

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

CRR-2004-2019 (&M)
Date of Decision: 17.04.2023

UDAIBIR SINGH

...Petitioner

Versus

SUNIL KUMAR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Tarun Yadav, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

CRM-24231-2019

There is delay of 189 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and delay of 189 days in filing the present revision petition is condoned.

Criminal Misc. Application is disposed of accordingly.

CRR-2004-2019

The petitioner has filed this Criminal Revision Petition, seeking quashing of judgment dated 14.03.2018 passed by learned Additional Sessions Judge, Rewari; whereby, the respondents-accused have been acquitted by setting aside the judgment of conviction dated 16.03.2017 passed by the Court of learned Judicial Magistrate Ist Class, Rewari, in case FIR No.112 dated 09.06.2011, registered under Sections 323, 325 and 506 read with Section 34 of the Indian Penal Code (for short 'the IPC'), at Police Station Rampura.

2. Briefly, the above-said case FIR was registered on the complaint of Udaibir Singh son of Ram Mehar, resident of Village Punsika (Rewari); wherein, it was alleged that on 08.05.2011, at about 7:00-7:30 p.m., he along with Devdutt son of Ram Singh, Prem Parkash son of Data Ram, Ratan Panch son of Bhola Ram, Ratan son of Hazari Singh, was sitting in the house and talking to each other, when the respondent-accused (Mahesh) armed with an *iron rod*, Rakesh son of Hoshiyar Singh, armed with *piece of wood*, Rajbir son of Abhay Singh, Sudhir son of Sabha Chand, Sunil son of Laxmi Narain, Anil son of Sabha Chand, Manjit son of Amar Singh, Abhay Singh son of Amar Singh, Hoshiyar Singh son of Amar Singh and their wives entered his house. Mahesh is alleged to have given a blow of rod on the nose of Devdutt, Rakesh is alleged to have given a blow of piece of wood on his waist, Rajbir is alleged to have hit the complainant on his left eye, Manjit is alleged to have hit him on his leg with a stone; whereas, Sunil, Sudhir, Anil and Abhay, are alleged to have held the complainant and Devdutt. As per the FIR, Prem Parkash Panch, RatanPanch and Ratan son of Hazari Singh, rescued them from the hands of the accused persons and while leaving, the accused persons intimidated the complainant and Devdutt, by threatening to kill them.

3. It appears that on the basis of the afore-said statement, earlier one DDR No.20 dated 09.05.2011 was registered at Police Station Rampura; however, after obtaining MLR and X-ray reports of the injured, the above-said FIR was registered. The challan is stated to have been presented against Rajbir son of Abhay Singh and Sunil son of LaxmiNarain; while the other persons, named as assailants, were found to be innocent. Thereafter, an application under Section 319of the Code of Criminal Procedure, was filed which was partly allowed by the trial Court

vide order dated 06.08.2016; wherein, Mahesh son of Manjeet, Rakesh son of Hoshiyar Singh and Manjeet son of Amar Singh, were summoned as additional accused.

4. Subsequently, Sunil, Mahesh, Rakesh, Manjeet and Rajbir, were charge-sheeted under Sections 323, 325 and 506 read with Section 34 of the IPC. However, all of them pleaded not guilty and claimed trial.

5. The prosecution examined the following witnesses :-

<i>PWs</i>	<i>Name of the witness</i>
PW1	Udaibir son of Ram Mehar, complainant/injured.
PW2	Dr. Amit Yadav, Medical Officer
PW3	Devdutt son of Ram Singh, injured/eye witness.
PW4	MHC Sunil Kumar
PW4 (repeated)	Dr. Rajnessh Kumar, Medical Officer
PW5	Rattan son of Hazari resident of village Punsika, oral witness.
PW6	Rattan Singh son of Bhola Ram resident of Village Punsika, oral witness.
PW7	ASI Ajit Singh, Investigating Officer.

6. Upon completion of prosecution evidence, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, wherein the incriminating material was put to them; however, they denied all the allegations levelled against them and pleaded innocence.

7. The learned trial Court, vide judgment of conviction dated 16.03.2017, convicted all the afore-said five accused persons under Sections 323 and 506 read with Section 34 of the IPC and vide separate order of sentence dated 17.03.2017, they were sentenced to undergo

rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each under Section 323/34 IPC; to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- each under Section 506/34 IPC.

8. It is noticed that the respondents-accused were acquitted of the charge under Section 325/34 IPC.

9. Being dis-satisfied with the afore-said judgment of conviction and sentence passed by the trial Court, the respondents filed an appeal before the learned Additional Sessions Judge, Rewari; which was allowed vide judgment dated 14.03.2018 and all the respondents-accused were acquitted of the charges framed against them. Accordingly, the present revision petition has been filed before this Court.

10. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

11. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge.

12. Hon'ble Apex Court in ***Johar and others v. M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

"17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal."

13. The factum of powers of the revisional court dealing with the revision against acquittal being extremely limited was reiterated by the Hon'ble Supreme Court in the case of ***K. Ramachandran v. V.N. Rajan & Anr. 2010(5) RCR (Criminal) 237***, wherein it was held as under:-

"This question has been considered in the celebrated judgment of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

"(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- accused;

(ii) Where the Trial Court has wrongly shut out evidence which the prosecution wished to produce;

(iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law."

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal

may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to reappreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."

14. In the case of ***Hydru v. State of Kerala, {2004 (13) SCC 374}***, the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

15. In the case of ***Satyajit Banerjee v. State of West Bengal, 2005(1) RCR (Crl.) 723***, the Apex Court laid down that revisional jurisdiction, at the instance of the complainant has to be exercised by the High Court only in very 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.

16. Considering the case in hand, the learned lower Appellate Court, after appreciating the entire evidence on record, acquitted the

respondents of the charges framed against them, vide judgment dated 14.03.2018, by observing as under :-

“12. I have given due consideration to the arguments advanced by learned counsel for appellants/accused and the learned Public Prosecutor for the State assisted by learned counsel for the complainant. In the statement Ex.PW1/A made by complainant Udaibir before the police, whereupon the present case was registered, he named as many as nine persons and their wives as assailants who allegedly entered into his house and caused injuries to him and Devdutt. As per the aforesaid statement, an iron rod was attributed to accused Mahesh and a piece of wood was attributed to accused Rakesh. However both the above named accused persons were found to be innocent by the Investigating Officer during the course of investigation. No weapon is alleged to have been recovered from their possession. They have been summoned as an additional accused to face trial on an application moved by the complainant through learned Public Prosecutor under Section 319 Cr.P.C. Only the accused namely Sunil and Rajbir were sent up to face trial by the investigating agency. No specific injury or weapon was attributed to anyone of them by the complainant during the course of investigation. Even no specific injury or weapon was attributed to accused Manjeet who was summoned as an additional accused to face trial. Only sweeping allegations have been made by the complainant so as to implicate as many members of the families of the accused persons as possible. The complainant has also named the wives of the accused persons facing trial as assailants. However they were also found to be innocent during the course of investigation. It is thus evident that complainant Udaibir has concealed the genesis of the offence and tried to implicate as many persons as accused as possible due to political enmity.

13. Admittedly Udaibir was the Sarpanch of the village Punsika at the time of alleged occurrence. He also submitted that Prem Parkash and Rattan son of Bhola Ram, the alleged eye-witnesses of the occurrence were Panches of the Gram Panchayat at that time. PW1 Udaibir also admitted during his cross-examination that the accused lodged a complaint against him with BDPO for having raised construction of a latrine in the rasta. PW5 Rattan son of Hazari also admitted during his cross-examination that he had good relations with Udaibir. He also did not attribute any specific injury or weapon to any of the accused persons facing trial namely Sunil, Manjeet and Rajbir. PW6 Rattan son of Bhola Ram also admitted that he was the Panch of Gram Panchayat at the time of alleged occurrence. There have been material discrepancies in the statements made by PW1 Udaibir, PW5 Rattan and PW6 Rattan, Panch as regards the manner in which the occurrence allegedly took place. Although PW1 Udaibir stated that the accused entered into his house while being armed with weapons, but the site plan Ex.PW7/D prepared by the Investigating Officer shows the place of occurrence in the street and not in the house of the complainant. It also makes the statement made by PW1 Udaibir highly doubtful.

14. The most material witness examined by the prosecution is PW3 Devdutt. He is the injured/eye-witness in this case. As per his MLR Ex.PW2/B, he suffered one injury on his nose with a blunt weapon. As per the statement made by the complainant, the said injury has been attributed to accused Mahesh. However PW3 Devdutt failed to identify any of the assailants who allegedly gave beatings to him and Udaibir. He stated that it was the dark on the spot. He could not see the assailants. He categorically stated on oath that the accused present in court were not those persons who had caused injuries to him and Udaibir. Although he was got declared hostile by

the prosecution and cross-examined by learned Public Prosecutor but no support for the prosecution case could be solicited. Even PW2 Dr. Amit Yadav and PW4 Dr. Rajneesh Kumar admitted that the injuries sustained by Devdutt and Udaibir by fall on a hard surface could not be ruled out. The Investigating Officer also admitted that the FIR was registered after a period of about one month of the occurrence. He also admitted that during his investigation, it was found that the occurrence had taken place in the street and not in the house of the complainant as alleged by him. All these facts also makes the prosecution story highly doubtful.

*15.It is now well settled principle of criminal jurisprudence that the onus lies upon the prosecution to prove each and every ingredient of the offence alleged to have been committed by the accused. It is not for the accused to connect the circumstances under which the alleged occurrence took place. Where two views are possible from the evidence on record brought by the prosecution, the view which favours the accused ought to be adopted. Reference may be made to the ruling **Sunil Kumar Vs. State of Haryana 2016(2) RCR (P&H) 28.***

*16.In view of the observations made above, this court is of the opinion that the prosecution has miserably failed to prove the identity and the guilt of the accused under Sections 323, 325, 506 IPC read with Section 34 IPC. The impugned judgment of conviction and order of sentence passed by the learned Judicial Magistrate Ist Class, Rewari thus cannot be sustained. The appellants/accused are held entitled to benefit of doubt. The observations made by the learned trial court to the effect that the prosecution has been available to bring home the guilt of the accused under Sections 323, 506 IPC read with Section 34 IPC thus cannot be sustained. **Consequently the present appeal is allowed.** The judgment of conviction dated 16.03.2017 and order of sentence*

dated 17.03.2017 passed against the appellants/accused is hereby set aside. They stand acquitted of all the charges for which they faced trial. Their bail bonds stand discharged. The amount of fine deposited by them be refunded to them on expiry of the period of filing appeal/revision, as the case may be. The trial court record be sent back. The appeal file be consigned to the record room after due compliance.”

17. Keeping in view the legal position as indicated in foregoing paras, I do not find any illegality or infirmity with the impugned judgment, apparent on the face of the same, which may call for any interference by this Court, while exercising its revisional jurisdiction. There is nothing on the record to show that the Court below had exceeded its jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment. The impugned judgment is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment passed by lower Appellate Court is based upon proper appraisal and appreciation of evidence and as per law.

18. Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.

19. All pending application/s, if any, shall stand closed.

April 17th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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