

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Decided on: 25.04.2018

1. CRR No.221 of 2017 (O&M)

Om Parkash

....Petitioner

Versus

Dharam @ Dharminder and another

....Respondents

2. CRR No.4951 of 2016 (O&M)

Om Parkash

....Petitioner

Versus

Puran and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Jagjot Singh, Advocate
for Mr. Rohit Rana, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.2096 of 2017 in CRR No.221 of 2017

Prayer in this application is for condoning delay of 15 days
in filing the revision petition.

Heard.

In view of averments made in the application, the same is
allowed and delay of 15 days in filing the revision petition stands
condoned.

CRM No.41187 of 2016 in CRR No.4951 of 2016

Prayer in this application is for condoning delay of 09 days

in filing the revision petition.

Heard.

In view of averments made in the application, the same is allowed and delay of 09 days in filing the revision petition stands condoned.

CRR Nos.221 of 2017 and 4951 of 2016

The present revision petitions have been filed challenging the judgment dated 13.09.2016 passed by the Lower Appellate Court vide which while holding the respondent – Dharam @ Dharminder guilty of commission of offence punishable under Sections 323, 324, 325 of the Indian Penal Code (in short 'IPC'), has released him on probation. The prayer in CRR No.4951 of 2016 is for setting-aside the judgment of acquittal passed by the trial Court dated 09.02.2015 qua the accused – Puran, Balbir Singh and Bhagat Singh as well as the judgment dated 13.09.2016 passed by the Lower Appellate Court dismissing the appeal filed by the petitioner/complainant.

Since, both the revision petitions are arising out of the same FIRs and judgments passed by the Courts below, the same were heard together and are disposed of vide common judgment.

Brief facts of the case are that the petitioner – Om Prakash got an FIR No.44 dated of 2007 registered under Sections 323, 324, 325, 326 IPC at Police Station Hassanpur has been registered against 04 persons namely Puran, Balbir Singh, Bhagat Singh and Dharam @ Dharminder with the allegations that on 24.05.2007, he was constructing a boundary wall on his plot and, thereafter, the accused

persons came at the spot having weapons in their hands. Dharam @ Dharminder gave a blow of knife on the forehead of the complainant twice. Bali gave a blow of brickbat on the private part of the complainant whereas Satparkash hit him with the brickbat on his left shoulder. Bhagat gave a blow of lathi on his back and when the brothers of the complainant namely Digambar and Dalip tried to save him, they were also given injuries by lathis and sticks. On raising alarm, one Narayan came at the spot and the injured persons were taken to hospital. After obtaining their MLR, the FIR was registered.

During the investigation, Bhupinder and Varinder were declared juvenile and their trial was separated and they were sent to face the trial before the Juvenile Justice Board.

On completion of investigation, the report under Section 173 Cr.P.C. was submitted in the Court and the accused persons were charged for the offence punishable under Sections 323, 324 and 325 IPC.

The prosecution examined Digambar as PW1, Dalip as PW2, Karambir as PW3, the complainant – Om Parkash as PW4, Dr. H.C. Bhagat as PW5 and the Investigating Officer, SI Abdul Hamid as PW6 and closed the evidence.

Thereafter, the statement of accused persons were recorded under Section 313 Cr.P.C. and they denied all the incriminating evidence which were put to them and claimed innocence, however, no defence evidence was led.

PW1 – Digambar stated on the line of the version given in

the FIR and deposed that the accused persons caused injuries to the complainant – Om Parkash. Similar statement was made by PW2 – Dalip and PW3 – Karambir.

The complainant – Om Parkash proved his statement made before the police as Ex.PW4/A and also supported the version as given in his statement.

PW5 – Dr. H.C. Bhagat proved the MLR of Om Parkash as Ex.PW5/A.

PW6 – SI Abdul Hamid, the Investigating Officer also deposed on the line of investigation conducted by him and stated that he recorded the statement of the complainant in the hospital and an information was sent to the Police Station vide Ex.PW6/A for registration of the FIR and a formal FIR was registered as Ex.PW6/B. On obtaining the opinion of the doctor, Ex.PW6/E, Section 326 IPC was added and after the arrest of the accused persons, the report under Section 173 Cr.P.C. was submitted before the Illaqa Magistrate.

The trial Court after hearing the counsel for the parties, vide its judgment dated 09.02.2015 held that it was a case of free-fight between the parties and two FIRs were registered for the same incident. It was also held that it is difficult to hold which party was the aggressor party and the prosecution has failed to explain the injuries sustained by the accused persons and the MLR was not proved by the prosecution, in accordance with law and there are many discrepancies in the statement of the prosecution witnesses and acquitted the accused persons.

The petitioner – Om Parkash, thereafter, filed an appeal

before the Lower Appellate Court challenging the judgment of acquittal.

The Lower Appellate Court, vide impugned judgment dated 13.09.2016 upheld the acquittal of the accused persons namely Puran, Balbir and Bhagat Singh, however, held Dharam @ Dharminder guilty of commission of offence punishable under Sections 323, 324, 325 IPC and vide order of sentence dated 13.09.2016 released the respondent/accused Dharam @ Dharminder on probation subject to furnishing his personal bonds with surety for a sum of Rs.20,000/- for maintaining good conduct and behaviour for a period of 01 year and further to pay a compensation of Rs.5,500/- to the injured/complainant – Om Parkash.

The petitioner has, thereafter, filed the present revision petitions. In CRR No.221 of 2017, the petitioner has challenged the order of sentence for releasing the respondent/accused Dharam @ Dharminder on probation and in CRR No.4951 of 2017, the petitioner has challenged the acquittal order of the respondents/accused namely Balbir, Bhagat Singh and Puran by both the Courts below.

Counsel for the petitioner has submitted that the Lower Appellate Court has wrongly released the respondent/accused – Dharam @ Dharminder on probation as he was found guilty of commission of offence punishable under Sections 323, 324 and 325 IPC and he has caused injury No.1 on the forehead of the petitioner. It is further submitted that the Lower Appellate Court has not recorded any finding while releasing the respondent – Dharam @ Dharminder on probation.

It is further submitted that the compensation awarded to the petitioner is inadequate. Counsel for the petitioner has further submitted that there was sufficient evidence available on record to prove that even the respondents/accused namely Puran, Balkar and Bhagat Singh, in conspiracy with Dharam @ Dharminder have caused injuries to the petitioner and both the Courts below have wrongly acquitted them despite the fact that their involvement in the case is proved as it was a case of version and cross-version and the genesis of the occurrence is not disputed by the respondents/accused.

After hearing counsel for the petitioner, I find no merit in the present revision petitions. So far as the acquittal of the accused – Puran, Balbir and Bhagat Singh is concerned, both the Courts below have recorded a concurrent finding that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. No recovery of knife was effected from the co-accused Dharam @ Dharminder and from the statement of PW5 – Dr. H.C. Bhagat, it is stated that part of injury No.2 is misprinted in the MLR and Section 326 IPC was added only on the basis of injury No.2. The complainant party has also got recorded FIR No.55 dated 25.05.2007 in which the accused persons have also suffered injuries, however, none of the witness has been able to explain the injuries sustained by the accused persons and, therefore, the trial Court has rightly held that it was a case of free-fight between the two parties and from the evidence led by the prosecution, it could not be concluded as to which party was the aggressor party.

So far as the conviction and sentence of the accused –

Dharam @ Dharminder is concerned, the Lower Appellate Court has recorded a finding that there is no proof of meeting of mind between the accused – Puran, Balbir and Bhagat Singh with Dharam @ Dharminder as Dharam @ Dharminder has already reached the spot followed by the other co-accused persons. As per the prosecution version, Dharam @ Dharminder was the first person who has caused injuries and, thereafter, the other persons came. Both the Courts below, have concurrently held that it is doubtful whether injury No.2 was an incised wound injury caused by a sharp edged weapon. Since, the knife used in the occurrence by Dharam @ Dharminder was never recovered in this case and was not put to PW5 – Dr. H.C. Bhagat, the Courts below have rightly held that causing of injury No.2 with sharp side of the knife is doubtful. The Lower Appellate Court has convicted Dharam @ Dharminder holding that the injury No.1 is proved to be caused by sharp edged weapon, however, he was released on probation.

The Lower Appellate Court has released the accused – Dharam @ Dharminder by taking into consideration the fact that he is a poor person having two small children and old aged parents are living with him and he is the only bread earner of the family. It was also considered that he was not a previous convict and also taking into consideration that the accused persons were facing the trial since 2007 and thereafter, there was no repetition of the occurrence, the accused Dharam @ Dharminder deserve opportunity to reform himself and therefore he was released on probation.

Counsel for the petitioner could not rebut that even after

expiry of the period of one year, for which Dharam @ Dharminder was directed to furnish personal bonds for maintaining good conduct and behaviour, he has rebutted the offence or has not shown improvement in his character.

However, I find that the compensation of Rs.5,500/- awarded in favour of the petitioner – Om Parkash is on lower side and thus, the same is enhanced to Rs.10,000/-.

With the aforesaid partial modification in the amount of compensation payable to the petitioner – Om Parkash, I find no other reason to set-aside the impugned judgments passed by both the Courts below acquitting – Puran, Balbir and Bhagat Singh and releasing Dharam @ Dharminder on probation.

25.04.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No