

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.234

CRR-3974-2018 (O&M)
Date of decision:12.02.2024

Raju...Petitioner
Versus
State of Haryana

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr.S.K.Panwar, Advocate for the petitioner.
Mrs. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present revision petition against the judgment dated 16.11.2018 passed by the Sessions Judge, Palwal, whereby the appeal filed by the petitioner has been dismissed, upholding the judgment of conviction and order of sentence dated 15.11.2017 passed by the Judicial Magistrate 1st Class, Palwal, vide which the petitioner has been convicted and sentenced as under:-

Under Section	Sentence	In default of payment of fine
323 IPC	RI for six months & fine Rs.1000/-	SI for 15 days
325 IPC	RI for two years & fine Rs.1000/-	SI for 2 months

2. The FIR in the present case was got registered by Sunil Kumar (complainant) by stating that at about 08.30/09.00 PM on 15.09.2013, he was going towards Palwal after crossing Aligarh bridge Railway Crossing for getting his mobile phone recharged and on the way his relative Raju (petitioner) met him. Raju asked Sunil where he was going and on this, Sunil told Raju that he was going to get his mobile phone recharged. The petitioner (Raju) abused him that why he was not taking his wife with him and on this, the complainant replied that it was his personal matter. Thereafter, petitioner-Raju inflicted lathi blow which hit on his head. He also dealt two blows, which hit on his left hand and another blow on his right big toe. On suffering the injuries, the petitioner (Raju) made hue and cry and then his friend Mukesh reached at the spot. On seeing, Mukesh, the petitioner fled away from the spot and the complainant was shifted to the hospital for treatment by Mukesh.

3. After presentation of the final report, charges for the offence under Section 323/325 IPC were ordered to be framed against the petitioner, to which, he pleaded not guilty and claimed trial.

4. In order to prove the charges against the petitioner, the prosecution had examined eight witnesses, namely, Dr. Arindam Ghosh as PW-1; Constable Ajim Khan as PW-2; Dr. Sachhidanand Purkit as PW-3; Dr. Naveen Aggarwal as PW-4; DSP Om Parkash as PW-5; ASI Abhey Pal as PW-6; Mukesh as PW-7 and Sunil as PW-8.

5. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded and he claimed his false implication. However, he did not lead any evidence in his defence.

6. After appreciating the evidence on record, the trial Court vide its judgment dated 15.11.2017 came to the conclusion that the prosecution proved its case by leading cogent and convincing evidence against the petitioner and accordingly he was convicted and sentenced as noted above. Dissatisfied with the judgment of conviction and order of sentence of even date i.e. 15.11.2017 passed by the Judicial Magistrate, 1st Class, Palwal, the convict/petitioner filed his appeal, which came to be dismissed by the Sessions Judge, Palwal, vide impugned judgment dated 16.11.2018. Hence this present criminal revision petition.

7. At the very outset, learned counsel for the petitioner submits that he does not wish to challenge the conviction of the petitioner and prays that a lenient view may be taken, while awarding the sentence to the present petitioner. Even though the learned counsel has made a statement that he does not intend to challenge the conviction, still the merits of the case have been examined in the light of the evidence led by the parties.

8. On the other hand, learned State counsel submitted that the trial Court has rightly convicted the petitioner on the basis of evidence led by the prosecution. He prays for dismissal of the present petitioner.

9. I have heard the learned counsel for the parties and perused the case file minutely.

10. From the perusal of the case file, PW-8 Sunil (complainant) was the most material witness, who reiterated the allegations levelled by him in the FIR against the accused/petitioner. His testimony was corroborated by the statement of Mukesh (PW-7), who was also an eye witness of the case.

11. Further, PW-1 Dr. Arindam Ghosh, has proved his affidavit as Ex.PW1/A and the MLR of the complainant. He found the following injuries found on the person of the complainant:-

- (i) A wound over skull longitudinally, edges irregular with diffused bleeding fresh, size 15 cms x 2.8 cms x 0.5 cms, NCCT Head was advised;
- (ii) A swelling with buldge over left forearm and arm, weapon used was blunt, X-ray was advised;
- (iii) A swelling over right leg foot and toe and abrasion, X-ray of right leg was advised;

12. PW-3 Dr. Sachhidanad Purkit proved his affidavit as Ex.PW3/A and the NCCT Scan of Brain of the complainant as Ex.PW3/B and opined as follows:-

- (i) Calcified granuloma at right parietal region;
- (ii) No bone injury;
- (iii) Extra cranial soft tissue edema at left frontal region.

13. PW-4 Dr. Naveen Aggarwal proved his affidavit as Ex.PW4/A, the X-ray Report as Ex.PW4/B and X-ray Film as Ex.PW4/C. He found following injury on the complainant:-

- (i) Fracture of Left Radius on the forearm.

14. The trial Court held that there was no substantial cross-examination of these witnesses. Thus, the prosecution established that on 15.09.2013 the complainant Sunil was found to have injuries as mentioned in the MLR on his person.

15. The prosecution also examined PW-6 ASI Abhaypal, who proved Ex.PW6/A DD Entry No.31, Ex.PW6/B Police Proceedings,

Ex.PW6/C Police Proceedings, Ex.PW6/D FIR, Ex.PW6/E FIR Endorsement, Ex.PW6/F Site Plan, Ex.PW6/G Application dated 11.11.2013 for obtaining doctor's consent. He fully corroborated the entire prosecution version. During his cross-examination, he deposed that he did not receive any doctor's ruqa in the present case and he received the complainant's MLR after 18-20 days. He also deposed that only Ct. Manoj accompanied him to the spot and the complainant did not accompany him there.

16. From the perusal of above referred evidence, it is apparent that the prosecution has been able to prove the guilt against the present petitioner. No doubt, PW-8 Sunil Kumar (complainant) was an injured/interested witness of the present case. However, the petitioner has not been able to shatter his testimony in any manner. The statement of PW-8 was supported by the testimony of Mukesh (PW-7) and this Court does not find any ground to disbelieve the testimony of these two witnesses. Even the testimonies of the injured witness has been duly corroborated by the statements of PW-1 Dr. Arindam Ghosh, PW-3 Dr. Sachhidanad Purkit and PW-4 Dr. Naveen Aggarwal. In fact, it was duly proved that the complainant had suffered three injuries on his person and Dr. Naveen Aggarwal, PW-4 proved the X-ray report of the injured, which clearly proved that the injured had suffered the fracture of left radius on the left forearm. Thus, there is no infirmity, irregularity and perversity in the impugned judgments of conviction passed by both the courts below.

17. Now adverting to the order on quantum of sentence, admittedly, the occurrence in the present case had taken place on 15.09.2013. During the course of hearing, the custody certificate has been filed by the learned State

and 24 days of sentence out of total sentence of 2 years and he is the first offender. Apart from that, the present petitioner has four children and is the sole bread earner of the family. Further, he has been facing the agony of trial/appeal for the last more than 10 years and no purpose would be served by sending him behind bars, at this stage. Thus, in view of the facts and circumstances of the case, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

18. Keeping in view the above discussion, the judgments of conviction passed by the courts below are upheld, however the order of sentence dated 15.11.2017 is modified to the extent that the substantive sentence of imprisonment awarded by the courts below is reduced to the period already undergone by the petitioner. Further, the amount of fine is enhanced to Rs.50,000/-, out of which, Rs.25,000/- shall be deposited by the petitioner with Punjab and Haryana High Court Bar Clerks' Association and the remaining amount of Rs.25,000/- shall be deposited with the trial Court within a period of 03 months from today, which shall be paid to the injured/complainant as compensation; failing which, the present appeal shall be deemed to be dismissed.

19. With the above modification, the present appeal stands disposed of, in the above terms. Pending application(s), if any, shall also stand disposed of, accordingly.

(N.S. SHEKHAWAT)
JUDGE

12.02.2024
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO