

CRR-1760 of 2018 (O&M)

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

CRR-1760 of 2018 (O&M)
Date of Decision: 11.12.2018

Ramesh and others

...Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Deepak Girotra, Advocate, for the petitioners.
Mr. P.K. Garg, AAG, Haryana.
Mr. Lalit Yadav, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this revision petitioners have laid challenge to judgment dated 20.03.2018 of the First Appellate Court, holding them guilty under Sections 148, 323 and 325 read with Section 149 IPC and order of sentence of even date, releasing them on probation of good conduct on their furnishing personal bonds in the sum of ₹25,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that they would keep peace and be of good behaviour for one year from the date of passing of the order. That apart, petitioners were also directed to make payment of ₹60,000/- to all the injured/complainant.

Briefly, petitioners were booked and tried vide FIR No.324 dated 28.09.2012 registered under Sections 148/149/323 and 325 IPC pertaining to Police Station Sampla, on the allegations that in the morning of 10.09.2012, when complainant Suresh was levelling his purchased plot

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adjacent to his house against the wishes of petitioners, who are his neighbours, they came on the spot and after abusing, caused him injuries. On hearing noise, his sons Ravi and Pawan came on the spot and rescued him. However, after holding trial, petitioners were acquitted by the trial Court vide judgment dated 01.02.2017.

Being aggrieved, respondent No.2-complainant approached the First Appellate Court, who, vide impugned judgment dated 20.03.2018, while setting aside the said judgment of acquittal, punished the petitioners in the manner as narrated above in the opening part of the judgment.

Learned counsel for the petitioners *inter alia* contends that the First Appellate Court failed to appreciate that there were major contradictions in the initial version of the complainant and his statement in Court as PW2. First Appellate Court did not deal with any of the well, cogent and convincing findings of the trial Court recording acquittal of the petitioners and without appreciating the evidence led by prosecution in the right perspective, wrongly and illegally held the petitioner guilty and convicted them. First Appellate Court also failed to appreciate that prosecution has miserably failed to explain injuries suffered by the petitioners at the hands of the complainant's side.

On the other hand, learned State counsel assisted by learned counsel for respondent No.2-complainant vehemently opposing submissions of learned counsel for the petitioners, pleaded the legality and validity of the impugned judgment.

Having given thoughtful consideration to the rival submissions made by both the parties, this Court finds the instant revision merits

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acceptance for the reasons to follow.

No question of law much less substantial has been raised in this revision.

As per complainant's initial version his son Ravi had also reached the spot to rescue him. Petitioners had also caused injuries to him. However, in his cross-examination as PW2, respondent-complainant categorically admitted that his son Ravi was not present at the spot.

Two juvenile co-accused of the petitioners were acquitted by the Juvenile Justice Board vide judgment dated 12.05.2015 Mark-DX. Prosecution or respondent No.2 did not challenge the same in appeal. Therefore, said judgment of acquittal qua juvenile co-accused of the petitioners has attained finality. Consequently, case of the petitioners has to be treated on the same party as that of his co-accused, being based on similar facts and circumstances.

PW10 Hari Om specifically admitted in his cross-examination that petitioners, namely, Ramesh, Munni, Sunita, Jagdish and others had also received injuries, but he did not record their statements nor collected their medico-legal report, despite moving of complaints Ex.D1 to D3 by Ramesh against the complainant party coupled with medical reports Ex.PW7/DA, Ex.PW7/DA1, Ex.PW7/DB and Ex.PW7/DB1. Therefore, it is evident on the record that investigation done by the aforesaid investigating officer was tainted.

Respondent-complainant is not a truthful witness inasmuch as he denied the factum of giving injuries to the petitioners in the impugned occurrence. Even he did not disclose to the police about the injuries caused

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by them to the petitioners.

There are major contradictions in the statement of PW2 Suresh-complainant. In his initial version to the police, he reported that Ramesh and Jagdish @ Jage Halwai at the first instance came on the spot and gave beatings to him and thereafter remaining assailants came on the spot, whereas as PW2, during trial he, contrary to the above statement, testified that initially Ramesh, his wife Munni and son Amit had come on the spot and caused injuries to him and thereafter other accused, including Jagdish had come and gave beatings to him.

That apart, PW2 respondent No.2-complainant during trial further testified that on hearing noise, his sons Ravi and Pawan reached the spot to rescue him. Petitioners caused injuries to them also, whereas before Juvenile Justice Board, he did not depose about the arrival of his son Ravi.

Respondent No.2-complainant as PW2 testified that Munni had inflicted *lathi* blow on his eye, whereas in his statement before the Juvenile Justice Board, he testified that Amit and Monu had inflicted *lathi* blow on his eye.

Considering above major contradictions, revision is allowed. Impugned judgment of conviction of the First Appellate Court is set aside and that of trial Court is upheld.

December 11, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No