

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRR-1022-2006 (O&M)

Date of Decision: September 2, 2015

Krishan and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Gurinder Singh, Advocate,
for Mr. Vaneet Soni, Advocate,
for the petitioners.

Mr. Pawan Gaur, DAG, Haryana,
for the respondent.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J. (Oral)

Challenge in this criminal revision petition is to the judgment dated 29.4.2006, passed by learned Additional Sessions Judge, Jhajjar, whereby the conviction and sentence recorded by learned Judicial Magistrate First Class, Jhajjar, for the offences

punishable under Sections 323/34 and 326/34, IPC, qua the petitioners was dismissed.

Mr. Gurinder Singh, learned proxy counsel for the petitioners submits that both the Courts below have ignored the fact that petitioner No. 1, Krishan, and Ranbir Singh (since acquitted by learned Appellate Court) had received numerous injuries on their person in the same incident in which Ram Kishan (PW3) had received injuries. The occurrence had taken place in the street near the pond of the village in which both the factions had received injuries. Though the prosecution has failed to prove that the petitioners were aggressors, but even if the said fact is ignored, then at best it can be said that it was a case of free fight in which both the parties had come to cause injuries to each other and in those circumstances mischief of Section 34, IPC, would not be attracted since there was no common intention of one accused with other in causing the injuries. Even if the whole case of the prosecution is taken as it is, then also the convicts can be held guilty for their individual roles.

To elaborate his submissions, learned counsel contends that as per prosecution version Ram Kishan (PW3) had received simple injury on the waist by means of *Lathi*, inflicted by petitioner No. 1, Krishan. Ram Kishan (PW3) also received simple injury on his shoulder by means of *Jelly*, caused by petitioner No. 2, Rajinder

Singh, while petitioner No. 3, Suresh, alleged to have used a *Farsa* (a sharp edged weapon) on the fingers of the right hand of Ram Kishan (PW3), causing grievous injury attracting the mischief of Section 326, IPC. He further submits that Ram Kishan (PW3) and his companions, namely, Dilbagh Singh and Om Parkash were tried separately for the offences punishable under Sections 323 and 325 read with Section 34, IPC, for causing injuries to petitioner No. 1, Krishan, and his co-accused Ranbir Singh. During trial, Om Parkash had since died, therefore, proceedings qua him were dropped. Learned Trial Court without appreciating the facts in depth acquitted Ram Kishan and another while the petitioners and their co-accused were held guilty of the offences punishable under Sections 323/34 and 326/34, IPC.

Learned counsel further contends that though the prosecution in the present case has miserably failed to prove that as to which party was aggressor and the benefit of the said fact has not been extended to the petitioners, but in view of the concurrent findings of both the Courts below he would restrict his submissions with regard to free fight only.

On the other hand, learned counsel for the State has not controverted the fact that Ram Kishan (PW3), Om Parkash (since deceased) and Dilbagh, from the complainant side, were tried separately for the offences punishable under Sections 323 and 325

read with Section 34, IPC. On the basis of material available on record, learned Trial Court acquitted all the three and accepted the prosecution version while holding the petitioners guilty for the offences punishable under Sections 323 and 326 read with Section 34, IPC. He further submits that the said judgment of conviction and order of sentence were upheld by learned Appellate Court qua the petitioners, therefore, no interference is called for. He has produced the affidavits of the Superintendent, District Jail, Rohtak, showing the period of incarceration suffered by the petitioners, which are taken on record.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Perusal of the rough site plan prepared by the police would show that quarrel had taken place in the street near village pond. From the complainant side of the present case, Ram Kishan (PW3) alleged to have received four injuries while petitioner No. 1, Krishan, and his co-accused Ranbir Singh, had received total 13 injuries. The motive for the quarrel was that Ram Kishan and his companions were constructing a reservoir (*Ghat*) for storage of water for animals near village pond and when the petitioners' side asked them not to construct the said reservoir, then quarrel had taken place in which members of both the parties had sustained

injuries.

From the material available on record it cannot be said that which party was aggressor. The only conclusion arrived at is that both the parties had come at the place on occurrence with an intention to cause injuries to each other, therefore, it was a case of free fight and in that circumstance the accused cannot be convicted with the aid of Section 34, IPC. Once the Court comes to the conclusion that it is a case of free fight, then Section 34 or Section 149, IPC, would not be applicable.

As per prosecution version, petitioner Nos. 1 and 2, Krishan and Rajinder Singh, had caused simple injuries on the person of Ram Kishan (PW3), therefore, their conviction for the offence individually under Section 323, IPC, is maintained. However, both of them are acquitted for the offence punishable under Section 326 read with Section 34, IPC.

Since simple lacerated wound as well as grievous injuries by means of sharp edged weapon (*Farsa*) were inflicted by petitioner No. 3, Suresh, on the person of Ram Kishan (PW3), therefore, his conviction for the offences punishable under Sections 323 and 326, IPC, is maintained.

Learned counsel for the petitioners submits that the occurrence had taken place in the year 1996 over construction of a reservoir (*Ghat*) near the pond of the village and there was no

personal enmity between both the factions; none of the petitioners is either involved or required in any other case; none of the petitioners is a previous convict; during trial, appeal and pendency of the present revision petition, the petitioners were released on bail and they did not misuse the said concession; and that perusal of the affidavits produced by learned counsel for the State would reveal that petitioner Nos. 1 and 2, Krishan and Rajinder Singh, have undergone jail imprisonment for more than one month each, while petitioner No. 3, Suresh, has suffered incarceration for more than three months, therefore, their respective sentences may be reduced to the period already undergone by them.

There appears to be substance in the submission of learned counsel for the petitioners that the quarrel had taken place at a common place in the village in the year 1996, in which both the factions had received injuries; none of the petitioners is required or involved in any other case; the petitioners are the first offenders; and that during their incarceration in the jail, each one of them tried to improve himself, therefore, at this juncture the petitioners can be extended the benefit in their jail imprisonment.

Since the conviction of petitioner Nos. 1 and 2, Krishan and Rajinder Singh, has been maintained for the commission of the offence punishable under Section 323, IPC, only, therefore, their sentence is reduced to the period already undergone by them, i.e.

one month and ten days for petitioner No.1, Krishan, and one month and seven days for petitioner No. 2, Rajinder Singh. Their conviction and sentence for the offence punishable under Section 326 read with Section 34, IPC, are set aside and they are acquitted of the said charge.

Since the conviction of petitioner No. 3, Suresh, has been maintained for the offences punishable under Sections 323 and 326, IPC, therefore, his sentence for the offence punishable under Section 323, IPC, is upheld while for the offence punishable under Section 326, IPC, it is reduced to rigorous imprisonment for six months. The fine imposed upon petitioner No. 3, Suresh, for both the offences is also maintained. Both the sentences of petitioner No. 3, Suresh, shall run concurrently.

It is further directed that petitioner No. 3, Suresh, shall pay ₹20,000/- (Rupees twenty thousand only) while petitioner Nos. 1 and 2, Krishan and Rajinder Singh, shall pay rupees ten-thousand each (₹10,000/- + ₹10,000/- = ₹20,000/-) as compensation to injured Ram Kishan (PW3), within two months of passing of this order. The amount of compensation shall be deposited with learned Trial Court within the stipulated period otherwise petitioner Nos. 1 and 2, Krishan and Rajinder Singh, would suffer sentence for the offence punishable under Section 323, IPC, as awarded by learned Court below while petitioner No. 3, Suresh,

would suffer sentence for both the counts as recorded by learned Court below.

Learned Trial Court after receipt of the amount of compensation from the petitioners shall issue notice to the injured, Ram Kishan (PW3) for withdrawal of the amount as per norms.

With the above modification in the judgment of conviction and the order of sentence, the present criminal revision petition is partly allowed.

The record received from the Courts below be sent back forthwith.

September 2, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE