

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Crl. Revision No. 3777 of 2013

Date of decision : February 13, 2015

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Darshna Devi and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Munish Gupta, Advocate for the petitioner.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This criminal revision petition has been filed against the judgment dated 11.9.2013, whereby the Additional Sessions Judge, (Adhoc) Fast Track Court, Hoshiarpur has modified the judgment of conviction and order of sentenced passed by the Judicial Magistrate First Class, Mukerian (hereinafter referred to as `the trial Court') dated 9.5.2012 and released the accused on probation.

Prosecution story, in brief, is that there was a boundary dispute between respondent no.2/complainant and petitioners. On 15.7.2005 at about 8:15 a.m, respondent no.2/complainant reached in his fields. All the accused were already present there. On seeing the complainant, petitioner no.1 raised lalkara to catch hold of the

complainant and at this petitioner no.2 took hold of the arms of the complainant. Petitioners no. 3 & 4 inflicted injuries and stone blows upon the complainant. The complainant was thrown on the ground and he was mercilessly beaten by the petitioners. Complainant sustained injuries on his legs and other parts of the body. Dilbhag Singh, Sain Dass Lamberdar and Ravinder Singh saw the entire occurrence and rescued the complainant from the clutches of the accused. The complainant was admitted in the Civil Hospital, Talwara on the same day and police recorded the statement of the complainant but in place of registering FIR against the accused, complainant was challaned under Sections 107, 151 of Cr.P.C by the police. Complainant approached the police but all in vain. Hence a complaint under Sections 325, 323, 506 and 149 IPC was filed.

The accused were ordered to be summoned to face trial under Sections 325, 323, 506, 148, 149 IPC.

Finding a prima facie case, the accused were charge sheeted under Sections 325, 323, 506, 148, 149 IPC, to which , the accused pleaded not guilty and claimed trial.

The complainant examined himself as CW-1, Sain Dass as CW-2, Dr. S.C Chadda as CW-3 and closed his evidence.

Statements of the accused under Section 313 Cr.P.C were recorded, in which entire incriminating evidence appearing against them was put to them. They pleaded innocence and false implication. In their defence evidence, the accused examined Gurdeep Singh as DW-1, Roop Lal as DW-2 and closed the same.

The trial Court after going through the entire evidence led by the prosecution, convicted the accused-petitioners under Sections 323, 325 read with Section 149 IPC and sentenced them to undergo rigorous imprisonment for a period of two years and fine of Rs. 1000/- under Section 325 read with Section 149 IPC. In default of payment of fine, they were further directed to undergo rigorous imprisonment for a period of one month. They were also sentenced to undergo rigorous imprisonment for a period of one year and fine of Rs. 500/- under Section 323 read with Section 149 IPC. In default of payment of fine, they were further directed to under rigorous imprisonment for a period of 15 days.

However, on appeal, the lower appellate Court keeping in view the that the petitioners no. 1 & 4 are ladies of more than 50 years and petitioners no. 2 & 3 are of more than 60 years of age and that they had been facing agony of the trial since the year 2006, released them on probation for a period of one year on execution of probation bonds in the sum of Rs. 10,000/- each. At the same time, they were also directed to deposit Rs. 5000/- each i.e Rs. 20,000/- in total in the District Legal Service Authority Funds, Hoshiarpur.

From the perusal of the judgment passed by the Additional Sessions Judge, (Adhoc) Fast Track Court, Hoshiarpur, it becomes clear that there was a delay of 23 days in lodging the complaint before the Illaqa Magistrate. The occurrence took place on 15.7.2005 and the complaint was made on 6.8.2005. The complainant had approached the DSP and SSP many times for

registration of the case, but nothing was done in this regard. In the complaint, he mentioned that the delay was due to the time spent by him in getting the case registered through police. Moreover, when the complainant appeared as CW-1, he was not cross examined in this regard by the accused. Hence delay of 23 days in lodging the complaint before Illaqa Magistrate was well explained by the complainant. The occurrence dated 15.7.2005 was admitted by all the accused/petitioners as on the same day the complainant Balbir Singh was also arrested by the police of Police Station Talwara under Sections 107, 151 Cr.P.C registered vide DDR No.3 of 15.7.2005. Moreover in the appeal, the petitioners contended that injury no.1 on the person of the complainant was attributed to Pawan Kumar who did not face the trial and was declared a Proclaimed offender. Another fact which the Lower Appellate Court has taken into consideration is the deposition of CW-3, Dr. S.C Chadha who observed that there were two injuries on the person of complainant, Balbir Singh which are as follows:

1. Uprooted tooth third from clutter i.e canine in the left side of lower jaw. Signs of fresh bleeding was present in the uprooted tooth socket. There was laceration of half cm. In the mucosa of lower lip corresponding to uprooted tooth. Oro-dental hygiene was poor. Patient was advised dental check up for management.

2. Multiple abraded contusion of vary size and

shapes in the front of and sides of neck front of left knee joint in the dorsum of left foot and on the face.

The injury no. 1 was grievous and injury no.2 was declared simple. Medical examination was within 6 hours of injuries and the weapon used for both the injuries was blunt. CW-3, Dr. S.C Chadha proved the copy of MLR. No cross-examination of this witness was done by the accused. The evidence led by the defence in the form of DW-1 and DW-2 could not put any dent on the case of the complainant. The petitioners were convicted for the offences under Section 325 read with Section 149 IPC and Section 323 read with Section 149 IPC by the trial Court. The conviction has been upheld by the Lower Appellate Court as the MLR was proved by CW-3 and the incident was also admitted by the present petitioners. The judgment of conviction is based on correct appreciation of facts led by the prosecution. However, keeping in view the provisions of Probation of Offenders Act, 1958 and moreover, as none of the petitioners were carrying a past criminal background, the benefit of probation has been extended to the petitioners.

In view of all that has been discussed above, present revision petition is dismissed.

February 13, 2015

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(**RITU BAHRI**)
JUDGE