



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

111

CRR-1636-2021 (O&M)
Date of decision: 05.02.2026

BIJENDER AND ANR

...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. B.S. Dhankar, Advocate for the petitioners.
Mr. Praveen Kumar, DAG Haryana.
Mr. R.S. Dhillon, Advocate for respondents No.2 to 5.

YASHVIR SINGH RATHOR. J.(Oral)

1. This revision petition is directed against the judgment dated 07.10.2021 passed by the Court of Additional Sessions Judge, Sonipat, vide which the appeal instituted by the victims against the acquittal of the petitioners/accused for the offence under Section 325 IPC while convicting them for the offence under Sections 323 and 506 of IPC vide judgment dated 06.11.2017 passed by the Trial Court, has been allowed and the matter has been remanded to the Trial Court for a decision afresh.

2. Feeling aggrieved, accused/petitioners have filed the present revision petition.

3. I have heard learned counsel for the parties and have gone through the material placed on the record.



4. Brief facts of the prosecution are that on 24.01.2014, at about 11:30 A.M., information was received at Police Post from P.S. Ganaur that Balbir, Angoori, Dharambir, Sombir have been brought to Khanpur Kalan from CHC Ganaur due to injuries sustained in the quarrel. Thereafter, Investigating Officer along with other officials reached at Khanpur Kalan and after obtaining the opinion of the doctor, MLRs of the injured, the offence punishable under Sections 325, 506 IPC was found to be made out. Balbir son of Sarup got recorded his statement stating that he is Numberdar of village Mehmoodpur Majra and their house is situated in one gali in which Randhir son of Lakhmi is also living. On 23.01.2014 at about 6.00 P.M., Randhir son of Lakhmi started fixing a shutter at his house, but upon objection by the complainant, he threatened to kill him and started abusing him. Thereafter, Randhir, Ramesh, Jagmender and Ram Kumar sons of Lakhmi caught hold of him and starting beating him. On hearing noises, Randhir's wife Angoori, Sitender, Bijender sons of Randhir, Deepak, Rinku sons of Raghbir and Muli wife of Raghbir and Bitu wife of Ram Kumar, armed with lathis/dandas also caused and started beating him and his wife. His sons Dharambir and Sombir intervened, but they were also beaten, as a result of which the complainant suffered a fracture in his hand and his sons also sustained injuries. The complainant sought action against the accused. On the basis of this complaint, FIR No.21 dated 24.01.2014 was lodged and investigation was started. On conclusion of the investigation, accused were challaned and they were charge-sheeted by the court for the offences punishable under Sections 148, 323, 325, 506 read with Section 149 IPC.

The learned trial court after hearing the parties and after evaluating the evidence, convicted the accused only for the offences punishable under



Sections 323, 506 IPC and acquitted them of the charges under Sections 148, 325 read with Section 149 IPC and ordered release of all the accused persons on probation of good conduct after ordering them to pay the compensation as reflected in the order of quantum of sentence vide judgment dated 06.11.2017.

5. Feeling aggrieved, the victims preferred an appeal under Section 372 of Criminal Procedure Code (for short 'Cr.P.C.') and after hearing the parties, the learned Appellate Court set aside the judgment dated 06.11.2017 and remanded the matter with the following observations:-

“9. Ex. PW-8/C and Ex.PW-8/D are the copy of bed head ticket of Angoori and Balbir wherein the fractures have been shown wherein HC Malik, Medical record officer had sent the report to Subhash Chander. ASI but the Investigating Officer never tried to find out the doctor who had conducted the x-ray of these two injured nor arrayed the doctor as a witness who had recorded that there were fractures to Angoori and Balbir. These documents though discussed by the learned Sub Divisional Judicial Magistrate, Ganaur but he had mentioned that the prosecution has failed to prove the charge under Section 325 IPC against the accused as the injuries suffered by Angoori Devi have not proved on record by the doctor who treated or conducted the x-ray of said injuries. In order to prove the charge under Section 325 IPC it was mandatory to prove the injuries suffered by Smt.Angoori Devi, however, the prosecution has proved the treatment record, thus the prosecution has failed to prove the charge under Section 325 IPC against the accused.

10. The learned Sub Divisional Judicial Magistrate, Ganaur should have asked the public prosecutor to prove the injuries on the person of Balbir and that of Angoori, the treatment record of both the injured showing fracture has been exhibited by the prosecution but could not be looked into evidence by the learned Judge in the absence of the doctor who treated the injured or who had conducted the x-ray



examination of the injured. Had the doctors been examined the charge under Section 325 IPC could have been proved in an easy manner by the prosecution. If there is a mistake or an error apparent on the face of record that cannot be lost sight of by the court.

11. The complainant is not to suffer due to the fault on the part of the prosecution or due to fault on the part of the investigating agency. Therefore, the impugned judgment of conviction and order of sentence have become illegal and perverse and are set aside. Therefore, the instant appeal stands allowed.

12. The learned trial court would examine the doctors who treated the injured Angoori and Balbir and who conducted the x-ray examination of both the injured by asking the Investigating Officer to trace out the doctors who could not be examined before the learned trial court. Therefore, the learned trial court would decide the matter afresh after examining the treating doctors and x-ray doctors of Angoori Devi and Balbir

13. The learned trial court would decide the matter within three months from the date of receipt of this judgment. Parties are directed to appear before the learned trial court on 18.10.2021 sharp at 10.00 A.M.

Lower Court record along with a copy of this judgment be sent back for information and necessary compliance. The appeal file be consigned to the records.”

6. A perusal of the judgment passed by the Trial Court shows that the accused were held guilty and convicted for the offences under Sections 323 and 506 of IPC, and they were acquitted of the charge under Section 325 of IPC on the ground that the doctor who had radiologically examined the victim and declared the injuries to be grievous in nature had not been cited as a prosecution witness and was not examined by the prosecution. Learned Appellate Court observed that



the Investigating Officer never tried to find out the doctor who had conducted the x-ray examination of two of the injured, namely, Angoori and Balbir, who had suffered fractures and he was not cited as a prosecution witness and in order to prove the charge under Section 325 IPC, it was mandatory to examine the radiologist to prove the x-ray report. It was also observed that complainant cannot be made to suffer due to fault on the part of the Investigating Officer and the judgment under challenge was set aside and the matter was remanded back to Trial Court to decide the same afresh.

7. In my opinion, no illegality or infirmity has been committed by the learned Appellate Court while setting aside the judgment passed by the Trial Court and in remanding the matter for a decision afresh. Once victims had suffered fractures and had been radiologically examined, it was the bounden duty of the Investigating Officer to have placed on file the x-ray reports and films and to cite the radiologist and the doctor who had declared the injuries to be grievous as prosecution witness. By not citing him as a witness, the victims have been deprived of a fair trial as it is only the radiologist who could have proved that the victims had suffered fractures in the incident in question. Even the Trial Court could have summoned the Radiologist suo moto in exercise of powers conferred under Section 311 Cr.P.C. and should not have remained a mute spectator in order to ensure a fair trial to the victim as well. The concept of a fair trial has now evolved from focusing solely on the rights of the accused to a more balanced approach that includes the rights and dignity of the victim and to ensure that the truth is ascertained without bias and prejudice against any of the parties. It is also well settled that denial of a fair trial is as much injustice to the accused as is to the victim and the society. The learned Appellate Court thus taking into consideration



the fact that opportunity of fair trial has not been given to the victims has set aside the judgment of acquittal and has remanded the matter back to the Trial Court for a decision afresh after examination of the Radiologist. The impugned judgment thus does not suffer from any material illegality or infirmity and no interference in the same is called for.

8. As a result of aforesaid discussion, there is no merit in the revision petition and the same is ordered to be dismissed. However, it is made clear that only two opportunities shall be granted to the prosecution to examine the Radiologist.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.02.2026
Vishal Vardhan

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable.	:	Yes/No