

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

CRR-2329-2017(O&M)

Date of Decision:-04.10.2023

Vikas @ Ganja.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sandeep S. Majithia, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioner/complainant against the judgment dated 20.05.2017 passed by Additional Sessions Judge, Kurukshetra vide which the judgment of conviction and order of sentence dated 04.07.2016 and 08.07.2016 passed by Judicial Magistrate Ist Class, Kurukshetra has been upheld.

2. The brief facts of the case are that on 02.01.2014 the complainant Ajay Kumar made a statement before the police that on 01.01.2014 when he had returned home from his fields he had seen accused Vijay and his brother Vikas @ Ganja (petitioner) hurling abuses upon Shish Pal his paternal uncle. The petitioner had caught hold of Shish Pal in his arms whereas Vijay Kumar had given a *gandasi* blow on Shish Pal and another blow on his arm. On an alarm being raised the accused had fled away from the spot after which the injured had been shifted to hospital. The

motive behind the occurrence was that Vijay Kumar would tease the daughter of Shish Pal and Shish Pal had prohibited him from doing so. Legal action was sought.

3. Based on the aforementioned complaint the FIR came to be registered. The report under Section 173(2) Cr.PC was submitted against the petitioner whereas accused Vijay was found to be a juvenile and was produced before the Juvenile Justice Board, Kurukshetra to face trial wherein he stands convicted.

4. Based on the evidence led, the petitioner came to be convicted and sentenced vide judgment of conviction and order of sentence dated 04.07.2016 and 08.07.2016 as under:-

Offence under Sections	Imprisonment
326 IPC	Convict is sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/-. In default of payment of fine convict shall undergo rigorous imprisonment for a period of one month.

5. The petitioner/accused preferred an appeal before the Court of Additional Sessions Judge, Kurukshetra which came to be dismissed vide order dated 20.05.2017.

6. The present revision petition has been preferred by the accused against the aforementioned judgments.

7. The Counsel for the petitioner contends that no independent witness has been examined despite the availability of the same. The conviction has been recorded only on the basis of the statement of complainant Ajay Kumar, PW-2 and injured Shish Pal, PW-3. The plea of *alibi* of the petitioner had not been properly considered which emanated from the depositions of DW-1 Omi Devi and DW-2 Urmila. In fact from the cross examination of the witnesses it was apparent that the petitioner did not get along with his brother Vijay Kumar and, therefore, there was no question

of him taking part in the occurrence along with his estranged brother. Even otherwise, no specific role has been attributed to him. He lastly contends that if this Court were to confirm the judgments of conviction, the sentence may be reduced to the period already undergone by the petitioner as the occurrence was of the year 2014 and as many as 09 years have elapsed ever since.

8. The Counsel for the State on the other hand contends that the case of the prosecution has been established beyond reasonable doubt. The medical evidence is totally in consonance with the ocular account. The depositions of PW-2 and PW-3 are consistent in material particulars. In fact the juvenile co-accused Vijay Kumar had also been convicted. He, therefore, contends that no case for interference is made out in the well reasoned judgments passed by the Courts below and the instant revision petition was liable to be dismissed.

9. I have heard counsel for the parties at length.

10. Para 14 of the judgment of the lower Appellate Court is reproduced hereinbelow:-

“ PW-1 Dr. Vikas has examined the injured Shish Pal on 01.01.2014. As per the medico legal report, there were two injuries on the person of Shish Pal. As per the version of the complainant Ajay Kumar, he took the injured to the hospital after arranging a vehicle along with his father. The injuries as mentione din MLR Ex.PW-1/C are sharp marginal wounds approximately 10 cm long on Parito Occipital region of right side of scalp with bleeding present. The wound was also cut and was visible. There was a sharp marginal transversely placed wound on the dorsome of left forearm 5cm long bone deep in the middle of the forearm and there were multiple tendon cuts and muscles cuts on the forearm. The medico legal examination was conducted at 3.45 PM and the injures were stated to be grievous .

However, in the medico legal report the duration of the injuries has not been mentioned. The injured was thereafter referred to PGI, Chandigarh but he was taken to Government Medical College and Hospital, Sector 32, Chandigarh. As per the medico legal case summary Ex.PW-6/C, Shish Pal injured was taken to the hospital by Balkar Singh and the injury as per the opinion of the doctor was grievous in nature.”

11. A perusal of the medical evidence as described above, would show that the injured Shish Pal has received two injuries one on the head and another on the forearm. Both these injuries were stated to be grievous in nature. Complainant Ajay Kumar as PW-2 and injured Shish Pal as PW-3 have explained in detail the manner in which the occurrence took place. Therefore, the medical evidence is totally in consonance with ocular account. The plea of alibi which has been sought to be canvassed by the petitioner cannot be believed. In fact DW-1 Omi Devi and DW-2 Urmila have only stated that accused had taken them to Brahm Sarovar on 01.01.2014 but have given no account of the present incident. Apparently both these witnesses were residents of the same locality as that of the accused and it was only on that account that they deposed in favour of the petitioner. On the other hand the evidence of PW-2 Ajay Kumar and PW-3 Shish Pal who is an injured witness cannot be discarded as has already been discussed hereinabove.

12. In view of the above, I find no reason to interfere with the well-reasoned judgment of the Lower Appellate Court and therefore, the present petition stands dismissed.

13. As regards the imposition of sentence, it is apparent that the occurrence is of the year 2014 and as many as 09 years have elapsed ever since. Therefore, while upholding the conviction, I deem it appropriate to

reduce the sentence to 06 months rigorous imprisonment under Section 326 IPC along with fine of Rs.26,000/-. A sum of Rs.25,000/- out of the fine imposed shall be paid as compensation to the injured Shish Pal. The sentence in default of payment of fine shall however, remain intact.

(JASJIT SINGH BEDI)
JUDGE

October 04, 2023

Vinay

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