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

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**CRR-1270-2009
Reserved on : 22.11.2023
Pronounced on : 29.11.2023**

Narender @ Ballu

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Ramnish Puri, Amicus Curiae
for respondent No.2.

PANKAJ JAIN, J.

1. Complainant is in revision aggrieved of judgment dated 04.02.2009 passed by Court of JMIC, Charkhi Dadri, whereby the respondents stand acquitted.

2. FIR was registered on the complaint made by one Ramgiri wife of Omkar claiming that on 28.07.2002 at about 6.30 p.m., her son Narender @ Ballu i.e. the present petitioner was watering newly constructed wall when some water spilled in the neighbouring house of Banwari Lal. Udey Bhan @ Bhanu son of Banwari Lal got annoyed and armed with jaily accompanied by Krishan armed with iron rod, Mintu armed with brick, Ashok armed with lathi trespassed into their house. Accused Krishan inflicted iron rod injury on the finger of the complainant. Krishan threw a brick that fell on the left lateral side of

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her abdomen. Krishan inflicted iron rod injury on the person of Narender and accused Udey Bhan inflicted jailly blow on the back of the complainant.

3. Trial Court after appreciating evidence on record found that both the parties i.e. complainant as well as the accused party have sustained injuries as the defence was able to prove on record MLR of Krishan Kumar Ex.DY, who also sustained injuries in the same incident. In the aforesaid circumstances, the trial Court thus held that the police in partisan manner challaned accused party only and did not take any action against the complainant party which shows that the prosecution did not approach the Court with clean hands. It was further found by the trial Court that there was delay of 17 days in registration of FIR and the same remained unexplained.

4. Counsel for the petitioner eloquently argued that the delay stood fully explained. The occurrence took place on 28.07.2002. Rapat No.23 dated 29.07.2002 has been proved on record as Ex.PW5/D. X-Ray report vis-a-vis injuries i.e. fractures suffered by Ramgiri-the complainant was awaited and when the same was received, FIR was got registered. He thus claims that the trial Court completely misdirected itself in acquitting the respondents merely for the reason that there was unexplained delay of 17 days in registration of FIR, which is perverse being against the record.

5. *Per contra*, counsel for the complainant however submits that from the bare perusal of the impugned judgment, it is evident that unexplained delay is not the only factor on which the petitioner has been non-suited, it is one of the factors. He submits that for the sake of

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arguments even if the explanation with respect to delay is found to be sufficient, the impugned judgment can still sustain. He submits that the issue that goes to the route of the case is the partisan manner in which the investigating agency conducted itself. He further submits that the trial Court rightly found that the prosecution concealed the genesis of the occurrence and failed to approach the Court with clean hands. The trial Court held that FIR was registered after 17 days of occurrence but without there being any explanation as to why no action was taken against the complainant party on the information sent by the doctor concerned regarding admission of injured Krishan Kumar, who is accused in the present FIR. It is in these circumstances, the trial Court found that it being impossible to decide which party was aggressor and which party acted in self-defence. The acquittal was inevitable. Reliance is being placed upon judgment passed by Supreme Court in ***Criminal Appeal No.524 of 2021***, titled as '***Parshuram vs. State of M.P.***', decided on **03.11.2023**.

6. I have heard counsel for the parties and have gone through the records of the case.

7. A close examination of the impugned judgment shall reveal that the delay in registration of FIR has not been held to be fatal against the prosecution. The fact that weighed with the trial Court is that despite the fact that FIR was lodged after 17 days of occurrence, inaction of the police on information received with respect to injuries suffered by one of the accused remains unexplained which makes it impossible for the Court to determine as to which of the two parties was the aggressor and which party acted in self-defence.

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8. Counsel for the petitioner does not dispute that the injuries on the body of Krishan Kumar have been proved in defence by the accused as Ex.D1.

9. In the criminal jurisprudence, omission on the part of prosecution to explain the injuries on the person of the accused usually assumes significance for more than one reason. The same has been elaborately explained by the Supreme Court in the case of ***Lakshmi Singh and others vs. State of Bihar 1976 (4) SCC 394*** observing as under:-

“12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which

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competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

10. The same has been repeatedly followed by Apex Court including in *Parsuram’s case (supra)*, wherein the Supreme Court held as under:-

“xx xx xx

23. Non-explanation of injuries on the persons of the accused would create a doubt, as to, whether,

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the prosecution has brought on record the real
genesis of the incident or not. xx xx xx”

11. In the present case, counsel for the petitioner has not been
able to offer any explanation even for the sake of arguments.
12. In view of above, this Court does not find any reason to
interfere in the present revision petition and the same is thus ordered to
be dismissed.

(PANKAJ JAIN)
JUDGE

29.11.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes