

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRR-3209-2014 (O&M)

Date of Decision: February 4, 2015

Kesar Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Daman Jeet, Advocate,
for the petitioners.

Mr. Shilesh Gupta, Addl. AG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J (Oral)

1. Challenge in this criminal revision petition is to the judgment dated 16.9.2014 passed by learned Additional Sessions Judge, Bathinda, whereby the appeal filed by the petitioners challenging their conviction and sentence for the offences punishable under Sections 323, 324 and 325 read with Section 34, IPC, recorded by learned Sub-Divisional Judicial Magistrate, Phul, was dismissed.

2. Learned counsel for the petitioners at the very outset

submit that in view of the concurrent findings of both the courts below, he did not want to assail the impugned judgments on merits. However, he submit that there were fairly arguable points in the revision petition so far as the reduction of the substantive sentences of the petitioners were concerned.

3. In view of the statement suffered by learned counsel for the petitioners, notice was issued with regard to quantum of sentence only. Learned counsel for the State has put in appearance.

4. Though learned counsel for the petitioners has opted not to challenge the conviction of the petitioners, but to satisfy the conscience of this Court, the material available on record has been re-scanned.

5. As per the prosecution version on the basis of an application moved by injured Amar Singh (PW1), FIR No. 83, dated 20.11.2008, for the offences punishable under Sections 323, 324 and 325 read with Section 34, IPC, was registered at Police Station, Phul, District Bathinda. He (Amar Singh), *inter alia*, disclosed that he was an agriculturist. On 19.11.2008, when Amar Singh was irrigating his land and Darshan Singh (PW2) was working in the nearby fields, at about 3:00 p.m., petitioner No. 1, Kesar Singh, armed with a *dang*; petitioner No. 2, Surjit Singh,

armed with a *gandasa*; and petitioner No. 3, Gurmail Singh @ Gela, armed with a *toka*, came to the fields. Kesar Singh exhorted that Amar Singh be caught and taught a lesson. Surjit Singh hit Amar Singh with *gandasa* on the left shoulder from reverse side. Resultantly, he (Amar Singh) fell down. Surjit Singh once again caused an injury on the middle finger of the left hand by means of *gandasa*. Gurmail Singh caused an injury by means of *toka* on the middle finger of right hand of Amar Singh. Gurmail Singh once again hit the *toka* on the left knee of Amar Singh. Kesar Singh caused injuries on the waist and knee of right leg of Amar Singh by means of *dang*. On hearing the noise, Darshan Singh, brother of the complainant reached at the spot and thereafter the petitioners took to their heels alongwith their respective weapons. The motive for causing injuries was that the land measuring 10 kanals, where there was a bore in it, was in possession of the complainant, Amar Singh, while the petitioners were saying that the said bore belonged to them. During medico-legal examination, six injuries were detected on the person of Amar Singh and, as such, the FIR for the offences punishable under Sections 323 and 324 read with Section 34, IPC, was registered. After obtaining the report from the Radiologist, Section 325, IPC, was added since there was a fracture on the left

shoulder of the injured, Amar Singh. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented. The charges were framed, to which the petitioners pleaded not guilty and claimed trial.

6. In order to prove the charges, the prosecution examined the complainant/injured, Amar Singh as PW1; Darshan Singh as PW2; Dr. Rakesh Goyal as PW3; Dr. R.P. Singh, Medical Officer, as PW4; SI Gurtej Singh (Retd.) as PW5; SI Major Singh, Investigating Officer, as PW6; SI Sukhpal Singh (Retd.) as PW7, and thereafter the evidence of the prosecution was closed by the order of the learned Trial Court.

7. Statements of the petitioners/accused in terms of Section 313, Cr.P.C., were recorded. All the incriminating material appearing against the petitioners was put to them, but they denied the same and pleaded false implication. In defence, no evidence was led by the petitioners and thereafter closed their defence evidence.

8. Learned Trial Court after hearing counsel for the parties held the petitioners guilty for the offences punishable under Sections 323, 323 and 325 read with Section 34, IPC, and ordered them to undergo the following sentences:-

Name of convict	Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
Surjit Singh	323, IPC	1 year	500/-	15 days
	324, IPC	1 year	1,000/-	1 month
	325, IPC	2 years	1,000/-	1 month
Kesar Singh	323, IPC	1 year	500/-	1 month
	324/34, IPC	1 year	1,000/-	1 month
	325/34, IPC	2 years	1,000/-	1 month
Gurmail Singh @ Gela	323, IPC	1 year	500/-	1 month
	324/34, IPC	1 year	1,000/-	1 month
	325/34, IPC	2 years	1,000/-	1 month

All the sentences were ordered to run concurrently.

9. Aggrieved by the judgment of conviction and the order of sentence, the petitioners preferred an appeal before the Court of Session, which was dismissed after modification of the substantive sentence of the petitioners for the offence punishable under Section 325, IPC. Learned Additional Sessions Judge, Bathinda, reduced the substantive sentence for the offence punishable under Section 325, IPC, from two years to one year.

10. From the perusal of the facts and material available on record, this Court is of the considered view that both the Courts

below have rightly held the petitioners guilty for the offences punishable under Sections 323, 324 and 325 read with Section 34, IPC, and, as such, learned counsel for the petitioners has rightly opted not to challenge the conviction of the petitioners.

11. Learned counsel for the petitioners submitted that petitioner No. 1, Kesar Singh, is aged about 81 years, while his sons, Surjit Singh and Gurmail Singh @ Gela (petitioner Nos. 2 and 3) are approximately 35/40 years old. None of the petitioners is previous convict; the quarrel had taken place on account of a dispute over a bore; the occurrence had taken place in the year 2008 and during trial and pendency of the appeal, the petitioners remained on bail, but they did not misuse the said concession; petitioner Nos. 2 and 3, namely, Surjit Singh and Gurmail Singh @ Gela, are the only bread winners for their respective families; the petitioners have already suffered incarceration for four months and 16 days as on 2.2.2015; during their incarceration in the Central Jail, Bathinda, they are attempting to improve themselves and, as such, 16 days remissions were granted to them, to be added to their substantive sentences; and that as per the provisions contained in Section 360, Cr.P.C., they can be released on probation or their sentences can be reduced to the period already undergone by

them. He further contends that petitioner Nos. 2 and 3 are ready to adequately compensate the injured, Amar Singh. In support of his submissions, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court delivered in the case of **Hansa Singh v. State of Punjab**, (1976) 4 SCC 255 and a Division Bench judgment of this Court in the case of **Dev Singh and others v. State of Punjab**, 2000 CrI.L.J. 347.

12. Learned counsel for the State has not opposed the prayer of the learned counsel for the petitioners with regard to his contention not to challenge the conviction of the petitioners. However, he submits that in view of nature and number of the injuries inflicted by the petitioners, the first appellate court has already reduced the maximum substantive sentence from two years to one year for the offence punishable under Section 325, IPC, and, as such, no further reduction is proper in the present case.

13. I have heard learned counsel for the parties with regard to quantum of sentence of the petitioners.

14. There appears to be substance in the submissions made by learned counsel for the petitioners when he submitted that the petitioners being the first offenders, could be ordered to be released on probation in the present case in accordance with

the provisions laid down under Section 360, Cr.P.C. The submissions made by learned counsel for the petitioners, which have been noted hereinabove, appears to be genuine.

15. In view of totality of the facts and circumstances of the case and taking into consideration the ratio of the judgment delivered by Hon'ble the Supreme Court in the matter of **Hansa Singh (supra)** and a Division Bench judgment of this Court in the matter of **Dev Singh and others (supra)**, this Court is of the considered opinion that the petitioners, namely, Kesar Singh, Surjit Singh and Gurmail Singh @ Gela, can be released on probation.

16. As a sequel to the above discussion, this criminal revision petition is partly allowed. The impugned order of sentence is modified and the petitioners are ordered to be released on probation for a period of two years from the date they furnish the necessary bonds to the satisfaction of the learned Trial Court. Necessary bonds shall be furnished by the petitioners within a month of passing of this order. Separate undertaking by each one of them shall also be furnished to the effect that they shall undergo remaining part of their substantive sentences if called for to do so by a Court of competent jurisdiction during the period of their probation, if they violate

the terms and conditions of the bonds to be furnished by them.

17. It is further ordered that during the period of probation, the petitioners shall not commit any other offence and be of good behaviour. Petitioner Nos. 2 and 3 have agreed to pay a sum of Rs. 10,000/- each (Rs.10,000/- + Rs.10,000/- = Rs. 20,000/-) as compensation to the injured, Amar Singh. The said amount shall be deposited with the learned Trial Court within one month of passing of this order. On deposit of the amount by petitioner Nos. 2 and 3, learned Trial Court shall issue a notice to the injured, Amar Singh, to move appropriate application for withdrawal of the said amount as per norms. In case petitioner Nos. 2 and 3 do not comply with the order with regard to payment of compensation, then the order of sentence passed by the learned first appellate Court shall enure. The amount of fine imposed by the learned Court below shall be converted into costs of litigation.

18. The petitioners be set at liberty at once subject to above conditions, if not required to be in custody in any other case.

(NARESH KUMAR SANGHI)
JUDGE

February 4, 2015
Pkapoor