

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 - CRR-931-2020

Date of Decision: 17.11.2022

Khelu Ram

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SP Chahar, Advocate for the petitioner

Mr. Chetan Sharma, AAG Haryana

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioner seeking quashing of the judgment dated 18.12.2019 passed by Sessions Judge, Rohtak vide which the respondent No.2 to 5 have been acquitted of offence in case FIR No.79 dated 17.02.2014 under Sections 323/324/506/34 IPC, registered at Police Station Sadar Rohtak, and to restore the judgment dated 03.01.2019 passed by the trial court and also to modify the order of quantum of sentence dated 05.01.2019 to the extent that respondents No.2 to 5 be punished with highest and deterrent sentence with a further direction to pay compensation of Rs.3 lakhs to the petitioner.

The brief facts of the case are that on 15.2.2014, HC Satish Kumar and EHC Suresh Kumar, on getting the information from Police Station PGIMS, Rohtak that Khelu Ram, (petitioner) PW4 and his wife Sumitra (PW6) have been admitted with injuries suffered in an altercation, reached PGIMS, Rohtak but they did not find the injured there. On 17.2.2014, HC Satish Kumar and EHC Suresh again visited PGIMS, Rohtak where they came to know that the doctor had discharged injured

Khelu Ram and his wife Sumitra who had left PGIMS, Rohtak against medical advice. Accordingly, HC Satish Kumar and EHC Suresh left for village Bahu Akbarpur where the injured were residing. However, they found Khelu Ram (petitioner) at the bus Stand of the village, who filed the complaint in writing (Ex.PW-4/A), wherein he reported that he is a resident of village Bahu Akbarpur and is an agriculturist. Accused Joginder is his neighbour. Accused had blocked the drain situated in the street. He had asked Joginder to clear the same. However, accused Joginder started abusing him and left for his home. Accused Joginder came armed with a farsa and gave a farsa blow on his head. Joginder's brother Ramesh also came armed with a lathi and gave him a lathi blow on his left elbow. Joginder's wife Murti and Ramesh's wife Babli also came armed with dandas. They also caused him injuries with dandas. He raised a hue and cry. From the side of the accused, Pinki daughter of Ramesh and Reena daughter of Joginder also reached there and they slapped and gave kick blows to his wife Sumitra. Vikas son of Joginder also joined them, who gave him a blow with an iron rod. Many persons gathered there. Accused left stating that they had been saved and would kill them on getting the opportunity. Complainant reported that action be taken against the accused. Complainant also reported that the occurrence had taken place on 15.2.2014, at about 7.15 p.m. and thereafter, his family members had got him admitted at PGIMS, Rohtak. He also reported that in the occurrence, a gold ear ring of his wife and his gold ring had got misplaced.

On the basis of this report (Ex.PW-4/A), police registered the present FIR and carried out the investigation. The injured were subjected to

medical examination and after that police filed the challan under Sections 323, 324, 325, 506 read with Section 34 of the Indian Penal Code, against accused Joginder, Ramesh, Murti and Babli in the Court the Magistrate. Police also filed the challan against accused Vikash, Reena and Pinki in the Juvenile Justice Board. Vide order dated 12.1.2015, the Magistrate framed the charges against the accused under Sections 323, 324, 325 read with Section 34 and 506 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

The trial court vide judgment dated 05.01.2019 convicted Joginder, Ramesh, Murti and Babli and sentenced them to undergo RI for 3 months and to pay a fine of Rs.500/- under Section 323 IPC; RI for 6 months with fine of Rs.500/- each under Section 324 IPC; RI for one year with fine of Rs.1000/- each under Section 325 IPC; RI for 6 months with fine of Rs.500/- each under Section 506 IPC; and simple imprisonment for one month each. Besides, compensation of Rs.40,000/- was awarded to Khelu Ram.

The said judgment was challenged before the appellate court, however, vide judgment dated 18.12.2019, partly allowed the appeal filed by Joginder Singh and others as well as of injured-complainant. All the accused were held guilty under Sections 323, 324 and 506 of the Indian Penal Code. Accused Murti and Babli are ordered to be released on probation and the amount of fine imposed upon them by the Trial Court was converted into cost of proceedings. Each of the accused were is ordered to pay Rs.10,000/- as compensation to the petitioner over and above the compensation ordered by the Trial Court.

Learned counsel for the appellant contended that the doctor who has conducted radiological examination of the petitioner has not been examined although the prosecution has fully proved grievous injury caused to the petitioner by leading cogent evidence in the shape of medical record which was medically proved. However, the medical record was erroneously not taken into consideration by the appellate court. He further averred that the ocular version of the petitioner is fully corroborated by the medical documents regarding injuries caused to the petitioner.

Having heard learned counsel for the petitioner and after going through the record, this Court do not find any legal or factual infirmity in the judgment passed by appellate court.

The appellate court, on the basis of the evidence on the record, rightly held that the trial court has rightly convicted the accused as before the trial court, the defence of the accused was that no occurrence had taken place. From the evidence on the record, it is also apparent that the accused had tried to show that the occurrence had taken place in the dark and that the injured had not identified the assailants. Whereas before the trial court, the accused had alleged that no occurrence had taken place; and at the appellate stage, the accused had tried to show that it was a case of free fight. It was rightly observed that the accused have taken a *volte face* in the appeal. Besides, it was held that the prosecution has failed to bring home the guilt against the accused under Section 325 IPC as the doctor who had conducted the radiological examination has not been examined. The circumstance that the *farsa* used in the commission of the crime was not

recovered by the police, is of no consequence as the doctor has opined that the injury on the head of petitioner was with a sharp edged weapon.

In view of the above discussion, this Court does not find any illegality or infirmity in the judgment/order passed by the appellate court.

Dismissed.

17.11.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No