

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

**CRM No.M-1760 of 2018 (O&M)
Date of Decision: February 15, 2019**

Anil and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Sr. Advocate with
Mr.Karandeep S. Sidhu, Advocate
for the petitioner.

Mr.Sharad Yadav, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No.74 dated 09.10.2005 under Sections 148, 149, 323, 325 and 304 IPC registered at Police Station Jatusana, District Rewari (initially trial concluded in FIR No.74 dated 09.10.2005 under Sections 148, 149, 323 and 325 IPC, order dated 08.12.2017 framing the charge under Sections 304 read with Section 149 IPC passed by learned Addl. Sessions Judge, Rewari, supplementary challan dated 29.04.2017 and all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioners as well as

learned State counsel and have gone through the record.

The perusal of the record shows that occurrence took place on 6/7.10.2005 and FIR No.74 dated 09.10.2005 under Sections 148, 149, 323 and 325 IPC was got registered, which is reproduced as under:-

“On 09.10.15, one V.T was received from Police Station Model Town at Police Station Jatusana that Savinder s/o Sh.Shradanand, caste Ahir, resident of Bhankli was lying admitted in Virender Hospital, Garhi Bolni Road, Rewari in injured condition after a quarrel and I/O be sent, whereupon ASI Jagdish Chander alongwith C. Anil Kumar 854 reached Virender Hospital for conducting appropriate proceedings. Opinion of the doctor was obtained from the doctor for recording statement of injured and the doctor declared injured Savinder fit to make statement and statement of injured was recorded after going to the ward, which as under:- “Statement of Savinder Kumar s/o Shradanand, caste Ahir, resident of Bhakli Kalan, P.S. Kosli, Distt. Rewaro, aged about 17 years. Stated that I am resident of above said address and am working as Peon in Modern Senior Secondary School, Berli Kalan for last about two months and live in school for whole day and night. On 06.10.15, Anil Kumar, resident of Motla Kalan, Coordinator/Manager of school called me and stated that some money had gone missing from school and he had a suspect on me. I told him that I had not taken the money. Thereafter, on the intervening night of 06/07.10.05 at about 10.00 P.M., Kamal, resident of Motla Kalan, driver of Anil Kumar, Coordinator, resident of Motla Kalan came to school and immediately on coming, Anil, Manager/Coordinator gave me a saria blow on my waist and Kamal Driver gave a plastic pipe blow on my waist. Thereafter, Kartar Singh, Master resident of Baldhan Khurd, who was armed with danda, gave a blow on my back. Then Ajit Singh, Driver, resident of Berli Kalan came and gave fist blows on my chest. Thereafter Satpal, Driver, resident of Berli Khurd also came and gave danda blows on my calf muscles. Thereafter, Anil again gave a saria blow on my back-bone. I got an opportunity and went to the roof of the school and all of chased. Then I raised an alarm saying, “Mar diya, Mar diya” (killed-killed) but due to odd time, none could come to rescue me. I scaled the roof top and Anil Kumar pushed me. On falling below, I became unconscious and regained my consciousness on 07.10.05. Due to severe pain, my father Sh.Shradanand and Ex-Sarpanch Yogender got me admitted in Virender Hospital, Rewari. Both my feed are motionless till now. I have got recorded my statement. I have heard the same, which is correct. Action be taken.”

As per the record and admitted fact, challan was presented in

the FIR, trial concluded and accused were convicted under Section 323 read with Section 149 IPC and they have been acquitted of the offence punishable under Sections 148 and 325 read with Section 149 IPC. In the judgment, it is specifically held that considering the confrontations, medical report of complainant-injured as well as contents of Mark-D, which has been duly admitted by complainant-injured, the Court could not be convinced with the prosecution that grievous injury as sustained on the person of complainant-injured is a direct or probable consequences of act and conduct of accused persons, rather it suggests that grievous injuries sustained on the person of complainant-injured on account of his own act and conduct. Therefore, no criminal responsibility could be proved of the accused persons for causing grievous injuries to the complainant-injured, however, accused persons, being the members of unlawful assembly and in prosecution of common object of that assembly, could only be held guilty for voluntarily causing simple hurts to complainant-injured. This judgment of conviction was passed on 19.11.2011 by learned SDJM, Kosli and accused were sentenced vide order of sentence dated 21.11.2011 to undergo till rising of the Court and to pay fine of ₹1000/- each and in default of payment of fine, to undergo rigorous imprisonment for a period of 10 days.

The injured himself appeared on 02.02.2008 before the trial Court in that case as PW-2. His statement has been placed on record of this file, which is Annexure P-6. At that time, he has nowhere mentioned that he is still suffering from the injuries etc. The injured died on 27.07.2008, which means that he died almost after 2 years 9 months of the occurrence. Now, mother of the deceased has made complaint on 28.09.2015, on the

basis of which, supplementary challan under Section 173(8) Cr.P.C. has

been presented in the same FIR against the same accused under Section 304 IPC after the trial has concluded and accused have been convicted and sentenced earlier under other offences.

Learned counsel for the petitioner brought it to the notice of this Court that there is no post-mortem examination report nor there is any opinion of the doctor that injured has died due to the injuries received by him in the alleged occurrence.

The perusal of the record shows that after occurrence i.e. after 10 years, the mother has made the complaint. She was knowing that trial was going on and accused have already been convicted under Section 323 read with Section 149 IPC in the year 2011. The present petitioners have already been tried and convicted regarding same occurrence.

Keeping in view the facts and circumstances of the present case, I find that petitioners cannot be tried again for the offence under Section 304 or 302 IPC. Now, the presentation of supplementary challan by the police under Section 173(8) Cr.P.C. is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. The supplementary challan dated 29.04.2017 presented in case FIR No.74 dated 09.10.2005 and order framing the charge under Section 304 read with Section 149 IPC, along with all subsequent proceedings arising therefrom, are hereby quashed.

February 15, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No