

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

316

**CRR No. 2873 of 2009 (O&M)
Date of Decision : 11.07.2019**

Tinku and another

... Petitioners

Versus

State of Haryana

...Respondent

(2)

CRR No. 3249 of 2009 (O&M)

Billu

... Petitioner

Versus

State of Haryana

... Respondent

(3)

CRR No. 151 of 2010 (O&M)

Suraj Bhan and others

.... Petitioners

Versus

State of Haryana

.... Respondent

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Naman Nanda, Advocate for
Mr. Sanjay Vashisth, Advocate for the petitioners
in CRR No. 2873 of 2009.

Mr. Naman Nanda, Advocate for
Mr. B.S.Thind, Advocate for the petitioners
in CRR No. 3249 of 2009 and CRR No. 151 of 2010.

Mr. Praveen Bhadu, AAG, Haryana.

HARNARESH SINGH GILL,J.

This order shall dispose of the above mentioned three cases as all of them arise out of the judgment dated 30.10.2009 passed by the Additional Sessions Judge, Bhiwani, vide which the appeal filed by the petitioners, challenging the judgment of conviction dated 11.04.2007 and order of sentence dated 12.04.2007, passed by the Judicial Magistrate Ist Class, Bhiwani, in case FIR No. 266 dated 16.11.1999 under Sections 323, 325/34 of the Indian Penal Code (for short 'IPC'), registered at Police Station Sadar Bhiwani, was dismissed.

For convenience, the facts are being taken from Criminal Revision No. 2873 of 2009 by treating it as main case.

As per the prosecution case, on 28.10.1999, complainant Bhale Ram stated that on 27.10.1999 at about 8:00 p.m, he was standing in front of house of Pirthi Singh, accused, namely, Krishan, Tinku and Billu gave him fist blows and Hawa Singh and Baljeet had also given him fist blows and later on he was admitted to General Hospital, Bhiwani by his brother-in-law, namely, Balbir. Thus on his statement, present FIR No. 266 dated 16.11.1999 was registered and after completion of investigation, challan was presented in the Court.

Charges were framed against the petitioners under Sections 323, 325 and 34 IPC on 15.06.2000, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined, as many as six witnesses.

PW-1, Dr. K.L.Bawa proved on record X-rays report as Ex.PW1/A and X-rays Films as Ex.P1 to P4.

Similarly, Dr. Ranbir Singh, Medical Officer, General Hospital, Bhiwani examined as PW-2, deposed that on 28.10.1999, complainant, Bhale Ram was medico-legally examined. Complainant, Bhale Ram was examined as PW-4.

Statements of the accused under Section 313 Cr.P.C., in which they pleaded innocence. In defence, accused examined DW-1, Om Parkash, who stated that at the time of occurrence, he was present at the spot and he tried to pacify both Bhale Ram and Rameshwar but it was of no use. Dr. Ranbir Singh appeared as DW-2 (also appeared as PW-2) deposed that he had examined Rameshwar, with history of assault on 27.10.1999 at 6.30 p.m. This witness proved MLR as Ex.DW2/A.

Vide judgment dated 11.04.2007, the learned trial Court convicted the accused-petitioners under Sections 323 and 325 read with Section 34 IPC and vide order of sentence dated 12.04.2007, all of them were sentenced to undergo rigorous imprisonment for four months under Section 323 read with Section 34 of IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- each under Section 325 read with Section 34 IPC and, in default of payment of fine, to further undergo simple imprisonment for 14 days. Both the sentences however, were ordered to run concurrently.

Aggrieved of the said judgment and order, petitioner preferred an appeal before the Additional Sessions Judge-III, Bhiwani which was dismissed by the Appellate Court, vide judgment dated 30.10.2009.

Still aggrieved, the petitioners have preferred the present revision petition.

Learned counsel for the petitioners has vehemently argued that

both, the complainant and his brother were admitted in the hospital at the same time and accordingly, it stood established on record that petitioners/accused persons had never caused any injury to the complainant. Rather a fight took place between the complainant and his brother Rameshwar.

Counsel for the petitioners has further stated that in the present case, FIR pertains to the year 1999 and the petitioners/accused have been facing agony of trial for the last more than 19 years and the offences for which they had been charged, were tried by the Magistrate. As per the custody certificates, accused-Tinku has undergone actual sentence of 2 months and 14 days; accused Binder, Baljeet, Krishan and Suraj Bhan have undergone actual sentence of 3 months and 24 days, whereas accused-Billu has undergone actual sentence of 3 months and 09 days and accused- Hawa Singh has undergone actual sentence of 2 months and 14 days.

Per contra, learned State counsel, while opposing the aforesaid arguments raised by learned counsel for the petitioners, stated that all the petitioners/accused had attacked Bhale Ram (complainant) and gave him fist blows, as a result of which nasal bone of the complainant got fractured and the charges framed against the petitioners/accused stand duly established beyond reasonable doubt.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the Courts below.

Taking into consideration the totality of the facts and circumstances, in my opinion, no useful purpose would be served by sending the petitioners behind the bars once again to undergo the

remaining sentence. Ends of justice would be suitably met, if the substantive sentence of the petitioners is reduced to the one already undergone by them.

Even otherwise, against the findings recorded by the Courts below, revisional powers are limited. The Courts are supposed to interfere in the revision only when there exists legal lacunas in the order(s) under challenge or may be when the findings under challenge are not supported by the evidence and are absurd on the face of it.

Further there is nothing on record to show that during the period of suspension of sentence, the petitioners have involved themselves in any illegal activity.

In view of the above, while upholding the conviction of the petitioners as recorded by the Judicial Magistrate Ist Class, Bhiwani and upheld by learned Additional Sessions Judge, Bhiwani, their substantive sentence is reduced to the period already undergone by them. However, there is no modification in the amount of fine.

Disposed of in the above terms.

11.07.2019

pooja saini

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes