

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

CRR-1225-2006 (O&M)
Date of decision: 10.11.2016

Gaja

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JP Dhull, Advocate for the petitioner

Mr.Karan Sharma, Assistant Advocate General, Haryana

SNEH PRASHAR, J.

CRM-35231-2016

The present application is for placing on record medical record of the petitioner vide Annexures R-1 to R-3.

For the reasons mentioned in the application, the same is allowed. Annexures R-1 to R-3 are taken on record subject to all just exceptions.

CRR-1225-2006

Petitioner Gaja and one Bheema Singh were convicted for commission of offence punishable under Section 326 read with Section 34 of the Indian Penal Code (For short 'IPC') and were sentenced by learned Additional Chief Judicial Magistrate, Kaithal vide judgment / order dated 5.8.2003 to undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/- each and in default of payment of fine to

further undergo rigorous imprisonment for three months. Aggrieved by the judgment of conviction and order of sentence, both the convicts preferred an appeal, which was partly allowed by learned Sessions Judge, Kaithal vide judgment dated 1.6.2006. While Bheema was acquitted, the sentence of accused Gaja was reduced from two years to one year with no change in sentence of fine.

As per the prosecution story, on 24.8.1994 Gaja, whose fields were adjacent to the field of complainant Ganga Ram, had diverted the flow of rain water standing in his fields towards the field of the complainant, wherein paddy crop had been sown. The complainant, who was present in the field, raised objection saying that his crops will get destroyed due to accumulation of water in the field, but Gaja persisted to continue with the wrongful act. At about 8.30 AM Gaja armed with 'Gandasi' and his brother Bheema armed with 'lathi' came in front of the house of the complainant and raising a 'lalkara' that they would teach him a lesson for preventing them from discharging the rain water, Gaja gave a gandasi blow on the left arm of the complainant. When Bheema tried to give a lathi blow, complainant saved himself by stepping backward. Complainant's shouts attracted his brothers Kuldeep and Satbir and one Balbir s/o Kehar Singh, who rushed to the spot to save him. On seeing them, the assailants alongwith their respective arms fled away. The complainant was taken to General Hospital, Kaithal and on his statement a formal First Information Report was registered. The accused -appellant and his brother Bheema were arrested.

On completion of investigation, final report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') was presented in the Court. Finding a prima facie case, the petitioners were charge-sheeted under Sections 326, 323 read with Section 34, to which they pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined as many as seven witnesses in all. Thereafter, statements of petitioners under Section 313 Cr.P.C. were recorded wherein they denied the allegations and pleaded false implication. In defence, they examined Dr.Lajja Ram as DW1.

Evaluating the evidence led by the parties and the submissions made by Assistant Public Prosecutor for the State and the defence counsel, learned trial Court convicted and sentenced the petitioner and Bheema vide judgment / order dated 5.8.2003 as indicated above. Feeling aggrieved, the petitioner and Bheema filed an appeal, which was allowed qua Bheema whereas dismissed qua Gaja (petitioner). However, the sentence of rigorous imprisonment awarded to the petitioner was reduced from two years to one year by learned Sessions Judge, Kaithal vide judgment dated 1.6.2006.

Being dissatisfied by the judgment of conviction and order of sentence, petitioner Gaja preferred the instant criminal revision.

The submissions made by Mr.JP Dhull, Advocate representing the petitioner and Mr.Karan Sharma, Assistant Advocate General, Haryana have been heard and perused the record.

At the very outset, it is submitted by learned counsel for the

petitioner that he does not challenge the judgment of conviction dated 5.8.2003 recorded against the petitioner by learned Additional Chief Judicial Magistrate, Kaithal, which was allowed by learned Additional Sessions Judge, Kaithal vide judgment dated 1.6.2006, however, he submitted that the petitioner is facing agony of criminal prosecution for the last more than 22 years. He is 61 years old and is suffering from Cancer. The medical record of the petitioner vide Annexures R-1 to R-3 has been placed on record. There is no material on the record, which may indicate that after being granted the concession of bail, he has ever misused the same in any manner. He has also never been involved in any criminal activity prior to the incident and also after the same.

Since, learned counsel for the petitioner does not challenge the judgment of conviction passed by learned trial Court and upheld by learned first appellate court qua the present petitioner, this Court is not inclined to go into the details with regard to the factual aspects of the case. However, on scrutinizing the impugned judgments as well as evidence led by the prosecution before the trial Court, it is apparent that as per copy of MLR Ex.PW1/A of complainant Ganga Ram, there was one incised wound on his right forearm. As per the statements of the complainant and other witnesses, the said injury was inflicted by Gaja with a 'gandasi'. The parties being neighbours were well known to each other and there was no dispute regarding identification. As such, there is no scope for any interference in the concurrent findings recorded by both the courts below and the conviction of the petitioner is maintained.

Coming to the matter of sentence, as per the custody certificate already placed on record by the State, there is no other criminal case pending against the petitioner. He had also never been involved in any criminal case prior to the case in hand. In other words, admittedly, the petitioner is a first offender. The case was registered in the year 1994 and since then, the petitioner has been facing prolonged trial. As per the medical record, produced as Annexures R-1 to R-3, the petitioner is suffering from cancer and is also more than 61 years of age. Keeping in view the health status and age of the petitioner, in my considered opinion, it shall be expedient and in the interest of justice that instead of sending him behind the bars, he is given the benefit of probation.

Accordingly, the petitioner is ordered to be released on probation under Section 4(i) of Probation of Offenders Act for a period of one year subject to his furnishing required probation bonds to the satisfaction of learned Chief Judicial Magistrate, Kaithal. The bonds shall be furnished within two months from the date of receipt of the certified copy of this judgment, failing which the present revision petition shall be deemed to have been dismissed.

It is further directed that the petitioner shall keep peace and will bear good behaviour during the period of probation and will surrender before the Court as and when called upon to do so. In addition to the same, the petitioner shall deposit Rs.8000/- as litigation expenses and the amount of fine already deposited by him i.e. Rs.2000/- is also

converted into the litigation expenses. The total amount of Rs.10,000/- will be paid to the injured complainant as compensation.

The present criminal revision petition is disposed of accordingly.

10.11.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes/ No

Whether reportable?

Yes/ No