

CRR-2202-2016

231 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-2202-2016 (O&M)  
Date of decision: 14.02.2024

Nishan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Munish Puri, Advocate  
for the petitioner.

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HARPREET SINGH BRAR, J. (ORAL)

CRM-18998-2016

This is an application filed by the petitioner seeking condonation of delay of 37 days in filing the present revision. For the reasons mentioned in the application, same is allowed and the delay of 37 days in filing the instant revision petition is condoned.

CRR-2202-2016

1. The present revision petition is preferred against judgment dated 20.01.2016 passed by learned Sessions Judge, Pathankot, whereby appeal against judgment of acquittal dated 11.08.2015 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Pathankot in FIR no. 19 dated 14.02.2014 registered under Sections 323, 324, 325, 326, 34 of the IPC at Police Station Divison No. 2, District Pathankot, was dismissed.

2. Briefly, the facts are that on 17.01.2014 at about 10:30 p.m., the petitioner/complainant was on his way home, when he was accosted by respondent no. 2, respondent no. 3 and two other unknown persons, for blowing the horn of his vehicle on the street where the respondents reside. The respondents were armed

with a datar and an iron rod. In order to teach the petitioner a lesson, respondent no. 2 dealt two blows from his datar on the left side of the petitioner's face. Respondent no. 3 struck the petitioner multiple times with the iron rod. As a result, he fell on the ground. In the meantime, the petitioner's mother and his friend arrived at the spot of the occurrence, to rescue the petitioner. Seeing them the respondents fled away with their respective weapons. The MLR of the petitioner mentioned six injuries. While injury no. 1 and 2 were found to have been caused with a sharp edged weapon, injury no. 3 to 6 were declared to have resulted from a blunt weapon. The FIR was registered on the basis of the statement of the complainant on 14.02.2014 after the parties failed to reach a compromise. After completion of the investigation, challan was presented against respondent no. 2 and 3 to face trial under Sections 323, 324, 325, 325 of the IPC.

3. After assessing all material on record, the learned Trial Court acquitted respondent no. 2 and 3 vide judgment dated 11.08.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed vide judgment dated 20.01.2016.

4. Learned counsel for the petitioner assails the judgment of acquittal on the ground that even though there was a delay of 35 days in registering the FIR, it should not hamper the prosecution case as the petitioner had suffered serious injuries and underwent a jaw surgery on 11.01.2014. Consequently, he was not able to open his mouth for a period of 6 weeks and thus could not give his statement. The injuries were sustained on 07.01.2014 and the surgery was conducted on 11.01.2014. Thus delay in lodging the FIR is clearly explained.

5. Learned counsel further submits that the MLR of the petitioner is self-explanatory and it is patently discernible that he suffered grievous injuries. Lastly, it was argued that the learned lower Appellate Court wrongly acquitted respondent no.

2 and 3 due to non-production of the record of Guru Nanak Dev Hospital, Amritsar, where the petitioner was transferred soon after being taken to the Civil Hospital. It was the duty of the investigating officer to collect all the relevant material during investigation, which includes the hospital records and a slip up on his part should not be the reason why the victim is made to suffer. Moreover, in light of the MLR, the surgery records and the injuries suffered by the petitioner, the records of the said hospital become immaterial.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgements of the courts below to indicate perversity or misreading of evidence in the judgement of acquittal. With respect to the delay in FIR, it must be stated that the doctor at Guru Nanak Dev Hospital, Amritsar, had opined that the petitioner was fit to give a statement to the police officials on 09.01.2014, i.e., just two days after the occurrence of the alleged incident. Conveniently, the records of the petitioner's admission at this hospital have not been brought on record and no evidence is produced by the petitioner to prove that he was unable to speak on the said day. Further, even if it is assumed that the doctor wrongly arrived at such a conclusion, the FIR could have always been registered on the basis of the statement of the petitioner's mother or his friend who had arrived at the spot to rescue the petitioner and were thus eye witnesses. It was also averred by the petitioner's counsel that the family elders were trying to secure a compromise between the parties and because it could not be brought to fruition, the FIR was lodged after a delay of few days. However, no evidence has been adduced by the petitioner's counsel to substantiate this claim. Thus, the delay of 35 days in lodging the FIR is bound to be looked at with suspicion.

7. Furthermore, it was revealed during trial that the petitioner used to

harass the sister of respondent no. 2, who is also the daughter of respondent no. 3 and as a result, a complaint was filed in the police station. Accordingly, a compromise was arrived at (Ex. D-1) in which the petitioner has categorically admitted to attesting the same. Given there is a history of animosity between the petitioner and the respondents, the testimony of the complainant must be scrutinised with much more diligence. Crucially, the investigating officer, ASI Ajwinder Singh (PW-7) has concurred with the account of the defence i.e., the injuries were received by the complainant because he fell from the motor-cycle and that no such alleged quarrel between the petitioner and the respondents took place. As per the cross examination of PW-4, who is the medical officer, namely, Dr. Sukhwinder Singh, injuries sustained by the petitioner could have been caused from a bike accident. Additionally, there are no other eye witnesses of the quarrel apart from the mother and friend of the petitioner. That this was the petitioner's attempt at getting back at the respondents and falsely implicating them, given their bitter history, cannot be ruled out.

8. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (**See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

9. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court or the learned Trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is hereby dismissed.

14.02.2024  
Ajay Goswami

(HARPREET SINGH BRAR)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |