

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

228

**CRR-4213-2014 (O&M)
Date of decision: 11.05.2022**

ISHAM CHAND & ANR

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Ram Kumar Saini, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The instant revision petition has been preferred against the judgment dated 05.09.2013 and order of sentence dated 06.09.2013 passed by the Judicial Magistrate First Class, Ambala and subsequent judgment dismissing the appeal preferred by the petitioners dated 7.10.2014 passed by the Additional Sessions Judge, Ambala.

2. Briefly the case of the prosecution is that on 27.11.2005 at about 8:30 p.m., when the complainant party had reached near Ravi Dass Temple, the accused-assailants along with others came from the bus-stand side and started abusing the complainant. When the complainant-Amar Singh objected to the accused using superlatives, the accused No.1 and 5 namely Isham Chand and Balwinder Singh (petitioner herein) are alleged to have caught hold of the complainant-Amar Singh and accused No.6 namely Sukhbir Singh is alleged to

have caught Narender Kumar (son of complainant-Amar Singh) and in the meantime Sat Pal, Mukesh and Rajesh (accused Nos. 2, 3 and 4) also came to the spot. The petitioners herein who are referred to as accused Nos.1 and 5 are alleged to have thrown the complainant Amar Singh on the ground and Balwinder Singh-petitioner No.2 is alleged to have given a *gandasi* blow on the head of the complainant. Isham Singh-petitioner No.1 had thrown the son of the complainant on the ground and hit on the left eye of the son of the complainant with a rod while the other accused gave *lathi* blow to the father of the complainant.

3. The reason for the said fight was a previous litigation that was pending between the accused persons and the complainant party. On the basis of the allegations so levelled, FIR No.321 dated 27.11.2005 was registered under Sections 323, 324 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') against the accused persons. Upon conclusion of the investigation, a final report under Section 173 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') was submitted.

4. In order to prove its case, the prosecution has examined the complainant as PW1, Dharamveer as PW2, Narender Kumar as PW3, S.I. Ajaib Singh as PW4, Surja Ram as PW5 and Dr. Tarun Parsad, S.M.O., C.H.C., Shahzadpur as PW6. Since the prosecution could not conclude its evidence despite availing sufficient number of opportunities, the prosecution evidence was closed vide order. During the proceedings of the case, the accused no. 6 confessed his guilt on 24.05.2012. Statements of the remaining accused persons under Section 313 Cr. P.C. were recorded and incriminating evidence was put to them, to which they pleaded innocence and denied the allegations of the prosecution.

5. In defense, the accused no. 1 to 5 examined Kuljeet Kaur, Additional

Ahimad as DW1, who brought Ex. DW1 attested copy of the complaint titled as "Isham Singh Vs. Amar Singh and others", Ex. DW2 attested copy of the order dated 12.09.2008 and Ex. DW3 attested copy of the judgment titled as "State v. Rakesh Kumar and others".

6. After consideration of the evidence adduced before the trial Court, the Judicial Magistrate First Class, Ambala vide judgment dated 05.09.2013 convicted the accused Isham Chand, Satpal, Mukesh, Rajesh and Balwinder Singh for commission of offences under Sections 148/323/324 of the Indian Penal Code, 1860 read with Section 149 Indian Penal Code, 1860. The parties were heard on the quantum of sentence and vide order dated 06.09.2013, the convicts were held entitled to be released on probation under Section 360 of the Code of Criminal Procedure, after noticing that there were no such special circumstances as to why the benefit of probation ought to be denied to them.

7. That aggrieved of the said judgment of conviction and order of sentence directing release of the accused-convicts on probation, an appeal bearing Criminal Appeal Nos.34 and 35 were preferred before the Court of Sessions Judge, Ambala. Vide judgment dated 07.10.2014 the said appeal was partly allowed by the lower Appellate Court and the appellants-accused Satpal, Mukesh and Rajesh were acquitted after extending benefit of doubt to them. Aggrieved of the said judgment, the accused No.1 and 5 namely Isham Chand and Balwinder Singh have preferred the instant revision petition.

8. Learned counsel for the petitioners has argued that the trial Court has committed an error inasmuch as it has failed to notice that the version of the prosecution was not corroborated by any evidence or witnesses. He further submits that the victims being interested parties, it was essential for the Court to

have sought independent corroboration of the allegations so levelled. Additionally submission is made that there is no recovery of the weapon namely the *gandasi* whose blow is attributed to Balwinder Singh-petitioner No.2 on the left side head of the complainant and the rod blow attributed to petitioner No.1 Isham Singh allegedly given to the son of the complainant. He thus submits that in the absence of necessary link evidence and weapon of offence having not been recovered, the conviction is not sustainable. Moreover, submission is made by the learned counsel that even the Investigating Officer in the case has not stepped into the witness-box.

9. I have heard learned counsel for the respective parties and perused the material on record with their able assistance.

10. The trial Court had specifically noticed the fact that the injuries sustained by the witnesses were duly proven on record. PW6-Dr. Tarun Parsad, SMO, CHC Shahzadpur had specifically deposed with respect to the examination of the injured-witness Narender Kumar as well as the complainant-Amar Singh. Furthermore, the injury sustained by Surja and the MLR pertaining to the same was also proved. All the injured persons have duly stepped into the witness-box and have corroborated their version. A mere non-corroboration of the prosecution case by independent witnesses does not defeat the case of the prosecution, once the injured and eye-witness account is readily available with the Court. The testimony of the said witnesses cannot be discarded.

11. Moreover, merely because some of the accused persons to whom certain attributions have been made, have been acquitted, it would not demolish the case of the prosecution in its totality. The benefit of such discrepancy has already been extended to the person in whose favour the discrepancy was noticed

and the said accused persons namely Satpal, Mukesh and Rajesh were extended the benefit of doubt by the lower Appellate Court. It is not in dispute that the case is to be decided on the basis of the quality of the evidence and not on the strength of quantity of the witnesses brought before the Court. The ocular version of the victims-complainants is duly corroborated by the medical evidence. There is no reason why the complainant would falsely implicate the petitioners.

12. Furthermore, the fact that the prosecution has not examined the Investigating Officer in the instant case does not lead the Court to assume that the incident in question had not taken place. A lapse on the part of the prosecution to examine the Investigating Officer would not demolish the case of the State as a mere lapse of such nature does not raise any adverse inference against the prosecution. No benefit of such a lapse can be extended to an accused, specially when the prosecution witnesses have withstood the test of cross-examination and have fully proved the manner in which the injuries had been sustained and the injuries also stand corroborated by the medical evidence.

13. Even otherwise, the probative value of the evidence has already been discussed by the Courts below concurrently. A Revisional Court does not substitute its opinion for that of the Courts below, unless such opinion formed by the Courts below suffers from perversity, infirmity or gross illegality. If the opinion so formed by the Courts below is a possible opinion, the same shall not be ordinarily interfered with by the Revisional Court. Additionally, it is seen that the benefit of probation has already been extended to the petitioners. There is no occasion for the Court to re-appreciate the entire evidence. The sentence so imposed cannot be held to be excessively harsh or to be without any legitimate basis.

14. In view thereof the present petition is dismissed and the judgments passed by the Courts below are affirmed.

(VINOD S. BHARDWAJ)
JUDGE

May 11, 2022

S.Sharma(syr)

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