

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

(1)

**Criminal Revision No.1724 of 2018 (O&M)
Date of Decision: September 20, 2018**

Surender

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

(2)

Criminal Revision No.1766 of 2018 (O&M)

Satbir Singh and others

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

(3)

Criminal Revision No.1781 of 2018 (O&M)

Rakesh and another

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. Manish Kumar Singla, Advocate
for the petitioners in CRR Nos.1724 and 1781 of 2018.

Mr. P.S. Ahluwalia, Advocate
for the petitioners in CRR No.1766 of 2018.

Mr. Deepak Grewal, D.A.G., Haryana.

SURINDER GUPTA, J.

In case bearing FIR No.273 dated 26.08.2009, registered at Police Station City Tohana, for the offences punishable under Sections 323, 324, 506 read with Section 34 of Indian Penal Code (for short-IPC), petitioners were convicted and sentenced by the trial Court as follows:-

Sections	Imprisonment awarded
323/34 IPC	Sentenced to undergo rigorous imprisonment for a period of three months each.
324/34 IPC	Sentenced to undergo rigorous imprisonment for a period of three years each.
506/34 IPC	Sentenced to undergo rigorous imprisonment for a period of one year each.

Brief Facts:-

About the incident that took place on 24.08.2009 at about 9.00 a.m., FIR was registered on the statement (Ex.PB) of Satpal recorded on 26.08.2009 at about 8.15 a.m., wherein he stated that on 24.08.2009 at about 09.00 a.m., he and his brother Aakash had gone to their old house to take wheat-straw for their cattle. House of Man Singh was adjoining their house and in front of their house, sons of Man Singh had stacked bricks and stones. Complainant removed bricks and stones to a side and started taking wheat-straw. In the meanwhile, Satbir armed with *gandasi* came to the spot and gave a blow on the right side of the head of his brother Aakash. When the complainant intervened, Satbir gave *gandasi* blow on the thumb, finger and right arm of complainant. Jai Bhagwan gave an iron rod blow on the right elbow of Aakash while Joginder gave iron rod blow below knee on his right leg. Petitioner Krishan gave slaps to complainant and his brother while Rakesh and Surender (petitioner) gave beatings to them with *dandas*. They

raised noise at which their father Lakhmi Ram and mother Smt. Chameli

came there and got the complainant and Aakash relieved from the petitioners, who went inside their house giving threat to kill them.

During investigation, petitioner Surender was found innocent, while remaining petitioners were challaned for the offences punishable under Sections 323, 324, 506 read with Section 34 IPC. On finding prima facie case, initially charge was framed against five petitioners except Surender for offences punishable under Sections 323, 324, 506 read with Section 34 IPC to which they pleaded not guilty and claimed trial. Thereafter, on the application of prosecution, Surender was also summoned as additional accused and was charge-sheeted along with other accused.

In support of its case, prosecution examined ASI Azad Singh as PW1, Dr. Manju Gupta, Medical Officer, General Hospital, Tohana as PW2, (None examined as PW3), Complainant Satpal as PW4 and injured Aakash as PW5. Thereafter, the evidence of prosecution was closed after giving up PW Lakhmi Ram as unnecessary.

After completion of prosecution evidence, entire incriminating evidence was put to the petitioners while recording their statements under Section 313 Code of Criminal Procedure (for short, Cr.P.C.), which they denied and pleaded their false implication. They examined Nuparjeev Singh SP as DW1 and thereafter closed defence evidence.

Learned trial Court convicted and sentenced the petitioners as detailed in opening para of this judgment. Appeal filed by the petitioners was dismissed and their conviction and sentence as per the judgment of the learned trial Court was upheld.

Learned counsel for the petitioners have argued that Lakhmi

Ram, father of complainant Satpal had not named accused No.4 to 6 in his statement recorded by the police under Section 161 Cr.P.C. Though, he has not been examined but his statement recorded under Section 161 Cr.P.C. could be looked into. The police during investigation has also found petitioner Surender as innocent. The incident had taken place on 24.08.2009 and FIR was registered on 26.08.2009 on the statement of Satpal and there is no explanation for delay of more than two days in recording the FIR, particularly when complainant Satpal was not admitted in hospital. This has given reason to the complainant to implicate six persons from the side of accused (petitioners) for four injuries allegedly found on the person of complainant and his brother Aakash, out of which, three were abrasions. The injuries attributed to accused (petitioners) in the FIR as well as in the statements of complainant and injured Aakash are not supported by medical evidence. The prosecution avoided to examine Lakhmi Ram, whose statement under Section 161 Cr.P.C. was recorded while injured Aakash was examined as prosecution witness whose statement under Section 161 Cr.P.C. had not been recorded. The judgment of the both the courts below are not only perverse but learned Judges also failed to look into the truthfulness of the prosecution version, injuries on the person of accused, which were not explained in the statements of complainant and injured. The trial Court as well as the appellate Court failed to look into this aspect that statement of complainant and injured Aakash regarding the injuries caused to them were not truthful or find corroboration from medical evidence. While the learned trial Court never looked into this aspect as to whether injuries on the persons of complainant and his brother Aakash were caused

by the petitioners in furtherance of their common intention, Learned appellate Court had recorded findings to this effect without any evidence on file. Falsity of prosecution version is evident from the fact that 6 assailants had attacked complainant and his brother with weapons and only four injuries out of which three were abrasions, were caused.

Learned State counsel has argued that two days' delay in recording FIR took place as injured Aakash was admitted in hospital and declared 'unfit to make statement'. Complainant as well as injured have detailed all the injuries caused to them by the petitioners and both the Courts below have rightly appreciated their testimony while convicting and sentencing the petitioners.

The scope of appraisal of lower Courts' judgments in revision is limited to the extent as to whether the judgments are illegal, perverse and usually the finding of fact recorded by the Courts below are not disturbed except when these are either perverse or based on wrong interpretation of evidence. On perusal of the record and the judgments of the Courts below, I am of the opinion that the entire evidence led by the prosecution required to be looked into and appreciated to find as to whether the findings recorded by the Courts below that all the petitioners are guilty of offence punishable under Sections 323, 324, 506 read with Section 34 IPC and the quantum of sentence awarded to them commensurate with the nature of offence.

The matter was reported to the police with delay of about 60 hours after the occurrence. As per statement of Dr. Manju Gupta PW2, she examined Satpal, who came walking in the hospital and found following injuries on his person:-

- “(1). An abrasion of size 0.5 cm with surrounding bruise of size 3 x 3 cm situated on the right forearm at the junction of proximal 2/3 and distal 1/3rd.
- (2) A red abrasion of size 0.5 cm was present on palmar aspect of right thumb with fresh bleeding present.”

In the opinion of doctor, both the injuries were simple in nature, caused by blunt weapon within duration of 12 hours.

On the same day, she examined Aakash, who also came walking in the causality and found following injuries on his person:-

- “(1) An incised wound of size 2 x 1 x 0.5 cm was present on right parietal region of scalp 6 cm above right ear. Fresh bleeding was present.
- (2) An abrasion of size 1 x 1 cm was present on left eye brow.”

Both the injuries were declared simple in nature. In the opinion of doctor, injury No.1 was caused by sharp edge weapon while injury No.2 was caused by blunt weapon. Dr. Manju Gupta PW2 has stated that Satpal was not admitted in hospital and was able to give statement. She was also not shown any weapon by the police with which the injuries could be caused. In her cross-examination, Dr. Manju Gupta stated that on 24.08.2009, she had also examined petitioner Jai Bhagwan and found following injuries on his person:-

- “(1) A lacerated wound 2 cm with irregular margins/obliquely placed on left parietal prominence. No foreign matter was present.
- (2) An irregular red colour tender 3 cm x 2 cm bruise was present on dorsal side of right middle forearm.

- (3) A 0.5 cm red abrasion was present on distal phalanx of left thumb.”

On examination of petitioner Krishan, she noted following injuries on his person:-

- “(1) He complained of human bite. On examination, a 0.2 cm abrasion with scab was present on proximal phalanx of right index finger. It was linear and horizontal.
- (2) Two bruises of size 7 x2 cm and 10 x 2 cm were present on left shoulder blade posteriorly. These were rectangular, red and tender.”

Injuries No.1 to 3 on the person of Jai Bhagwan and the injuries on the person of Krishan were declared simple in nature, while injury No.2 on the person of Jai Bhagwan was kept for x-ray and Ortho opinion. X-ray examination of right fore-arm was advised.

The prosecution has not explained the injuries on the person of petitioner Jai Bhagwan and Krishan. In the FIR, complainant Satpal has stated about the injuries caused by the petitioners on the person of Aakash as follows:-

- (i) Satbir gave a *gandasi* blow on the right side of head of Aakash. (injury No.1)
- (ii) Jai Bhagwan gave a *gandasi* blow on the right hand of Aakash. (injury No.2)
- (iii) Krishan gave slaps and fist blow to Aakash. (No corresponding sign of injury found on medical examination)
- (iv) Rakesh and Surender gave beatings to Aakash with *dandas*. (No corresponding sign of injury found on medical examination)

While describing his injuries, complainant has stated as follows:-

- (i) Satbir gave *gandasi* blow which hit on his thumb, finger and right arm. (injuries No.1 and 2)
- (ii) Joginder gave a rod blow below the knee of the right leg. (No corresponding sign of injury found on medical examination)
- (iii) Krishan gave slaps and fist blows to him. (No corresponding sign of injury found on medical examination)
- (iv) Rakesh and Surender gave him beatings with *dandas*. (No corresponding sign of injury found on medical examination)

While appearing as PW4, complainant Satpal has reiterated causing of above injuries as mentioned in the FIR. Surprisingly, he has denied presence of his sister Moni at the time of occurrence, suffering injuries and that she was medically examined. Dr. Manju Gupta PW2 has categorically stated that on the same day, she also examined Moni daughter of Lakhmi and found following injuries on her person:-

- “(1) 10 x 1 cm long multiple red tender bruises were present vertically on dorsal side of left fore-arm.
- (2) A 2 x 2 cm sized abrasion was present on left shoulder joint.
- (3) A small round around 1 cm size red bruise was present over left ear.”

Injuries on the person of Moni and her presence at the time of occurrence has been concealed and she was not cited or examined as prosecution witness. Lakhmi Ram, father of complainant, who came to the spot, has also not been examined, obviously for the reason that in his statement dated 26.08.2009, recorded by the police under Section 161 Cr.P.C. during investigation of the case, he has not named the presence of any of the accused except Satbir, Jai Bhagwan and Joginder at the time of occurrence. Statement of Lakhmi Ram, which was made part of the challan

“On 24.08.2009, my sons Satpal and Aakash have gone to our old house to take wheat-straw for our buffalos. The house of Man Singh is adjoining our house. They have stacked bricks and stones in front of gate of our house as they have constructed their new house and have blocked the street. It was about 9.00 a.m., when Satbir, Jaibhagwan and Joginder came to the spot one by one and caused injuries to my sons. On hearing the noise, me and my wife came to the spot, separated them and got them admitted in hospital.”

It is evident that prosecution has avoided to examine Lakhmi Ram because he has not named presence of accused Krishan, Rakesh and Surender for causing any injuries to his sons. Avoiding to cite Moni as witness and hiding her presence at the spot is also for the reasons best known to complainant party. However, it causes a stigma on Investigator, who did not try to verify the truth behind the incident. Delay of 60 hours in reporting the matter to the police is also unexplained on record and giving of coloured, tutored and well conversed version of the occurrence has every possibility in the facts and circumstances of the case. Investigator has also not tried to find how injuries to Jai Bhagwan, Krishan and Moni were caused and what is explanation of complainant party about these injuries.

Complainant Satpal has stated that *danda* blows to them have caused bluish marks on their body. He was given about 10/15 *danda* blows on his legs and 10/12 *danda* blows on his shoulder. All the *danda* blows were given with full force. Aakash was given *danda* blow in the middle of his head. He and his brother Aakash have shown bluish marks on their body to the doctor.

PW5 Aakash has stated that he was caused injuries by Satbir,

Jai Bhagwan, Rakesh, Surender and Krishan and *danda* blows were given with full force on his body. The blood had oozed from the injuries caused by the *dandas* and this injury had left bluish marks on their body which were shown to the doctor. He has admitted that the complainant belong to Congress party, while the accused were of Indian National Lok Dal. The neighbours have also come to the spot but he was not in a position to tell their names. He has admitted that two cases for causing injuries to different persons have been registered against them.

The Investigating Officer has not been examined by the prosecution in this case. Statements of complainant and his brother find no independent corroboration. Even Lakhmi Ram father and Chameli Devi, mother of complainant and injured, who allegedly came at the spot, have not been examined. It is also apparent that sister of complainant was present at the spot and suffered some injuries but she was not made prosecution witness. Even her presence at the time of occurrence has been withheld. The injuries on the person of Krishan and Jai Bhagwan, who were also examined by Dr. Manju Gupta PW2 on the same day, have not been explained. The complainant has stated that they had suffered so many *danda* blows which have left bluish marks and bleeding on their body but no such injury was found on their persons by the doctor and she has not even been suggested that there were injuries caused by slaps, fists and *danda* blows on the person of complainant and his brother Aakash.

The facts discussed above reflect that complainant and his brother have concealed the real facts regarding the occurrence and are not truthful witnesses. Their testimonies are not corroborated by independent or

medical evidence. Both complainant and his brother have suffered three abrasions and one simple injury caused by sharp edged weapon but they have concealed the genesis of the occurrence and have not come up with any version regarding the injuries on the person of Krishan and Jai Bhagwan. Learned trial Court while recording conviction of the petitioners, has not even discussed the injuries on the person of Krishan, Jai Bhagwan and Moni or have discussed any explanation rendered by the prosecution on this score. The Appellate Court has also not looked into this aspect. Both the Courts have believed the testimony of complainant and his brother Aakash without looking into the fact as to why their father Lakhmi Ram and mother Chameli Devi, who had come to the spot, were not examined. As per injured Aakash, neighbours had also assembled at the spot but none of them has either been named or examined.

Keeping in view the above facts and circumstances, I am of the opinion that both the Courts below have committed grave error while convicting and sentencing the petitioners under Section 323, 324, 506 read with Section 34 IPC. The judgments of the Courts below are illegal, perverse and are not sustainable in the eyes of law. Consequently, I find merits in these revision petitions. The same are accepted. Judgment of conviction and order of sentence awarded by the Courts below are set aside and all the petitioners are acquitted of the charge framed against them. They be released forthwith, if not required in any other case.

September 20, 2018

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No