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(2017) 08 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : 34564-2016

Banwari Lal — APPELLANT

Vs

State of Haryana and others — RESPONDENT

Date of Decision : 17-08-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 323, Section 506 - Acts done by several persons in furtherance of common intention - Punishment for voluntarily causing hurt -

Citation : (2017) 08 P&H CK 0007

Hon'ble Judges : Arvind Singh Sangwan

Bench : SINGLE BENCH

Advocate : S.K.Agnihotri, ?Naveen Sheoran

Final Decision : Dismissed

Judgement

1. Vide this judgment, the above mentioned two petitions, would be disposed of as the petitioner-Banwari Lal has challenged the judgment and order dated 15.9.2014/16.9.2014 passed by the trial Court whereby all the four accused were convicted and sentenced and the judgment dated 26.4.2016 passed by the appellate Court, whereby the appeal filed by the petitioner for enchancement of sentence, was dismissed.

2. The trial Court, vide judgment of conviction dated 15.9.2014 held the respondents-accused- Lal Chand, Satish Kumar, Balram, Dhanwati guilty of commission of offences punishable under Sections 323, 506 of the Indian Penal Code (` IPC '' for short) and the other two accused, namely, Sangeeta and Sonu were acquitted and vide order of sentence dated

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16.9.2014, the aforesaid four accused were sentenced to pay fine of `1000/- each for commission of offence punishable under Section 323 IPC and fine of `2000/- each for commission of offence punishable under Section 506 IPC and in default of payment of fine, accused were liable to undergo simple imprisonment for a period of one month each for commission of offence punishable under Section 323 / 34 IPC.

3. Petitioner-Banwari Lal filed two petitions before the appellate Court i.e. Criminal Appeal No.143 challenging the judgment of acquittal of accused-Sangeeta and Sonu and Criminal Revision No. 100 praying for enhancement of sentence of all the accused persons. The appellate Court, vide its judgment dated 26.4.2016, dismissed the appeal as well as the revision. Thereafter, petitioner has filed present CRM-M-34564-2017 challenging the order passed by the appellate Court in Crl Appeal No. 143 and has also filed CRR No.3072 of 2016 challenging the dismissal of Criminal Revision No.143.

4. It is submitted on behalf of the petitioner that the Courts below, while acquitting accused- Sonu and Sangeeta has not appreciated that the commission of offence under Sections 147, 148 and 149 are made out as from deposition of PW1/PW2 and their presence and active participation is proved. It is also submitted that PW1 Banwari Lal as well as PW2 Smt Krishna have attributed specific role to accused Lal Chand, Satish Balram and Dhanwanti. The oral version of the complainant was corroborated with the medical evidence i.e. MLR of injured-Deepak,Banwari Lal and Smt.Krishna Exhibits PW3/A2, PW3/A3 and PW3/A4 which were proved by Doctor Sunita Rathi. It is, thus, submitted that the prosecution has been able to prove the charges against all the accused persons including Sonu and Sangeeta and, therefore, their acquittal is not justified in the eyes of law. It is further submitted that the sentence awarded to the accused Lal Chand, Satish, Balram and Dhanwati is on lower side as the prosecution has proved that they are guilty of commission

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of offence under Sections 323 and 506 IPC. Learned counsel has further argued that even the appellate Court has also not considered the oral as well as the medical evidence on record.

5. I have heard the counsel for the petitioner and the learned counsel for the State.

6. So far the submissions of the petitioner against Sonu and Sangeeta is concerned, the same is devoid of any merit as it has come in the statement of PW1 Banwari Lal, which was made to the Police that he did not mention the name of Sonu and Sangeeta as he could not identify them as they carrying a veil. Further as per the deposition of PW1/PW2, no specific injuries have been attributed to these ladies- Sonu and Sangeeta and,therefore, the Courts below have rightly acquitted them of the charges as neither their identity was proved in the Court nor any attribution causing injury to the complainant party is proved on record.

7. The next submission that the sentence awarded to the other accused, namely Lal Chand, Balram, Satish and Dhanwanti is on lower side as the trial Court has not imposed fine on them and has not awarded any sentence is also without merit.

8. Since these four accused were convicted for offence under Section 323 IPC for causing simple injuries to the complainant party, trial Court ordered payment of fine vide its judgment dated 16.9.2014. It is not disputed by the learned counsel for the petitioner that after passing of the judgment/order of conviction by the trial Court, approximately, a period of three years has already lapsed and these persons have not repeated any such incident or caused any threat to the petitioner. The appellate Court has also appreciated the entire prosecution evidence and has recorded a finding of fact that since these persons are first offenders and have faced trial for six years,therefore, in cases, where there is a minimum (or not minimum) and maximum punishment is provided under the Act, the discretion of awarding the sentence lies with the Court though the same is to be exercised judicially

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and not arbitrarily after due consideration of facts and circumstances of each case.

9. Since the Courts below held that the accused persons have already faced long trial and have not repeated the offence after passing of the judgment of the trial Court, the sentence awarded to the accused is legally justified.

10. Since both the Courts below have recorded the concurrent finding that the petitioner-complainant has failed to prove his case, in view of the judgment of Hon''ble the Supreme Court in Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748, holding that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court, the impugned judgments do not call for interference. Accordingly, this revision petition is dismissed.

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