

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.2203 of 2015 (O&M)

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Date of decision:30.9.2015

Buta Singh alias Balvir Singh and others

...Petitioners

v.

State of Punjab

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Harit Sharma, Advocate for the petitioners.

Ms. Simsi Dhir Malhotra, Deputy Advocate General, Punjab for
the respondent-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 397 Cr.P.C. for setting aside the impugned judgment dated 6.6.2015 passed by learned Additional Sessions Judge, Bathinda, whereby the appeal filed against the impugned judgment of conviction and order of sentence dated 24.2.2015 passed by learned Judicial Magistrate Ist Class, Phul in case FIR No.44 dated 26.5.2011 registered for the offences under Sections 452, 325, 323 read with Section 34 IPC at Police Station Dialpura, vide which the accused/petitioners have been convicted and sentenced to undergo rigorous

imprisonment for two years and to pay a fine of Rs.1,500/- each and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 452 IPC read with Section 34 IPC; to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default of payment of fine to further undergo simple imprisonment for one month for the offence under Section 325 read with Section 34 IPC and also to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default of payment of fine to further undergo simple imprisonment for seven days for the offence under Section 323 read with Section 34 IPC, has been partly allowed. The sentence of the accused has been modified and by reducing the sentence, the accused have been ordered to undergo rigorous imprisonment for a period of one year instead of two years for the offence under Section 452 read with Section 34 IPC and similarly, the sentence awarded under Section 325 read with Section 34 IPC has been reduced to rigorous imprisonment for six months instead of one year. Remaining part of sentence awarded to the accused has been ordered to remain unchanged.

The brief facts of the case are that on 26.5.2011, complainant- Raaman Singh and his son-in-law Jatinder Singh met ASI Sewak Chand and Raaman Singh got recorded his statement that he has two sons, namely, Naib Singh and Sukhmander Singh. Naib Singh is serving in army and married. Second son had gone to Dubai and one daughter is also married. About ten years ago complainant Raaman Singh had purchased 5 Kanals 5 Marlas land from Buta Singh alias Balvir Singh. Naib Singh son of the

complainant had come back to the house on vacations. On 17.5.2011, Naib Singh was cleaning watt (demarcation), complainant and his wife Gurmail Kaur were throwing grass outside and then they all came in the house. Then at about 6.00 p.m., Buta Singh alias Balvir Singh and his brother Sukhdev Singh armed with sticks, Mander Singh armed with iron patti, Sikander Singh armed with stick raised 'Lalkara' that Naib Singh should come out and they will taught him a lesson. At this, when the complainant opened the main gate of his house, then the said four persons along with their weapons forcibly entered into the house of the complainant. Buta Singh alias Balvir Singh gave blow of stick which hit on the back side of the complainant and on his right cheek near eye brow. Meanwhile Naib Singh, daughter-in-law Kamaljit Kaur and wife Gurmail Kaur came to rescue the complainant, then Sukhdev Singh gave blow of stick which hit on left shoulder. Thereafter, Sukhdev Singh gave two blows of stick which hit on the left shoulder (Mora) of Naib Singh. Sikander Singh also gave blow of stick which hit on the nose of Naib Singh, then Mander Singh started throwing bricks bat which hit on the left leg of Kamaljit Kaur and she fell down and Sikander Singh gave kick blows at her stomach. The complainant raised 'raula' and thereafter, the accused fled away from the spot along with their respective weapons. After necessary investigation, challan was presented in the Court.

On presentation of challan, the learned trial Court finding *prima facie* case against the accused-petitioners framed charges for the offences under Sections 452, 325, 323 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 complainant-Raaman Singh. PW-2 injured-cum-eye witness Kamaljit Kaur, PW-3 ASI Sewak Chand, who is Investigating Officer of this case, PW-4 Naib Singh, injured-cum-eye witness, PW-5 Dr. Gagan Deep Singh, PW-6 HC Mander Singh, PW-7 ASI Surjit Singh, PW-8 HC Faily Singh, PW9 HC Balkar Singh and then the evidence was closed by order.

At the close of prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which all the incriminating pieces of evidence were put to the accused, who denied the allegations of the prosecution and pleaded themselves as innocent. In defence one of the accused Buta Singh alias Balvir Singh examined himself as DW-1.

The learned Judicial Magistrate Ist Class, Phul, vide judgment dated 24.2.2015 convicted and sentenced the petitioners for the offences under Sections 452, 325, 323 read with Section 34 IPC as mentioned above. Aggrieved against this judgment an appeal was filed, which was partly accepted while upholding the conviction of the accused, but reducing the sentence as mentioned above vide judgment dated 6.6.2015 passed by learned Additional Sessions Judge Bathinda. Aggrieved against these judgments, the present criminal revision petition has been filed by the accused-petitioners.

Notice of motion has been issued in this case.

Ms. Simsi Dhir Malhotra, learned Deputy Advocate General, Punjab has put in appearance on behalf of respondent-State and contested

this revision petition. Lower Courts record is also available.

At the time of arguments, learned counsel for the revision petitioners argued that both the judgments passed by the Courts below are not as per law and are result of misreading of evidence. The Courts have not considered the delay of ten days in recording the FIR. The Courts have not considered the injuries on the person of the accused-petitioners. Genesis of the occurrence has been concealed by the prosecution. This has also been overlooked by the Courts below. The defence version given by the accused has not been considered as per law. Therefore, he argued that both these judgments are perverse, against the evidence on record and the evidence produced on the record has not been appreciated in right perspective.

On the other hand, learned Deputy Advocate General, Punjab, appearing for the respondent-State has argued that the judgments passed by the Courts below are correct, as per evidence and law and evidence has been read in right perspective. The oral statements have been duly supported and corroborated by medical evidence. She argued that there being no merit in the revision petition, the same should be dismissed.

After hearing learned counsel for the parties and after going through the record, I find that there is merit in the arguments of the learned counsel for the revision petitioners. In the present case, the occurrence has taken place on 17.5.2011 and the FIR was registered on 26.5.2011 i.e. after about ten days and there was sufficient opportunity with the complainant to concoct the version and to implicate so many persons as possible. The delay

of ten days has not been explained by the prosecution by leading cogent evidence. Secondly, it has been duly proved by the defence by cross-examination of PW-5 Dr. Gagan Deep Singh that the accused side also received the injuries and they have also been medico-legally examined regarding the same occurrence, but both the Courts below have ignored these injuries on the person of the accused. There is no explanation as to how the accused persons received the injuries which means the version given by the complainant party is doubtful and the prosecution in the present case has concealed the genesis of the occurrence. A reasonable doubt exists in the prosecution version on this ground as to how the occurrence took place. If the version of the complainant has been taken as it is, then as to how the accused received injuries on their person. The defence version as deposed by DW-1 further creates doubt in the prosecution version. Both the Courts below have not considered the evidence on all these points in right perspective. The misreading of evidence has resulted into the conviction of the revision petitioners. PW-5 Dr. Gagan Deep Singh, Medical Officer in the examination-in-chief has stated that he medico-legally examined Naib Singh and found four injuries on his person which includes one superficial linear abrasion, second multiple abrasion present on the left shoulder joint, third pain and tenderness on the root of nose and fourth abrasion present on the right shoulder joint. All the injuries were with blunt weapon and duration of the injuries was within 12 hours. He also deposed regarding medico-legal examination of Raaman Singh and found two injuries, pain and tenderness on the lower back and pain on the right

side of the face. In both these injuries no external injury mark was seen.

As regards the medico-legal examination of Kamaljit Kaur, pain and swelling of dorsum of left foot was found present and pain and in the left leg below knee joint where tenderness was found. The third injury was pain in the abdomen and tenderness was present but in all these injuries no external injury mark was seen. In the cross-examination, PW-5 Dr. Gagan Deep Singh admitted that on the same day Sikander Singh was examined and he found five injuries including small abrasion and linear abrasion, pain in the right hand, pain and tenderness present in abdomen and abrasion present on the dorsum of little finger. He also deposed that on the same day he also medico-legally examined Buta Singh and found three injuries pain in both lower limbs, pain in occipital region of skull and pain and tenderness in the right scapular region. He also examined Mander Singh on the same day and also found two injuries small abrasion present on the right shoulder joint and pain and tenderness in the right hand. This cross-examination shows that the occurrence had not taken place as stated by the prosecution and the injuries on the person of the accused have not been explained. DW-1 accused-Buta Singh alias Balvir Singh has proved the certified copy of the complaint Ex.DA and also the copies of MLRs of Buta Singh, Mander Singh and Sikander Singh.

Therefore, from the above, I find that the findings given by the Courts below regarding conviction of the present revision petitioners is the result of misreading of evidence and not appreciating the evidence on record in right perspective. The defence version has been totally ignored. The

Courts have also not considered the delay in recording the FIR, unexplained injuries on the person of the accused and also the defence version as well as the fact that the genesis of the occurrence has been concealed. Therefore, from the evidence on record, it is clear that the prosecution has failed to prove its case by leading cogent evidence beyond a reasonable doubt.

Therefore, from the above discussion, I find that the judgments of conviction and the orders of sentence passed by the Courts below are not as per evidence and law, hence the same are set aside.

For the reasons mentioned above, the criminal revision petition is accepted. Petitioners Buta Singh alias Balvir Singh, Sukhdev Singh, Sikander Singh and Mander Singh are acquitted of the charges as framed against them. The petitioners, who are in custody, be released forthwith if their custody is not required in connection with any other case.

September 30, 2015.

(Inderjit Singh)
Judge

hsp