

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.233

CRR-2002-2011 (O&M)
Date of decision : 21.2.2019

Ishwar Singh

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. JP Sharma, Advocate, for the petitioner.

Mr. Deepak Grewal, DAG, Haryana

SUDHIR MITTAL, J. (Oral)

An incident took place within the jurisdiction of Police Station Kanina on 8.11.1999 and FIR No.203 dated 9.11.1999 was registered at Police Station Kanina, District Mahendragarh, under Sections 323, 324, 326, 452 and 34 IPC, on the complaint of one Anguri Devi. The accused named in the FIR, are Shanti @ Somwati wife of Dayanand, Ranjit son of Nanad Ram, Pardeep son of Ranjit, Dinesh son of Dayanand and Ishwar son of Balbir Singh.

2. Vide judgment dated 12.11.2008, the trial Court acquitted four of the aforementioned accused persons by giving them benefit of doubt and convicted aforementioned Ishwar under Section 326 IPC and sentenced him to undergo RI for a period of 03 years and to pay fine of Rs.3,000/-. It has been brought to my notice that fine already stands paid.

3. Aforementioned Ishwar preferred an appeal against conviction. The State also filed an appeal against acquittal of the co-accused. Vide judgment dated 14.7.2011, the appellate Court dismissed both the appeals.

4. The present revision petition has been preferred by Ishwar son of Balbir Singh.

5. Learned counsel for the petitioner submits that on the complaint of the accused persons, a daily diary report Ex. DA was registered against the complainant party. Both the Courts below have found that the location of the incident has not been proved. According to the complainant, the incident took place in the courtyard of their house whereas according to the accused persons, the incident took place in a plot belonging to Shanti Devi @ Somwati. As per the evidence on record, villagers had gathered at the spot, but no independent witness was examined. Based on this evidence, the Courts below have acquitted the co-accused, but the same benefit has not been granted to the petitioner and thus, material irregularity has been committed by the appellate Court in exercise of jurisdiction. It has further been argued that regarding the injury inflicted on PW-8 Naveen the medical opinion is not certain. The MLR Ex.PW7/B records existence of incised wound on the left parietal region of Naveen and in the X-ray report Ex.PW12-A, the existence of a depressed fracture has been mentioned on the left parietal bone, whereas PW-14 Dr. Ashok Gupta (Radiologist) had stated that the depressed fracture is on the fronto parietal region of Naveen. This ambiguity in the medical evidence has not been given the due importance by the Courts below and thus, conviction of the petitioner is illegal. Finally, it is submitted that the weapon of offence, namely, Axe has not been produced in Court and this is fatal to the case of the prosecution. Accordingly, the petitioner deserves to be acquitted.

6. Learned State counsel supports the judgments of the Courts below and adopts the reasoning given therein.

7. On a perusal of the record, it is evident that the petitioner is accused of having given an Axe blow on the head of PW-8 Naveen. There is oral evidence in this regard in the shape of statement of complainant PW-1 as well as the statement of PW-8. The medical evidence in the shape of MLR PW-7/B, X-ray report Ex.PW 12-/A and oral evidence of PW-14 Dr. Ashok Gupta, leave no manner of doubt that PW-8 Naveen suffered a depressed fracture in the skull. Whether the said fracture was on the fronto parietal region is of no consequence and the Courts below have rightly held so. Thus, the findings of the Courts below cannot be said to be perverse.

8. The argument of counsel for the petitioner that the petitioner also deserves to be acquitted because the co-accused had been acquitted has to be rejected. The co-accused were acquitted because it was a case of version and cross-version. The accused persons had also suffered injuries and the prosecution had failed to pin-point the place of occurrence. However, the petitioner cannot take benefit of this because irrespective of the place of occurrence, it has been proved as a matter of fact that PW-8 Naveen suffered an injury on his skull, which was caused by the petitioner. In the light of this evidence, it is not relevant whether the accused party or the complainant party in this case, was the aggressor. The same reasoning would also apply to the argument of counsel for the petitioner that the weapon of offence had not been produced in evidence.

9. For the aforementioned reasons, there is no merit in the revision petition.

10. At this stage, counsel for the petitioner states that the petitioner has undergone agony of protracted trial. The aforementioned FIR was

registered in the year 1999 and thus, almost 20 years have elapsed since then. Meanwhile, the petitioner has been in custody for 10 months and 10 days (inclusive of remission). Thus, he has suffered enough for his mis-deeds. There is no other criminal case pending or decided against the petitioner and from the facts and circumstances of this case, it is revealed that the injury on PW-8 Naveen was accidental and not intentional. Thus, a lenient view may be taken regarding the sentence.

11. Apparently, the petitioner has undergone the travails of a criminal prosecution for almost 20 years and has remained in custody for 10 months and 10 days. According to the custody certificate dated 18.2.2019, prepared by Sh. Shivender Pal, Deputy Superintendent, District Prison, Narnaul, Mahendragarh, it is evident that there is no criminal case pending or decided against the petitioner and thus, it can safely be held that the petitioner has no criminal antecedents. The incident took place on account of fight between the family members which turned ugly and in my opinion, the petitioner has been adequately punished for his mis-deeds. Criminal jurisprudence is based upon reformatory approach and under the circumstances, I feel that sentencing the petitioner to the period undergone would aid the reformatory process.

12. Accordingly, the impugned judgment of conviction and order of sentence dated 12.11.2008, passed by the JMIC, Mahendergarh and as upheld vide impugned judgment dated 14.7.2011 by the Addl. Sessions Judge (Fast Track Court), Narnaul, is affirmed. So far as order of sentence is concerned, the sentence of the petitioner is reduced to the period already undergone and further the petitioner shall undergo probation for a period of six months from the date of his release from jail, on his furnishing probation

bonds to the satisfaction of the Court/successor Court of the convicting Magistrate concerned.

13. With the above modification in the order of sentence, instant revision petition stands dismissed.

(SUDHIR MITTAL)
JUDGE

21.2.2019
Ramandeep Singh
Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No