

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

CRR No. 1249 of 2007 (O&M)

Date of decision:22.04.2016

Jasvir Singh and others

....Petitioners

Versus

State of Punjab

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers 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. Vinod Kataria, Advocate for the petitioners.

Mr. Yogesh Gupta, AAG, Punjab.

P.B. Bajanthri, J.

In the instant petition, petitioners have questioned the validity of judgment dated 29.09.2006 passed in Criminal challan No. 85-1 of 03.07.1999 by the Sub Divisional Judicial Magistrate, Gidderbaha and judgment dated 13.07.2007 passed in Criminal Appeal No. 73 dated 26.10.2006. The Trial Court sentenced as under:-

Sr. No.	Name of the Accused	Under Section	Sentence
1	Jasvir Singh	325 IPC	To undergo RI for two years and to pay fine of Rs.1000.00. In default it of payment of fine to further undergo RI for two months.

2.	Accused Kulvir Singh & Kakka Singh	325/34 IPC	To undergo RI for two years each and to pay fine of Rs.1000 each. In default of payment of fine to further undergo RI for two months each.
3.	Accused Kulvir Singh	323 IPC	To undergo RI for four months.
4.	Accused Jasvir Singh & Kakka Singh	323/34 IPC	To undergo RI for four months each.
5.	Accused Kakka Singh	323 IPC	To undergo RI for four months
6.	Kulvir Singh and Jasvir Singh	323/34 IPC	To undergo RI for four months each.

All these sentences shall run concurrently.”

2. Feeling aggrieved by the aforesaid sentence, petitioners preferred an appeal before the Additional Sessions Judge, Fast Track Court, Muktsar. Additional Sessions Judge, reduced the sentence from RI of 2 years to RI to the tune of one year in respect of offence under Section 325 IPC while maintaining the sentence under Section 323 of the IPC. Aggrieved by both the trial Court as well as Sessions Court, the present criminal revision petition has been filed.

3. The brief case of the prosecution is that on 20.05.1999, MLR NO.28/99/RK GDB was received in the police station stating that injuries were caused to one Mukhtiar Singh. There was a dispute between the petitioners and complainant and Mukhtiar Singh in respect of distribution of water course to their lands resulted in inflicting injuries on Mukhtiar Singh by the petitioners. In this regard, formal complaint was registered and the matter was investigated. Thereafter, challan was filed under Section 325/323/34 IPC on 04.12.2001.

4. The prosecution examined PW2-Mukhtiar Singh who has deposed on oath that the accused have caused injuries to him with sticks.

The said version was corroborated by PW1-Iqbal Singh. PW3-Dr.

R.K.Gupta has deposed as follows:-

“That on 20.05.1999 he was posted at Civil Hospital, Gidderbaha as Medical Officer and he medicolegally examined Mukhtiar Singh and found the following injuries on his person:

- 1. A diffuse swelling in lower part of fore-arm. Unnatural movements were present. Crepitus was present. Underlying both bones were fractured.*
- 2. A reddish contusion 10.0 cm x 2.0 cm on the back of left fore-arm extending to elbow joint X-ray was advised.*
- 3. A reddish contusion 12 cm x 4 cm on lateral surface of left lumbar region. Injury was kept under observation.*

He further stated that injury No. 1 was greivous in nature and injuries No.2 and 3 were kept under observation and weapon was blunt.

5. The prosection also relied on X-ray films and report relating to injuries caused on Mukhtiar Singh thereby it was contended that Sections 325/323/34 IPC is attracted against petitioners-accused.

6. Statement of the petitioners-accused under Section 313 Cr.P.C. was recorded in which they have denied prosecution story as well as allegations and pleaded that they have been falsely implicated in the present case. However, no defence was led in support of their case. The trial Court while appreciating the evidence on record sentenced the appellant under Sections 325/323/34 of IPC. The Sessions Court while reappreciating the evidence on record, reduced the sentence under Section 325 IPC only.

7. Learned counsel for the appellant vehemently contended that having regard to the nature of injuries and the weapon used, Section 325 IPC is not attracted and the prosecution has failed to make out a case under

Section 325 of IPC. Both the trial Court and Sessions Court did not appreciate the fact of injuries and the weapon used. It was further contended that the petitioners are not involved in any other criminal case. Therefore, they are entitled to seek relief under probation.

8. Learned State counsel submitted that petitioners have caused 3 injuries in which injury No.1 was grievous in nature as opined by PW3-Dr.R.K.Gupta. Therefore, the petitioners are rightly sentenced under Section 325 read with Sections 325/34 of IPC. The peittioners have not make out a case so as to interfere with the trial Court as well as Sessions Court. In fact, the Sessions Court modified the sentence from 2 years to one year. Therefore, question of interference in respect of reducing sentence may not proper.

9. Heard learned counsel for the parties.

10. The petitioners' contention is that prosecution has not make out a case so as to attract Section 325 of IPC. Nature of injury and weapon used read with PW3-Dr.R.K.Gupta's deposition that injury No. 1 was a grievous injury. In view of the nature of injury No. 1 and the weapon used was blunt, I am of the view that interference with the order of Sessions Judge, may not proper.

11. Learned counsel for the petitioner relied on the decision of this Court reported in case titled as ***State of Punjab versus Kuldeep Singh and others*** reported in 2007(2)RCR (Crl) 670. Relevant extract of the judgment is as follows:-

“5. In this background, the acquittal of accused Ranjit Singh and Sukhdev Singh appear to be justified. Regarding accused Kuldip Singh, he is alleged to be the author of injury No.2 which though has been held to be

grievous in nature, has been found to be the result of use of some blunt weapon. Thus, the offence would be covered only under Section 325 IPC and not under Section 326 IPC. The offence being covered under Section 360 Cr.P.C., the accused was released on probation for 1 year for the reasons that he had remained in custody for 10-12 days; he was aged 26 years and had small children to support, and this was his first offence. Thus, the impugned judgment is affirmed, and the Criminal Appeal is hereby dismissed.”

12. The petitioners are entitled to be released on probation for the reasons that injuries caused by them on Mukhtiar Singh-PW2 was not an intentional one. In a fit of anger petitioners have assaulted PW-2. It is true that PW3-Dr.R.K.Gupta has opined that injury No. 1 is severe in nature. However, victim Mukhtiar Singh is entitled to victim compensation under Section 357 and 357A of IPC. PW-2 Mukhtiar Singh or his legal heirs entitled to compensation of Rs.25,000/- towards the pain and agony faced by him and his family members from the date of injury caused, till disposal of the case. The offence was under Sections 325 and 323 of IPC and the offence being covered under Section 360 Cr.P.C., the accused were released on probation for one year for the reasons that they remained in custody for one months and 18 days. Even while taking note of the fact that petitioners are not involved in any other criminal proceedings.

13. The accused are directed to pay victim compensation to Mukhtiar Singh-PW2 or to his legal heirs through the CJM, Gidderbaha within a period of 3 months failing which the CJM, Gidderbaha is directed to take coercive steps against all the accused-petitioners. Victim compensation shall be disbursed at the earliest but not later than one month from the date of deposit of compensation amount.

14. Accordingly CRR is disposed of.

22.04.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE