

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-517-2012
Reserved on: 12.12.2023
Date of Pronouncement: 21.12.2023

AJIT SINGH -Petitioner

Versus

STATE OF HARYANA -Respondent

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. G.P. Singh, Advocate
for the petitioner.

Mr. Gagandeep S. Chhina, A.A.G, Haryana.

KULDEEP TIWARI, J.

1. The instant revision petition is directed against the impugned verdict of conviction dated 03.02.2010, and, consequent thereto order of sentence dated 05.02.2010, rendered by learned Additional Chief Judicial Magistrate, Gurugram, in case FIR No.209 dated 10.08.2002, under Sections 324, 326 of the IPC, and, Sections 25/54/59 of the Arms Act, registered at P.S. Sohna, Gurugram, whereby, the petitioner has been convicted under Sections 324 and 326 of the IPC, and, has been sentenced in the hereinafter extracted manner:-

Offence under Section	Period (R.I.)	Fine	In Default
324 of the IPC	6 months	Rs.1,000/-	Imprisonment for 10 days
326 of the IPC	2½ years	Rs.4,000/-	Imprisonment for 1 month

All the substantive sentences were ordered to run concurrently.

Out of the above fine amount, Rs.2,000/- were directed to be paid to injured Yogender, and, Rs.1,000/- was directed to be paid to injured Rajender, on account of injuries sustained by them.

2. In addition, the petitioner also assails the impugned verdict dated 24.01.2012, whereby, the learned Additional Sessions Judge, Gurugram, after dismissing the statutory appeal filed by the petitioner, upheld the impugned verdict of conviction and order of sentence, as drawn by the learned trial Court.

FACTUAL MATRIX

3. The roots of the instant revision petition can be traced to a statement (Ex.PW3/A) made by one Rajender Kumar son of Suraj Mal, contents whereof, as extracted in the impugned verdict dated 24.01.2012, are reproduced hereinafter:-

“2. The portrayal of the facts unfolded during the trial before the trial court, Rajender Kumar, son of Suraj Mal, resident of Raisina Ki Dhani, (hereinafter called the complainant), got his statement recorded with the police, Ex.PW3/A, allegedly, they are two brothers, are agriculturist and residing in Dhani. After demise of their father, his mother, was living with his brother, the accused (Ajit Singh). Her benefits of pension and land used to receive by the accused (Ajit Singh). Now about past three months, his mother started to live with him and benefit started to come in his favour. At this, his brother accused (Ajit Singh) was nourishing grudge, on account of this reason. On the intervening night of 9/10.08.2002, at around 12/12.30 AM, he alongwith his son Yoginder were sleeping in the fields. Suddenly, he heard the sound of cry of his son, he awoke up and noticed his brother Ajit Singh, armed with pharsa, proceedings towards him. He started to rotate pharsa in the air. His son Yoginder caught hold of him (Ajit Singh) from backside. Even then, he landed pharsa blow at his thigh of right foot and at the right side of his chest and also struck at left hand elbow. The accused decamped on hearing the noise, he also noticed injuries on his left

temple of his son and was strained with pool of blood. As stated by Yoginder, caused by accused Ajit Singh, witnessed by Krishan Pal, son of Ram Sarup. He alongwith Yoginder were rushed to Govt. Hospital, Sohna, in the car of Satpal Singh son of Sanpat and prayed to book the culprits on record.”

4. The statement (Ex.PW3/A) led to registration of the present FIR and thereupon, investigation commenced, which resulted in arrest of the accused/petitioner. After completion of investigation, the Final Report under Section 173 Cr.P.C. was presented before the learned trial Court.

5. Finding a prima facie case, the accused/petitioner was charge-sheeted for commission of offences punishable under Sections 324/326 of the IPC, and, Sections 25-54-59 of the Arms Act, to which he pleaded not guilty and claimed trial.

6. The prosecution, in order to prove its case against the accused/petitioner, examined as many as 8 witnesses.

7. The accused/petitioner, in his statement recorded under Section 313 Cr.P.C., pleaded innocence and false implication in the present case while denying all the allegations, as leveled against him.

8. After completion of trial and upon appreciation of the entire evidence available on record, the learned trial Court held the accused/petitioner to be guilty for commission of offences punishable under Sections 324 and 326 of the IPC, however, acquitted him from the charges drawn under Section 25/54/59 of the Arms Act.

9. The impugned verdict of conviction and order of sentence was assailed by the accused/petitioner, through filing a statutory appeal, before the learned Sessions Judge concerned. However, the appeal filed by the accused/petitioner did not find favour with the learned Sessions Judge

concerned, rather resulted in his affirming the impugned verdict of conviction and order of sentence, as drawn by the learned trial Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

10. The learned counsel for the petitioner has laid much emphasis on the fact that PW4 Dr. Jai Narain, who had medico legally examined the injured Yogender on 10.08.2022 and had prepared his MLR, was not made available by the prosecution, for thereby enabling the defence to subject him to cross-examination. Therefore, though PW4 Dr. Jai Narain had make deposition in his examination-in-chief that as per x-ray report concerned, there was “fracture of neck of condyle of mandible of left side without callous formation”, however, in the absence of any able opportunity being afforded to the defence to subject the said witness to cross-examination, his deposition cannot be read into evidence, for thereby convicting the accused/petitioner under Section 326 of the IPC, as has been done by the learned courts below. He further submits that since even the x-ray report concerned was never proved on record by the examining doctor concerned, therefore, the fracture allegedly suffered by the injured also remains unproved. The only offence, which may, at the most, be attracted and proved against the petitioner, may only be the offence under Section 323 of the IPC and not the offences, where-under, he has now been convicted.

11. The next argument, as addressed by the learned counsel for the petitioner, is that, the prosecution had failed to examine the investigating officer, which consequently vitiates the entire trial, as in the absence of his examination, the final report and the recovery(ies) allegedly effected from the accused/petitioner remains unproved.

SUBMISSIONS OF LEARNED STATE COUNSEL

12. *Per contra*, the learned State counsel has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, District Prison, Gurugram, and, has opposed the arguments made by the learned counsel for the petitioner. He draws attention of this Court towards the testimony of PW6 Dr. Mahesh Mangal, who tendered his affidavit Ex.P1/A in his examination-in-chief, thereby affirming that injured Yogender was admitted in the hospital concerned on 10.08.2022 with history of assault at around 12:00 a.m. on 09.08.2002. He has made categoric deposition that upon examination, he found “fracture of maxilla and mandible on left side” on the body of injured. Therefore, the candid and categoric deposition of PW6 Dr. Mahesh Mangal fills the lacuna, as created by non cross-examination of PW4 Dr. Jai Narain.

13. The learned State counsel has further argued that both the injured, despite being subjected to lengthy and exhaustive cross-examinations, did not depart from their version, wherethrough, the defence could succeed in its attempt to impact the probative value of their evidence.

ANALYSIS

14. This Court has heard the learned counsels representing the parties and with their able assistance, has also made a meticulous survey of the record. However, the impugned verdicts do not appear to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

15. The prime reason for forming the above inference emerges from the candid and unambiguous testimony of PW2 Yogender, who had suffered the injury attracting the provisions of Section 326 of the IPC. He made categoric deposition that, on the fateful day, the accused/petitioner,

while being armed with Farsa, entered in their house and thereupon, inflicted injuries to him and his father/complainant. Likewise, complainant/PW3 Rajender also deposed against the petitioner/accused, through narrating the entire occurrence, which triggered the accused/petitioner to cause injuries to him and his son.

16. The ocular testimonies of PW2 Yogender and PW3 Rajender, who suffered simple and grievous injuries at the hands of accused/petitioner, were, besides being appreciated by the learned courts below, assigned credence also, thereby resulting in the conviction of the accused/petitioner.

17. What lent substantiation to the ocular testimonies of prosecution witnesses, was the medical record of the injured, which established the culpability of the accused/petitioner.

18. PW4 Dr. Jai Narain, who prepared the respective MLRs of injured PW2 Yogender and PW3 Rajender, had observed the hereinafter extracted injuries on the bodies of the injured.

“Injuries on the body of PW2 Yogender:-

1. An incised wound elliptical in shape horizontally situated over left side of face, size of 11cmx3cm of the middle and cutting the maxillary, mandibular bone, parotid gland extending from lateral angle of eye led to the post, auricular region, bleeding was present and the colour was reddish, no foreign body was seen. X-ray facial region was advised and dental surgeon opinion was advised.

2. An incised wound, size of 3 cm, over right thumb reddish in colour, bleeding was present.

Injuries on the body of PW3 Rajender:-

1. An incised wound reddish with bleeding was present on the right side of chest size of 7 cm. No foreign body was seen. The wound was obliquely situated.

2. An incised wound size of 2cm x .25cm, over Palmer aspect of right

ring finger, bleeding was present. No foreign body was seen.

3. An incised wound size of .2cm linear over proximal phalyns of right index finger, bleeding was present.

4. An incised linear abrasion over right thigh on lower part horizontally situated size of 9 cm colour was reddish. There was cut sharp over pyajama.

5. A brushes reddish in colour over left elbow laterally situated moments not restricted.”

19. Moreover, as per x-ray report, MLX 364 to 367, dated 10.08.2022, he also detected “fracture of neck of condyle of mandible of left side.” However, since he was not put to cross-examination by the defence, therefore, his testimony was rightly not read into evidence by the trial court.

20. What filled the lacuna created by non cross-examination of PW4 Dr. Jai Narain was the testimony of PW6 Dr. Mahesh Mangal, who tendered his affidavit Ex.P1/A in his examination-in-chief, wherein, he made clear affirmation qua existence of “fracture of maxilla and mandible on left side of the face of PW2 Yogender”. Therefore, the star argument of the learned counsel for the petitioner, which is anchored upon the alleged fracture remaining unproved, on account of non-affording any opportunity to the defence to cross-examine PW4 Dr. Jai Narain, pales into insignificance, by the testimony of PW6 Dr. Mahesh Mangal.

21. Insofar as another argument of the learned counsel for the petitioner is concerned, inasmuch as, the entire proceedings becoming vitiated on account of non-examination of the investigating officer, this argument does not carry any vigour.

22. Though the examination of the investigating officer is indisputably a significant and essential requirement, for thereby enabling the prosecution to establish its case beyond reasonable doubt. However,

mere non examination of the investigating officer, especially in the absence of any resultant prejudice being established to be caused to the accused/petitioner, cannot be termed to vitiate the entire trial. In the instant case, the accused/petitioner is unable to point out as to what prejudice has been caused to him by non examination of the investigating officer.

23. For all the reasons (supra), this Court does not find any merit in the arguments advanced by the learned counsel for the petitioner and is not inclined to acquit the petitioner from the charges framed against him. Consequently, the charges framed against the petitioner, besides the impugned verdict of conviction, are hereby affirmed.

24. Though the learned counsel for the petitioner could not secure acquittal of the petitioner, however, he has sought the relief of reducing the sentence awarded to the petitioner, to the period already undergone by him. In this regard, he has submitted that the petitioner has faced the agony of protracted trial for approx. twenty one years. During the trial, the petitioner remained on bail, however, he did not misuse the concession of bail. The dispute was evidently between two brothers and except the instant FIR, the petitioner is not involved in any other criminal case. The petitioner is now more than 60 years of age, therefore, no purpose will be served by sending him behind bars. He has already mended his way of life and joined the mainstream of the society.

25. To support his arguments, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court rendered in *Sk. Sakkar @ Mannan vs. State of West Bengal, 2021(4) SCC 483*, wherein, the Hon'ble Supreme Court, after considering the mitigating circumstances, reduced the sentence to the period already undergone. The

relevant extract of the said judgment is reproduced as under:

“11. It is manifest from Section 20(i) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs. 50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant’s sentence is reduced to the extent of the period he has already undergone. We order accordingly.”

26. The learned State counsel has not disputed the factual submissions made by the counsel for the petitioner. However, he has submitted that the learned trial Court has rightly sentenced the petitioner.

REASONS FOR REDUCING THE SENTENCE TO THE PERIOD ALREADY UNDERGONE

27. This Court has considered the legal submissions made by the learned counsel for the petitioner and finds merit in his contentions. A perusal of the custody certificate, as placed on record by the learned State counsel, makes revelations that the petitioner has undergone incarceration of about 4 months, out of the total substantive sentence of 2½ years.

28. Therefore, considering the age of accused/petitioner, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime viz-a-viz reformatory approach of punishment, this Court deems it appropriate to reduce the period of sentence of the petitioner to the period already undergone.

FINAL ORDER

29. In view of the above, the instant revision petition is **partly**

allowed. The impugned verdict of conviction dated 03.02.2010, and, consequent thereto order of sentence dated 05.02.2010, are upheld. However, the sentence imposed upon the petitioner is reduced to the period already undergone. Furthermore, the amount of fine is enhanced to Rs.50,000/-, which shall be paid as compensation, to each of the injured.

(KULDEEP TIWARI)
JUDGE

21.12.2023
devinder

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