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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2498-2012 (O&M)

Date of decision: 06.07.2023

Moti Ram and others

...Petitioners

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anish Setia, Advocate,
For the petitioners.

Mr. Karan Garg, AAG, Haryana.

None for respondent No.2.

ARUN MONGA, J. (ORAL)

Instant revision has been filed by the petitioners against the judgment/order dated 01/03.08.2012vide which judgment of acquittal passed by learned Judicial Magistrate First Class, Faridabad was set aside and appeal of complainant-Ganeshi Lal was allowed and accused (petitioners herein) were held guilty and convicted under Sections 323 and 326 read with Section 34 of Indian Penal Code.

2. Petitioners were sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each for commission of the offence punishable under Section 323 IPC and in default of payment of fine they were to further undergo simple imprisonment for 15 days. Petitioners were also sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- each for the commission of the offence punishable under Section 326 IPC and in default of payment of fine, they were to further undergo simple imprisonment for two months. However, both the sentences were ordered to run concurrently.

3. Brief facts of the case in hand, as recorded by learned trial Court in the impugned judgment, are reproduced as under:

“Brief allegations against the accused as mentioned in the report under Section 173 Cr.P.C. are that on 21.12.2003, the accused Rati Ram was helping a person named Gyani to open a shop in front of the plot belonging to the complainant Ganeshi Lal. When the complainant tried to stop the accused Rati Ram from doing so, he hit the complainant with a Gandasi and the blow landed on the right hand of the complainant. The complainant submitted that the other accused Moti Ram and Sher Singh also came to the spot and

assaulted him. When he raised an alarm, Monu son of Sunder Lal saved him from the clutches of the accused.”

4. Accused were charge-sheeted under Sections 323 and 326 read with section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

5. To support the charges, prosecution examined as many as 5 witnesses, namely, Ganeshi Lal as PW1, Monu as PW2, Doctor S.K.Mittal as PW3, ASI Rohtash Singh as PW4 and Sadhu Ram, retired DSP as PW5.

6. All the incriminating evidence produced by the prosecution was confronted to the accused in their statements under Section 313 Cr.P.C. They controverted the same and pleaded innocence. However, they did not adduce any evidence in defence.

7. After hearing both the parties, learned trial Court held that prosecution has failed to prove the charges against the accused and accordingly, acquitted the accused.

8. Aggrieved against the impugned judgment of acquittal dated 02.11.2011, complainant filed an appeal, which was allowed vide order dated 01.08.2012 and petitioners herein were sentenced, as aforesaid in para 2 of this judgment.

9. I have heard the rival contentions of learned counsels for the parties and have perused the case file.

10. Learned counsel for petitioners submits that complainant version in the FIR is contradictory to the medical evidence. Ganeshi Lal- complainant in his FIR said that his index finger was cut, whereas, according to doctor Sh. S.K. Mittal, there was a fracture on the right index finger. There is no evidence at all that Moti Ram and Sher Singh, brothers of Rati Ram, inflicted any injury, as alleged by Ganeshi Lal complainant. There is no independent witness to support the prosecution evidence. It is based on the statement of the nephew of the complainant. He further submits that alleged weapons of the offence were not produced in the Court as no recovery was effected from the petitioners. He further submits that a false case has been registered against petitioners as there is a civil litigation also going on between the parties. Learned Appellate Court without appreciating the evidence on record convicted the petitioners for the aforesaid offences.

11. So far as order of sentence is concerned, learned counsel for petitioners, alternatively submits that petitioners have suffered a protracted trial of 20 years. Learned counsel for petitioners further submits that after conviction, petitioners have committed no other offence. They are first time offenders.

Learned counsel prays that sentence awarded to petitioners may be reduced to already undergone by them.

12. Learned appellate Court *inter alia* has held as under:

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“15. Now coming to the facts of the case in hand, in the light of the afore-said ingredients of Sections 320/323/326/34 IPC and scrutinizing the evidence led by the prosecution/appellant/complainant, I am of the considered opinion that the ingredients of Section 323 and 326 of the Indian Penal Code are duly proved against the respondents/accused. When appellant/complainant appeared in the witness box as PW1 then he has testified that respondent/accused Rati Ram was holding the Gandasi in his hand and he assaulted him with the Gandasi and it struck on his finger next to the thumb of right hand. Monu PW2 has also corroborated the version of PW1 appellant/complainant while reiterating the same facts. The injury on the person of appellant/complainant is duly proved by PW3 Doctor S.K.Mittal. He radiologically examined the appellant/complainant Ganesh and proved the x-ray report as Ex.PW2/A as well as x-ray film as Ex. P5. He clearly deposed on oath that he found fracture on the right index finger on the person of the appellant/complainant. Thus, the ocular evidence finds due corroboration in the medical evidence. No doubt the doctor who has conducted the MLR did not appear in the witness box but the MLR marked A is on the file and the reference of this MLR is given in the X-ray report, on perusal of which it is crystal clear that appellant/complainant Ganeshi Lal suffered injuries on his person. Therefore, I do not find, arguments advanced by learned counsel for the respondents/accused tenable in the eyes of law, regarding the non-examination of the Medical Officer PW4 Rohtash Singh ASI has proved the FIR Ex. PWA/A and PWS Sadhu Ram retired DSP has proved the challan report under section 173 Cr. P.C. The prosecution witnesses have faced the grilling lengthy cross examination, but nothing has been elicited in the favour of the respondents/accused. It is proved on file that all the accused in furtherance of their common intention voluntarily caused simple as well as grievous injury on the person of appellant/ complainant.

16. In view of the above discussion, I am of the considered view that the learned Trial Court has not appreciated the evidence on record minutely and carefully. The learned Trial Magistrate has ignored the statements of PW1 Ganeshi Lal, PW2 Monu and PW3 Doctor S.K. Mittal as well as X-ray report Ex. PW2/AI am not in consonance with the impugned judgment of acquittal passed by the learned Judicial Magistrate Ist Class, therefore, the same is hereby set aside and the appeal of the appellant/complainant is allowed. The respondents/accused are held guilty and convicted under Sections 323/326/34 IPC.”

13. *Qua* the contention that petitioners should be dealt with leniently in the circumstances, learned counsel for petitioners relies upon “**R. Soundarajan V.**

Seed Inspector, Coimbatore and another”¹, wherein the Supreme Court observed as under:-

“26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment”

13.1. Learned counsel for petitioners further places reliance on “*Umrao Singh V. State of Haryana*”,² wherein Supreme Court made the following observations:

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16(1) (a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3. The appeal is disposed of accordingly”

14. Per contra, learned counsel appearing for the State contends that learned appellate Court after considering the evidence and material on record rightly convicted and sentenced the petitioners. He further submits that that no compassion should be shown to the petitioners, who without any provocation, voluntarily caused injuries to complainant in furtherance of their common intention.

15. Learned counsel for the petitioners has not pointed to any material on the record to support his contention that in the FIR, Ganeshi Lal complainant had stated that his index finger had been cut. I am, therefore unable to accept the

¹2006(4) R.C.R. (Criminal) 645

²1981 AIR (SC) 1723

contention that the same was contradictory to the medical evidence, according to which there was a fracture or right index finger.

15.1 Section 34 of the Code *ibid* provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. Once it is shown that a criminal act was done by one or more persons in furtherance of the common intention of all the accused, each one of them would be liable for the same, even if no injury has been caused by a particular accused himself. **(Rambilas Singh v. State of Bihar AIR 1989 SC 1593)**. In present case also, it has been proved that in furtherance of their common intention of all the accused, simple as well as grievous injury were voluntarily caused to the complainant. Merely because, as contended by learned counsel for the petitioners, Moti Ram and Sher Singh did not inflict any injury to Ganeshi Lal complainant, they cannot be absolved of the vicarious liability for the injuries voluntarily caused by their co-accused in furtherance of the common intention of all the accused.

15.2 It is not shown if any independent witness was present on the spot at the relevant time. No fault can, therefore, be found with the prosecution case for non-examination of any independent witness of the occurrence. Accordingly, the contention to that effect is rejected. Merely because the weapon of offence was not recovered and produced in the Court is not fatal to the prosecution case, when the other evidence actually produced was reliable and found sufficient to prove the charges.

15.3 In present case, on appreciation of the evidence, the learned Additional Sessions Judge held that in furtherance of their common intention all the accused voluntarily caused simple as well as grievous injury to the complainant.

15.4. Having perused the impugned judgment, my considered opinion is that the prosecution witnesses withstood the test of cross-examination and nothing could be elicited in favour of petitioners. It is proved beyond shadow of reasonable doubt that all the petitioners in furtherance of their common intention voluntarily caused simple as well as grievous hurt to complainant. The submissions made before learned Appellate Court below were duly considered and rightly repelled by recording sound and sufficient reasons consistent with the trustworthy evidence on record. I am inclined to agree with the findings of

conviction recorded by the learned Additional Sessions Judge and the view taken by him.

16. From the record, it is borne out that the incident took place on 21.12.2003. The revision petition pertains to the year 2012. The petitioners have already suffered protracted trial of around 20 years. Petitioner Moti Ram was aged 42 years, while petitioner Rati Ram was 40-year old and petitioner Sher Singh was of 46 years of age at the time of occurrence and further they have undergone sentence for a period of two months each. All the three petitioners are poor persons having wives and children. Their antecedents are clean.

17. Learned State counsel has though been able to defend this case on merits, but insofar as reduction of sentence imposed upon petitioners is concerned, I am of the opinion that no useful purpose would be served by sending the petitioners to jail at this point of time to undergo the remaining period of sentence. Given the over all scenario, in my view, ends of justice will be met if the substantive sentence of imprisonment is reduced to period of detention already undergone by the petitioners.

18. Consequently, the conviction of the petitioners, as mentioned above, is maintained. However, the sentence of rigorous imprisonment is reduced to the period already undergone by them. Order of payment of fine and so also consequences in default thereof are, however, maintained. Learned counsel for petitioners informs that fine has already been paid.

15. The impugned sentence order stands modified to the extent indicated above. Accordingly, the present revision is partly allowed. The petitioners are stated to be on bail. Their bail bonds shall stand discharged.

(ARUN MONGA)
JUDGE

06.07.2023
vandana

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