

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1481-2016 (O&M)**Date of Decision: 18.04.2023**

Manjinder Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SS Antal, Advocate for the petitioner

Mr. Mohit Chaudhary, AAG Punjab

Sandeep Moudgil, J.

1. This criminal revision petition has been preferred by the petitioner against the judgment dated 23.01.2015 passed by the JMIC, Patiala vide which respondents No.2 to 5 have been acquitted from the charges framed against them as well as against the judgment dated 08.01.2016 passed by Addl. Sessions Judge, Patiala vide which the judgment passed by the trial court has been upheld.

2. Brief facts of the case can be culled out as narrated in FIR No.160 dated 21.10.2009 under Sections 325/324/323/341/506/34 IPC, registered at Police Station Julkana to appreciate that on 17.10.2009, a wireless message was received from Rajindra Hospital, Patiala that Manjinder Singh s/o Niranjn Singh has been admitted in the hospital as he has suffered injuries in fight. On this, ASI Sucha Singh along with police party went to Rajindra Hospital, Patiala where he after getting fitness certificate recorded statement of Manjinder Singh. Manjinder Singh complainant stated that on 16.10.2009 he was going towards his house from his village. When he

reached near Pond (Toba) of village, then Balwinder Singh s/o Sher Singh who was carrying a Tungli (Prong), Gurwinder Singh s/o Balwinder Singh carrying a knife like sharp edged weapon, Tejinder Singh s/o Jarnail Singh carrying sticks and Gunwant Singh s/o Labh Singh came there and started beating him. At about 6.30pm Balwinder Singh hit him with Prong at his arm and then Gurwinder Singh hit him with knife like sharp edged weapon at his left leg and thereafter Balwinder Singh hit him with Prong in centre of his head and Tejinder Singh also caused him injuries by stick blows. Thereafter he fell down and after that all the accused hit him with fist blows and leg blows. He raised hue and cry and after hearing his cries, his father Niranjan Singh and other passer-byes came at the spot and rescued him from the accused persons. After seeing people, accused persons ran away from the spot along with their weapons. Thereafter, his father arranged a vehicle and took him to Rajindra Hospital, Patiala. On the basis of statement of complainant, case against accused was registered under Sections 323,341,506,34 IPC. Site plan of occurrence was prepared. Statements of witnesses were recorded. After taking opinion from concerned doctor offence u/s 326 IPC was added but thereafter Board of Doctors was constituted and after that offence u/s 326 IPC was deleted and offence u/s 325 IPC was added. Accused were arrested. After completion of investigation challan against accused was produced in court under Sections 325,324,323,341,506,34 IPC.

3. The trial court vide judgment dated 23.01.2015 acquitted the accused persons on the ground that the prosecution is full of inconsistencies and discrepancies as neither ocular version has found support from the

medical evidence nor testimonies of PW1 and PW2 are in consonance with each other.

4. The complainant Manjinder Singh preferred an appeal before the appellate court, however, the Addl.Sessions Judge, Patiala dismissed the appeal filed by the complainant vide judgment dated 08.01.2016 upholding the judgment passed by the trial court.

5. Learned counsel for the petitioner has contended that the courts below have not taken into consideration the statement of the witnesses, which include the complainant Manjinder Singh and other witness. He has further averred that petitioner-injured Manjinder Singh categorically examined all the injuries on his person, as to which respondent-accused gave which injury and which kind of weapon was used by him referring to the version of the petitioner-injured Manjinder Singh, which is also corroborated by the statement of his father Niranjan Singh. He has also contended that Dr. Virender Garg appeared as PW5 and this witness conducted the x-ray of petitioner-injured Manjinder Singh and 7 X- rays were taken of different parts of the body which were advised and a Ulna bone and Tibia bone were found to be fractured.

6. It is also contended that there are multiple injuries and otherwise also what was the need for the petitioner-injured to inflict multiple injuries that too grievous in nature and as such exerts to say that the Courts below have not properly appreciated the evidence and the facts and as such the judgments of acquittal are liable to be set-aside as after the gap of 2-3 years the statements of the witnesses were recorded in the Court, so there is every possibility of minor contradictions in their statements as being human, which

is bound to occur and should be ignored but both the Courts below have not taken into consideration the medical evidence and only mentioned the doctors who treated and examined the injured persons. As such he folds up the submissions urging that the judgments passed by both the courts below are against the law and facts as the same are based on the conjectures and surmises and have wrongly appreciated the evidence on the file and wrongly acquitted the accused/respondent without considering the documentary evidence brought on record by the prosecution.

7. The counsel has laid much stress to support his submissions with case law i.e. *Himanshu Singh Sabharwal Vs. State of MP and others. 2008 (2) RCR (Cr.) 267, State of A.P Vs. S. Rayappa and others 2006 (1) RCR (Cr.) 967, Rana Partap and others Vs. State of Haryana 1983 Cr. LJ 1272 & Dr. Ramesh Nand Lal Vs. Special Judge, Gorakpur 1998 (2) RCR (Cr.) 55.*

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

9. In the present case, the prosecution has examined as many as 6 witnesses and out of them the evidence of PW1 Manjinder Singh, the petitioner-injured and PW2 Niranjana Singh, eye witness are material and evidence of the remaining evidence are formal in nature as they are deposing regarding investigation and medical treatment. The version of the petitioner-injured Manjinder Singh is that on 16.10.2009 at about 6.30 PM in the area of Village Jalbera, all the respondent-accused in furtherance of common intention of each other armed with sharp edged weapon caused injuries to him. In support of his version, the complainant himself stepped into the

witness box as PW1 and his father Niranjana Singh stepped into the witness box as PW2 and he corroborated the version of the complainant. But, the version of the petitioner -complainant is that at the time of occurrence, he fell down and he raised hue and cry and on hearing the same, his father and other Villagers reached at the spot. But, the prosecution has failed to cite a witness out of those villagers, who gathered at the spot at the time of occurrence. Furthermore, in this case PW5 Dr. Varinder Garg, who conducted the x-ray of the petitioner-complainant and proved on record x-rays films as Ex.PW5/1 to Ex.PW5/7 and his x-ray report Ex.PW5/8. As per this witness, he conducted the x-ray of petitioner-complainant Manjinder Singh on 16.10.2009 and found no fracture was seen in the left leg nor any fracture was seen in left scapula and skull. More-so, PW6 Dr. Vikas Goyal is one of the members of that team, who got medically re-examined petitioner-complainant Manjinder Singh and proved the report of medical board as EX.PW6/A and he gave his opinion that injury No.2 was least likely to occur with sharp edged weapon and further possibility of injury No.2 being self inflicted or self suffered injury cannot be ruled out. As per the version of the prosecution, the occurrence took place on 16.10.09 at about 6.30 PM, but, ASI Gurcharan Singh proved on record the statement of petitioner-complainant Manjinder Singh got recorded before him as Ex.PW1/A and perusal of the same shows that the same was recorded on 17.10.09 at about 3.55 PM and after three days after recording the statement of petitioner-complainant Manjinder Singh, the FIR has been registered on 21.10.2009.

10. Both the courts below have rightly observed that the prosecution has failed to satisfactorily explain the delay, in lodging the FIR i.e., after

three days on recording the statement of the petitioner-complainant Manjinder Singh. Further the version of the prosecution regarding admission of the petitioner - complainant Manjinder Singh in the hospital is also doubtful. As per petitioner-complainant his father got admitted him in Rajindera Hospital Patiala. But, the perusal of his cross-examination in which he stated that his father Niranjn Singh has firstly taken him to their home and after giving first aid in home, he was taken in Rajindera Hospital, Patiala. But, this version has nowhere come anywhere in the prosecution story before cross-examination of the petitioner-complainant. The father of the petitioner-complainant Niranjn Singh appeared as PW2 and he categorically deposed that Manjinder Singh after lifting from the place of occurrence directly taken into the hospital. The perusal of the medical record of Manjinder Singh petitioner -complainant shows the time of arrival of petitioner -complainant in the hospital 10.30 PM. But, PW1 Manjinder Singh and PW2 Niranjn Singh in their depositions gave the arrival time in the hospital different-different, as petitioner -complainant Manjinder Singh stated that they reached in the hospital at about 9 PM and as per his father i.e. PW2 Niranjn Singh, they reached in the hospital at about 9.30 PM. As per the petitioner Manjinder Singh and his father i.e. PW2 Niranjn Singh, the distance between their Village and Rajindera Hospital Patiala is 35-40 KM and as per the prosecution story the occurrence took place at about 6.30 PM and according to PW2 Niranjn Singh the petitioner - complainant Manjinder Singh was taken to hospital by a Car, so it is not possible that a Car carrying distance 35-40 KM in two hours when the petitioner -complainant Manjinder Singh lying in a injured condition. As such, this version of the prosecution was rightly

held to be doubtful. More-so, as per the petitioner-injured Manjinder Singh, respondent -accused Balwinder Singh has hit him with Prong on his head and thereafter blood started oozing.

11. A perusal of the medical record brought by prosecution on record nowhere suggests that there was any injury found by the concerned doctors who medically examined petitioner-complainant on his head. The prosecution has also failed to examine any villagers, who reached at the spot on hearing the hue and cry of the complainant and other injured. There is also unexplained delay of taking petitioner-complainant Manjinder Singh in hospital. Both the courts below have thus held that all these contradictions in the statements of the prosecution witnesses create a doubt in the truthfulness of the prosecution story as also the citations relied upon by the petitioner which are not applicable to the case in hand and as such distinguishable.

12. In *State of Punjab Vs. Karnail Singh 2003 (1) (S.C.) 271*, the Supreme Court held that an appellate court in the appeal against acquittal must bear in mind that there is double presumption in favour of the accused. The appellate court rightly observed that the the presumption of innocence is available under the fundamental principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law. Secondly, the accused have secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the courts below.

13. Thus, no error can be found in the judgments passed by both the courts below since the case of the prosecution falls short of demanding degree of proof. The case of the prosecution, as per the allegations of the

complainant is with regard to causing the injuries to his and eye witness-injured by the respondent-accused. However, the prosecution has failed to lead any cogent and convincing evidence to prove any of the ingredients: of the offences with which the respondent-accused have been charged.

14. Accordingly, this Court is fully in consonance to the conclusion that none of the ingredients of the offences are made out from the evidence and record brought on the file by the prosecution and thus the prosecution has failed to prove and establish the offences under which the charges have been framed against the respondents No.2 to 5.

15. In the backdrop of facts and discussions on law as well as the submissions made on behalf of the petitioner, I do not find any illegality or perversity in the judgments passed by both the courts below and the same are affirmed and the revision petition is dismissed accordingly.

18.04.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No