

**In The High Court for the States of Punjab And Haryana
At Chandigarh**

CRR-2776-2015 (O&M)

Date of Decision:-20.12.2018

Suraj Bhan

... Petitioner

Versus

State of Haryana and others

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. B.S. Rathee, Advocate for the petitioner.

Ms. Aditi Girdhar, Assistant Advocate General, Haryana.

Mr. Naveen Singh Panwar, Advocate for respondents No.2 to 5.

GURVINDER SINGH GILL, J.(Oral)

1. The complainant has filed this revision petition assailing judgment dated 19.2.2015 passed by learned Additional Sessions Judge, Sonapat dismissing his revision petition wherein he had challenged judgment dated 8.5.2014 passed by learned Sub-Divisional Judicial Magistrate, Gohana acquitting the accused in respect of offence under Section 325 of Indian Penal Code while holding them guilty for offence under Section 323 of Indian Penal Code only.
2. I have heard the learned counsel for the petitioner and also the learned State counsel.
3. The short question involved in this case is as regards the existence of fracture on the person of injured PW-3 Bijender. It is the case of prosecution that the accused had caused injuries to two of the injured namely PW-2-Surajbhan and PW-3 Bijender. The aforesaid injured had been taken to the

hospital and were duly examined by PW-4 Dr. Vinay Mohan, who duly proved their MLRs. It appears that both the injured were also subjected to X-ray examination and as per case of the prosecution PW-3 Bijender was found to have sustained a fracture on middle finger of right hand. However, the radiologist, who had given his report Ex.PW-4/D, has not been examined and it is only PW-4 Dr. Vinay Mohan, who deposed about the said report, when he stepped into the witness box. The relevant extract from his statement reads as follows:-

“I have seen “X-ray report” Ex.PW-4/D, which shows fracture terminals phalanx of middle finger on the person of Bijender son of Surajbhan. Two X-ray films are Ex.P-1 and Ex.P-2.”

4. No doubt PW-4 Dr. Vinay Mohan has stated as regards the fracture but he has stated so, simply on the basis of X-ray report Ex.PW-4/D, which was not prepared by Dr. Vinay Mohan himself but by some radiologist. During the course of cross-examination some questions were put to him as regards X-ray films to which he answered as follows:-

“The X-rays Ex.P-1 and Ex.P-2 were conducted in my presence. I do not remember the name of radiographer. Hindi writing at point “A” is neither in my hand nor written in my presence. I cannot tell the exact dates, when X-rays were conducted without seeing the record”.

5. It is not disputed that the radiologist was never examined by the prosecution. In the absence of examination of radiologist, the statement of Dr. Vinay Mohan, as regards the existence of fractures, cannot be relied upon since it is the job of a radiologist to opine about the existence of fractures. Unless the fractures are such, regarding which anybody can opine even by a naked eye

say for example in case of a broken tooth or an absolute crushing of some limb etc., the opinion of some other doctor as regards fracture may not be sufficient to be treated as an expert's opinion.

6. During the course of arguments, the learned counsel for the petitioner placed reliance upon a judgment reported as 2014(3) RLW 2161 Halke Versus State of Rajasthan to contend that production of a Medical Officer and Radiologist is not *sine-qua-non* for establishing guilt of the accused.
7. I have perused the cited judgment. The cited judgment was a case of murder, wherein the Medical Officer had not been produced. The High Court of Rajasthan, while noticing that there was other convincing circumstantial evidence to establish the factum of death, held that examination of Medical Officer and Radiologist is not *sin-qua-non*. However, the facts in the present case are distinct inasmuch as the opinion of radiologist would be required to ascertain the finer aspects like the existence of a fracture. As already noticed above, in the present case, the existence of injuries is not in dispute and has been duly established but in order to hold that the said injuries resulted in fracture, the opinion of an expert in the nature of Radiologist, would certainly be required to be duly proved.
8. In view of the discussion made above, this Court does not find any ground to interfere with the findings of the trial Court and as affirmed by the lower Appellate Court and the same are hereby affirmed. There is no merit in this revision petition and the same is hereby dismissed.

20.12.2018

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)
Judge