

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

231

CRR-3005-2013

Date of decision: 01.05.2023

Abdul Jabbar and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sunil Panwar, Advocate
for the petitioners.

Mr. Amit Aggarwal, DAG, Haryana
for the respondent-State.

Mr. Sarfraj Hussain, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners by way of the instant revision petition are impugning the order dated 12.09.2013 passed by learned Additional Sessions Judge, Nuh vide which the appeal preferred by them against the judgment of conviction and order of sentence dated 22.04.2013 passed by learned Chief Judicial Magistrate, Nuh was dismissed.

2. Learned Chief Judicial Magistrate, Nuh vide aforesaid judgment of conviction and order of sentence dated 22.04.2013 convicted and sentenced the petitioners as under:-

Offence(s) u/s	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
323/34 of the IPC	3 months	-	-
325/34 of the IPC	01 year	₹500/- each	-

Both the sentences were ordered to be run concurrently.

3. The case as set up by the prosecution may be noticed as thus.

The FIR in question came to be registered under Sections 452, 323 and 325 read with Section 34 of the IPC on the statement of the complainant injured Tahir Hussain (PW6) wherein he alleged that on 30.01.2010, he received a telephonic call from one Tayyub Hussain (PW5) that accused Abbas (petitioner No.3) had pointed a country made pistol towards the neck of his uncle Subeddin, while the latter was lying in the courtyard of his house. The remaining accused namely Abdul Jabbar (petitioner No.1), Ibrahim (petitioner No.2) and Abdul @ Abdul Karim (petitioner No.4) were also present at the spot with accused Abbas along with some deadly weapons like sticks etc. Upon receipt of the above information, the complainant reached the spot and found accused Abdul Jabbar, Imbrahim and Abdul @ Abdul Karim present along with *lathis* whereas accused Abbas was empty handed. On seeing the complainant, the accused left the spot and instead climbed over the roof of the nearby houses and started pelting stones at the complainant, as a result of which he sustained injuries on his nose. The occurrence in question was also stated to have been witnessed by PW6 Tayyub Hussain and his uncle PW4 Subeddin, Mehboob, Hamid and Nasim and co-villagers who were attracted to the spot. The complainant was thereafter taken to the Government Hospital, Nuh in an injured condition, by his uncle Khurshid Ahmed, where his statement (Ex.PW1/B) was recorded.

4. The prosecution in support of its case examined as many as

07 witnesses including the complainant. On the basis of the evidence and other material on record the Trial Court acquitted the accused petitioners under Section 452 of the IPC. They were, however, convicted under Sections 323 and 325 read with Section 34 of the IPC. Prayer of the accused petitioners to be released on probation was rejected and they were sentenced as already detailed in the earlier part of this order.

5. Learned counsel appearing for the petitioners submitted that the impugned judgment deserved to be set aside as the Courts below had failed to appreciate the material improvements made by the prosecution witnesses, and also the blatant inconsistencies in their testimonies. While inviting the attention of this Court to the deposition of the witnesses including that of the injured complainant, who stepped into the witness box as PW6, learned counsel argued that while getting his statement recorded at the time of registration of the FIR, the complainant had categorically stated therein that he was unsure as to who out of the 04 accused had pelted stones upon him, however, when he stepped into the witness box, he made material improvements and attributed pelting of stones to petitioner No.1 Abdul Jabbar and petitioner No.3-Abbas. Hence, it was asserted that these material improvements indeed cast a shadow of doubt on the truthfulness of the prosecution version, which had been erroneously ignored by both the Courts below.

6. Learned counsel appearing for the petitioners further argued that even otherwise a perusal of the deposition of all the prosecution witnesses including the complainant revealed that no

specific injury much less any role had been attributed to petitioner No.2-Ibrahim and petitioner No.4-Abdul @ Abdul Karim. Hence, the Courts below had clearly erred in convicting both of them under Sections 323 and 325 read with Section 34 of the IPC.

7. Per contra, learned State counsel assisted by learned counsel for the complainant while controverting the submissions made by the counsel opposite, argued that no doubt there had been some improvements made by the complainant when he stepped into the witness box as PW6, however, those improvements could not be said to be of such a nature much less material which would render the prosecution case unbelievable. It was further argued that the injury sustained by the complainant on his nose corroborated the ocular testimony of the witnesses and there was no occasion for the complainant to falsely implicate the petitioners. It was still further argued that the injury received by the complainant was a nasal fracture, which could not have been self-inflicted. Learned counsel for the State assisted by learned counsel for the complainant thus, vehemently prayed for dismissal of the instant revision petition.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. This Court finds merit in the contentions made by learned counsel for the petitioners that in the absence of any specific role much less any injury attributed to petitioner No.2-Ibrahim and petitioner No.4-Abdul @ Abdul Karim, the Courts below had erred in recording a finding of conviction qua them. As already noticed in the earlier part of this order, the petitioners were acquitted by the Court below under

Section 452 of the IPC. The occurrence in question i.e. the pelting of stones did not take place at the spot as alleged by the complainant but the stones were pelted from the roof of a nearby house. Nothing came to the fore during trial that at the time when the stones were being pelted, petitioner No.2-Ibrahim and petitioner No.4-Abdul @ Abdul Karim had either exhorted the co-accused to cause injuries or attack the complainant party, much less had aided the the other accused by providing them the stones with which the alleged injury was sustained by the injured complainant. In the circumstances, this Court has no hesitation in observing that petitioner No.2-Ibrahim and petitioner No.4-Abdul @ Abdul Karim deserve to be given the benefit of doubt and be acquitted of the charges framed against them. Accordingly, petitioner No.2-Ibrahim and petitioner No.4-Abdul @ Abdul Karim are acquitted of the offences charged with.

10. Coming next to the case of petitioner No.1-Abdul Jabbar and petitioner No.3-Abbas, the ocular testimony qua their role in the crime in question, finds due corroboration with the medical evidence on record. Not only did complainant Tahir Hussain (PW6) categorically depose about the role played by both these accused in the crime in question but even the other eye witnesses i.e. PW4 Subeddin and PW5 Tayub Hussain corroborated on all material aspects of the case. Even the medical evidence, as brought on record in the testimony of PW3 Dr. Pankaj Vats, lends support to the testimony of the ocular witnesses including the injured witness. In view of the consistent testimony of all these 03 material witnesses PW4 Subeddin, PW6 Tayub Hussain and PW6 Dr. Pankaj Vats, this Court does not find any perversity much less

illegality in the impugned judgment which is accordingly upheld.

11. A prayer has been made by learned counsel for the petitioners for taking a lenient view and releasing petitioners No.1 and 3 on probation since the occurrence in question pertains to the year 2014 they have already suffered and faced the agony of a protracted trial for more than 09 years.

12. On a pointed query put to the learned State counsel qua the antecedents of petitioner No.1-Abdul Jabbar and petitioner No.3-Abaas, he, on instructions has informed the Court that petitioner No.3-Abbas does not have any criminal antecedents and he is not involved in any other criminal case. However, qua petitioner No.1-Abdul Jabbar, it has been informed that there is one more criminal case pending trial against him.

13. This Court, in the above circumstances while upholding the conviction, does not deem it appropriate to send petitioner No.3-Abbas behind bars at this stage. It may not always be necessary in each and every case to incarcerate the offender where he/she has had an opportunity to repent for his/her wrongs. Accordingly, petitioner No.3-Abbas is ordered to be released on probation for a period of two years on his entering into a bond in the sum of ₹25,000/- with one surety of like amount, to the satisfaction of Chief Judicial Magistrate concerned, with an undertaking that he shall maintain good conduct and peace.

14. As far as as petitioner No.1-Abdul Jabbar is concerned, in view of the fact that there is one more criminal case pending against him under Sections 148, 149, 323, 324, 452 and 506 of the IPC, this Court is of the considered opinion that he does not deserve the

concession of probation. However, at the same time keeping in view the fact that the occurrence in question dates back to 30.01.2010 and petitioner No.1-Abdul Jabbar has undergone agony of a protracted trial for the last more than 13 years, the sentence of petitioner No.1-Abdul Jabbar is reduced from 01 year to 03 months and fine is enhanced from ₹500 to ₹5,000/- under Section 325/34 of the IPC. As per custody certificate available on record, petitioner No.1-Abdul Jabbar has undergone a total sentence of 01 month and 03 days. The concerned CJM/trial/successor Court shall issue warrants for taking him into custody for serving out the remaining part of his sentence as awarded above.

15. It is made clear that in case of non-deposit of fine with the trial/successor Court within a period of three months from the date of this order, benefit of reduction of sentence shall not accrue to petitioner No.1-Abdul Jabbar. On deposit of fine, the enhanced amount of fine shall be disbursed to the injured/complainant, against proper identification.

16. The instant revision petition is disposed of in the above terms.

01.05.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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