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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
(245)

CRR-2412-2009 (O&M)
Date of Decision: 19.07.2023

Hoshiara Singh and ors.

... Petitioners

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate, for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 04.09.2009 passed by the Sessions Judge, Jind whereby the appeal filed against the judgment of conviction and order of sentence dated 20/26.08.2008 passed by the Sub Divisional Judicial Magistrate, Safidon (Jind) has been dismissed.

2. The case of the prosecution originates on the basis of a statement of complainant Dalbir Singh son of Mehar Chand Jat, resident of Kalwa dated 17.10.2003 Ex. PA. On 16.10.2003 at about 11.00 p.m., he was going on his roof for urination and when he sat on the roof for urination, then the accused persons, namely, Nafe Singh, Hoshiara along with Lathi: Satyawan alongwith jelli; Azad along with danda came there. Accused Satyawan a gave blow of the jelli on his



left leg; accused Hoshiara gave a blow of a lathi on a his head; accused Azad Singh gave a blow of a danda on his right knee and he fell down. Thereafter, all the accused persons injured him with their respective weapons. On hearing his hue and cry, his father Mehar Chand, his brother Teja and Surja also came and rescued him from the clutches of the accused persons. accused persons were fled away alongwith their respective weapons. His brother Teja rushed him to the hospital.

3. Based on the aforementioned complaint, FIR No.115 dated 28.10.2003 under Sections 323, 325 and 34 IPC, Police Station Pillukhera came to be registered against the accused persons. Thereafter, the investigation was concluded and the report under Section 173(2) Cr.P.C. came to be submitted against the accused persons.

4. On conclusion of the Trial, the petitioner came to be convicted and sentenced by the Court of the Sub Divisional Judicial Magistrate, Safidon (Jind) vide judgment and order of sentence dated 20/26.08.2008 as under:-

Offence under Sections	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Section 323 read with Section 34 IPC	(RI) 03 months	Rs.500/- each	(SI) 15 days
Section 325 read with Section 34 IPC	(RI) 02 years	Rs.1,000/- each	(SI) 02 months

Both the sentences were ordered to run concurrently.

5. The accused-petitioners preferred an appeal which came to be dismissed by the Court of Sessions Judge, Jind, vide judgment dated 04.09.2009.



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6. The aforementioned judgments are under challenge in the present petition.

7. The learned counsel for the petitioners contends that the conviction of the petitioners has been recorded on the basis of conjectures and surmises. The medical evidence was contrary to the ocular account. The occurrence took place on 16.10.2003 but the medico legal examination took place after a gap of few days. This delay was fatal to the prosecution case. PW-3/Tejbir and PW-4/Mehar Chand were not eye-witnesses. In fact, the conviction had been recorded on the basis of interested witnesses alone. Therefore, the judgments of conviction are liable to be set aside. In the alternative, it is prayed that as the occurrence was of the year 2003 and the petitioners had clean antecedents, they be released on probation or their sentences be reduced to the period already undergone by them.

8. The learned counsel for the State, on the other hand, has placed on record custody certificates of the accused-petitioners dated 18.07.2024 which are taken on record. He contends that the offences in question stood established beyond reasonable doubt. The medical evidence was clearly in consonance with the ocular account. The witnesses had deposed in favour of the prosecution and a perusal of their testimonies would reveal that they had supported the prosecution version and material particulars. As regards the reduction of sentence, he contends that the nature of the offence committed by the petitioners did not entitle them to the concession of either probation or reduction of their sentences.



9. I have heard the learned counsel for the parties and gone through the record.
10. In the instant case, the prosecution version cannot be disbelieved. The complainant-injured/Dalbir Singh while deposing as PW-1 has clearly supported the case of the prosecution. His statement is in consonance with the medical evidence brought on record. Therefore, it cannot be stated that the medical evidence was contrary to the ocular account. The other prosecution witnesses have also supported the case of the prosecution.
11. Thus, no fault can be found with the well-reasoned judgments of the Trial Court dated 20.08.2008 and the Lower Appellate Court dated 04.09.2009, Therefore, the present petition stands dismissed.
12. As regards the imposition of sentence, it may be pointed out that the occurrence took place on 16.10.2003. The custody certificates of the petitioners would reveal that they have clean antecedents with no other case registered against them. Therefore, while upholding their conviction, I deem it appropriate to modify the sentence of the petitioners as under:-

Offence under Sections	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Section 323 read with Section 34 IPC	(RI) 02 months and 04 days	Rs.500/- each	To undergo the entire sentence as imposed by the Lower Appellate Court
Section 325 read with Section 34 IPC	(RI) 02 months and 04 days	Rs.10,000/- each	To undergo the entire sentence as imposed by the Lower Appellate Court

All the sentences shall run concurrently.

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14. The amount of fine of Rs.30,000 to be paid by the petitioners shall be disbursed to the injured-complainant/Dalbir Singh as compensation.

(JASJIT SINGH BEDI)
JUDGE

July 19, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No