

**CRR-2779-2008 (O & M)
(235)**

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

**CRR-2779-2008 (O & M)
Date of Decision: 13.09.2023**

Dharam Pal @ Dimpi

... Petitioner

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Jasraj Singh, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment and order dated 25.11.2008 passed by the Sessions Judge, Kaithal in Crl. Appeal No.115 of 2006 whereby the judgment of conviction and order of sentence dated 23.10.2006 passed by the Judicial Magistrate Ist Class, Kaithal, has been affirmed.

2. The brief facts of the case are that the statement of Pala Ram was recorded to the effect that on account of prior enmity, on 16.09.1997 at about 7.30 pm, Mehar Singh son of Nanak Chand, Krishan son of Veeru and Dharam Pal @ Damphy @ Dimpi son of Mani Ram (petitioner) came to their (complainant party's) house armed with *gandasis* and *lathis*. Mehar Singh gave him (complainant) a *lathi* blow

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on both his legs and also gave a blow on the right arm and wrist of his wife-Bimla and Dimpri also attacked her with a *gandasi* on her head, Krishan gave a *lathi* blow to his wife on her nose fracturing the same. Taking advantage of the darkness, he (complainant) ran away from the spot. The accused stated that he (complainant) and his family would be taught a lesson in future. On hearing the noise, many people had gathered at the spot. He (complainant) reached the residence of the Superintendent of Police, Kaithal where all the facts were disclosed to the Reader-Satpal. Thereafter, an application was moved to the Deputy Superintendent of Police and then, he (complainant) came to know that his wife had been admitted in the Civil Hospital, Kaithal. He reached the hospital and found that his wife was lying unconscious. Thus, all the accused with a common intention had injured him and his wife with weapons. Legal action was sought.

3. Based on the aforementioned complaint, the FIR in question came to be registered. Pursuant to the conclusion of the investigation, the report under Section 173 Cr.P.C. was presented and on conclusion of the trial, the accused came to be convicted and sentenced by the Court of Judicial Magistrate Ist Class, Kaithal as under:-

Offence U/S	Sentence (RI)	Fine (Rs.)	In default of payment of fine
325 IPC	02 Years	Rs.500/-	07 days
326 IPC	02 Years	Rs.500/-	07 days

Both the sentences were ordered to run concurrently.

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4. All the convicted-accused preferred an appeal before the Court of Sessions Judge, Kaithal and while acquitting Mehar Singh son of Nanak Chand and Krishan son of Veeru, the petitioner came to be convicted only under Section 326 IPC and the sentence awarded to him was reduced to one year rigorous imprisonment whereas the fine imposed upon him was left unaltered.

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

6. The learned counsel for the petitioner contends that an entirely false prosecution version has been concocted as there is an inordinate delay of 15 days in registration of the FIR for which no reasonable justification has been given by the complainant. As per the opinion of the doctor dated 17.09.2017, Bimla-PW/3 was fit to give her statement but has refused to do so which creates a doubt in the prosecution story. The MLE previously conducted on 16.09.1997 shows all the injuries to be blunt it was only subsequent thereto that the MLR had been changed. No offence under Sections 325 and 326 IPC was made out as there was only one alleged injury on the skull which had been examined after a long time giving rise to the inference that the injury could have been self-suffered. In fact, the X-ray report had not been proved in accordance with law. The Courts had failed to appreciate the fact that the investigating officer never joined any independent witness from the public at the point of the alleged recovery despite having the opportunity to do so. There were material contradictions

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between the statements of the prosecution witnesses which had not been properly appreciated by the Trial Court and the Lower Appellate Court. He, thus, contends that the judgments of conviction were liable to be set aside and the petitioner was liable to be acquitted of the charges framed against him.

7. The custody certificate of the petitioner dated 12.09.2023 has been placed on record by the learned counsel for the State, as per which, the petitioner has undergone a total actual custody period of 02 months 19 days out of the awarded sentence of 01 year vide judgment dated 25.11.2006 passed by the Sessions Judge, Kaithal. He contends that the offence has been established beyond reasonable doubt. The medical evidence is in consonance with the ocular account. The Lower Appellate Court has clearly established the culpability of the petitioner while acquitting his co-convicts Mehar Singh and Krishan. The delay in the registration of the FIR had been properly explained. He, thus, contends that the judgments of conviction ought not to be interfered with and were liable to be upheld.

8. I have heard the learned counsel for the parties.

9. A perusal of the material on record would establish that the occurrence is proved beyond any reasonable doubt. The medical evidence is totally in consonance with the ocular account so far as the petitioner is concerned. As per the injured, PW-3-Bimla, it was the petitioner who had assaulted her which fact has been reiterated by PW-4/Pala Ram, her husband. As per the medical evidence on record, Bimla

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has been found to have sustained one injury on her head. The testimonies of Dr. B.B. Kakar (PW-6) and Dr. D.C. Thakural (PW-7) clearly establish that a grievous injury was caused by the petitioner with a sharp-edged weapon on the person of PW-3/Bimla.

The delay of 20 hours in reporting the matter to the police cannot be considered to be fatal to the prosecution case as the injured-Bimla (PW-3) had sustained grievous injuries on her head which was attributed to the petitioner. The conduct of the complainant in reporting the matter to the police after some delay is natural and cannot be faulted.

The identity of the petitioner is also established beyond any reasonable doubt. As the parties were well-known to each other, therefore, merely because the incident took place at night does not mean that the complainant party could not identify the accused.

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 1997 and as many as 26 years have elapsed ever since. Therefore, I deem it appropriate to reduce the substantive sentence of the petitioner from a period of 01 year rigorous imprisonment to 03 months rigorous imprisonment. The sentence of fine, however, under Section 326 IPC is enhanced to Rs.25,000/-. A sum of Rs.20,000/- (Rs.10,000/- each) out of the fine imposed shall be paid to

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the complainant-Pala Ram (PW-4) and his wife-Bimla (PW-3) as compensation. However, the sentence in default of payment of fine shall remain intact.

**(JASJIT SINGH BEDI)
JUDGE**

September 13, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No