

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224

CRR-2849-2015

Date of Decision: 17.11.2022

Bijender

... Petitioner

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. GP Singh, Advocate for the petitioner

Mr. Parveen Kumar Aggarwal, DAG Haryana

Mr. Deepak Saini, Advocate for the complainant

Sandeep Moudgil, J. (Oral)

(1) The petitioner – Bijender has assailed the judgment and order passed by the JMIC, Gurgaon dated 26.11.2013 as well as the judgment dated 22.07.2015 passed by learned Addl. Sessions Judge, Gurgaon arising out of FIR No.268 dated 14.09.2005 under Sections 323/324/325/506/34 IPC registered at Police Station, Manesar vide which the petitioner along with co-accused Praveen was convicted under Sections 323,324,325,506 read with section 34 IPC and they were sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.500/- for the offence punishable under Section 323 IPC and in default of payment of fine, they were sentenced to undergo simple imprisonment for 15 days. They were further sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 324 IPC and in default of payment of fine they were sentenced to undergo simple imprisonment for a period of one month. They were sentenced to undergo imprisonment for a period of two years and to pay a fine of Rs.1000/- for the offence punishable under

Section 325 IPC. In default of payment of fine they were sentenced to undergo simple imprisonment for a period of one month. They were further sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.500/- for the offence punishable under Section 506 IPC and in default of payment of fine they were sentenced to undergo simple imprisonment for a period of 15 days. Their appeal against the judgment and order dated 22.07.2015 has been dismissed by ld

(2) The facts of the case in brief are that on 14.9.2005 on receiving of a VT from P.S. City Gurgaon in P.S. Manesar, PW2 HC Tejpal reached General Hospital, Gurgaon, where doctor declared PW5 Sukhbir fit to make his statement and his statement was recorded. It was stated by PW5 Sukhbir that he runs an STD booth at village Manesar. On 13.9.2005 at around 4.30 p.m., when he was going to his fields from his shop, then on his way to the fields, Praveen S/o Sajjan Singh, Kalu S/o Tek Chand and Bintoo S/o Tek Chand met him and Praveen said that complainant poses himself to be very smart at his shop and he must be taught a lesson. On saying this, Praveen hit the complainant on his head with a knife in his hand. Thereafter, Kalu S/o Tek Chand hit twice on the head of the complainant with the knife in his hand and Bintoo @ Bijender hit the complainant on his left elbow and on his feet with an iron rod in his hand. When the complainant raised alarm 'bachaobachao', his elder brother Subhash reached the spot and rescued the complainant. He further stated that while leaving the spot the accused threatened him with dire consequences. On the basis of the said statement, FIR was registered.

(3) Learned counsel for the petitioner contended that learned courts below have gravely erred in law while not considering the material aspect that the doctor, who initially gave treatment and stitches to the injured Sukhbir at Manesar, has not been examined. Two injuries have been attributed to the present petitioner, i.e., one on the elbow and another on the feet with iron rod. Learned counsel for the petitioner asserted that the alleged weapon used i.e. iron rod, by the petitioner has not been recovered, and in fact, the knife used by Kalu and co-convict, has also not been recovered.

(4) In addition to the aforesaid submissions, learned counsel has referred to the cross-examination of PW5 Sukhbir who has categorically stated that the petitioner Bijender did not cause any injury with iron rod and a perusal of the same further reflects that he also denied the role of Praveen – co-convict in causing injuries on the head of the injured. It is further asserted that Dr. Neena PW3, who prepared MLR Ex.PA, also did not mention with regard to the duration of wounds to be within 6 hours or not and in the light of the same, such testimony cannot be relied upon which creates suspicion in the story of the prosecution.

(5) Counsel for the petitioner has also drawn attention of this Court to another material aspect and the facts stated by PW5 Sukhbir, in his cross-examination, that he was going all alone whereas he is stated to have been accompanied by his brother.

(6) On the other hand, learned State counsel, vehemently, argued that the concurrent findings of conviction have been passed by courts below against the petitioner and the medical evidence is also corroborating the case of the prosecution, if considered in totality. He has also submitted that there

is a limited scope of this Court to intervene in revision petition, once there is concurrent finding of conviction by both the courts below.

(7) Learned counsel for the complainant Mr. Deepak Saini, Advocate, in addition to the submissions made by the learned State counsel, has submitted that according to medical report, injuries are there and such injuries have been inflicted other than by the present petitioner, in connivance with other two co-accused, on account of getting annoyed once the complainant asked for his money, who is running a STD booth.

(8) Having heard learned counsel for the parties and perused the record with the able assistance of counsel for the parties, this Court cannot lose sight of the cross-examination of PW5 – the complainant, who has turned hostile and has specifically denied not only qua the petitioner but also against the co-accused saying that no knife injuries were given by Kalu and also specifically deposed that the petitioner Bijender never caused any iron rod blow on his left hand elbow or on feet.

(9) As far as the medical evidence is concerned, the prosecution has failed to explain and even the complainant has not made any effort to summon the doctor, who treated the injured at Manesar apart from the statement Ex.PC Dr. Neena to the effect that the exact reasons of injuries cannot be ascertained.

(10) It has also transpired during the course of hearing that one of the co-convict Kalu has already expired and keeping in view the statement of PW5 in cross-examination and the medical evidence which is lacking on account of the fact that the doctor, who is alleged to have given stitches, has not been examined and in the absence of recovery of weapons, the judgments

passed by the both the courts below suffer from material irregularity and illegality, which are liable to be set aside.

(11) In view of the above, the present petition is, therefore, allowed and the judgment and order passed by the learned JMIC, Gurgaon dated 26.11.2013 in FIR No.268 dated 14.09.2005 under Sections 323/324/325/506/34 IPC registered at Police Station, Manesar as well as the judgment dated 22.07.2015 passed by learned Addl. Sessions Judge, dismissing the appeal against the judgment of JMIC, Gurgaon, are ordered to be quashed.

17.11.2022

V.Vishal

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

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No