

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.244 of 2015 (O&M)

Date of decision: 24th September, 2015

Pavitra Devi

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. S.N. Yadav, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana.

FATEH DEEP SINGH, J.

This is a revision petition preferred by convict Pavitra Devi who was initially found guilty for commission of offences under Sections 323/324/326 IPC and was sentenced under Section 326 IPC to undergo simple imprisonment for 3 years and to pay a fine of ₹3,000 and in default of payment of fine to further undergo simple imprisonment for 3 months; under Section 323 IPC to undergo simple imprisonment for 6 months and to pay a fine of ₹500 in default whereof to undergo simple imprisonment for 15 days, whereas under Section

324 IPC to undergo simple imprisonment for 1 year and to pay a fine of ₹1,000 and in default to undergo simple imprisonment for 1 month vide judgment of conviction dated 24.02.2012 and order of sentence dated 25.02.2012 passed by the Court of learned Judicial Magistrate 1st Class, Rewari.

On appeal, the same was dismissed vide judgment dated 08.01.2015 of learned Additional Sessions Judge, Rewari with modification regarding her co-appellants. The same is subject matter of this invocation in terms of Section 401 Cr.P.C.

Heard Mr. S.N. Yadav, Advocate for the petitioner; Mr. Munish Sharma, Asstt. Advocate General, Haryana and perused the records.

The factual findings that it was on 12.12.2004 around 8.30 p.m. complainant Navraj along with his son injured Kanwar Singh and Om Parkash friend of his son were at their house when their neighbour accused Devender and his wife Pavitra present revisionist assaulted them. Leaving aside the role of the co-accused, it is alleged that Pavitra armed with an axe caused injury on the right hand of the complainant Navraj and when his son Kanwar Singh and friend of his son Om Parkash intervened, Pavitra besides others caused injuries to them. The main contention is over the injury caused by Pavitra by means of axe to Om Parkash (sic, in fact Kanwar Singh) on the bridge of his nose. After registration of the FIR and necessary formalities, on

submission of Challan, prosecution examined 10 witnesses and proved various documents.

The lone contention that is sought to be made is over the nature of injury. Though it is forcefully submitted on behalf of the State that the injury on the nose of Kanwar Singh by means of an axe after x-ray in view of the opinion of the doctor Ex.PW5/C is opined to be grievous in nature, however, as has been contended that neither there is any extent of the bone cut and that even the x-ray report as per examination in-chief by way of affidavit Ex.PW3/A of Dr.A.K. Saini shows it to be a mere fracture.

No doubt, the term 'fracture' has nowhere been explained in the Indian Penal Code but as it was laid down way back in the case of '**Po Yi Maung v. Ma E Tin**' reported in **AIR 1937 Rangoon 253**, that the meaning of the word 'fracture' would imply that there should be a break in the bone and that in the case of a skull-bone it is not merely sufficient that there is a crack but the crack must extend from the outer surface of the skull to the inner surface, and thus, in a subsequent view reported in **AIR 1942 Patna 376 'Mutukdhar Singh v. Emperor'**, it was held by their Lordships that when there is nothing whatever to indicate the extent of the cut whether the deep one or a mere scratch on the surface of the bone, it will be difficult to infer that the injury is a grievous hurt within the meaning of Section 320 IPC.

In the instant case, this injury No.1 though its dimensions of length and breadth have been duly given but there is no mention as to the depth of the bone cut or the fact that the underlying bone was cut, are matters which keeps the Court in dark about the very nature of the injury. Being an injury by a sharp edged weapon unless or until there is a clear cut finding that the underlying bone was cut, the mystery over the nature of injury remains. Neither the learned State counsel could pinpoint, as has been argued on behalf of the revisionist, any other evidence of the doctor or medical record which could give any satisfactory explanation how the same is covered within the terminology of 'grievous'. Since the onus lay on the prosecution to prove its case and to derive home the point that this injury falls under Section 320 Clause Seventhly IPC. There is no evidence led on the record to the effect that there was a rupture or fissure cutting and thus a fracture of the bone. Unless or until it is there in a case of an incised injury by a sharp edged weapon the medical evidence falls short of the necessity and for which benefit must go to the accused.

Merely because the doctor stated it so cannot be taken as a gospel truth on the face of it and there should be some supporting evidence in that direction. Even to the very query of the Court, learned State counsel could not convince what evidence has been led by the prosecution upon whom the onus lay as to the very extent of the

damage and merely because it is on the nose does not mean or can be construed to be grievous besides the fact that there is no substantial evidence of vital signs of the body because of this injury, any hospitalization and the likely treatment including surgical notes.

Not only this, as has come on the record on the pointing out of the learned counsel for the petitioner, neither any weapon of offence which is claimed to have been recovered, was ever sent for chemical examination to seek report of the serologist, are matters which have a debilitating effect on the prosecution story.

A Full Bench of this Court in '**Sarvinder Singh and another v. The State**' 1976 PLR 867 have considered at length the very element of intention and knowledge to draw a conclusion as to the attraction of offence of grievous injury and it was opined by their Lordships that intention or knowledge cannot be measured by the consequence, it has to be gathered from all surrounding facts and circumstances. There is lone injury attributed to the petitioner inflicted upon Kanwar Singh and had there been an intention to cause life-threatening injuries, there would have been more attempts and injuries which are totally missing, and thus from all this, irresistible inference can be drawn that in this melee comprising of three persons from the accused side and three from the complainant side with single injury on this victim, that the petitioner did not have the intention to cause much damage to the victim side.

The learned courts below have lost sight of this aspect of the matter that there was no tangible and reliable evidence as far as this injury to be covered under Section 326 IPC was concerned and in view of this inadequacy of the evidence, the same thus stands covered under Section 324 IPC. Therefore, the conviction and sentence awarded to petitioner Pavitra Devi under Section 326 IPC for this injury is hereby set aside holding and thus modifying the impugned judgment that the injury is covered under Section 324 IPC and the convict/petitioner is convicted under it and sentenced to undergo simple imprisonment for 1 year and to pay a fine of ₹1,000 in default whereof to further undergo simple imprisonment for 1 month.

It has been addressed with much force and vehemence on behalf of the revisionist by citing '**Maya Bai and others v. State of Punjab**' 2006(1) RCR (Criminal) 687; '**Narsa Ram and others v. State of Rajasthan**' 2009(5) RCR (Criminal) 224; and '**Paramjit Singh v. State of Haryana**' 2011(2) RCR (Criminal) 855, that the revisionist is an aged lady and the occurrence had taken place almost 11 years ago and she has undergone trauma of prolonged trial and sword of Damocles remained hanging upon her head till date and she has no history of previous crime together with the fact that the victim as well as the convict belong to the same very village and are neighbours and thus, would be conducive for the environment of peaceful living and that her co-accused have since been granted

concession of probation in terms of Section 360 Cr.P.C. by the Court below and therefore, this Court does not feel any impediment in exercise of these powers.

In the light of the same, the petitioner is allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on her entering into a bond in the sum of ₹20,000 with one surety of the like amount to the satisfaction of the trial Court undertaking therein that she shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

The revision petition stands disposed off with these modifications. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

September 24, 2015
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