

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2187-2016

Date of decision : 06.09.2022

Rajender Baghel

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Arjun Atri, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Jasvinder Singh Yadav, Advocate
for respondents No.2 to 4.

PANKAJ JAIN, J.

Complainant is in revision. Respondents were held guilty for offences punishable under Section 323, 325 of IPC read with Section 34 of IPC by the trial Court vide order dated 22.12.2015 and were sentenced as follows:-

Section (IPC)	Simple Imprisonment	Fine (in Rs.)	In default of payment of fine (simple imprisonment)
323 read with Section 34	6 months	500/- each	One week
325 read with Section 34	3 years	1,000/- each	One month

2. Law was set into motion after FIR No.605 dated 02.11.2012 was registered on the complaint made by the petitioner. It was alleged by the petitioner that on 06.05.2012, FIR No.245 was registered against the respondents-accused for offences punishable under Sections 323/325 read

with Section 34 IPC. The accused persons are pressurizing the complainant to compromise the matter. On 31.08.2012 at about 2.30 P.M., accused persons came across the complainant near Yasin Meo Degree College and started beating him. Accused No.3 namely Ram son of Mahender caught hold on him and accused No.1 Mahender gave lathi blow on his mouth. Accused No.2 also gave danda blow on his chest. He fell on the road and the accused further gave him fist and kick blows. He claims that in the incident, his tooth was broken. The matter was reported to the local police, but no action was taken. Thereafter, on 17.09.2012, he moved an application before Station House Officer, Nuh. After no action was taken even by the Station House Officer, the complainant moved a complaint under Section 156(3) of Cr.P.C. before the Illaqa Magistrate on 02.11.2012. On the directions of the Magistrate, the present FIR was lodged.

3. After investigation, report under Section 173(2) of Cr.P.C. was filed and the accused were charge sheeted. Trial Court heavily relied upon the testimony of the complainant, who appeared as PW-2 and his son Ajit Singh, who appeared as PW-3. Trial Court believed the complainant holding that his testimony stands fully corroborated by that of an eye witness i.e. PW-3. Trial Court further found that medical evidence on record also corroborates the version of the complainant. Dr. Sanjay Phogat as PW-4 and Dr. Deepti Grover appeared as PW-5. Dr. Deepti Grover has proved the broken tooth of the complainant. She has proved on record her report as Ex.PW-5/B. Trial Court while referring to the same recorded that:-

“XX XX XX

Further, Dr. Deepti Grover Dental Surgeon appeared before the court as PW5 and proved Ex PW5/B report issued by her after examination of complainant. Perusal of said report reflects that right upper upper C.I is

missing with a semi healed socket, left upper C.I is grade 1 mobile, there is no corresponding lip injury and there is no bleeding on provocation and in X-ray one empty socket or around 8 mm depth can be seen which is rounded off. Bone loss in adjacent tooth can be seen. After taking into consideration the testimonies of both Medical Officers, it is crystal clear that one tooth of the complainant was broken due to injury caused by the accused persons and in this way it is duly proved that complainant sustained simple as well as grievous injuries. All injuries were caused by blunt weapon.”

4. Thus trial Court vide its judgment dated 17.12.2015 and order of conviction dated 22.12.2015 found that the accused were guilty of offence committed for the offences punishable under Section 323/325 read with Section 34 of IPC.

5. The aforesaid judgment was taken in appeal by the accused. Appellate Court vide impugned judgment dated 15.03.2016 has allowed the appeal preferred by the accused setting aside the order of conviction and has ordered acquittal of the respondents. Appellate Court after reappraisal of the evidence came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and that the accused are entitled for benefit of doubt on account of following reasons:-

“(i) There is delay of approximately 16 days. Incident is stated to be of 31.08.2012. However, complainant as per his own version approached police only on 17.09.2012.

(ii) He further alleges that he was admitted in the hospital from 31.08.2012 to 03.09.2012. However, no record has been brought on record to prove the aforesaid fact.

(iii) He approached PW4 Dr Sanjay Phogat with history of physical assault (a) bruised upper lip 2 x 2 cm with

upper tooth is mobile. As per the evidence of Dr. Deepti Grover, PW5 she has noted following injuries as under:-

1. Right upper C.I. is missing with a semihealed socket.
2. Left upper C.I. is grade I mobile.
3. There is no corresponding lip injury and there is no bleeding on provocation.
4. In x-ray one empty socket of around 8 mm depth can be seen which is rounded off Bone loss adjacent tooth can be seen.

Perusal of report Ex.PW5/B shows that there was only twenty teeth in the mouth of complainant Rajinder. Tooth missing before injury 872/67 and 8721/17. Tooth missing after injury, one. Periodontics with bone loss in outerious. PW 2 Rajinder Singh complainant has stated in his evidence that on 31.8.2012 Ram caught hold him and Mahender gave a lathi blow on his mouth and Krishan gave a lathi blow on his chest.

Bare perusal of the above said evidence of injured/complainant PW 2 coupled with the medical evidence shows that there is chronic disease to Rajinder and he had only 20 teeth in his mouth. Moreover, PW4 Dr. Sanjay Phogat has shown injury bruise. But to my mind, if any danda blow is to be given on the mouth of any person then there must be injury of laceration or abrasion.

(iv) MLR was conducted on 31.08.2012, whereas the dental examination w.r.t. the broken tooth was conducted on 06.09.2012 i.e. after period of 6 days. As per the testimony of PW-5 Dr. Deepti Grover, there is no corresponding lip injury and there is no bleeding.

(v) Trial Court has completely misread statement of PW-3 and has treated him as an eye witness of the case, but as per his own version, he reached the spot only after occurrence had already taken place. Thus, he cannot be treated as an eye witness.

(vi) Appellate Court further observed that in complaint Ex.PW-2/B, the description regarding lathi blow on the mouth of the complainant was added by pen later on, which shows manipulation.”

6. Counsel for the petitioner has not been able to show that any of the aforesaid circumstances are not based on facts on record. Cumulative effect of aforesaid circumstances does create doubt on the story of prosecution. As per settled law benefit thereof must go to the accused. Revisional jurisdiction is limited and the same has been discussed by Apex Court in ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907*** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice

requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh).”

7. As a sequel of the discussion held hereinabove, there is no ground to interfere in the order passed by the Appellate Court which is well reasoned.

8. Consequently, the present revision petition is dismissed being without any merit.

(PANKAJ JAIN)
JUDGE

06.09.2022
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No