

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

CRR No.478 of 2010

Date of decision: 28th July, 2016

Satyawan and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Deepak Gupta, Advocate
for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

Petitioners Satyawan and Subhash who are real brothers have preferred this criminal revision challenging the initial judgment of conviction passed by the Court of Additional Chief Judicial Magistrate, Kaithal dated 27.11.2008 which has merged in judgment dated 04.12.2009 passed by the first appellate Court of learned Additional Sessions Judge, Kaithal thereby dismissing the appeal of the convict appellants and upholding sentence so awarded.

Upon hearing Mr. Deepak Gupta, Advocate for the petitioners; Mr. Munish Sharma, Asstt. Advocate General, Haryana for the respondent/State and on perusal of the records.

A case by way of FIR No.2 dated 03.01.2000 under Sections 323/324/326/506/34 IPC and Section 25 of the Arms Act was registered at Police Station Rajound against the petitioners accused on the statement of injured Ranbir Singh. Allegations of the prosecution are that on 02.01.2000 on account of dispute between Ram Kala brother of the petitioners as well as petitioners pertaining to a piece of land and on the said date around 11 a.m. while Ram Kala had come to his house and reached the street, Subhash armed with Gandasa, Satyawar armed with Sword came there. On raising of lalkara by Subhash that Ram Kala should not escape, Subhash is alleged to have given a Gandasa blow to Ram Kala whereas Satyawar gave a Sword blow on his left palm. On intervention of the public the complainant was saved from the clutches of the accused and meanwhile Satyawar took out a pistol and which the complainant tried to snatch to save himself when Subhash inflicted two Gandasa blows on the right arm and right leg of Ram Kala. Prosecution in all examined 12 witnesses. However, the defence denied these allegations but did not lead any evidence in defence resulting in passing of the impugned findings which were upheld by the learned first appellate Court.

In the light of contentions of learned counsel for the revisionists the petitioners have been found guilty under Section

323/324/326/34 IPC. It is well established from the medical evidence of PW12 Dr.Arvind Jindal who has proved MLR Ex.PW12/A of the victim Ranbir Singh who has testified as PW2 and Ram Kala whose MLR has been proved as Ex.PW12/C that injury No.1 and 2 to Ranbir Singh were caused by sharp edged weapon whereas injury No.3 was with blunt means. It is sought to be established by this witness who has sought to prove x-ray report Ex.PW12/F that there was fracture of skull bone of Ranbir Singh. The testimony of this witness qua other injured Ram Kala PW1 it has come that injuries No.3 and 4 have been caused by blunt means and injuries No.1 and 2 on his person were by sharp edged weapons and there is no fracture of the bones in the injuries on the person of Ram Kala. The only contention that has been raised by the learned counsel for the revisionists is over the conviction under Section 326 IPC qua the injury of Ranbir Singh which is on the head which is injury No.1 and 2 which both are incised wounds and were kept under observation as has been contended by the two sides. It was this Doctor who has opined on the basis of MLR Ex.PW12/F that as has been the submissions of the petitioners' counsel pointing out the examination in chief of PW12 that this Doctor states that there was no fracture on the mandible portion but fracture was seen on the x-ray skull on the person of Ranbir Singh. The mere cross-examination in the light of submissions

of the two sides shows that this Doctor admits that x-ray examination of injured Ranbir Singh and Ram Kala were not done by him. Sufficiently illustrates that this Doctor having not conducted the x-ray examination and without examination of the radiologist who conducted the x-ray to prove the fracture of the skull how the Court came to the conclusion that fracture was there, are matters which impinges the judicial conscience. In the absence of any legal evidence as the prosecution has failed to produce radiologist in the Court to prove the x-ray films and report and therefore injury on the head of Ranbir Singh to be a fracture having remained unproved cannot be covered under the definition of Section 326 IPC and the definition assigned to 'Grievous hurt' by virtue of Section 320 IPC does not covers this injury as neither there is any privation, emasculation, permanent disfigurement or permanent fracture of any part of the body nor it is there that he remained under hospitalization which has endangered his life for a period of 20 days or more. Thus, in view of the law laid down in '**Baldev Singh v. State of Punjab**' 1996(1) RCR (Criminal) P&H 790 the said injury does not stands covered under Section 326 IPC and which arguments of learned counsel for the petitioners could not be controverted by learned State counsel and therefore, this injury stands covered under Section 324 IPC. Learned Courts below have wrongly considered this x-ray report to be

legal and legitimate piece of evidence when there had been no such adherence to legitimate process of law in proving such documents i.e. x-ray report. Thus, in the light of law laid down in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam and others**' 1971 AIR (SC) 1865; '**Karnail Singh v. M/s Kalra Brothers, Sirsa**' 2009(2) RCR(Civil) 380; '**LIC of India & another v. Ram Pal Singh Bisen**' 2010(4) SCC 491; and '**Muddoru Rajappa Tipanna v. State of Karnataka**' 2015(4) RCR(Criminal) 485 mere exhibiting of a document does not dispenses with its proof. In the light of the same, the impugned judgment dated 27.11.2008 which has merged into the findings of judgment dated 04.12.2009 to that effect are set aside holding that in the absence of any legitimate proof the prosecution have certainly failed to prove that this injury on the head of Ranbir Singh falls under Section 326 IPC and rather it falls under Section 324 IPC. The finding to this effect of the courts below is modified.

The second line of contention that has been raised by learned counsel for the petitioners is over the prayer for grant of concession of probation. It is contended that the petitioners are real brothers and have suffered enormously for more than 16 years and have families to support and if sent to custody would certainly not only bring about ignominy for the petitioners but would also adversely impact families of the two. Though on behalf of the State such a prayer has

been sought to be stoutly opposed on the ground that petitioners have taken law in their hand and are not entitled to be shown any compassion.

Going through the submissions, admittedly the petitioners are real brothers and as is conceded at bar by the State there is no previous conviction or criminal past of both the petitioners and it is only a dispute over a piece of land between blood relations and which is more of spontaneous aggression which has led to all this. The provisions of Section 360/361 Cr.P.C. mandates the courts must consider the grant or refusal of such a relief of probation the same being in conformation to the reformatory theory of criminal jurisprudence. As sending the petitioners to custody would expose them to hardened criminals and they might follow the path of crime which would be a source of distress for the society at large. If the petitioners are weaned back to the path of rectitude they might prove to be an asset to the society and thus, the ends of justice demand that the petitioners who have already suffered enormously for a period of 16 years from their prosecution/conviction in this case and must have suffered enormously in terms of money as well as hardship physical as well as mental, be given the solace of this concession.

In the light of the same, the petitioners are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on their entering into a

bond in the sum of ₹20,000 each with one surety each of the like amount to the satisfaction of the trial Court undertaking therein that they shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

The revision stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

July 28, 2016

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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