

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-58-2013 (O&M)

Date of Decision: 19.04.2023

Lekhraj

... Petitioner

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajesh Lamba, Advocate for the petitioner

Mr. GS Dhillon, AAG Haryana

Sandeep Moudgil, J.

1. This criminal revision petition has been preferred by the petitioner against the judgment dated 30.11.2012 passed by the Addl. Sessions Judge, Fatehabad and the judgment of conviction and order of sentence dated 01.09.2010 and 03.09.2010, respectively, passed by ACJM, Fatehabad vide which the petitioner has been convicted under Section 323/324/325 IPC and sentenced to undergo RI for a period of 4 months, 1 years and 2 years, respectively, in case FIR No.200 dated 16.05.2004 under Sections 323/324/325/34 IPC, registered at Police Station Sadar Fatehabad.

2. On 16.05.2004, on receipt of a V.T. message at Police Post, Dariyapur, regarding admission of Shera Ram son of Kishan Chand at General Hospital, Fatehabad, ASI Rajinder Singh visited there and recorded the statement of Shera Ram to the effect that he had installed a tubewell in his field, which is also shared by Buta Ram. On that day, he along with his brother Harnam Chand and nephew Madan Lal went to the fields. His brother Harnam Chand started ploughing the field and he along with his nephew Madan Lal started irrigating the same. At about 9:00 a.m., Buta Ram armed

with spade, Guro Bai empty handed, Lekh Raj (petitioner) armed with gandasi came there and asked the complainant that they would irrigate their fields also through the tubewell, on which, he told them to pay the electricity consumption charges before taking the water from the tubewell. Lekh Raj (petitioner) allegedly got angry and gave a gandasi blow on the right thumb of Madan Lal and another blow on the head of complainant. Buta Ram gave spade blow to the complainant on which he and Madan Lal raised noise on listening and on hearing the cries his brother Harnam Chand came at the spot. Lekh Raj (petitioner) gave a gandasi blow from reverse side on the right forearm of Harnam Chand. Meanwhile Gurdev Singh came there and rescued them from the clutches of the accused. The accused fled away from the spot after extending the threats.

3. It is on the basis of this statement (Ex.PW2/A), police proceedings (Ex.PW5/C) were initiated and a report was sent to the police station. A formal FIR (Ex.PW5/D) was recorded and in pursuance thereon, the Investigating Officer visited the site and prepared a site plan (Ex.PWS/E). He arrested the accused persons including the petitioner, as permemos (Ex.PW5/F to Ex.PW5/H). The opinion of the doctor was recorded and on completion of the investigation, the police found sufficient grounds to proceed against the accused and accordingly, the final report under Section 173 Cr.P.C. was submitted in the Court, which resulted into a judgment dated 01.09.2010 of conviction of the petitioner and other co-accused persons namely Buta Ram and Smt. Guro Bai under Section 323/324/325/34 holding them guilty and sentenced as under:-

U/s 323 IPC Rigorous imprisonment for a period of four months and to pay a fine of Rs.200/- each. In case of non-payment of fine the convicts shall further undergo simple imprisonment for a period of 7 days.

U/s 324 IPC Rigorous Imprisonment for a period of one year and to pay a fine of Rs.500/- each. In case of n on-payment of fine, the convicts shall further undergo simple imprisonment for a period of 10 days.

U/s 325 IPC Rigorous Imprisonment for a period of two years and to pay a fine of Rs.700/- each. In case of non payment of fine, the convicts shall further undergo simple imprisonment for a period of 14 days.

4. Aggrieved against the same, all the accused persons challenged the said judgment and order of conviction and sentenced before the Lower Appellate Court, which was allowed granting acquittal to co-accused Buta Ram and Smt. Guro Bai vide judgment dated 30.11.2012, however, upheld the conviction and sentence of the petitioner vide dismissing the said appeal qua the present petitioner

5. Hence, assailing the judgment of conviction and order of sentence dated 03.09.2010 respectively alongwith the judgment dated 30.11.2012 passed by the Lower Appellate Court, the present revision petition has been preferred only by the accused-petitioner namely Lekhraj.

6. Mr. Rajesh Lamba, learned counsel for the petitioner contends the false implication of the petitioner in the instant case arguing that it was the complainant party who inflicted injuries on the person of petitioner for which a criminal case was instituted against them and the present FIR No.200 dated 16.05.2004 is a counter blast and an arm twisting tactic of the

respondents to pressurize the petitioner-accused for entering into a compromise.

7. Learned counsel further argued that there was a common tubewell in which the complainant as well as accused party had share and on the fateful day, it is the complainant, who did not allow the petitioner/accused to irrigate their fields from the said tubewell. He also submitted that actually the complainant had inflicted injuries on the person of petitioner/accused and now the petitioner/accused had left the village due to the quarrelsome attitude of the complainant.

8. Learned counsel vehemently submits that the fracture on the right proximal phalanx on the complainant was seen without callous formation in the x-ray report, rather this injury has been shown by the doctor in collusion with the complainant only to falsely implicate the petitioner/accused, since there is no other corroborated cogent evidence in support thereof. Urging error in law and on fact, learned counsel submits Courts below have not appreciated the evidence before it particularly in the light of non-explanation by the complainant qua alleged injuries sustained by the petitioner in fact on his person.

9. The attention of this Court has also been drawn to the statement of PW1 Dr. Suraj Kamboj, who did not mention the extent of fracture over the part x-ray and it was deposed that the duration of fracture on the person of Madan Lal was within 14 days, whereas the x-ray examination took place on 18.5.2004 and the alleged incident is of 16.5.2004.

10. Further asserting on the false implication and inconsistency in the prosecution story, it is contended on behalf of the petitioner that two

MLRs were prepared in the case as on 16.05.2004, the injury was declared simple but at the behest of Madan Lal, another MLR was prepared dated 18.05.2004. It is submitted that x-ray of the thumb was not got conducted on 16.05.2004 and element of doubt, which has occurred in the prosecution case with regard to the fracture of the thumb relating to the same incident of 16.05.2004 has been ignored by the Court below. On this count also, the benefit of doubt ought to have been granted to the petitioner.

11. It is further the case of the petitioner that the prosecution evidence is not specific as to who has given the injury upon whose person inasmuch as no specific attribution of the injury could be proved against the petitioner. There is categorical contradiction pointed out by the counsel for the petitioner making a reference to the statement of PW-3 Madan Lal and PW-2 Shera Ram with regard to the alleged injury on the head and asserted that Sections 324 and 325 of IPC cannot be attributed qua the petitioner/accused in the light of deposition of Madan Lal as PW-3, the injury caused by the petitioner is with gandasi on the right hand, which is highly improbable.

12. Mr. Lamba, learned Advocate lays stress of prosecution being faced by PW-1 Dr. Suraj Kamboj under the Prevention of Corruption Act for preparation of false MLR, which resulted into conviction of the petitioner under Section 325 IPC and concluded the submissions lastly pointing out that the report of PW1 was not challenged, is erroneous as during cross-examination, it was specifically asked about the giving of false report and the answer was "it is incorrect to suggest that I have given false report on the asking of injured".

13. On the other hand, learned State counsel submitted that the complainant party has suffered simple as well as grievous hurt attributed to all the accused. In fact, it was the petitioner/accused who came to the tubewell installed in the fields of the complainant and started quarreling with them. He further pointed out that no injury has been caused to the petitioner/accused party as neither the petitioner/accused in their statements under Section 313 Cr.P.C. nor in their defence have placed on record any medical report showing that any of the injuries were inflicted on them. In fact, Madan Lal PW-3 suffered a grievous hurt on his right thumb and x-ray report clearly reveals the fracture on the right thumb. All the accused came to the fields of complainant in furtherance of their common intention and the petitioner-accused has been rightly convicted and sentenced vide judgment and order dated 01.09.2010 and 03.09.2010 respectively, as has been upheld by the Lower Appellate Court on 30.11.2012.

14. I have heard learned counsel for the parties and gone through the record.

15. The complainant Shera Ram has deposed that on 16.05.2004, he along with his nephew Madan Lal went to his fields. At about 9:00 a.m. when they were irrigating their fields, accused Buta Ram having spade in his hand, Guro Bai empty handed and Lekh Raj armed with gandasi came there and asked them that they would irrigate their fields through the tubewell, on which, the complainant told the accused to pay the six months electricity consumption charges before using the water from the tubewell and on this, Lekh Raj got annoyed and gave a gandasi blow on the right thumb of Madan Lal PW-3 and on hearing the noise raised by Shera Ram-complainant, his

brother Harnam came there from the nearby field, where he was ploughing at that time. The accused fled away from the spot along with their weapons and Shera Ram-complainant got admitted in the hospital by Gurdev and his brother Harnam. In the hospital his statement (Ex.PW2/A) was recorded.

16. PWI Dr. Suraj Kamboj, who radiologically examined injured Madan Lal, has proved x-ray report (Ex.PW1/A) and x-ray films (Ex.PW1/B) and found a fracture of right proximal phalanx thumb without callous formation. He also examined complainant Sher Ram and proved x-ray report (Ex.PW1/C) and film (Ex.PWI/D) but did not find any bone injury. PW5 ASI Rajender Singh, Investigating Officer has proved application (Ex PW5/A) which he moved before the doctor for seeking his opinion regarding fitness of injured-complainant.

17. This Court cannot loose sight of the fact that it was on altercation between the complainant party and accused party on account of use of tubewell water in which admittedly both the parties have share, who are closely related to each other and living in the neighbourhood. The houses of both the parties are at a reasonable distance from the place of incident.

18. This Court is also sanguine of the fact that there is a contradiction in the version of complainant Shera Ram and another injured from the complainant side namely Madan Lal and the prosecution case creates doubts since none of the witness could depose in clear terms regarding the injuries on their person as to which injury has been caused by which of the accused.

19. There is also nothing on record to suggest that it was the accused/petitioner who was the aggressor in this case. To invoke Section 34

IPC, there must be a pre-arranged plan with a common intention, which is not at all evident from the material on record, as it was a sudden altercation at the sight itself even if the prosecution story is taken to be gossypol truth. There can be no question of constructive liability arising by use of Section 34 of Indian Penal Code.

20. This Court is in agreement with the submission raised by learned counsel for the petitioner that the prosecution evidence is not specific as to who has given the injury to whom. PW Madan Lal implicates Buta Ram in giving head blow to Shera Ram whereas PW Shera Ram attributed the blow on the head to the petitioner, however, no specific attribution of the injury has been proved by any corroborating material piece of evidence including the medico legal report against the petitioner. Even otherwise also, Section 324 IPC cannot be specifically attributed to the petitioner due to serious in the prosecution version, which seems to be highly improbable and manipulated.

21. Secondly, there are two MLRs prepared in the case. On 16.05.2004, the injury was declared simple but as per version, Madan Lal again approached the doctor on 18.05.04 and fresh MLR was conducted. x-ray of the thumb was not got conducted on 16.05.2004 and an element of doubt occurred in the prosecution case with regard to the fracture of the thumb relating to the same incident of 16.05.2004. The courts below also did not appreciate that PW1 was facing a case under Prevention of Corruption Act and due to manipulation of injury on the thumb, the petitioner has been convicted u/s 325 IPC. On this count also, the benefit of doubt flows in favour of the petitioner. Further, the factum of having received the injury

allegedly attracting Section 325 IPC is also not proved beyond shed of doubt inasmuch as the fracture alleged in the altercation has also not been proved.

22. In view of the above discussion, since no specific injury has been proved against the petitioner and since there is nothing on record to show that there was any pre-planned to attack the complainant, wherein the parties are closely related, who own share in the tubewell wherefrom water is used by both the parties. The prosecution story is also doubtful on account of the two MLRs for the same injury, which are dated 16.05.2004 and 18.05.2004 i.e., alleged fracture of the thumb, which also has not been proved in accordance with law.

23. Another fact, which convinces this Court to interfere with the judgments and order of sentence passed by the Courts below is that disparity created, while awarding acquittal to the other two co-accused on the same set of evidence and facts but singled out the petitioner with conviction and sentence on the cases of very evidence, which was found to be doubtful by the Courts below qua the other co-accused.

24. The alleged occurrence was not intrinsically pre-meditated inasmuch as it admittedly arose, if at all out of a dispute between the close relatives on account of use of water from a common tubewell jointly shared by them and one of the groups was let off ostensibly i.e., the complainant side, because injuries suffered by the petitioner's side were trivial.

25. Hence, considering the facts and evidence examined hereinabove, the petitioner is first time offenders and have undergone imprisonment for almost five months out of two years deserves a concession to be granted under the provisions of Probation of Offenders Act, 1958, since

there is no previous conviction against any of the accused-convict either alleged or proved and also considering the other relevant facts, it is hereby ordered that benefit of probation to the petitioner is to be granted, though conviction is upheld. In this way, the petitioner is ordered to be released from the conviction by reducing the sentences awarded to them to the extent actually undergone by him.

26. Such direction will however be with a rider that fine amount shall be paid as originally awarded by the trial Court and be disbursed to the complainant or his family members.

27. Ordered accordingly.

28. The revision, is thus, disposed of.

29. The petitioner is on bail. They are released in terms of observations recorded hereinabove.

19.04.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No