

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revn. No. 2623 of 2014 (O&M)
Date of decision : 09.02.2015

Nirmal Singh

....Petitioners

versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.P.S Sidhu, Advocate
for the petitioner.

RITU BAHRI , J.

Challenge in the present petition is to the judgment dated 28.05.2014 passed by learned Sessions Judge, Ferozepur, whereby the revision petition filed by the petitioner for enhancement of sentence of the accused was dismissed and the appeal filed by respondent Nos. 2 to 5 against judgment dated 09.01.2013 was allowed and they were acquitted of the charges framed against them.

The case was got registered by the present petitioner/complainant against accused-respondent Nos. 2 to 5 for the offence punishable under Sections 324/323/34 IPC with the allegations that he is working as an agriculturist and the turn of water to irrigate the fields from water course was fixed as 9.25 PM. The complainant along with his father Sohan Singh went to their fields at about 9.30 P.M to irrigate their fields. When Sohan Singh was about to divert the flow of water, Tehal Singh who was under the influence told Sohan Singh that their turn for water is already over. Tehal Singh caught hold of Sohan Singh and exhorted his co-accused. The sons of Tehal Singh also came on the spot. Lakhwinder Singh armed with gandasa, Harpreet Singh armed with kirch, Jarnail Singh and Sukhchain Singh armed with dangs

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arrived at the spot and started inflicting injuries to the petitioner as well as his father Sohan Singh. The petitioner and his father became unconscious. Thereafter, the accused ran away from the spot. Amarjit Singh neighbourer of the petitioner took the complainant and his father to Civil Hospital, Ferozepur. It has been alleged that the water course in the village was got cleaned on contract basis and villagers had to contribute the amount of Rs.7/- per killa. A sum of Rs.50/- was to be paid by the complainant and the said amount was handed over to Surat Singh. In this background, F.I.R was got registered.

Challan against the accused was presented before the Illaqa Magistra/te and initially, charges were framed against the accused under Sections 148/324/323/149 IPC., After recording of the statements of Dr. Anil Kaushal P.W.1 and Dr. Renu Singla, P.W.2, the charge was amended. Fresh charge under Sections 148/323/324/326/149 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

The prosecution has examined as many as five witnesses and statement of the accused under Section 313 Cr.P.C has been recorded and they have produced the documentary evidence in support of their defence version.

The trial Court after going through the evidence led by the parties, came to a conclusion that the injury No. 1 on Nirmal Singh was caused by accused-Harpreet Singh with kirch, which is a sharp edge weapon and the same was declared to be grievous in nature. The contention of learned defence counsel that partial cut does not fall under Section 326 IPC, has no merits, because it is not necessary that bone should be cut through and through. The partial cut on bone amounts to a grievous injury. Similarly, it is proved on file that accused Lakhwinder Singh caused simple injuries with dang to complainant Nirmal Singh and

injured Sohan Singh. Further it has been held that all the accused assembled to cause injuries on the person of the complainant party and at that time, they were armed with weapons. Accordingly, they were sentenced as under:-

<i>Convict</i>	<i>U/s</i>	<i>RI</i>	<i>Fine</i>	<i>I/D of fine to further under RI</i>
Harpreet Singh	148 IPC	6 months	-	--
	326 IPC	2 years	Rs.500/-	15 days
	324/149 IPC	1 years	Rs.500/-	15 days
	323/149 IPC	6 months	Rs.500/-	15 days
Lakhwinder Singh	148 IPC	6 months	-	--
	326/148 IPC	2 years	Rs.500/-	15 days
	324/149 IPC	1 years	Rs.500/-	15 days
	323/149 IPC	6 months	Rs.500/-	15 days
Jarnail Singh	148 IPC	6 months	-	--
	326/148 IPC	2 years	Rs.500/-	15 days
	324/149 IPC	1 years	Rs.500/-	15 days
	323 IPC	6 months	Rs.500/-	15 days
Tehal Singh	148 IPC	6 months	-	--
	326/148 IPC	2 years	Rs.500/-	15 days
	324/149 IPC	1 years	Rs.500/-	15 days
	323/149 IPC	6 months	Rs.500/-	15 days

All the sentences were ordered to run concurrently.

Feeling aggrieved against this order, petitioner filed a revision petition against order/judgment dated 09.01.2013 for enhancement of sentence and accused filed an appeal for setting aside the judgment dated 09.01.2013.

The Lower Appellate Court heard both the cases together and dismissed the petition filed by the petitioner and allowed the appeal filed by the accused acquitted them of the charges levelled against them, vide order/judgment dated 28.05.2014. The Lower Appellate Court has taken into consideration the complaint (Ex D4) which was instituted by Gurdev Singh and Sohan Singh in which Nirmal Singh was summoned as accused for having committed the offence, vide summoning order (Ex D5). Gurdev Singh and Sohan Singh had filed two separate suits for

specific performance against Jasbir Kaur and others. The matter in dispute was compromised and both civil suits along with the criminal complaint has been withdrawn.

Further, the occurrence in the present complaint dated 30.06.2005 took place at 9.30 A.M. The injured had arrived in the hospital after a gap of more than three hours and statement of Nirmal Singh P.W.2 has been recorded after a delay of about 11 hours i.e on 01.07.2005. It has been observed that injury No. 1 on the person of Nirmal Singh, which falls within the ambit of Section 326 IPC was self inflicted or caused with friendly hand, as stated by Dr. Anil Kaushal in his cross examination. Further with regard to the injuries on the person of Sohan Singh, Dr. Anil Kaushal in his cross examination stated that no clotted blood was seen on injury No. 1. The injury No. 2 could be with friendly hand and injuries no. 3 to 10 on the person of Sohan Singh could be the result of fall. Thus, the delay in arriving on the injured in the hospital and lodging of the F.I.R render the version of the prosecution doubtful. The intervening time has been utilized in manufacturing the injuries and concocting a false story.

Further as per the version of the prosecution, the place of occurrence is the fields of Sohan Singh. However, the site plan ExPW5/12 indicates that the occurrence took place in the fields of Gurdev Singh adjoining to the water course. The fields of Sohan Singh has not been specified in the site plan. Further in the cross examination of Investigating Officer, it has emerged that no blood stained earth was found at the spot.

Further as per the defence version, Anant Kaur mother of Tehal Singh and Sohan Singh was the owner of 24 kanals of land. Tehal Singh and Sohan Singh had partitioned their lands since long. Sohan Singh and his sons had been demanding share in the land owned by

Anant Kaur and she had executed the sale deed dated 16.01.2003 and 21.01.2004, in favour of sons of Tehal Singh. Nursing a grudge on that score, the injuries have been inflicted and the accused have falsely been implicated.

In view of the above factual position, judgment dated 28.05.2014 passed by learned Sessions Judge, Ferozepur does not require any interference by this Court, as the accused have rightly been extended the benefit of doubt and have been acquitted of the charges framed against them.

09.02.2015
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(RITU BAHRI)
JUDGE