

**CRR-2333-2007(O&M)****1****201 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****Date of Decision: 02.05.2025****CRR-2333-2007(O&M)****Banarsi and Another**

...Petitioners

Versus

State of Haryana

...Respondent

CRR-505-2008(O&M)**Baljit**

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Abhimanyu Batra, Advocate
for the petitioner No.2 in CRR-2333-2007

Mr. Vikram Singh, Advocate
for the petitioner in CRR-505-2008

Mr. Vikas Bhardwaj, AAG, Haryana.

Harpreet Singh Brar, J. (Oral)

1. This order will dispose of above-said two revision petitions as both of them have arisen out of common judgment dated 16.11.2007 and order of sentence dated 19.11.2007 passed by learned Appellate Court. Brief facts of the case are taken from CRR-2333-2007.

2. The revision petition is preferred against judgment dated 16.11.2007 passed by learned Additional Sessions Judge, Jind whereby appeal filed against judgment of acquittal dated 06.09.2006 passed by learned Sub Division Judicial Magistrate, Safidon(Jind) in FIR No.89 dated 01.03.1999 registered under Sections 323, 324, 148, 149, 326 and 506 of the Indian Penal



Code, 1860 (hereinafter IPC) at Police Station Safidon, was allowed and vide order dated 19.11.2007, the petitioners were sentence as under:

Offence under Section(s)	Sentence
324 r/w 34 IPC	RI for six months and a fine of Rs.500/- each and in default of pay-ment of fine to further undergo RI for one month
326 r/w 34 IPC	RI for one year and a fine of Rs.1,000/- each and in default of payment of fine to further undergo RI for 02 months.
Both the sentences were ordered to run concurrently.	

3. Learned counsel for the petitioners, at the outset, submits that the petitioner No.1, namely Banarsi, has died during the pendency of present revision petition and as such, the present revision petition maybe abated qua him.

4. In view of the above, the proceedings qua petitioner No.1, namely Banarsi stands abated.

5. Succinctly, the facts, as alleged, are that on 28.02.1999, a medical ruqa was received from Community Health Centre at Police Station, Safidon regarding the admission of complainant, who had sustained injuries. Acting upon this information, Head Constable went there and recorded the statement of the complainant in which he stated that he had a pending property dispute with one Jogi Ram, and complainant had secured a stay order in the matter. On 28.02.1999, while he was feeding his cattle on the said plot, the petitioners and co-accused, who all are sons of Jogi Ram, came to the spot with a common intention to attack him for securing the stay. It was alleged that petitioner No.1 caught hold of him, while other co-accused gave him slaps and



fist blows on his waist and face. Further, petitioner No.2 inflicted a *gandasi* blow on the little finger of complainant's hand, resulting in its amputation. The assault was witnessed by Rohtash and Kashmir, both residents of the same village, who intervened to rescue the complainant. Upon hearing the commotion, other villagers arrived at the scene, leading to the petitioners fleeing. Thereafter, complainant was admitted to the hospital. On the basis of the said statement, a formal FIR(supra) was registered.

6. After assessing all material on record, the learned Trial Court acquitted the petitioners vide judgment dated 06.09.2006. Aggrieved by the same, the respondent preferred an appeal before the learned Lower Appellate Court which was allowed and petitioners were convicted for the offences punishable under Sections 324 and 326 read with section 34 of IPC vide judgment dated 16.11.2007 and sentenced vide order dated 19.11.2007 as mentioned above.

7. Learned counsel for the petitioners in CRR-2333-2007, *inter alia*, contends that the learned trial court had rightly appreciated the prosecution's case and rendered a well-reasoned judgment acquitting the petitioners. However, the learned lower appellate court, without proper appreciation of evidence and due application of judicial mind, erred in reversing the said acquittal and convicting the petitioners. It is submitted that the Court below misread the deposition of PW-1-Dr. A.K. Suri, particularly ignoring the crucial aspect of his cross-examination wherein it was brought out that had the complainant been struck with a sharp-edged *gandasi*, the injury would likely have extended beyond a single finger and he clearly deposed that the complainant was conscious and in a fair condition at the time of medical examination. Further, PW-2- ASI Som Dutt, a public official, stated that there



was information that the complainant had allegedly cut his own finger and falsely implicated the petitioners, but no action could be taken due to lack of documentary evidence.

8. It is urged by the learned counsel that the prosecution failed to produce any blood-stained clothes or blood samples either collected by the Investigating Officer or submitted by the complainant, thereby raising serious doubts regarding the genuineness of the alleged incident. Moreover, the complainant himself admitted during cross-examination that the injury on his left-hand finger was an old one, sustained nearly 30 years ago while operating a kohlu, and that a deformity already existed. Lastly, it is contended that the prosecution deliberately withheld the examination of an independent eye-witness, namely Kashmir, whose testimony could have been material.

9. Learned counsel for the petitioner in CRR-505-2008, *inter alia*, contends that the conviction and sentence awarded to the respondents No.2 and 4 should be enhanced and all the respondents are liable to be convicted under Sections 323, 324, 148, 149, 326 and 506 of IPC. Further, the learned Lower Appellate Court has totally ignored the statement given by PW-1-Dr. A.K. Suri, PW-2- ASI Som Dutt and PW-4-petitioner.

10. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner and submits that he has been convicted by the learned Lower Appellate Court on correct appreciation of the facts and the law, as such interference by this Court is not warranted.

11. Having heard learned counsel for the parties and after carefully examining the evidence led by the prosecution with their able assistance, this Court finds that the prosecution's case hinges on the allegation that petitioner no.2 inflicted a *gandasi* blow on the complainant's left hand, severing his little



finger. However, upon a comprehensive appraisal of the evidence, this Court finds that the prosecution has failed to establish the charge beyond reasonable doubt. In cross-examination, PW-1-Dr. A.K. Suri, opined that a *gandasi* blow to the little finger would ordinarily result in injuries to adjoining fingers or other parts of the hand, which were notably absent. He further stated that the complainant was conscious and in fair general condition, thereby undermining the complainant's claim of a sudden and grievous assault. Further, the testimony of PW-2- Investigating Officer, casts serious doubt on the origin of the injury. In cross-examination, he stated that there was information suggesting the complainant may have self-inflicted the injury, though no action was taken due to lack of documentary proof. Equally significant is the failure of the investigating agency to collect even basic forensic evidence. No blood-stained clothes were seized from the complainant, nor were blood samples produced before the medical officer.

12. Furthermore, the complainant admitted during cross-examination that he had sustained an old injury to his left-hand fingers nearly 30 years ago while operating a *kohlu*, resulting in a permanent deformity, this previous injury offers a plausible alternative explanation. Moreover, prosecution has also failed to examine Kashmir Singh, an independent eyewitness named in the FIR(supra), without assigning any justification. Lastly, the FIR(supra) was lodged after an unexplained delay of one day. These material contradictions further weaken the prosecution's case.

13. It is pertinent to observe that the learned Trial Court, having had the benefit of examining the evidence first-hand, returned a finding of acquittal in favor of the petitioners. A two Judge Bench of the Hon'ble Supreme Court in



Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415, speaking through Justice C.K. Thakker, has observed the following:

*“37-38. In our view, if in the light of above circumstances, the trial Court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of appellate Court are as wide as that of the trial Court and it can review, re-appreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. **But it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.** In this case, a possible view on the evidence of prosecution had been taken by the trial Court, which ought not to have been disturbed by the appellate Court.”*

14. 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. Relevance in same regard can also be placed on **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**. A Division bench of this Court in the judgment of **State of Haryana Vs. Ankit** and others passed in 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.

15. In view of the above discussion, the revision petition in CRR-505-2008 stands dismissed while the revision petition in CRR-2333-2007 stands allowed and the impugned judgment of conviction dated 16.11.2007 and order of sentence dated 19.11.2007, passed by the learned Additional Sessions Judge, Jind, are set aside. Hence, the petitioner No.2, namely Roshan Lal, is acquitted of the charges framed against him. His bail/surety bonds stand discharged.

16. All pending application(s), if any, are disposed of accordingly.

02.05.2025
sonia

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No