

(2008) 07 P&H CK 0139

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Rev. No. 861 of 1999

Babu Lal and others.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 11, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357
- Penal Code, 1860 (IPC) - Section 324, 326, 34

Citation: (2009) 2 RCR(Criminal) 753**Hon'ble Judges:** K.C. Puri, J**Bench:** Single Bench**Advocate:** Sandeep Mann, for the Appellant; Kartar Singh, Assistant Advocate General, Haryana, for the Respondent

Judgement

K.C. Puri, J.

This is a revision petition directed by the accused against the judgment dated 22.7.1999 passed by Dr. S.K. Kapoor, Additional Sessions Judge, Rewari, vide which appeal preferred by the accused against the judgment dated 31.7.1997 passed by Sh. A.K. Singh Panwar, HCS, Additional Chief Judicial Magistrate, Rewari, has been dismissed.

2. Briefly stated, the prosecution case, as gathered from the record, is that in the morning of 2.10.1990, at about 9.00 A.M., complainant Mangtu Ram's children has some altercation with his mother's sister Murti Devi, while taking water from a public tap in village Mirpur, District Rewari. Mangtu Ram had scolded his children and pacified his aunt. He had gone to the fields and was returning to home in the evening when accused persons, namely, Babu Lal and Satbir Singh, both armed with Jellies and Ved Parkash, armed with lathi came near a sand-dune accompanied by his wife Krishana and son Bhagirath. The accused proclaimed that they would teach a lesson to the complainant for having picked up a quarrel with Murti Devi.

Thereupon, Babu Lal accused gave a blow with jelly on the right elbow and Satbir accused inflicted a blow with jelly on the left leg of the complainant. Ved Parkash accused had allegedly inflicted injury on the left wrist and another on the back of the complainant with lathi. On hearing the noise, complainant's wife Krishana and son Bhagirath who were moving ahead of the complainant, rushed towards the accused, who however ran away from the place of occurrence with their respective weapons. The complainant was taken to the General Hospital, Rewari for treatment, where he was medico-legally examined. On 4.10.1990 after obtaining the legal opinion of doctor, Head Constable Sunderbhan recorded the statement of complainant Mangtu Ram, which formed the basis of the FIR.

3. After completion of the investigation, the challan was presented against the accused. The accused were charged under Sections 324/326 read with Section 34 IPC on 24.9.1991 by the trial Court. The accused pleaded not guilty and claimed trial.

4. The prosecution produced 11 witnesses besides placing reliance on certain documents.

5. All the accused were examined u/s 313 Cr.P.C. and they pleaded false implication.

6. The learned trial Court after hearing both the sides and going through the record, convicted the accused. The accused were sentenced to undergo six months rigorous imprisonment u/s 324 IPC and to pay fine of Rs. 250/- each and in default of payment of fine to undergo simple imprisonment of 15 days. The accused were convicted for offence u/s 326 IPC to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/- each and in default of payment of fine to undergo simple imprisonment for 30 days. Both the sentences were ordered to run concurrently.

7. Feeling dissatisfied with the abovesaid judgment, the accused preferred an appeal but the same was dismissed by Dr. S.K. Kapoor, Additional Sessions Judge, Rewari vide judgment dated 22.7.1999, referred to above.

8. Still dissatisfied with the abovesaid judgments, the accused petitioners have preferred the present revision petition for their acquittal.

9. Learned counsel for the petitioners has submitted that petitioners have been convicted u/s 324 and 326 IPC. So far as the ingredients of offence u/s 326 IPC are concerned, the same are not made out from the evidence on the file. The original X-Ray has not been produced on the file. The doctor who has radiologically examined the complainant, has not been examined by the prosecution. It is submitted that in the absence of proving the fracture, the ingredients of offence u/s 326 IPC are not made out. To support this contention, learned counsel for the petitioners has relied upon the authorities reported as *Kashmir Singh v. Sardul Singh and others*, 2003 (3) RCR (Criminal) 658, *Rajesh @ Vimal Kumar and another v. State (Delhi Admn.)*, 1995 (2) RCR (Crl.) 140 (Delhi), *Harmesh Lal v. State of Punjab*,

10. In reply to the abovesaid submission, learned Assistant Advocate General, Haryana, has submitted that ingredients of offence u/s 326 are also made out against the accused in view of the statement made by Dr. Arun Yadav PW-3.

11. I have carefully considered the submissions made by both the sides and have gone through the record.

12. The X-Ray film has not been placed on the file. PW-4 A.R. Matheto, Record Keeper, has stated that X-Ray film and X-Ray report was given to the police department. The X-Ray film has not seen the day of the light for the reasons best known to the prosecution. X-Ray film was the best evidence to adjudge whether there was any fracture in respect of injury of the complainant or not. The doctor who has conducted the X-Ray, who was primary evidence to depose about the fracture, has not been examined by the prosecution. So, the mere statement of PW-3 Dr. Arun Yadav, in the absence of X-Ray film declaring the injury as grievous cannot be relied upon. So, I have not hesitation in holding that prosecution has failed to prove ingredients of offence u/s 326 IPC against the accused.

13. Learned counsel for the accused has further submitted that occurrence relates to the year 1990, i.e. about 18 years back. The accused have already undergone imprisonment of 7 days during the investigation and about 9 days after their conviction. The prayer has been made to grant relief of probation and in the alternative allow them to suffer the sentence already undergone by them.

14. The prayer has been opposed by the learned State counsel.

15. I have carefully considered the said submission and have also gone through the record of the case.

16. The occurrence relates to the year 1990 i.e. more than 18 years back. The accused have already undergone the sentence of more than 15 days, as per statement made by counsel for the petitioners. So, in these circumstances, the ends of justice would be met if the sentence of the accused is reduced to the already undergone but the sentence of fine is enhanced to Rs. 5,000/- to each of the petitioner. The said amount on realisation is ordered to be paid to the complainant u/s 357 Cr.P.C. as compensation. In default of payment of fine each of the accused shall undergo rigorous imprisonment for six months.

17. Consequently, the revision stands partially accepted. The accused stand acquitted u/s 326 IPC. However, their conviction u/s 324 IPC stands maintained. The sentence is substituted to the imprisonment already undergone and for payment of fine of Rs. 5,000/- by each accused and in default of payment of fine the petitioners shall undergo imprisonment for six months. The said amount of fine on realisation shall be paid to the complainant as compensation u/s 357 Code of Cr.P.C. and in case of his death, to his legal representatives. The petitioners shall be at liberty to

adjust the amount of fine deposited by them in respect of offence under Sections 326 and 324 IPC in the trial Court, towards the fine narrated above.

Order accordingly.