

Hariman Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-09-2009

Reported in : RLW2009(4)Raj3681

Judge : Mahesh Chandra Sharma, J.

Appellant : Hariman

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

Mahesh Chandra Sharma, J.

1. This revision petition has been filed by the petitioner Hariman, against the order dated January 24, 2002 of Additional Sessions Judge (Fast Track) Gangapur City in Sessions Case No. 88 of 2001 whereby accused respondent Nemi Lal @ Nemichand was acquitted from offence under Sections 397, 394, 325, 324/34 and 323/34 1PC. And Section 145 of Indian Railways Act, 1989 and accused-respondent Lohare Lal was acquitted from the offence under Sections 397, 394, 325, 324/34 and 323/34 IPC and Section 145 of the Indian Railways Act, 1989.,

2. Brief facts of the case are that complainant petitioner Hariman got his parcha bayan (Ex.P/1) recorded in the Hospital at Gangapur where he was undergoing

treatment. In the said parcha bayan it was, inter alia stated that on Feb. 8, 2001 at about 1.30 p.m. the informant had come from Gangapur City after selling milk. As soon as he alighted from the train at the Railway Platform of village Khandeep, accused-respondents Nemi Lal and Lohare Lal surrounded him and initiated an assault on his person with an axe and a lathi. First of all accused Lohare Lal dealt an axe blow on his head, thereafter accused Nemi Lal gave a lathi blow on his thigh. Then another blow with axe was given by accused Lohare on his right elbow. Subsequently a lathi blow was given on the teeth by Nemi Chand. On hearing cries, Rekha Ram, Ram Kishore, Ram Avtar came to the spot, who saved the informant. At the time of leaving the accused-respondents took away Rs. 2150/- from the pocket of the informant. On the basis of the above mentioned parcha bayan formal F.I.R. No. 22 of 2001 was registered at Police Station GRP Gangapur City for offences punishable under Sections 145 Indian Railways Act and Sections 323 and 379 IPC. During investigation statements of various witnesses were recorded under Section 161 Cr.P.C. The site was inspected, where the incident had taken place and a site plan was prepared. Injury report as also X-ray report of injured Hariman was obtained. The accused respondents were arrested and recovery of weapons were effected at their instance. Blood stained clothes were also seized. After doing the needful, the investigating agency filed charge-sheet for offences punishable under Sections 323, 324, 325, 394, 397 IPC and Section 145 Indian Railways Act, 1989. After hearing arguments charges were framed against accused-respondents. Nemi Lal accused was charged for offences under Sections 397, 394, 325, 324/34 and 323/34 IPC and Section 145 Indian Railways Act. Accused Lohare Lal was charged for the offences under Sections 397, 394, 325, 324/34 and 323/34 IPC and Section 145 Indian Railways Act. The accused denied the charges and claimed to be tried. During course of trial the prosecution examined 15 witnesses and got 21 documents exhibited. In defence one witnesses was examined and one document got exhibited. After hearing arguments the trial Court vide judgment dated January 24, 2002 acquitted both the accused-respondents of all the charges. Against this judgment of acquittal the complainant filed this revision petition.

3. The learned Counsel for the petitioner argued that the medical evidence available on record virtually clinches the issue. The ocular testimony of the

complainant petitioner is duly corroborated from the medical evidence available on record. The trial Court on the contrary arrived at erroneous conclusion that the ocular evidence of the complainant petitioner stands in conflict with the medical evidence. The complainant has categorically stated that he was assaulted with an axe as also lathi. From the medical evidence available on record it is squarely reflected that the complainant suffered as many as 12 injuries on his body including sharp edged weapon as also blunt weapon injuries. There is sufficient trustworthy evidence available on record to show that the injured was assaulted and thereafter an amount of Rs. 2150/- was taken away from his pocket. It is surprising that the trial Court did not find an offence under Sections 394 and 397 IPC committed by the accused-respondents. As per the provisions of Section 145 of the Railways Act, from the evidence available on record, the ingredients of the said offence were wholly gratified. Thus the order acquitting the accused non-petitioners is liable to be set aside.

4. The learned Counsel for the accused non-petitioners and the learned Public Prosecutor on the other hand opposed the submissions of learned Counsel for the petitioner and stated that the Court below after considering all the evidence, documents and record passed the order of acquittal. There is no illegality or infirmity in the order passed by the Court below.

5. I have heard the learned Counsel for the parties and gone through the entire record. The judgment passed by the Court below is perfectly according to law and there is no illegality or infirmity in the same. I have gone through the judgment passed by the trial Court. The trial Court did not believe the injuries inflicted by the accused-respondents while all of them were traveling in the same train in which the complainant was also traveling after selling milk. The trial Court discarded the prosecution case on the ground that one cannot travel in train having kulhadi with him. In sum and substance the trial Court disbelieve the statements of the witnesses in giving blows by lathi and kulhadi. Thus the order passed by the trial court cannot be said to be illegal or perverse. The Court's attention was drawn on the judgment of the Hon'ble Supreme Court in *Umrao v. State of Haryana and Ors.* : SCC 2006 Vol. 10 page 136 in which their Lordships of the Supreme Court has observed in para 26 that 'it is now well settled that if two views are possible, the

appellate Court should not interfere with the judgment of acquittal passed by the court below.'

6. Thus the order passed by the Court below does not call for any interference in revisional jurisdiction and the revision petition stands dismissed.

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