

**229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2649-2018
Decided on : 21.02.2023

Rajiv Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Lajpat Sharma, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the judgment dated 03.04.2018 passed by Lower Appellate Court whereby the appeal preferred by the petitioner against the judgment of acquittal dated 07.10.2015 passed by the trial Court, Kaithal, was dismissed.

The prosecution case in brief may be noticed as thus; FIR No.70 dated 05.07.2013 under Sections 323, 325, 506/34 IPC was registered at the instance of the petitioner-complainant at Police Station Siwan, District Kaithal. As per allegations levelled in the FIR in question, on 30.06.2013, when the petitioner was present in the market, he was approached by respondent No.3 -Rohtash Kumar @ Kala, who told him that he had been called by Numberdar Jaspal to his petrol pump. Respondent No.3 thereafter took the petitioner on his motorcycle to the petrol pump of Numberdar Jaspal. While the petitioner was waiting for Jaspal to come, accused-respondent alongwith one unknown person came to the spot and

caught hold of the complainant. Accused Ashu Virk inflicted gandasi blow from its reverse side on the right wrist of the complainant. Thereafter, accused Ashu Virk alongwith an unknown person pushed the complainant, as a result of which he hit the glass of the door of the petrol pump and sustained injuries on his right shoulder and he fell down. Accused Rohtash Kumar @ Kala, who too was present, inflicted a 'danda' blow on the right toe of the complainant, which was followed by all the accused giving fist blows and slaps to the complainant. PW-3 Deepak and one Balraj happened to reach the petrol pump for refueling their motorcycle and they rushed to the rescue of the complainant by saving him from the unprovoked attack leashed on him by all the three accused. Accused Ashu Virk while going away threatened the complainant that he also had a pistol and the complainant would be done to death.

The prosecution examined six witnesses including the complainant, who stepped into the witness box as PW-1, PW-3 Deepak eyewitness to the occurrence and PW-5 Dr. Dipesh Goyal, who proved the medico-legal report Ex.PW-5/B of the injured-complainant. The accused in their defence examined Ram Kumar as DW-1.

The trial Court on the basis of the material on record and evidence led, acquitted the accused of the charges framed against them on the ground that there was a delay of more than 5 days in lodging of the FIR in question, which created a question mark qua the authenticity of the version put-forth by the complainant in the FIR in question, and thus, fabrication and manipulation could not be ruled out. The appeal preferred by the petitioner impugning the judgment passed by the trial Court was

dismissed by the Appellate Court vide judgment dated 03.04.2018. Hence, the present petition.

Learned counsel for the petitioner has vehemently argued that the delay of 5 days in lodging of the FIR in question could not be said to be fatal to the case of the prosecution because soon after the occurrence in question, the petitioner had got himself medically examined. Learned counsel has submitted that the injury sustained by the petitioner could not be said to be self inflicted injuries much less with friendly hand. Learned counsel has thus, submitted that in the circumstances, the trial Court erred in acquitting the respondents.

Heard learned counsel and perused the relevant material available on record.

It has not been disputed by the learned counsel for the petitioner that as per the MLR, three injuries, which were found on the complainant i.e. on his right forearm, neck region and great toe of his right foot, were not of such a nature, which had rendered the petitioner unfit to make a statement. As per the MLR, aforementioned three injuries were pain on the right forearm, pain in the neck region and pain in the great toe of right foot. It is also a matter of record and which was not denied by the petitioner that no ruqa was ever sent to the police station by the doctor concerned after the petitioner got himself medically treated. Admittedly, no external injury mark was found on the body of the petitioner except a swelling (injury No.1). Dr. Dipesh Goyal, who stepped into the witness box as PW-5 did not rule out the possibility of injuries No.2 and 3 having been sustained on account of a fall on a hard surface. The delay in lodging

of the FIR coupled with the fact that no ruqa was sent to the police qua the admission of the petitioner after the alleged occurrence, thus, hint towards a fabricated and exaggerated version having been brought forth by the complainant while lodging the FIR in question. Still further, the ocular testimony of the petitioner does not find due corroboration with the medical evidence on record. As per the deposition of the petitioner, he was hit with a gandasi, however, there was no corroborative injury reflected on the person of the complainant much less any external injury. Had the petitioner indeed been inflicted with a gandasi as alleged, some external injury would have surely been reflected in the MLR of the petitioner.

As an upshot to the above, this Court does not find any perversity with the impugned judgment so as to warrant its interference. The present petition being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

21.02.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No