

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2384 of 2015 (O&M)

Date of decision : 14.3.2018

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Vikas and others

.....Petitioners

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.P.S. Virk, Advocate
for the petitioners.

Mr. Surender Singh, Assistant Advocate General,
Punjab.

Mr. Gaurav Sharma, Advocate for respondent No.2.

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H. S. Madaan, J.

Accused – Vikas, Giani Ram, Saroj and Rohtash, booked in FIR No.83 dated 13.6.2010, for offences under Sections 323, 325, 506, 34 IPC, registered at Police Station, Sadar Narwana, faced trial by Sub Divisional Magistrate, Narwana, who vide judgment dated 12.3.2014, convicted the accused for offences under Sections 323, 506 IPC read with Section 34 IPC and vide order of the even date, released the convicts on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, on their furnishing probation bonds in the sum of Rs.10,000/- with one surety in the like amount each, for a period of six months, to keep peace and be of good behaviour, during the said period and to appear before the court as

and when called upon to receive the sentence during the period so mentioned.

Briefly stated, facts of the case, as per the prosecution story are that on 11.6.2010 at about 9.00 A.M. complainant Shakti Parkash s/o Giani Ram r/o Dhakal, had gone to his fields. When his father Giani Ram, brother Rohtash, both armed with jailli, nephew Vikas armed with lathi reached there. Rohtash gave a jailli blow to the complainant and complainant raised his left hand to save his head, taking the blow on his left hand. Vikas gave a lathi blow hitting the complainant on his left ribs. Giani Ram gave a jailli blow hitting the complainant on his left shoulder. In the meanwhile, Vishal s/o Rohtash and Saroj w/o Rohtash, having dandas also reached there and they gave danda blows to the complainant hitting him on his left thigh, ribs and back. On hue and cry being raised by the complainant, his sons Deepak and Kuldeep arrived at the spot. They also raised alarm, which attracted some persons from the neighbourhood. Thereafter, the assailants ran away from the spot alongwith their respective weapons. The injured had become unconscious. He was removed to Government Hospital, Narwana, where he was given first aid and then referred to PGIMS Rohtak. However, the injured was taken to Government Hospital, Hisar and got admitted there. The motive for the incident was that wife of the complainant had lodged a complaint regarding molestation, which left the accused aggrieved and they had caused injuries to the complainant.

An intimation regarding arrival of injured in the Government Hospital, Hisar, was conveyed at Police Station, Sadar

Narwana. From there the police party went to the Hospital. Statement of the injured was recorded on 13.6.2010, when he was in a fit condition to make the statement. Formal FIR was registered. The accused were arrested and after completion of the investigation, they had been sent up to face trial, which ended in their conviction and release on probation, as mentioned above.

Both, the convicts, as well as the complainant feeling dissatisfied by the said judgment of conviction and order of sentence had challenged the same by way of filing separate appeals, which were disposed of by Sessions Judge, Jind, vide judgment dated 12.5.2015.

In the appeal filed by the appellant-convicts, an application for producing additional evidence was filed, which was allowed by the learned Sessions Judge vide order dated 9.2.2015. Similarly, the appellant-complainant had also filed an application for adducing additional evidence in the appeal filed by him, contending that the Investigating Agency did not produce the X-Ray report of the complainant-injured alongwith the challan because of accused happened to be a police official; that in terms of X-Ray report No. 687 dated 11.6.2010, there was a fracture on the left hand as well as on 9th rib of left side of the complainant-appellant, as per the report given by Dr. T.P. Sharma, Medical Officer, General Hospital, Hisar. The trial Court did not held the appellant-convicts guilty under Section 325 IPC for the reason that X-Ray report had not been produced, therefore, no offence under Section 325 IPC was made out. Therefore, X-Ray report was necessary to be produced before the trial

Court for doing justice to the appellant-complainant. That application was opposed by the accused-convicts vehemently. However, the learned Sessions Judge, observed that appellant- convicts were charge sheeted under Section 325 IPC and from the judgment passed by the trial court, it is clear that the sole ground for acquittal of the accused under Section 325 IPC was non-production of either X-Ray film or X-Ray report, though X-Ray report pertaining to the appellant-complainant was available on the judicial file, but name of the doctor issuing X-Ray report was not mentioned in the list of witnesses attached with the challan, which appeared to be the sole reason for non-summoning of that witness to prove the X-Ray report.

Learned Sessions Judge came to the conclusion that examination of the said doctor to formally prove the said report was necessary for adjudication of the case in a judicious and rightful manner and further the complainant – appellant should not be blamed for the lapse which was on the part of the prosecution. Taking into view that application for additional evidence filed on behalf of the convicts, had already been allowed in the connected appeal, applying the same analogy, the application moved by the complainant was also allowed. In the appeal filed by the accused convicts, learned Sessions Judge while allowing the application moved by the convicts to lead the evidence to prove alibi of one of the appellant-convict on the ground that he was on election duty and that documents pertaining to his election duty were on file but not formally proved. Learned Sessions Judge, Jind, making such observations directed that the lower court record be ordered to be sent back with a direction to

record evidence of Dr. T.P. Sharma and to decide the case afresh. It was further directed that lower court will take into consideration the additional evidence already taken by the court of Sessions in appeal No. 48 of 2.4.2014, whereby one of the appellant-convict namely, Rohtash raised the plea of alibi.

The accused convicts are feeling aggrieved by the said judgment passed by the learned Sessions Judge.

After hearing learned counsel for the revisionists, learned State counsel as well as learned counsel for the complainant, I find that the grouse of the revisionists is unfounded. The judgment passed by the trial Court has since been set aside by the learned Sessions Judge. Such judgment delivered by the learned Sessions Judge is well reasoned one based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The learned Sessions Judge, Jind, has been fair enough in allowing the application for additional evidence moved by the accused convicts as well as by the complainant, adopting legal yard stick. No fault could be found with such judgment setting aside the judgment passed by the trial Court and remanding the case back to such court.

The revision petition is without any merit and is dismissed accordingly.

14.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No