

CRR-3406 of 2018 (O&M)

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

CRR-3406 of 2018 (O&M)
Date of decision: 09.10.2018

Baldev Singh alias Deba and another

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Lokesh Vohra, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this revision, accused have laid challenge to judgment dated 20.09.2018 of the First Appellate Court, affirming the judgment of conviction dated 04.04.2018 of the trial Court, holding the petitioners guilty under Section 323 and 325 read with Section 34 IPC, but reducing their sentence from two years to six months.

Briefly, petitioners were booked, tried, held guilty and sentenced under Sections 323 and 325 read with Section 34 IPC and convicted for maximum period of two years by the trial Court vide judgment of conviction and order of sentence dated 04.04.2018 for the allegations that in the morning of 18.04.2014, they along with their co-accused Kartaro Bai alias Budan Bai (released on probation by the First Appellate Court) by brick-bating caused injuries near right eye and nose of complainant Pasho Bai. Assailant-co-accused Kartaro Bai @ Budan Bai had also passed derogatory remarks against the complainant. Being aggrieved, petitioners and their

mother-co-accused Kartaro Bai @ Budan Bai approached the First

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Appellate Court, who, affirming the aforesaid judgment of conviction of the trial Court, reduced the sentence from two years to six months vide judgment dated 20.09.2018 while releasing Kartaro Bai @ Budan Bai on probation.

Learned counsel for the petitioners *inter alia* contends that the medical evidence led by the prosecution was not precise, because PW6 Dr. Ashwani Kumar in his cross-examination opined that possibility of suffering of injury No.1 by complainant due to fall on a blunt object, could not be ruled out. Both the Courts below erred in ignoring the statement of DW1 Usha Rani, who had categorically deposed that complainant had slipped on the way to her field and had fallen down on a brick, on account of which she had received injuries. No independent witness was joined. PW2 Shabmu Singh had demolished the entire prosecution story by admitting in his cross-examination that he was not eyewitness to the occurrence. Lastly, he prayed that petitioners may be released on probation.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

Complainant as PW1 has categorically deposed that he had suffered injuries by brick-batting done by the petitioners. PW5 Dr. Anupamdeep, Radiologist on the basis of his X-ray report Ex.PW5/A and film report Ex.PW5/B had categorically testified that complainant had suffered a fracture on her right nasal bone. Therefore, statement of complainant is fully corroborated by medical evidence. Statement of PW6

Dr. Ashwani Kumar that such like injuries as suffered by the complainant

can be possible due to fall on a blunt object is only a suggestion. Therefore,

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it does not go to the root of the case. In other words, it does not affect the merits of the case. Statement of DW1 Usha Rani, being an interested witness as relative of the petitioners, has rightly been discarded by both the Courts below. More so, her statement as DW1 is contradictory to the statement of the petitioners under Section 313 Cr.P.C. inasmuch as, the petitioners in their statement under Section 313 Cr.P.C. stated that complainant had received injuries on account of her slip while drinking water at bore-well, whereas DW1 Usha Rani has stated that complainant had fallen down on the watt of the fields. Quality of evidence has to be seen and not the quantity.

Joining of independent witness is only a rule of caution, but not mandatory. It is open secret that in the village nobody comes forward to become a witness to an occurrence with a fear of his earning enmity with his co-villager against whom he would depose.

Considering nature of offence committed by the petitioners and the fact that their mother has already been released on probation and their sentence has been reduced from maximum two years to six months, they do not deserve any further concession.

I have gone through the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

October 09, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No