

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR No. 2538 of 2016

Date of decision: 7th August, 2023

Pardeep Kumar

Petitioner

Versus

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Lalli, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab

AVNEESH JHINGAN, J (Oral):

1. This criminal revision is filed aggrieved of acquittal of the accused (respondents No. 2 to 4 in appeal).
2. The facts shorn off unnecessary details are that FIR No.58 dated 21.6.2011 was registered at the instance of Pardeep Kumar. It was stated that his father entered into an agreement to sell with Buti Ram (now deceased) for sale of one acre land. The sale deed was not executed and a civil suit for specific performance was filed. Further allegations were that on 22.5.2011, the complainant along with his brother were cultivating the land in dispute when Buti Ram exhorted and other co-accused armed with iron rod and hockey inflicted injuries on the complainant and his brother. The details of the injuries inflicted by each of the accused were specifically mentioned. The statement of the complainant was recorded on 21.6.2011.
3. The prosecution examined eight witnesses. The trial court convicted the accused vide judgment dated 19.10.2015 and sentenced to undergo:

Name of accused	Under Section (IPC)	Imprisonment	Fine (Rs.)	Default sentence
Chaman Lal	325	1 year RI	500	15 days SI
	323	6 months SI	-	--
	447	3 months SI	--	--
	506	6months SI	--	--
Kuldeep Kumar	325	1 year RI	500	15 days SI
	323	6 months SI	-	--
	447	3 months SI	--	--
	506	6months SI	--	--
Sulakhan Kumar	325	1 year RI	500	15 days SI
	323	6 months SI	-	--
	447	3 months SI	--	--
	506	6months SI	--	--

4. The accused were acquitted in appeal vide judgment dated 26.2.2016 and appeal filed by the complainant was dismissed hence the present revision.

6. Learned counsel for the petitioner submits that depositions of the injured and that of the doctor were not properly appreciated. It was not taken into consideration that the complainant had suffered a fracture of nasal bone.

7. Heard learned counsel for the petitioner and perused the record with his able assistance.

8. The appellate court considered that there was civil litigation pending between the parties in Regular Second Appeal before this court with regard to non-execution of the sale deed. There was a backdrop to the alleged incident. There were material discrepancies in the testimonies of PW1-Pardeep Kumar and PW2-Kamaljeet with regard to the manner of assault described by them. There was contradiction between the first version made to the police and the descriptions of events deposed during trial. Ocular versions of the star prosecution witnesses were considered doubtful coupled with the fact that they were also interested witnesses.

9. PW1-Pardeep Kumar in his cross-examination stated that they went empty handed to cultivate the land and further that the land was lying

vacant and no crop was standing. In cross-examination, he improved the version and stated that they were carrying *Datri*. PW2- Kamaljeet Singh stated that they were empty handed and went for cutting grass whereas he improved his version and stated that they were having *Datri*. Both the prosecution witnesses stated that the land was vacant, whereas PW6- SI Joginder Pal deposed that wheat crop was standing and the accused caused damage to the standing crop.

10. It was taken note of that the prosecution failed to adduce evidence to prove the ownership and exclusive possession of the complainant over the land in question.

11. So far as the medical evidence is concerned, the Radiographer was not examined to prove the X-ray films. PW5-Dr. Subhash Chander in his cross-examination stated that the injuries sustained by the complainant and his brother could be the result of fall on a hard surface or in bushes. PW7-Dr. Harsh Mahajan tendered his affidavit to support the case of the prosecution. In his cross-examination he opined that the nasal bone injury could be old and X-ray cannot reveal whether the injury was old or new. As per him, the fracture of nasal bone could be result of fall or striking against hard surface.

12. Another angle considered was that there was un-explained delay of one month between the incident and registration of the FIR. There was contradiction in the cross-examinations of PW1-Pardeep Kumar and PW2-Kamaljeet Singh. It was deposed that after the incident they went to the police station and thereafter to Civil Hospital. As per PW1-Pardeep Kumar they were brought to the police station by their father. On the other hand, PW2-Kamaljeet Singh deposed that he along with his brother came to the police station and the Head Constable received the application. No evidence was produced to substantiate the version that the police was informed on the date of incident.

13. The contention raised by learned counsel for the petitioner that the injuries, fracture of nasal bone and testimony of the doctor was not properly appreciated, lacks merit. From a perusal of the testimonies of PW5- Dr. Subhash Chander and PW7-Dr. Harsh Mahajan, it is evident that the prosecution failed to prove that the injuries were inflicted in the alleged

incident that took place on 22.5.2011. As per the doctors, the injuries could have been a result of fall on a hard surface or bushes. The nasal bone fracture could have been an old injury. The ocular versions of PW1-Pardeep Kumar and PW2-Kamaljeet Singh were doubted due to material contradictions.

14. Supreme Court in ***New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey, 2020(1) Ori. Law Rev. 246*** held as under:-

“8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C., 1973 is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisionsal power is to set right a patent defect or an error of jurisdiction or law.”

15. There is no factual or legal error much less perversity in the impugned judgment. The view taken is plausible one.

16. The revision petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

August 7th, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |