

2024.PHHC.097548



CRR-4720-2015(O&M)

#1#

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

CRR-4720-2015(O&M)

Date of Decision:-31.07.2024

Jasbir.

.....Petitioners.

Vs.

State of Haryana & Anr.

.....Respondent.

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

Present:- Mr. Kulvir Narwal, Advocate with
Mr. Abhisar Chaudhary, Advocate for the Petitioner..

Mr. Deepak Grewal, Deputy Advocate General, Haryana.

None for the respondent no.2.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been filed against the judgment of conviction dated 07.10.2015 recorded by Sessions Judge, Rohtak whereby the judgment of acquittal dated 07.07.2014 passed by Sub Divisional Judicial Magistrate Meham has been set aside.

2. The brief facts of the case as put forth in the report under Section 173, Cr.P.C. are that on 30.09.2009, at about 9/10:00 P.M., complainant Suresh was going through the street and when he reached near the house of Rakesh son of Inder Singh, Joginder son of Wazir Singh and



Jasbir son of Raghbir Singh were standing there. The complainant had paid an amount of Rs.49,500/- to the accused Joginder. The complainant requested him to return his money as he was in dire need of the same. On that, the accused Joginder became furious and he in collusion with accused Jasbir, started beating the complainant with fist blows. Jasbir gave a brick blow on the mouth of complainant, which struck on the lips and teeth of the complainant and again Jasbir hit the complainant with a brick on his forehead with an intention to kill him. The complainant raised a hue and cry, which attracted Dayanand and Virender, who came there and saved the complainant from the clutches of the accused. While leaving the spot, the accused threatened the complainant with dire consequences. The complainant got admitted in PGIMS, Rohtak by Dayanand and Virender. No proper treatment was provided to the complainant in the hospital, so the complainant got himself admitted at Base Hospital, Delhi where he was medico-legally examined and treated by the doctors and after X-ray, the doctors found a fracture in the skull of the complainant. After being discharged from the hospital, the complainant reached Police Station Meham to register a case against the accused but the concerned police officials in collusion with the accused persons, did not register any case against the accused. A complaint in this regard was presented before Learned Illaqua Magistrate, who sent the complaint under Section 156(3), Cr.P.C. to the SHO concerned for investigation and registration of the case. On this complaint, a formal FIR was registered. The police, thereafter, started the investigation, wherein a site plan was prepared, statements of the witnesses



were recorded, the MLR of the injured was collected and after completion of the necessary investigation, the report as required under Section 173, Cr.P.C was submitted.

3. On finding a prima facie case, both the accused were charge sheeted for committing the offence punishable under Sections 323/325/ 506 read with Section 34 of IPC. The accused pleaded not guilty and claimed trial. Accordingly, the case was adjourned for prosecution evidence.

4. PW1 Suresh Kumar is the complainant as well as injured in this case and stated on oath that on 30.09.2009, he was going in his street. When he reached near house of Rakesh son of Inder Singh, Joginder son of Wazir and Jasbir son of Raghbir were standing. He asked Joginder to return Rs.49,500/-, which was lent by him (Joginder). On this, he got angry and gave a 'Danda' blow on his waist. Jasbir son of Raghbir gave a brick blow on his lips. His three teeth were broken. Jasbir also gave another brick blow on his forehead. He raised an alarm, which attracted his brother Dayanand, who came there and rescued him from the clutches of the accused. While leaving the spot, both the accused threatened him with dire consequences. Thereafter, his brother and his son Anup took him to PGIMS, Rohtak. On 02.10.2009, his statement was recorded by the Police at PGIMS, Rohtak. No proper treatment was provided at PGIMS, Rohtak and thereafter, he reached Base Army Hospital, Delhi, where he got treatment. He wrote letters to DSP, I.G., S.P. and SHO, Lakhan Majra, which is Ex.P1. On 02.10.2009, he got recorded his statement to the police, which is Ex.PW- 1/A but no action was taken against the accused by the police and thereafter, he moved a complaint



Ex.PW-1/B before Learned Illaqua Magistrate. He identified the accused, present in the court.

PW2 Dayanand stated on oath that on 30.09.2009, at about 9/9:30 P.M., he and his brother Virender were seated in front of their house and on hearing the noise of the quarrel, they went to the spot where they saw that accused Joginder son of Wazir and Jasbir were standing and Joginder gave a 'Danda' blow on the waist of his brother Suresh and thereafter, accused Jasbir gave a brick blow on the mouth and forehead of his brother. After seeing them, the accused escaped from the spot and while leaving the spot, the accused threatened Suresh with dire consequences. They took Suresh to their house and after arranging a vehicle, they took Suresh to PGIMS, Rohtak. He identified the accused, present in the court.

Dr. Amit Batra, while appearing in the witness box as PW3, stated on oath that on 30.09.2009, he medico-legally examined Suresh son of Ram Mehar, 40 years, male, resident of village Nindana, District Rohtak. On examination, he found the following injuries on the person of the patient:

1. Small abrasion below left knee.
2. 5 x 2 cm lacerated wound on the left forehead in left supraorbital area with active bleed.
2. 5 x 2 cm lacerated wound on right forehead in supraorbital area with active bleed.
4. 4 x 1 cm lacerated wound on right side of forehead above upper crease with active bleed.
5. 3 x 2 cm lacerated wound on right forehead above right eye lid with active bleed.
6. 3 x 1 cm lacerated wound (vertical) on right cheek with active



7. Small abrasion on nose.
8. 2 x 1 cm lacerated wound on the left upper lip with active bleed.
9. 1 x 1 cm lacerated wound on chin on left side with active bleed.
10. Central incisors and left canine teeth are mobile with active bleed in upper gums.

All the injuries were kept under observation were caused within a duration of less than 24 hours. Carbon copy of MLR is Ex. PW-3/A, which bear his signature. He also sent the ruqqa, which is Ex. PW-3/B.

PW4 ASI Om Parkash is the Investigating Officer in this case and stated on oath that on 03.03.2010, he was posted at Police Station Lakhan Majra. On that day, a complaint under Section 156 (3), Cr.P.C.. was received in the Police Station from the court, on which, he registered FIR bearing no.67 dated 03.03.2010 Ex. PW-4/D and thereafter, he, along with HC Ram Bilas, went to village Nidana and after inspecting the spot, site plan Ex.PW-4/A was prepared. On 14.03.2010, he went to PGIMS, Rohtak, where he moved an application Ex.PW-4/B before the concerned doctor for obtaining an opinion and the doctor opined that there was a fracture but that there was no danger to life. Therefore, the offence under Section 307 IPC, was deleted. On 25.03.2010, he went to Base Hospital, Delhi where he presented an application Ex.PW-4/C before the concerned doctor and the doctor opined that there was a fracture. On 29.03.2010, accused Joginder was arrested and Jamatalashi memo Ex PW-4/D was prepared. On 30.03.2010, accused Jasbir was arrested in this case. he identified the



accused, present in the court.

PW5 ASI Jaswant Singh stated on oath that on 01.10.2009, he was posted at Police Station Lakhan Majra. On that day, a V.T. was received in the Police Station from Police Post PGIMS, Rohtak regarding admission of Suresh son of Ram Mehar resident of village Nidana in the hospital, on which, he, along with Constable Rohtash, reached Police Post PGIMS, Rohtak from where he received a doctor ruqqa along with the MLR of Suresh. Thereafter, they went to Ward no. 5 where he moved an application Ex PW-5/A before the concerned doctor for obtaining an opinion and the complainant Suresh refused to give his statement on that day. On the next day, he again went to PGIMS, Rohtak, and got recorded the statement of Suresh. On that he did necessary police action Ex PW-5/B and Roznamcha Rapat was registered. No heinous crime was found and thus, offence under Sections 107/151, Cr.P.C. was registered against the accused. On 07.11.2009, Bed Bead Ticket and X-Ray report of Suresh were received, wherein no fracture was found.

PW6 Virender brought the summoned record of patient Suresh son of Ram Mehar resident of village Nindana bearing CR no.795716 and on the basis of the record, the patient was admitted on 01.10.2009 and was discharged on 03.10.2009.

PW7 Subedar Shiv Singh stated that the summoned record was deposited with Record Room, Sikandrabad and record is to be summoned from Sikandrabad.

Dr. Nitin Jain, while appearing in the witness box as PW8,

**CRR-4720-2015(O&M)**

#7#

stated on oath that on 30.09.2009, he radio-logically examined patient Suresh son of Ram Mehar resident of village Nindana vide CR no. 795716 Chest X-ray- PA view where no fracture was seen. His report is Ex.PW-8/A.

5. On considering the evidence the Court of Sub Divisional Judicial Magistrate, Meham vide judgment dated 07.07.2014 came to acquit the accused on the grounds that there was a doubt about the presence of PW-2 on the spot, the two material witnesses had made several improvements in their testimonies and that no independent witnesses had been examined.

6. The Complainant Suresh Kumar preferred an appeal before the Court of Sessions Judge, Rohtak. On considering the material on record the court of Sessions Judge, Rohtak set aside the judgment of acquittal and convicted the petitioner-Jasbir for having committed the offence punishable under Section 323 IPC. However, he was released on probation vide judgment dated 07.10.2015 passed by Sessions Judge, Rohtak.

7. The aforementioned judgment of conviction is under challenge in the present petition.

8. The Counsel for the petitioner-convict contends that the first Appellate Court had fallen in error and had ignored the basic principles of criminal jurisprudence while convicting the petitioner. The motive had not been established beyond doubt. There were material improvements in the statements of two witnesses. The presence of PW-2 Dayanand at the spot was doubtful . Infact he had been introduced as a witness being the real brother of the injured/complainant. The medical evidence was in consonance



with ocular account. He thus contends that the judgment of conviction itself was liable to be set aside.

9. The Counsel for the State on the other hand contends that the medical evidence was totally in consonance with the ocular account. The complainant Suresh had received multiple injuries. His deposition could not be faulted in any manner whatsoever. There was no requirement in law of the presence of an independent witness particularly in a case wherein the injured witness was the complainant and had received multiple injuries. He therefore, contends that no fault could be found with the impugned judgment and the present revision petition was liable to be dismissed.

10. I have heard learned Counsel for the parties at length and have gone through the records.

11. While it is true that the FIR was lodged by the injured complainant after a couple of days of the occurrence but the said fact alone is not sufficient to discard the case of the prosecution in entirety. The version of the complainant who is an injured witness is supported by the deposition of his brother. The deposition of both the witnesses i.e. Suresh PW-1 complainant and his brother PW-2 Daya Nand stands corroborated from the evidence of Dr. Amit Batra PW-3 who found as many as 10 injuries on the person of the injured complainant Suresh. Thus, the medical evidence is totally in consonance with the ocular. The motive has also been set out by the complainant while deposing in court to the effect that the occurrence had taken place when the complainant had sought a return of Rs.49,500/- from Joginder. Therefore, the offence stands established

2024.PHHC.097548



CRR-4720-2015(O&M) #9#

beyond reasonable doubt.

12. Therefore, I find no reason to interfere with the well reasoned judgment of the Appellate Court and resultantly, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

July 31, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>