IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: February 22, 2023

1. CRR No.2970 of 2011 (O&M)

Krishan and others **…Petitioners**

Versus

State of Haryana **…Respondent**

2. CRM-M-14029 of 2012 (O&M)

Bajrang **...Petitioner**

Versus

Krishan and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Dinesh Arora, Advocate for petitioners No.1, 2, 5 and 6 in CRR No.2970 of 2011 (O&M) and for respondents No.1, 2, 5 and 6 in CRM-M-14029 of 2012 (O&M).

Mr. Abhilaksh Grover and Mr. Tapan Masta, Advocates for petitioners No.3 and 4 in CRR No.2970 of 2011 (O&M) and for respondents No.3 and 4 in CRM-M-14029 of 2012 (O&M).

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Aditya Sanghi and Ms. Shaveta Sanghi, Advocates for the complainant (petitioner in CRM-M-14029 of 2012)

DEEPAK GUPTA, J.(Oral)

In Criminal Case No.166-1 of 2002 arising out of FIR No.203 dated 28.09.2001 registered at Police Station Civil Lines, Bhiwani, six accused [now petitioners in CRR No.2970 of 2011 (O&M)] were convicted by the Court of learned Judicial Magistrate Ist Class, Bhiwani vide judgment dated 14.07.2009 under Sections 148, 149, 323 and 506 IPC, though they were acquitted of the charge under Section 325 IPC. Vide a separate order dated 15.07.2009, petitioners were sentenced as under:-

Under Section 323/149 IPC	01 year	₹300/-
Under Section 506/149 IPC	01 year	₹500/-
On default of payment of fine	02 months	

2. Against the above-said conviction, Criminal Appeal No.167 of

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2009 was filed by all the six convicts- petitioners. On the other hand, complainant of the case Bajrang filed CRR No.59 of 2009 not only seeking conviction under Section 325 IPC but also for enhancement of sentence. Both the cases were heard together by learned Additional Sessions Judge, Bhiwani and vide judgment dated 22.11.2011, the appeal filed by the petitioners was dismissed; whereas the revision of the complainant – Bajrang was allowed. In addition to the offences for which the petitioners were convicted, they were also convicted under Section 325 IPC read with Section 149 IPC and were sentenced to undergo rigorous imprisonment for a period of two years and also to pay a fine of ₹15,000/- each for committing the said offence under Section 325/149 IPC, with default sentence of two months simple imprisonment.

3. Against the above-said findings, both the parties have filed separate revisions. In Criminal Revision No.2970 of 2011 filed by the convicts, it is submitted that the Courts below erred in believing the prosecution story to the effect that the petitioners were forming unlawful assembly and caused injuries to the complainant- Bajrang and his brother Mahabir with blunt weapons. Trial Court failed to take into account the fact that one of the petitioners Vinod also suffered injuries, which fact was admitted by PW5 Mahabir. Though said Mahabir disclosed that petitioner Vinod suffered injuries due to fall on iron boxes but the site plan does not depict any such iron boxes. Further, the testimony of independent witness, namely, DW1 has been wrongly disbelieved. Courts below did not consider that injuries suffered by Vinod were not explained; that injured eye witness Rajiv has not been examined; PW2

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Bajrang and PW5 Mahabir being interested witnesses cannot be relied in the absence of independent corroboration, and that offence under Section 325 IPC was not made out from the evidence on record.

4. In CRM-M-14029 of 2012 filed by complainant of the case i.e. Bajrang, prayer is made for enhancement of sentence.

5. I have considered the submissions of both the sides and have perused the record.

6. FIR was lodged on the statement of PW2 Bajrang, as per which he and his brother Mahabir were present at their shop situated in Naya Bazar, Bhiwani. Litigation between them and Vinod son of Ram Niwas regarding a wall was pending in the Court, due to which Vinod used to hurl abuses to them. On 27.09.2001, at about 07:30 PM, Vinod started abusing in filthy language and when it was protested, said accused became furious and he along with a boy serving at his shop came there having lathis. Vinod gave lathi blow on the head of Mahabir, whereas his son gave lathi blow on the chest of Mahabir. Vinod gave another lathi blow on the left hip of Mahabir. Thereafter, Krishan, Kanshi Ram, Subhash and Mahender came there. Krishan gave lathi blow on his back (Bajrang's back), whereas Kanshi Ram gave lathi blow on his shoulder. When Rajiv, son of Kailash Chand tried to rescue them, all the accused started giving beatings to him. Initially, FIR was registered under Sections 148, 149 and 323 IPC but as it was found during investigation, that accused had threatened to kill the complainant; and injured Mahabir had remained admitted in the hospital for a continuous period of more than 20 days, so, Sections 506 and 325 IPC were added. Necessary

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charges were framed.

7. During trial, two injured Bajrang and Mahabir appeared in the witness box as PW2 and PW5 and supported the prosecution case. PW4 Dr. K.K. Girdhar proved medico legal reports Ex.PW4/A to Ex.PW4/C of the three injured besides the Ruqqa sent to the police. PW2 Dr. K.D. Sharma, who was posted as SMO, General Hospital, Bhiwani had referred injured Mahabir to PGIMS, Rohtak on 28.09.2001 as per his testimony. PW6 Sumir Chand Record Keeper, PGIMS Rohtak brought the summoned record relating to Mahabir and deposed that as per record, Mahabir was admitted there on 28.09.2001 and discharged on 29.09.2001. Thereafter, he was again admitted on 19.10.2001 and discharged on 24.10.2001. He produced the relevant record in this regard. PW9 is the Statistical Assistant in General Hospital, Bhiwani, who on the basis of summoned record, proved that Mahabir was admitted in the hospital on 27.09.2001 and referred on 28.09.2001 but the said patient was again admitted on 01.10.2001 vide CR No.14286 dated 01.10.2001 and discharged on 19.10.2001. Other witnesses examined by the prosecution were police officials.

8. After recording the statement of accused under Section 313 Cr.P.C., in which they controverted the incriminating circumstances appearing against them, they examined one Kuldeep Kumar DW1, who has a shop in the neighbourhood of both the parties and deposed that on 27.09.2001 at about 07:30 PM, he was standing in front of his shop, when some altercation took place between Bajrang, Mahabir and Vinod, at the shop of Vinod. Mahabir and Bajrang wanted to construct a wall

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forcibly, which was being obstructed by Vinod and because of this reason, quarrel took place and injuries were caused.

9. After hearing both the sides, the trial Court recorded the conviction as per details given earlier but found that no case under Section 325 IPC was made out. In appeal, learned Additional Sessions Judge, found the commission of offence under Section 325 IPC also.

10. The first point urged before this Court is as to whether offence under Section 325 IPC is made out or not. As per the MLRs proved on record, three injuries were found on the person of Mahabir which was on head, chest and lower abdomen. Two injuries were caused to Bajrang, which were on his back in the lower part and pain in the left shoulder. Four injuries were found on the person of Rajiv, one of which was on his chest, two on right leg and one on left knee. None of the injuries resulted into any fracture. However, as per the medical evidence proved on record, Mahabir was initially taken to General Hospital, Bhiwani on 27.09.2001, from where he was referred to PGIMS, Rohtak on 28.09.2001. Mahabir remained admitted in General Hospital, from 28.09.2001 to 29.09.2001. He was again admitted to the same hospital on 01.10.2001 and was discharged on 19.10.2001 and then he was admitted in PGIMS, Rohtak, where he remained admitted from 19.10.2001 to 24.10.2001.

11. Apart from above, it has come in the testimony of PW5 Mahabir that during his stay in the hospital from 27.09.2001 to 24.10.2001 at General Hospital, Bhiwani or PGIMS, Rohtak, he used to urinate and answer the call of nature on the bed itself. This statement is

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corroborated by PW2 Bajrang, who deposed that during his stay in the hospital from 27.09.2001 to 24.10.2001, Mahabir, due to his serious condition, used to urinate and answer the call of the nature on the bed itself.

12. Section 320 of the IPC defines grievous hurt. Various kinds of hurts are designated as grievous, which includes any hurt, which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits.

13. In the present case, not only the fact that injured Mahabir remained admitted in the hospital for a period of about one month as per the medical evidence on record, he could not pursue his ordinary pursuits for a period of more than 20 days and remained in severe bodily pain and, therefore, learned Additional Sessions Judge did not commit any error in coming to the conclusion that offence under Section 325 IPC is also made out.

14. The next point raised by learned counsel for the petitioners is regarding applicability of Section 149 of the IPC. Said point contains merit. As per the consistent statement of PW2 Bajrang as well as PW5 Mahabir, initially it is only Vinod and his bhanja Bijender, who had come armed with lathi. It is Vinod, who after abusing Bajrang and Mahabir, inflicted lathi blow on the head of Mahabir. Then Bijender hit lathi in the chest of Mahabir, and then blow with lathi was inflicted by Vinod in his abdomen on the left side. It is only thereafter that other four brothers of Vinod, namely, Krishan, Kanshi Ram, Subhash and Mahender reached, who caused injuries to Bajrang and Rajiv.

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15. It is only the injuries caused to PW2 Mahabir, which have attracted Section 325 IPC as Mahabir remained admitted in hospital for a period of more than 20 days and during that period, he could not pursue his ordinary pursuits, therefore, it is only accused Vinod and Bijender who are guilty of committing offence under Section 325 to be read with Section 34 IPC, as both of them were sharing common intention of causing injuries to Mahabir.

16. As far as remaining four accused, namely, Krishan, Kanshi Ram, Subhash and Mahender are concerned and who had reached the spot later on, they are attributed to have caused injuries to Bajrang and Rajiv and those injuries were simple in nature and so, they have been rightly convicted under Section 323 IPC but their conviction under Section 325 IPC with the aid of Section 149 IPC cannot be sustained.

17. The other points raised by learned counsel for the petitioners to the effect that no independent witness was examined or that statements of PW2 and PW5 do not find corroboration or that injury on the person of accused Vinod is not explained; have no merit. These aspects have been duly examined by both the Courts below and have been rightly discarded.

18. On the basis of aforesaid discussion, it is held that petitioners Vinod and Bijender are guilty of committing offences under Section 325 read with Section 34 IPC besides Section 506 IPC; whereas other four petitioners, namely, Krishan, Mahender, Kanshi Ram and Subhash are guilty of committing offences only under Section 323/34 and 506 IPC. The impugned judgments of the Courts below are modified to that extent.

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19. As far as quantum of sentence is concerned, as per the custody certificates placed on record, all the petitioners have already undergone custody period of 03 months and 24 days. Having regard to the fact that occurrence had taken place more than 20 years back and petitioners – Kanshi Ram, Subhash, Mahender and Krishan have been found to have committed offence only under Section 323/34 IPC and 506 IPC, so sentence already undergone by them is considered to be sufficient to meet the ends of justice and, therefore, all four of them are sentenced to undergo imprisonment for the period already undergone by them.

20. However, as far as the petitioners Vinod and Bijender are concerned, complainant of the case Bajrang seeks enhancement of sentence, whereas counsel for the petitioners on their behalf prayed for sentencing them for the period already undergone by them. In the opinion of this Court, the period of sentence of 03 months and 24 days as undergone by these accused shall be insufficient. It is not only the petitioners, who are facing the agony of trial, it is also the complainant of the case, who has been waiting for justice. At the same time, imprisonment of 02 years under Section 325 IPC is considered to be quite excessive. As such, sentence is hereby reduced to one year imprisonment. The fine of ₹15,000/- each as imposed upon these petitioners Vinod and Bijender is maintained.

21. Consequently, the two petitioners Vinod and Bijender are directed to surrender before the jail authorities immediately to carry out the remaining sentence of one year and also to pay fine of ₹15,000/- each for committing offence under Section 325 IPC, if not paid earlier so far

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before the Court concerned. Other sentence qua them shall run concurrently.

Both the cases are disposed of accordingly.

February 22, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

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

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