

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

CRR-2343-2022(O&M)

Date of Decision:-14.09.2023

Gurdeep & Anr.

.....Petitioners.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ramandeep Singh, Advocate for the Petitioners.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioners against the judgment dated 09.03.2022 passed by Additional Sessions Judge, Sirsa whereby the judgment of conviction dated 08.11.2017 and order of sentence dated 09.11.2017 passed by the Judicial Magistrate Ist Class, Sirsa has been upheld.

2. The brief facts of the case are that the present FIR came to be registered on the statement of complainant Santo Devi who stated that on 20.10.2013 at about 8.00 pm while she and her family members were taking dinner at their house, Sonu under the influence of liquor started knocking at their door with a *danda*. On an objection being raised by them (complainant party) Sonu gave brick blows on the head of her (complainant's) son Veerpal. In the meantime, Gurdeep (convict/petitioner no.1) brother of Sonu (convict/non petitioner) and Malkeet (convict/petitioner no.2) father of

Sonu came at the spot. Gurdeep threw a brick which struck the forehead of her son Amar Singh. Thereafter, Malkeet gave a blow of *kassi* to her (complainant) which struck her on her left hand. On an alarm being raised Jagdish son of Bhura Ram and other neighbourers came to the spot on which the accused persons fled away. They (complainant & other injured) were got admitted to CHC, Baragudha by Sukhdev Singh for treatment. Legal action was sought.

3. Based on the aforementioned information the FIR came to be registered and pursuant to the conclusion of the investigation, the report under Section 173(2) Cr.PC was submitted against the accused. On the conclusion of the Trial, the petitioners along with their co-accused Sonu came to be convicted and sentenced vide judgment of conviction and order of sentence dated 08.11.2017 and 09.11.2017 as under:-

Offence under Sections	Imprisonment
323 IPC	Convicts are sentenced to undergo rigorous imprisonment of six months and to pay a fine of Rs.500/- each. In default of payment of fine, each convict shall undergo simple imprisonment for a period of one month.
326 IPC	Convicts are sentenced to undergo rigorous imprisonment of three years and to pay a fine of Rs.5000/- each. In default of payment of fine, each convict shall undergo simple imprisonment for a period of three months.

All the sentences were to run concurrently.

4. All the three convicts/accused preferred an appeal before the court of Additional Sessions Judge, Sirsa. During the course of said proceedings Sonu was declared a proclaimed offender on 10.02.2022. Ultimately, the appeal filed by the petitioners came to be dismissed vide judgment dated 09.03.2022.

5. The present revision petition has been preferred against the aforementioned judgments of conviction.

6. The learned Counsel for the petitioners contends that the conviction has been recorded on the basis of conjectures and surmises. There was a considerable delay in the registration of the FIR. The occurrence allegedly took place on 20.10.2013 at about 8.00 PM whereas the statement of the injured was recorded on 21.10.2013 at 12.40 pm. This delay was fatal to the prosecution case. The case was based on the testimony of interested witnesses alone despite the presence of independent witnesses at the place of occurrence and, therefore, the benefit of doubt ought to be given to the petitioners. He contends that the contradictions and discrepancies in the testimonies of PW-2 Complainant Santo Devi and PW-6 Veerpal had not been considered in their proper perspective. The X-ray report had not been proved in accordance with law and, therefore, no conviction could be recorded under Section 326 IPC. Even otherwise, the medical evidence was contrary to the ocular account. He thus contends that judgments of conviction were liable to be set aside and the petitioners ought to be acquitted of the charges framed against them.

7. The Counsel for the State has placed on record custody certificates dated 13.09.2023 of both the petitioners. The Same are taken on record. As per the custody certificates petitioner-Gurdeep has undergone a total custody period of 07 months and 29 days whereas petitioner-Malkeet Ram has undergone a total custody period of 08 months and 14 days out of the awarded sentence of three years. He contends that the testimonies of the injured prosecution witnesses cannot be disbelieved. In support of the testimony of injured witness, there is ample medical evidence on record and, therefore, the ocular evidence is totally in consonance with the medical evidence. There was no significant delay in the registration of the FIR so as to demolish the prosecution case. He therefore, contends that no case for

interference is made out and the present petition was liable to be dismissed.

8. I have heard counsel for the parties.

9. In the instant case, the occurrence took place at 8.00 pm on 20.10.2013. The medico legal examination of the PW-2 Santo Devi, PW-3 Amar Singh and PW-6 Veerpal Singh took place soon thereafter at about 9.25 pm. A ruqa was sent to the police station at 10.10 pm regarding the admission of the injured. Merely because the statement of the complainant was recorded later would not make any significant difference to the substratum of the prosecution case.

The injured prosecution witnesses, namely, Santo Devi, Amar Singh and Veerpal Singh have duly supported the prosecution case as regards the manner in which the occurrence took place and the injuries suffered by them. Similarly, the statements of PW-5 Jagdish and PW-4 Sukhdev who came to the spot completely support the prosecution version regarding the manner in which the occurrence took place. PW-1 Gerish Atri MO PHC Rori has tendered into evidence his duly sworn affidavit Ex.PW-1/A and proved MLR of injured Veerpal Ex.PW-1/B and diagram Ex.PW-1/C. He has also proved MLR of injured Santo Ex.PW-1/F and diagram as Ex.PW-1/G. He has also proved ruqa Ex.PW-1/H and his report Ex.PW-1/I and opinion as Ex.PW-1/J in his testimony. Therefore, the medical evidence is totally in consonance with the ocular account.

As regards the producing of the X-ray film and the non examination of Dr. Raj Kumar, Radiologist, it may be pointed out that the testimony of PW-1 Dr. Gerish Atri is sufficient to reach the conclusion that simple as well as grievous injuries with sharp edged weapons had been caused by the accused persons on the complainant party.

10. In view of the aforementioned discussion, I do not find any

reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Therefore, the present petition stands dismissed.

11. As regards the imposition of sentence, it may be mentioned that the occurrence pertains to the year 2013 and as many as 10 years have elapsed ever since. Therefore, I deem it appropriate to modify the sentences as under:-

Offence under Sections	Imprisonment
323 IPC	Convicts are sentenced to undergo rigorous imprisonment of six months and to pay a fine of Rs.1500/- each . In default of payment of fine, each convict shall undergo simple imprisonment for a period of one month.
326 IPC	Convicts are sentenced to undergo rigorous imprisonment of one year year and to pay a fine of Rs.25000/- each . In default of payment of fine, each convict shall undergo simple imprisonment for a period of three months.

All the sentences are ordered to run concurrently.

Out of the aforesaid enhanced amount of fine, a sum of Rs.21,000/- shall be paid to all the three injured persons in equal shares as compensation. However, the sentence in default of payment of fine shall remain intact.

(JASJIT SINGH BEDI)
JUDGE

September 14, 2023
Vinay

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