

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. S- 4514-SB of 2014 (O&M)

Date of decision : July 07, 2015

Kamaljit Singh and another

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Deepender Singh, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been preferred by Kamaljit Singh and Durga Singh impugning judgment and order dated 20.08.2014 passed by the learned Additional Sessions Judge, Ludhiana whereby the appellants have been convicted for the offence punishable under Sections 323, 324 read with Section 34 IPC. Benefit of probation has been extended to the appellants on their furnishing bonds to the tune of ₹50,000/- with one surety of the like amount for two years with an undertaking to appear and receive the sentence whenever called upon and in the meantime, to keep peace and maintain good behaviour.

The appellants pray for acquittal of the charges against them. Appellants – Kamaljit Singh and Durga Singh have been inculpated on the statement of Jagdish Singh recorded on

26.09.2008 to the effect that he was standing in the street at about 7.30 a.m. on 12.09.2008. When he asked appellant – Kamaljit Singh as to why he had thrown dirty water from his mouth on his father, Kamaljit Singh started abusing him and threatened to take care of him in the evening. At about 7.30 p.m. on the same day Kamaljit Singh alongwith his co-brother (husband of wife's sister) were imbibing liquor in his room. On seeing Jagdish Singh, appellant - Kamaljit Singh alongwith his father Durga Singh came out into the street and started abusing him. Kamaljit Singh brought out a kirpan and inflicted two kirpan blows on his left arm. When Jagdish raised his left hand to save himself, kirpan hit him on the upper side of ring finger of his left hand. On his raising hue and cry, his father Jagtar Singh, Harpreet Singh @ Rinku and uncle Mewa Singh reached at the spot. He also brought kirpan and his uncle was armed with an iron rod. They also caused some injuries to them while entering into house of the accused. Medico legal examination of Kamaljit Singh was conducted. An effort was made to effect a settlement between the parties but Kamaljit Singh did not come present. DDR No. 32 dated 26.09.2008 was registered. FIR No. 211 dated 13.09.2008 already stood registered in respect to the said incident on the basis of a statement rendered by Surinder Kaur. Accused Kamaljit Singh and Durga Singh were arrested on 27.09.2008.

On completion of the investigation, report under Section 173 Cr.P.C. was presented. Present being a cross version in FIR No. 211 dated 13.09.2008, case was committed to the Court of Sessions, Ludhiana. Charge was framed against the accused persons under

Sections 323, 324 read with Section 34 IPC. Eye witnesses were examined by the prosecution. While denying incriminating evidence put to them, accused in their statements under Section 313 Cr.P.C. pleaded innocence and false implication. It was specifically pleaded that Jagdish Singh armed with kirpan and his brother Harpreet Singh @ Rinku as well as Jagtar Singh and their relative Mewa Singh had trespassed into their house on 12.09.2008 at about 8.00 p.m. and caused injuries to Surinder Kaur wife of Kamaljit Singh as well as appellant Kamaljit Singh. FIR No. 211 dated 13.09.2008 already stood registered against the complainant party.

Learned trial Court on appreciation of the evidence on record concluded that the prosecution has successfully proved its case against the accused for the offences punishable under Sections 323, 324 read with Section 34 IPC, convicting them thereunder. Benefit of probation, as detailed above, was extended to the accused.

Learned counsel for the appellants submits that delay in lodging the complaint is fatal to the prosecution version in this case especially keeping in view the fact that FIR No. 211 dated 13.09.2008 already stood registered against the complainant party. Therefore, it is prayed that the appellants be acquitted in the present case.

On hearing learned counsel for the appellants and going through the file, we do not find any merit in the contention raised by learned counsel. Learned trial Court while considering the aspect of delay has specifically held as under:-

“This contention raised by the learned defence counsel

does not cut much ice. Admittedly this is a cross case as FIR No. 211 dated 13.09.2008 has been lodged on the statement of Surinder Kaur against Jagtar Singh, Jagdish Singh, Mewa Singh and Harpreet Singh alias Rinku. It is also not disputed that there is delay of 14 days in getting the statement of complainant Jagdish Singh recorded before the police but Jagdish Singh while appearing in the witness box as PW1 has explained this delay by deposing that police did not record his statement but only took his signatures on some blank papers. Moreover record reveals that the occurrence took place on 12.09.2008 at 6.30 p.m. and immediately after the occurrence Jagdish Singh was medico legally examined by Dr. Balwinder Kumar and he found four injuries on his person as proved in MLR Ex. PW5/B. This Dr. Balwinder Kumar also found that the injuries No. 1, 2 and 3 were caused with sharp edged weapons and duration of the injuries were within four hours.

Similarly, PW-2 Mewa Singh has stated that Police did not take any action on the complaint of Jagdish Singh as the police was supporting the opposite party and even they did not record his statement. PW3 Jagtar Singh father of the complainant has also deposed that police did not hear him, rather acted in the hands of the opposite party and registered false case against them. They approached regularly to the police but nothing was done. Thus, after having scrutinizing oral as well as documentary evidence this fact has become crystal clear that complainant Jagdish Singh suffered injuries at 6.30 p.m. on 12.09.2008 and immediately he reached the Civil Hospital where he was medicolegally examined by Dr. Balwinder Kumar even prior to the medico legal examination of Surinder Kaur at whose instance present FIR was got registered. But no reason has been assigned

by the investigating officer as to why statement of Jagdish Singh was not recorded earlier whereas he was medico legally examined on 12.09.2008. Therefore, under these circumstances the delay cannot be attributed on the part of the complainant. Besides this in **State of Rajasthan Vs. N.K. (Accused), 2000 Criminal Law Journal 2205 (SC)** it has been laid down by the Hon'ble Apex Court of India that mere delay in lodging the first information report cannot be a ground itself for throwing the entire prosecution case over board. The Court has to seek an explanation for delay and test the truthfulness and plausibility of the reasons assigned. If the delay is explained to the satisfaction of the court, it cannot be counted against the prosecution. Here in the present case delay if any has been duly explained by the complainant. Consequently, this contention raised by the learned defence counsel is rejected.

We find no illegality, infirmity or perversity in the abovesaid finding returned by the learned trial Court in this regard.

Medical evidence succinctly proves the injuries caused on Jagdish Singh by the accused. PW5 Dr. Balwinder Singh, Emergency Medical Officer, Civil Hospital, Ludhiana has specifically opined in respect to the injuries suffered. Appellants have been rightly convicted for the offences punishable under Section 323, 324 read with Section 34 IPC.

It is also an admitted fact that the accused in FIR No. 211 dated 13.09.2008 have also been convicted for the offences punishable under Section 323, 324 read with Section 34 IPC. Benefit of probation has also been extended to the accused in that case. It is noted that CRA D-No. 1685-DB of 2014 preferred by Surinder Kaur

praying for conviction of the accused thereunder for the offence punishable under Section 307 IPC and withdrawal of benefit of probation to them has been dismissed vide our separate order.

Appellants in this case have been afforded the benefit of probation keeping in view the fact that the complainant and the accused are neighbours.

Learned counsel for the appellants is unable to point out any ground whatsoever to warrant interference in the impugned judgment and order dated 20.08.2014.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

July 07, 2015
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