

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

CRR No.895 of 2022 (O&M)
Date of decision: 22nd February, 2023

Ajit Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for respondent No.1/State.

MANJARI NEHRU KAUL, J.

CRM No.16822 of 2022

The instant application has been filed for condonation of delay of 156 days in filing the revision petition.

In the light of averments made in the application and in the interest of justice, the same is allowed and delay in filing the revision petition is condoned.

CRR No.895 of 2022

The instant revision petition has been filed by the complainant to impugn the judgment dated 23.10.2019 passed by the learned lower Appellate Court vide which it accepted the appeal preferred by accused respondents No.2 to 4 against their conviction under Section 323 IPC read with Section 34 IPC.

As per the allegations leveled in the complaint, the complainant was serving as a Constable with the Railway Police Force. He, along with the accused was posted at Jalandhar. On 18.03.2013 after duty hours, when the complainant and the accused returned to their barracks, the accused started consuming liquor and the complainant went to take rest. The accused asked the complainant to join them, however, he refused since he did not take liquor. The accused then offered him a soft drink spiked with liquor. When the complainant consumed the soft drink, he felt giddy and started vomiting. Thereafter, without any rhyme or reason, the accused persons started assaulting the complainant. Accused No.3 Harjinder Singh caught hold of the complainant from his back while accused No.2 Gur Sahib Singh beat him up mercilessly, kicked him on various parts of his body, and also tore his clothes. On account of the assault by accused No.1 Gurbaj Singh, left ear of the complainant started bleeding. While assaulting the complainant, the accused stated that they were taking revenge against the complainant, who had reported against accused No.1 and accused No.2 qua some theft, and their unauthorized residence in quarter No.500-A. On a hue and cry raised, one Balwant Singh was attracted to the spot, who witnessed the occurrence and also rescued the complainant from the accused. Balwant Singh offered to take the complainant to the hospital, however, the latter refused and instead preferred to lodge a complaint with the Railway Police and

other Railway Police officials. As no action was taken on his complaint, the complainant lodged a complaint with IPF/BTI on 19.03.2013, which was not acted upon by the concerned officer. The complainant then went to Bathinda and got himself medically examined from DMO Northern Railway, Bathinda on 22.03.2013. On account of the assault carried out by the accused, the complainant alleged that he had suffered injuries on his left ear.

In support of his case, the complainant examined himself as CW-1 besides examining CW-2 Balwant Singh, CW-3 Dr. Pawan Kumar Kataria and CW-4 Dr. Sunil Kapoor. The Trial Court on the basis of the material on record and evidence led, convicted the accused for the offences under Section 323 read with Section 34 IPC. However, as they were first time offenders and Govt. employees, a lenient view was taken and they were sentenced to pay a fine of ₹ 1000/- each with default clause. The lower Appellate Court, vide order dated 23.10.2019, set aside the conviction of the accused and acquitted them on the ground that the alleged eye-witness Balwant Singh had failed to support the version put forth by the complainant and there was no medical evidence on record to corroborate the injuries allegedly suffered by the complainant in the occurrence in question.

Learned counsel for the petitioner has vehemently argued that the learned Trial Court erred in discarding the testimony of the complainant, who while stepping into the witness box as CW-1, had

reiterated all the allegations leveled against the accused. It was submitted that there was enough medical evidence in support of the complainant having suffered injuries on his left ear in the occurrence in question.

I have heard learned counsel for the parties and perused the relevant material on record.

As per allegations leveled, the complainant had suffered an injury on his left ear as a result of which it had started bleeding and eventually he had lost hearing in the said ear. However, it is a matter of record that the Medico Legal Report of the complainant was not even led in evidence to substantiate the factum of receipt of injuries by him. CW-3 Dr. Pawan Kumar Kataria while stepping into the witness box, simply deposed qua the medical examination done on the complainant by Dr.Geetu Garg on 22.03.2013 and thereafter, having referred him to a hospital in Delhi. Learned counsel was unable to bring to the notice of this Court any evidence on record from which it could be even remotely discerned that the complainant had at any point of time been treated by CW-3 Dr. Pawan Kumar Kataria. So much so, neither any medical record nor any bed-head ticket of the complainant was brought on record by the complainant. Still further, as per the complainant, surgery on his left ear was performed by one Dr.Shruti Ogura, however, said Dr.Shruti Ogura was not even examined by the complainant for reasons best known to him. No medical reports were

exhibited though some medical documents were produced as marked documents. However, the marked medical documents were completely silent about the medical history of the complainant. Hence, in the circumstances, the lower Appellate Court did not err in holding that no cogent much less convincing evidence had been led to prove that the alleged loss of hearing in the left ear of the complainant was an outcome of the assault allegedly carried upon him by the accused. Still further, strangely, the complainant instead of rushing to the nearest hospital on receipt of the alleged '*serious injuries*' on his person, chose to travel all the way from Jalandhar to Bathinda for getting himself medically examined and that too, after four days of the occurrence in question. This, without doubt, raises a big question mark about the authenticity of the version put forth by the complainant. Furthermore, as per the complainant he reported the incident to his superior officers on 20.03.2013 as well as 21.03.2013, however, yet again for reasons best known to him, he failed to examine any of these superior officers in support of his case. Learned counsel for the petitioner was also unable to bring to the notice of this Court any material from which it could be shown that in the three months following the occurrence in question, the complainant had ever approached the police to report qua the crime in question. Lastly, CW-2 Balwant Singh, the alleged eye-witness was declared hostile during trial as he failed to identify the accused. Thereafter, though CW-2 Balwant Singh was cross-examined

by the learned counsel for the complainant, however, nothing incriminating could be elicited against the accused.

As a sequel to the above discussion, this Court has no hesitation in upholding the judgment dated 23.10.2019 under challenge.

The instant revision petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

February 22, 2023
rps

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