

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No. 2411 of 2010
Date of Decision: 26.04.2016

Tika Ram and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. Ashwani Gaur, Advocate, for the petitioners.
Mr. Dhruv Dayal, Deputy AG, Haryana.

T.P.S. Mann, J.

The petitioners were tried for committing offences punishable under Sections 323, 324, 325 and 326 read with Section 34 IPC on the allegations that on 30.09.1997 at about 1.00 p.m., they, in furtherance of their common intention caused injuries, including grievous injuries, to Chameli, Niranjana, Rakesh, Vikram and Bhoop Singh. Vide judgment and order dated 15/21.05.2007, learned Additional Chief Judicial Magistrate, Sonapat, convicted the petitioners for the aforementioned offences and sentenced them as follows:-

- (i) Rigorous imprisonment for a period of one year and fine of Rs.400/- each for the offence

under Section 326 read with Section 34 IPC and, in default of fine, to further undergo simple imprisonment for a period of six months;

(ii) Rigorous imprisonment for a period of one year and fine of Rs.300/- each for the offence under Section 325 read with Section 34 IPC and, in default of payment of fine, to further undergo simple imprisonment for a period of three months;

(iii) Rigorous imprisonment for a period of six months and fine of Rs.200/- each for the offence under Section 324 read with Section 34 IPC and, in default of payment of fine, to further undergo simple imprisonment for a period of 1-1/2 months; and

(iv) Rigorous imprisonment for a period of three months and fine of Rs.100/- each for the offence under Section 323 read with Section 34 IPC and, in default of payment of fine, to further undergo simple imprisonment for a period of one month.

The period of imprisonment, if any, already undergone by the petitioners during the course of trial, was ordered to be set off while calculating the period of sentence awarded to them. All the sentences were ordered to run concurrently.

Aggrieved of their conviction and sentences, the petitioners filed an appeal, but remained unsuccessful as the same was dismissed by the learned Additional Sessions Judge, Sonapat, vide judgment dated 15.07.2010. Hence, the present revision in which they are on bail.

The case of the prosecution, as noticed by the learned lower appellate Court, in paragraph 2 of its judgment, is reproduced as under:-

“The case of the prosecution, in brief, is that on 30.09.1997, a ruqa was received in Police Station Sadar, Sonapat, from General Hospital, Sonapat, regarding admission of Smt. Chameli, Bhoop Singh, Niranjana, Rakesh and Vikram, residents of village Ahmadpur in injured condition. On this, ASI Rajesh alongwith other police officials went to General Hospital, Sonapat, and after seeking opinion of the Doctor regarding fitness of injured Bhoop Singh, recorded his statement, wherein he stated that a number of plots were carved out in the field of Surat Singh and they have put huts in those plots and the remaining portion of land is cultivated by Surat Singh. On that day at about 1.00 p.m., when he along with Chameli, Niranjana, Rakesh and Vikram reached in front of their house after plucking ladyfingers, accused Punna alias Pawan armed with Farsa, Tika armed with lathi, Samey alias Shyam Lal armed with Jaili and Krishan armed with brick in his hand were standing there. Punna exhorted that they would teach them a lesson for purchasing

plots out of the land of Surat Singh. Punna gave Farsa blows on his head and left hand, Tika gave lathi blow on the head of Smt. Chameli, Punna gave Farsa blow on the right hand of Smt. Chameli, Samey gave a Jaili blow lathiwise on the head of Niranjan, Tika gave Jaili blows on the left hand and back of Vikram and Krishan gave brick blow on the person of Rakesh. Attre, Ram Phal and Almuddin came at the spot. They also caused injuries to Attre in their defence. Thereafter, they were taken to Civil Hospital, Sonapat, on the Tractor of Lillu.”

The prosecution examined Niranjan as PW1, Rakesh as PW2, Smt. Chameli as PW3, Satbir Singh MHC as PW4, Rajender Singh Sub Inspector as PW5, Bhoop Singh as PW6, Vikram as PW7, Dr. S.K. Gosain as PW8, Ilmudeen as PW9 and Dr. V.K. Gupta as PW10.

When examined under Section 313 Cr.P.C., all the petitioners denied the allegations levelled against them and pleaded innocence. In defence, they examined Dr. S.S. Bhogal as DW1 and Dr. Versha as DW2 besides tendering into evidence some documents.

Both the Courts below believed the prosecution case and accordingly convicted and sentenced the petitioners, as mentioned above.

Learned counsel for the petitioners has submitted that it was the complainant party which had initiated the

occurrence and caused injuries to Attar Singh, father of petitioners Shyam Lal, Puna alias Pawan and Krishan. The said injuries have been duly proved by the defence by examining DW2-Dr. Varsha, who testified that she medico legally examined Attar Singh on 30.09.2007 and found the following injuries on his person:-

1. A swelling of size 6 x 6 cm and above it a lacerated wound 3.5 cm x 1 cm was present on the left parietal bone and X-ray was advised.
2. A lacerated wound of size 2 x .5 cm muscle deep was present on the frontal bone of the skull.
3. A lacerated wound of size 2 x .5 cm muscle deep was present on the frontal bone.
4. A reddish contusion of size 6 x 2 cm was present on the right side of the lower back.
5. A reddish contusion of size 4 x 3 cm was present on the left shoulder.
6. Adjacent and medial to the injury No.5, a reddish contusion with swelling of size 3 x 3 cm was present on the left shoulder and X-ray was advised.
7. He was complaining of pain in the right ankle region. There was no visible mark of injury seen.”

It is also submitted that DW1-Dr. S.S. Bhogal deposed that on 3.10.2007, he conducted X-ray examination of Attar Singh and found fracture of left acromion.

Having heard learned counsel for the parties and on going through the record, this Court finds that while making statement before the Police on the basis of which FIR was registered, complainant-Bhoop Singh had stated that the complainant party had caused injuries to Attar Singh, who had also reached the spot along with Ram Phal and Almuddin, in their self defence. Once the prosecution admitted causing of injuries to Attar Singh, father of the three petitioners, it cannot be said that the prosecution has failed to prove the guilt of the petitioners. Even otherwise, it has been brought on record by the prosecution that Smt. Chameli, Bhoop Singh, Niranjana, Rakesh and Vikram had suffered injuries on their persons. PW10-Dr. V.K. Gupta, had medico legally examined all of them and found the following injuries on their persons:-

i) Smt. Chameli.

1. There were diffuse swellings on left parietal region of the skull with over lying reddish abrasion X-ray skull was advised.
2. There was incised wound 5 cm x 1 cm over right fore arm middle. Fresh bleeding was present. Advised X-ray right forearm.

ii) Bhoop Singh

1. There were two injuries size 2 cm x 1 cm and 3 cm x .5 cm over right fronto

parietal region of the skull. X-ray skull was advised.

2. There was incised wound 8 cm x 4 cm over right elbow joint and upper third of the right forearm. Advised X-ray elbow joint and fore-arm.

iii) Niranjan

1. There was diffuse swelling over middle of fronto parietal region of the skull over lying there was L.wound 1 cm diameter. X-ray skull was advised.

iv) Rakesh

1. L.wound 2 cm x 1 cm bone deep over left leg upper third. Advised X-ray left leg.

v) Vikram

1. There was a L.wound 1 cm x 0.5 cm over posterior surface of lower third of left upper arm.

2. Half cm diameter stab wound over left lower-chest posterior surface at the level of T-12 vertebra 15 cm. away from the middle. Depth could not be ascertained. Margins of the wound were lacerated. Advised X-ray chest and surgeon opinion. There was no corresponding injury mark over the shirt patient was wearing.

The prosecution had also examined PW8-Dr. S.K. Gosain, Senior Medical Officer, who deposed about conducting X-ray examination of Smt. Chameli and finding fracture shaft right ulna. He also deposed about conducting X-ray

examination of Rakesh and finding fracture of left tibia. Thus, the injuries noticed on the persons of five injured persons on the complainant side are in conformity with the ocular account of the occurrence.

In view of the above, no case is made out for any interference in the conviction of the petitioners for the various offences.

As regards the quantum of sentence, it may be noticed that the petitioners have been facing the agony of the criminal prosecution for the last more than 18 years. The grievous injuries noticed on the persons of Smt. Chameli and Rakesh, were on their non vital parts i.e. right fore-arm and left leg, respectively. When the petitioners were examined by the trial Court on the quantum of sentence, they had pleaded that they were the first offenders and sole bread winners of their families. As per the custody certificates produced by the learned State Counsel, Tika Ram has already undergone sentence including remissions of 4 months and 21 days; Shyam Lal alias Samey has undergone 4 months and 26 days; Pawan alias Puna has undergone 4 months and 21 days while Krishan has also undergone 4 months and 21 days. All of them are presently on bail pursuant to the order passed by this Court on

10.11.2010. Nothing has come on the record that while on bail, they have misused the concession in any manner.

Taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the petitioners behind the bars once again to undergo the remaining period of sentences of imprisonment imposed upon them. Ends of justice would be amply met if their substantive sentences are reduced to the one already undergone by them. At the same time, the fine of Rs.400/- on each of the petitioners for the offence under Section 326 read with Section 34 IPC, can be enhanced to Rs.15,000/-so as to compensate two of the five injured, namely, Smt. Chameli and Rakesh, who had received one grievous injury each, on their persons.

Resultantly, the conviction of the petitioners for the offences under Sections 326/34, 325/34, 324/34 and 323/34 IPC is upheld. Their substantive sentences of imprisonment on all the counts are reduced to the one already undergone by them. The fine imposed upon the petitioners for the offences under Sections 325/34, 324/34 and 323/34 IPC along with their default clauses, are maintained. However, the fine of Rs.400/- imposed upon each of the petitioners for the offence under Section 326/34 IPC is enhanced to Rs.15000/- and in default of payment of

the enhanced amount, they shall undergo simple imprisonment for six months. The various amounts of fine imposed upon the petitioners by the trial Court, have already been deposited by them. The enhanced amount of fine i.e. Rs.14,600/- imposed on each of the petitioners, be deposited with the trial Court within a period of three months. The enhanced amount of fine, if paid, be disbursed to the injured, namely, Smt. Chameli and Rakesh as compensation in equal shares.

The revision is, accordingly, disposed of.

26.04.2016
ds

(T.P.S. MANN)
JUDGE