

CRR No. 2146 OF 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2146 OF 2016
Date of Decision: 15.05.2019

Rohtash @ Gurmail and othersPetitioners

versus

State of HaryanaRespondent

CORAM HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present Mr.Sandeep Thakan, Advocate for the petitioners.
Mr. M.D.Sharma, AAG, Haryana.

RAJBIR SEHRAWAT, J (ORAL)

This is a petition challenging the order dated 26.05.2016, passed by Sessions Judge, Bhiwani, whereby appeal filed by the petitioners was dismissed and the order of conviction of the petitioners under Sections 323 and 452 read with Section 34 IPC and the order of sentence dated 28.11.2014, sentencing the petitioners to two years rigorous imprisonment with fine, passed by Sub Divisional Judicial Magistrate, Loharu was upheld.

The brief facts of the case giving rise to the present case, as mentioned in the judgment of the lower Appellate Court, are that on 30.07.2011, Jagbir (complainant) (PW1) filed the complaint (Ex.PW1/A) with SHO, Police Station Loharu, stating that he is a resident of village Ajampur. On 29.07.2011, at about 12:30 a.m, Ram Avtar, Manphool, Raj Kumar sons of Manphool; Parveen son of Ram Avtar, Rajbir, Pardeep, Karambir sons of Rameshwar; Rohtash and Manoj, residents of Dev Road, came to the village on three vehicles and forcibly entered his house and started beating him with lathis; jaillies and kulharis etc. He and his children

fled the house and concealed their presence in a millet field. In the process, their mobile bearing no.9896618488 was lost. Accused damaged his household articles and fled the scene. While leaving, the accused threatened that they would come again. On the basis of this report. Formal FIR was registered. Investigation was carried out and police filed the challan against accused Rohtash @ Gurmail, Rajbir and Pardeep under Sections 323, 452, 427 and 506 read with Section 34 IPC. The investigation revealed that others were innocent.

To substantiate the allegations levelled against the petitioners, the prosecution examined Jagbir Singh as PW1 and his wife Tarawati as PW2. Beside this, the police officers who investigated the case were also examined as PWs in this case.

The trial Court found substance in the evidence led by the prosecution and convicted and sentenced the petitioners, as mentioned above.

Aggrieved against the order of conviction and sentence passed by the trial Court, the petitioners had preferred appeal before the Sessions Judge, Bhiwani. However, that appeal was also dismissed by the learned Sessions Judge. Hence, the present petition has been preferred by the petitioners/convicts challenging the order passed by the lower Appellate Court.

While arguing the case, learned counsel for the petitioners has submitted that although the allegations against the petitioners are of causing injury by entering into the house of the complainant, however, there are no photographs to substantiate this allegation. It is further submitted that even

the demarcation of the house was not done by the police to show that there was any incident of entering into the house by the petitioners. Still-further, it is contended that although the allegation against the petitioners is that they caused 'Jailly' blow, however, no medical practitioner has been examined to substantiate any injury. Still-further, it is contended that no independent witnesses have been examined. The story of the prosecution has been found to be otherwise not reliable; because out of six persons mentioned in the first version by the complainant, three persons had been found to be innocent by the police and one person Karambir has been acquitted of the charge by the Principal Magistrate, Juvenile Justice Board. Hence, the present petition deserves to be allowed.

Having heard the learned counsel for the petitioners, this Court does not find any substance in his arguments.

The first argument of the learned counsel for the petitioners that no photographs of the incident have been produced on file is totally irrelevant. In the night nobody is expected to keep a photographer ready to take photographs of the incident; when somebody enters the house of the complainant and causes injury.

Same is the situation regarding the second argument qua demarcation of the house. Since it is a residential house, therefore, the very fact that the petitioners entered the premises where the complainant and his family was residing is sufficient to proceed against the accused. In any case this fact has otherwise been proved on record by evidence. No such demarcation is required in this case; as is argued by learned counsel for the petitioners.

Still-further, this Court does not find any substance in the argument of

the learned counsel for the petitioners that no doctor has been examined to prove the injuries caused to the complainant. It deserves to be noticed that there is no allegation of any grievous injuries which might have required any medical opinion. Even the conviction is under Section 323 IPC. For substantiating the allegation under Section 323 IPC, in the given facts and circumstances of the case, no doctor was required to be examined. Furthermore, it was not even the case of the complainant that they had gone to any hospital as such. It is only the assertion of the complainant that after getting injured, they got some kind of treatment from a local person who was practising medicine in the village.

The argument of the learned counsel for the petitioners that no independent witness has been examined has also been rightly dealt with by the Courts below. Admittedly, the incident had taken place during night and at the house of the complainant, therefore, no independent witness is expected to be present at the time and place, on which the incident is stated to have happened. The fact that out of six persons named by the complainant four persons have either been found innocent or have been acquitted; rather shows the fairness of the process; emphasizing the fact that only the guilty person has been held to be responsible for the alleged crime, and that who was not actually involved; has not been punished at all. It is the job of the trial Court to separate grain from the chaff. This job has been duly performed in this case by the Courts; and the investigating agency as well.

In view of the above, this Court does not find any ground to interfere in the orders passed by the Courts below.

Petition is dismissed.

Since the petitioners were ordered to be released on bail by suspending their sentence, therefore, it is ordered that the petitioners be taken into custody forthwith; to serve their remaining sentence.

15.05.2019
mamta

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No