

(232) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2170-2016

Date of Decision: 15.11.2022

VIKASH @ VICKY & ANR.

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kamal Mor, Advocate
for the petitioners.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated passed by the Sessions Judge, Bhiwani vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 14.01.2015 passed by the Judicial Magistrate, 1st Class, Charkhi Dadri has been dismissed.

2. The prosecution case was set up on the basis of the complaint of Dr. Manish Kumar (hereinafter referred to as the complainant), wherein he stated that he was a resident of Charkhi Dadri and the owner of a Hospital in the name of M. Kumar. He also had a house situated in street No.3 of Prem Nagar, which was lying vacant. On 31.07.2010 at about 6:00 PM, he had come to Prem Nagar to look after his house. At that time he was also accompanied by his worker namely Kuldeep. After dusting the house Kuldeep threw broken branches of a Neem tree adjacent to the wall of the

complainant's house. Meanwhile, a lady from the neighbourhood came there and raised an objection about the throwing of garbage. He replied that it was just Neem leaves and that they were also thrown in front of his own house. In the mean time, the son of that lady came into the street and started abusing him. Meanwhile, several men and women from the neighbourhood gathered there. A boy namely Vicky was also present. Seeing the mob he thought it better to leave the spot. As he put on his helmet and tried to leave the spot with Kuldeep on his motorcycle, Vicky caught hold of the motor cycle and pushed due to which they fell down. Vicky gave a fist blow on his (complainant's) nose while the remaining gave him several slap, fist and kick blows. Vicky also wrongfully restrained him and tried to give him a hammer blow on his head after removing the helmet. He was admitted to GH Dadri but due to complaint of acute pain he was referred to GH Bhiwani. He therefore, sought strict legal action against the accused.

On the basis of the statement of the complainant, the FIR was registered and investigation was conducted. The accused were arrested and later on were released on bail.

3. A prima-facie case for the commission of offence punishable under Sections 323, 325, 341, 506, 34 of the IPC were found to be made out against the accused. Accordingly, they were charge-sheeted vide order dated 08.11.2010, to which they pleaded not guilty and claimed trial.

4. To substantiate its case, prosecution examined the following witnesses:-

PW1 Dr. M. Kumar in examination-in-chief deposed that on 31.07.2010 at about 06:00 PM he had come to Prem Nagar with Kuldeep to look after his house. After cleaning the house a few Neem leaves were thrown adjacent to the wall of his house. Suddenly a lady namely Geeta came from the neighbourhood and started shouting on the issue of throwing garbage. He tried to pacify her, however, she remained adamant. In the mean time her son namely Shiv Kumar also came there and starting abusing him. Thereafter several person gathered there. Seeing the mob he thought it better to leave the spot. As he tried to escape on his motorcycle Vicky came there and pushed the bike. The remaining started shouting to beat him. Shiv Kumar removed his helmet and Vicky gave a fist blow on his nose. The remaining gave him several slap, fist and kick blows. The assailants included Shiv Kumar, Geeta W/o Net Ram, Santosh W/o Sohan Lal and Vicky. He identified the accused Shiv Kumar and Vicky present before the Court. Due to injury his nose started bleeding. However, he managed to escape with Kuldeep on his motorcycle. When he had just travelled a little distance from the place of occurrence his way was intercepted by the accused Vicky with his motorcycle. Thereafter the accused Vicky tried to give him a hammer blow after removing his helmet but luckily he escaped. Thereafter he was admitted to GH Dadri from where was refereed to GH Bhiwani. He proved his statement by identifying his signatures over the same. In cross-examination he stated that he had engaged S.D Biomedical Co. for disposing of biomedical waste, which used to collect the waste rotation wise. He admitted that the house of the accused was situated adjacent to his house. He

further stated that a Neem tree was growing in his house and Kuldeep had thrown its leaves outside the house. He denied knowing Geeta etc. earlier and came to know about her name on inquiry in the neighbourhood. He also denied knowing the registration number of the motorcycle of accused Vicky. He denied procuring a false medical report in collusion with medical officers and deposing falsely.

PW2 Dr. Subhash Yadav in examination in chief tendered his affidavit Ex.PW2/A. He further proved Ex.PW2/B copy of MLR and Ex.PW2/C copy of medical ruqa being prepared and signed by him.

PW3 ASI Pawan Kumar in examination-in-chief deposed that on 06-08-2010 he was posted at police station City Dadri as I.O. On receiving a tehrir from HC Paramveer a formal FIR Ex.PW3/A was registered by him and proved the same by identifying his endorsement Ex.PW3/B over it. In cross-examination he stated that only the accused Vicky was mentioned in the FIR by name. The name of the remaining accused were neither written nor told to him. He denied lodging a false FIR due to pressure of any kind.

PW4 HC Paramveer in examination-in-chief deposed that on 31.07.2010 he was posted at police station City Dadri as I.O. On receiving Ex.PW2/C copy of medical ruqa and Ex.PW2/B copy of MLR he went to the GH Bhiwani on 01.08.2010. After obtaining medical opinion vide application Ex.PW4/A he recorded the statement of the complainant which is Ex.PW1/A and proved the same by identifying his endorsement Ex.PW4/B over it. He also proved rapat roznamcha as Mark X entered on the statement of the complainant. On 06.08.2010, after receiving the X-ray report of the injured

he made an endorsement Ex.PW4/C over the nakal rapat and sent the tehrir to the police station through EHC Sanjeev on the bases of which FIR Ex.PW3/A was registered. The place of occurrence was inspected and site plan Ex.PW4/D was prepared. On 20.08.2010 during the investigation accused Vikash and Shiv Kumar were arrested and their disclosure statements were recorded which are Ex.PW4/E and F respectively. After completion of investigation challan was filed by SHO Datta Ram and he proved the same by identifying his signature over it. In cross-examination he stated that he was accompanied by complainant and witness Kuldeep when he went to the place of occurrence for inspection. Site plan Ex.PW4/D was prepared at the instance of the complainant and he denied preparing a false report and deposing falsely.

PW5 MHC Ram Meher in examination in chief tendered Ex.PW5/A certified copy of rapat no. 26 dated 01.08.2010.

PW6 Dr. Anil Sharma, SMO, GH Bhiwani in examination in chief stated that on 02.08.2010 he radiologically examined Dr. M.K. Gera and found a fracture of the nasal bone. He further proved the X-ray report as Ex.PW6/A and X-ray films as Ex.PW6/B to D. In cross-examination he denied preparing a false report.

PW7 HC Narender Singh in examination-in-chief stated that on 20.08.2010 the disclosure statements of accused Vikas and Shiv Kumar was recorded which are Ex.PW4/E and F respectively. He further proved the disclosure statements by identifying his signature over them. In cross-examination he denied deposing falsely.

5. The statement of the accused was recorded under Section 313 Cr. P. C. recorded wherein, they pleaded themselves to be innocent and stated that they had been falsely implicated in the case. In defence evidence, the accused examined the following witness:-

DW1 Kuldeep in examination in chief deposed that on 31.07.2010 at about 6:00 PM he was cleaning the house of Dr. M.K. Gera situated in Prem Nagar. The alleged occurrence did not take place in his presence. The accused also did not quarrel with Dr. M. Kumar when he was going with him on his motorcycle. In cross-examination he denied deposing falsely due to threat from the accused side.

6. Based on the evidence led, the petitioners came to be convicted and sentenced by the Court of learned Judicial Magistrate, 1st Class, Charkhi Dadri as under:-

Vikash @ Vicky			
Sections	RI	Fine	In default of payment
341 of the IPC	RI for 06 months	--	
323 & 506 of the IPC	RI for 01 year	--	
325 IPC	RI for 03 years	Rs.5000/-	SI for 06 months
Shiv Kumar			
323 & 506 of the IPC	RI for 01 year	--	
325 IPC	RI 03 years	Rs.5000/-	SI for 06 months

All the aforesaid sentences were ordered to run concurrently.

7. Aggrieved by the judgment and order of sentence dated 14.01.2015 passed by the Trial Court, an appeal was preferred which came to

be dismissed by the Court of Sessions Judge, Bhiwani but the sentence awarded was reduced from 03 years to 02 year under Section 325 of IPC and the remaining sentence awarded by the Magistrate was maintained.

Still aggrieved, the present revision petition has been preferred against the aforementioned two judgments.

8. The counsel for the petitioners contend that the prosecution has failed to prove its case beyond reasonable doubt. There is material improvement in the testimony of the complainant when he was examined in Court. In fact, the complainant was a medical practitioner and used to throw his biomedical waste openly and just to scape from his liability has falsely implicated the accused/petitioners in the present case. The Courts had not considered the testimony of DW1-Kuldeep, an alleged eye-witness of the occurrence, in its proper perspective. He had specifically stated that no quarrel had taken place between the complainant and the accused. There was a substantial delay in the registration of the FIR which remains unexplained and the medical evidence has been procured since the complainant was a doctor.

9. The custody certificates dated 14.11.2022 respectively have been placed on record by the learned State counsel, which are taken on record. As per the custody certificates the period of custody actually undergone by petitioner No.1 is 05 months and 25 days and petitioner No.2 05 months and 22 days out of the awarded sentence of 02 years.

10. The learned State counsel on the other hand contends that the guilt of the accused has been established beyond reasonable doubt. The

evidence of the complainant is completely in consonance with the medical evidence. The petitioners had been duly identified during the course of the Trial and therefore there was no doubt regarding the culpability of the petitioners. He thus contends that there was no merit in the present revision petition and the same ought to be dismissed.

11. I have heard the learned counsel for the parties at length and examined the record.

12. The testimony of the complainant cannot be doubted. He has duly identified the petitioners during the course of the Trial. The injuries on the person of the complainant have been fully established by the evidence of PW2-Dr. Subhash Yadav who proved the copy of the MLR Ex.PW2/A, wherein he opined that there was fresh active bleeding due to the nasal bone injury inflicted on the person of the complainant for which he had advised an X-ray. PW6-Dr. Anil Sharma who radiologically examined the complainant has proved his X-ray report Ex.PW6/A and the X-ray films as Ex.PW6/B to D. He has stated that callous formation was not present when the complainant was radiologically examined which shows that the injury was fresh. Merely because the complainant was a doctor himself is no ground to disbelieve the testimonies of PW2-Dr. Subhash Yadav and PW6-Dr. Anil Sharma. Further, the Investigating Officer of the case PW4-Paramveer has duly proved the statement of the complainant leading to the registration of the FIR. The argument raised by the petitioners that there was no delay in the registration of the FIR is also fallacious. The occurrence took place on 31.07.2010, while the FIR was registered on 06.08.2010. In fact, the matter was promptly

brought to the knowledge of the Investigating Agency and a Rapat No.26 dated 01.08.2010 (Mark A) was registered and the FIR was registered on 06.08.2010 after conducting preliminary evidence and on receiving the medical report. Therefore by no stretch of imagination can it be held that the delay in the present case was fatal to the case of the prosecution. It also appears that DW1-Kuldeep who was working with the complainant at the time of the occurrence had left the employment of the complainant and therefore has not supported the case of the prosecution. Therefore, no weight can be attached to his testimony as a defence witness.

13. In view of the above discussion, I find no infirmity in the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Therefore, there is no merit in the present petition and the same is hereby dismissed.

14. However, since the occurrence in the present case pertains to the year 2010 and petitioner No.1 at the relevant point of time was of the age of 18 years and petitioner No.2 was 27 years and as per the custody certificate they are first time offenders, I modify the sentence of the petitioners and reduce it to a period of custody already undergone by them. However, the sentence of fine is increased from Rs.5000/- to Rs.10,000/- each. The sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

15.11.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No