

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Revision No. 75 of 2008.

Reserved on: 16th March, 2019.

Date of Decision: 29th March, 2019.

Tek Chand

.....Petitioner.

Versus

State of H.P.

....Respondent.

Coram

**The Hon'ble Mr. Justice Sureshwar Thakur,
Judge.**

Whether approved for reporting? Yes.

For the Petitioners: Mr. N.K. Thakur, Senior
Advocate with Mr. Divya Raj
Singh, Advocate.

For the Respondent: Mr. Vikrant Chandel, Deputy
Advocate General.

Sureshwar Thakur, Judge.

The instant Criminal Revision Petition, stands directed by the petitioner/accused, against, the judgment rendered on 2.4.2008, by the learned Addl. Sessions Judge, Fast Track Court, Una, H.P., upon, Cr. Appeal No. 22/05 RBT 53/05/05, whereby, he affirmed

the judgement of conviction and sentence, as, recorded, upon, the accused/petitioners herein, by the learned trial Court.

2. The facts relevant to decide the instant case are that the complainant Vijay Kumar is a resident of Village Kotla Kalan, Tehsil and District Una, H.P. He had taken a licence for the excavation and removal of sand stone and bajari from Smoor-II quarry from the department of industries, H.P., for the period w.e.f. 24.2.1999 to 25.3.1999. Prior to this he had taken the contract of the same. He used to supply sand and bajari etc., to the people on demand. He also used to sell the same at the spot against payment of Rs.25/- per trolley and Rs.100/- per truck. On 15.3.1999 at about 7 p.m., the accused came to the Khud along with his labour in a tractor No. HPG 2124 in which he loaded the bajari from the khud and thereafter started going back. The complainant asked him to pay the fee, but he refused and went away. Thereafter on 17.3.1999 at about 11.15 a.m., the accused again came to the khud and started loading Bajari. The complainant asked him to pay the royalty amount,

upon which the accused started abusing him. In the mean time, the father of the complainant had also reached at the spot. The accused slapped the complainant and thereafter he brought a 'Kassi" from the trolley of his tractor and gave a "Kassi" blow at his mouth because of which one tooth of upper jaw was uprooted and he sustained injuries near his nose and blood started oozing out of his mouth. Thereafter, the accused ran away from the spot along with his labour. The father of the complainant brought the complainant to the hospital where he was medically examined. On receipt of information regarding the occurrence, from District Hospital, Una, the police reached at the spot and statement of complainant, EX.PW1/A was recorded under Section 154, Cr.P.C., on the basis of which FIR was registered in the police station concerned. Thereafter police carry out the investigations in the case.

3. On conclusion of the investigations, into the offences, allegedly committed by the accused, a report under Section 173 of the Code of Criminal

Procedure was prepared and filed before the learned trial Court.

4. The accused/petitioner herein stood charged by the learned trial Court for his committing offences punishable under Sections 324, 326, 379 of the IPC. In proof of the prosecution case, the prosecution examined 10 witnesses. On conclusion of recording of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure stand recorded by the learned trial Court, wherein, he claimed innocence, and, pleaded false implication in the case.

5. On an appraisal of the evidence on record, the learned trial Court, returned findings of conviction upon the accused/petitioner herein, for his, committing offences punishable under Sections 324 and 326 of the IPC, whereas, it acquitted the accused for, an offence punishable under Section 379 of the IPC. In an appeal preferred therefrom by the accused/petitioner herein, before the learned Addl. Sessions Judge concerned, the latter affirmed the apposite findings of conviction, and, sentence, as,

recorded in the judgment pronounced by the learned trial Court.

6. The the petitioner herein/accused stands aggrieved by the findings recorded by the learned Addl. Sessions Judge, Una, in, affirmation to the judgment of conviction recorded against him, by the learned trial Court. The learned counsel appearing for the petitioner herein/accused has concertedly, and, vigorously contended qua the findings of conviction, recorded by the learned Addl. Sessions Judge, Una, rather standing not based on a proper appreciation of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by him, of the material on record. Hence, he contends qua the findings of conviction warranting reversal by this Court, in, the exercise of its revisional jurisdiction, and, theirs being replaced by findings of acquittal.

7. On the other hand, the learned Deputy Advocate General has with considerable force, and, vigour, contended qua the findings of conviction recorded by the learned Addl. Sessions Judge concerned, rather standing based on a mature and

balanced appreciation by him of the evidence on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. The contents borne in the FIR, embodied in Ex.PW6/A, stand cogently proven by the victim one Vijay Kumar (PW-1), besides, by the ocular witnesses to the relevant occurrence, who respectively deposed, as PW-2, and, PW-4. All the afore witnesses in their respectively recorded testifications, (a) rendered a version bereft of any intra se contradictions, comprised in their respective examination(s)-in-chief, and, in their respective cross-examination(s), (b) and, also their respectively rendered testifications, are, bereft of any infirmity(ies), engendered by theirs respectively testifying with inter se contradiction(s). Consequently, probative vigour is to be meted to their respectively rendered ocular version(s) qua the occurrence. Even, if, the victim, and his father, hence are interested witnesses, yet, the mere factum of

theirs being interested witnesses, is, unworthy of merit, (c) given an independent witnesses to the occurrence, who stepped into the witnesses box as PW-4, hence rendering an ocular account qua the occurrence rather free, from, any stain.

10. Furthermore, the inflicting, of, blows, upon, the person of victim one Vijay Kumar, with, user, of, Khasi, Ex.P-1, recovery whereof stood effectuated under memo Ex.PW2/B, rather sequeled, the, occurrence, of, the hereinafter extracted injuries, upon, the person of the victim:-

“1. Fractured upper right lateral incisor-crown root visible socket filled with fresh blood gums lacerated.

2. Fractured enamel of upper right first premolar central incisor.

3. Fractured hard plate from upper right lateral incisor extending along mid line posteriorly to soft palate. Fracture is compound in nature (lacerated margins oozing blood.”

Initially, the victim was examined by Dr. S.K. Nanda, who stepped into the witness box as PW-3, and, has proven, MLC Ex.PW3/A, besides has proven, his, referring the victim, to, a dental surgeon. PW-10, Dr.

Vipin Chaudhary, a Dental Surgeon, also examined the victim, on his being referred, to him, by Dr. S.K. Nanda, (a) and, in his testification, he, made echoings qua the afore extracted injuries being causable, with, user, of, sharp edged weapon, borne in Ex.P-1, upon the person, of, the victim, (b) the afore rendered testification hence garners firm formadibility, given Ex.p-1, standing shown to him in court, in contemporaneity to his theretofore rendering, his testification, (c) thereupon, the deposition rendered, by Dr. S.K. Nanda, who initially examined the victim, and, his therein articulating qua the afore injury(ies), being not causable, with the user of "Khasi", upon, the person of victim, rather stands subsumed, besides loses its probative tenacity, (d) given rather his making a reference, to the dental surgeon, Dr. Vinit Chaudhary, for eliciting from him, a firm opinion, vis-a-vis, the user of Ex.P-1, by the accused, upon, the relevant portion of the body, of, the victim, hence, entailing the afore injuries, upon, his person. Consequently, the, initially recorded deposition, of Dr. S.K. Nanda, wherein, he rather overruled, the, trite

factum, of, user of Ex.P-1, upon, the person of the victim, and, concomitantly also benumbed, the, factum, of, the afore injuries being a sequel of user, of, Ex.P-1, upon the apt portion of the body of the victim, is, obviously only a tentative opinion, (e) significantly, and, reiteratedly, upon, his making a reference, to, the dental expert, Dr. Vipin Chaudhary, for hence an elicitation being made, from the latter, qua the exact cause of injuries, and, the afore dental surgeon, upon, a reference being made to him, by Dr. S.K. Nanda, rather overruling and benumbing, the afore rendered testification, by Dr. S.K. Nanda. Furthermore, with Ex.P-1, being shown to Dr. Vinit Chaudhary, in Court, in contemporaneity to his recording, his deposition in Court, and, his testifying qua with the user of Ex. P-1, the, injuries noticed upon the apt portion of the body of the victim, being hence causable thereon, thereupon, renders, the, deposition, of Dr. Vinit Chaudhary, to acquire, the, fullest vigour.

11. In addition thereto, the recovery of “khasi” Ex.P-1, was, made through memo Ex.PW2/B, memo whereof stand proven by one of the witness thereto,

(a) and, with no evidence being adduced, to shatter the afore efficacy, of, recovery therethrough of Ex.P-1, hence being effectuated rather at the instance of the accused, (b) and, besides with Ex.PW2/A being cogently proven, and, reciting qua the accused lifting bajari, from, the land of the complainant, (c) thereupon, the genesis of the prosecution case hence ascribing, vis-a-vis, the accused commission of the offences, borne under Section 324, and, Section 326 of the IPC, stand proven adequately, and, the findings rendered by the learned Courts below, do not, suffer from any infirmity(ies).

12. For the reasons which have been recorded hereinabove, this Court holds that the learned Addl. Sessions Judge concerned, as also, the learned trial Court, have appraised the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material on record by the learned Courts below, does not suffer, from any gross perversity or absurdity of mis-appreciation, and, non appreciation of germane evidence on record.

13. Consequently, the instant revision petition is dismissed. In sequel, the judgment(s) impugned hereat are maintained and affirmed. All pending applications also stand disposed of. The learned trial Court is directed to forthwith execute the sentence imposed upon the accused/petitioners herein. Records be sent back forthwith.

29th March, 2019.
(jai)

(Sureshwar Thakur)
Judge.