

(250) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1365-2008 (O&M)

Date of Decision: 09.03.2023

RAJENDER SINGH & ANOTHER

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. H.S. Randhawa, Amicus curiae
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 15.07.2008 passed by the Additional Sessions Judge, Rewari, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 19.07.2005 passed by learned Judicial Magistrate, 1st Class, Rewari, has been dismissed.

2. The brief facts of the prosecution case as stated in Ex.PW2/A are that on 06.10.1997 at about 12.00 PM complainant-Babu Lal son of Ganpat Ram was sitting on the shop of Banwari son of Het Ram. All of a sudden Rajinder Singh son of Matadin (petitioner No.1/accused hereinafter known as the petitioner No.1) and Maniya @ Surinder Singh son of Matadin (petitioner No.2/accused hereinafter known as the petitioner No.2) came there having *lathis* in their hand. Rajinder Gave a *lathi* blow on the head of the complainant while Maniya gave a *lathi* blow on the left leg of the complainant. Rajinder further gave a *lathi* blow on the hands of the complainant. In the meantime, Moti Ram son of Mamraj and Krishan son of Mangu Singh came there and rescued the

complainant from the clutches of the petitioners. At the time of leaving, the petitioners further gave a threat of life to the complainant. On this information, the FIR against the petitioners was lodged. The investigation was initiated. Statements of the witnesses were recorded. The site plan was prepared. The petitioners were arrested. On completion of the investigation, the challan was prepared and presented in the court.

3. A copy of the challan and other documents were supplied to the petitioners as required under Section 207 Cr.P.C. free of cost.
4. On finding a *prima facie* case under Sections 452/323/325/506/34 IPC, the petitioners were charge-sheeted. They did not plead guilty and claimed trial.
5. The prosecution in support of its case examined Dr. J.K Saini as PW1-Dr. Banwari Lal as PW2, Babu Lal complainant as PW3, HC Rajinder Singh as PW4, Krishan Singh PW5 and Moti Ram as PW6. Thereafter, the evidence of the prosecution was closed by the APP vide his separate statement.
6. The statement of the petitioners was recorded under Section 313 Cr.P.C. No defence evidence was adduced by them.
7. Based on the evidence led, the accused/petitioners came to be convicted and sentenced vide judgment and order of sentence dated 19.07.2005 passed by the Court of Judicial Magistrate, 1st Class, Rewari as under:-

Section	Sentence	Fine imposed	In default
323/34 IPC	06 months RI	---	RI for 06 months and fine of Rs.500/- each.
325/34 IPC	02 years RI	Rs.1000/- each	RI for 06 months and fine of Rs.500/- each.
506/34 IPC	03 months	Rs.500/- each	--

All the sentences were ordered to run concurrently.

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8. Aggrieved by the judgment and order of sentence dated 19.07.2005 passed by the Trial Court, the petitioners preferred an appeal, where more or less similar grounds were raised. After examining the evidence and the record, the appeal came to be dismissed by the Court of Additional Sessions Judge, Rewari vide judgment dated 15.07.2008 leading to the filing of the present revision petition.

9. The learned counsel amicus curiae for the petitioners contends that there is a delay of more than 05 hours in the registration of the FIR. The occurrence took place at 12.00 PM and the case came to be registered at approximately 5.15 PM. The alleged eye-witnesses to the occurrence i.e. PW5-Krishan and PW6-Moti Ram did not support the prosecution version. The medical evidence also ran contrary to the ocular account and since no weapon had been recovered, the case of the prosecution becomes doubtful.

10. The custody certificate has been placed on record by the learned State counsel, which indicates that the period of custody actually undergone by the petitioner No.1 is 02 months and 06 days and petitioner No.2 is 02 months and 06 days out of the sentence awarded of 02 years. He contends that the offences stand well-established against the petitioners. The medical evidence is clearly in consonance with the ocular account and therefore, a mere delay of 5 hours in the registration of the FIR cannot be said to be fatal to the case of the prosecution case.

11. I have heard the learned counsel for the petitioner at length.

12. As regards the offences under Sections 323/325/506/34 IPC, PW3-Babu Lal being the complainant and injured in specific terms has deposed that the petitioners had caused various injuries on his person by *lathis*. His

deposition in Court is similar to his complaint regarding the role played by the petitioners. He has stated that he had received a fracture on his right hand.

PW1-Dr. J.K. Saini and PW2-Dr. Banwari Lal deposed as medical experts. PW2 proved the MLR Ex.PW2/A with regard to the injuries stated to have been received by the complainant-Babu Lal. All the injuries were stated to have been received with blunt weapons. Injuries 5 and 6 were kept under observation. The complainant-PW3 specifically deposed that he had been given blows of *lathis* by both the petitioners. Therefore, the ocular evidence is fully corroborated by the medical evidence. PW-1 has proved on record the X-ray report Ex.PW1/A and X-ray film Ex.PW1/B. As per the X-ray report, there was a fracture over the lower 3rd of the ulna bone in the left forearm of Babu Lal.

In view of the medical evidence being in consonance with the ocular account, merely because both the eyewitnesses to the occurrence did not support the prosecution case would not detract from the veracity of the case which has been established in accordance with law. Minor variations in the ocular and evidence cannot shake the prosecution case in its entirety.

13. In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is dismissed.

14. As regards the imposition of sentence, it may be pointed out that the occurrence pertains to the year 1997. As many as 26 years have gone by thereafter. A perusal of the custody certificate of the petitioners would reveal that they are first-time offenders. They have undergone total custody of 02 months and 06 days each. In view of the fact that the occurrence is of the year 1997 and the petitioners are first-time offenders, it would be in the interest of

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justice, if the sentence awarded to them is reduced to the period already undergone by them. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

09.03.2023
JITESH

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