

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.1626 of 2016 (O&M)

Date of Decision: 17.11.2016

Nirbhail Singh alias Nirbhal Singh @ Bhalla & another

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Veneet Sharma, Advocate
for the petitioners.

Mr. Jangsher Singh Bhullar, DAG, Punjab

HARI PAL VERMA J.

Petitioners - Nirbhail Singh alias Nirbhal Singh @ Bhalla son of Massa Singh and Piara Singh son of Niranjan Singh have filed the present revision petition against the judgment dated 19.1.2016 passed by learned Additional Sessions Judge, Tarn Taran, whereby their appeal against the judgment of conviction and sentence dated 11.9.2012 passed by learned Additional Chief Judicial Magistrate, Tarn Taran, has been dismissed.

Briefly stated, FIR No.78 dated 31.5.2004 under Sections 326/323/324/34 IPC, Police Station Sadar Tarn Taran was registered against the petitioners on the statement of complainant - Gopal Singh. As per the statement of complainant - Gopal Singh, on 21.5.2004 at about 7-30 P.M., he was returning to his Village Kang on his bicycle after doing sewa in Dera Baba Dasondha Singh at Khadoor Sahib and when he reached near

the gate of public school of his Village Kang, Nirbhail Singh @ Bhailla, petitioner no.1, brother-in-law (Sanddu) of his son armed with *gandasi* and his (complainant's) brother Piara Singh, petitioner no.2, armed with *gandasi* came there and stopped him. Nirbhail Singh raised a *lalkara* to catch hold of him and not to let him go alive. On hearing the noise, his son Nirmaljit Singh and Jarnail Singh son of Harbhajan Singh came at the spot. In the meantime, Nirbhail Singh gave two *gandasi* blows to him, which hit on his right forearm and near the right thigh. Piara Singh also gave him two *gandasi* blows, which hit him on his left leg and right knee. He raised *raula* of '*mar ditta mar ditta*' and on this, the assailants ran away from the spot along with their respective weapons. Nirmaljit Singh and Jarnail Singh arranged a vehicle for him and got him admitted in the hospital at Village Mian wind. The motive behind the occurrence was that there was a dispute between the complainant and his brother Piara Singh regarding partition of land and though the matter was compromised by the village panchayat, but he was not satisfied with the same.

After registration of the FIR and completion of investigation, the accused were arrested and challan was presented in Court. The copies of challan were supplied to the accused free of costs as envisaged under Section 207 Cr.PC and finding a prima-facie case, the charge was framed against the petitioners-accused under Sections 326, 325, 323 read with Section 34 IPC, to which, they pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined as many as six witnesses i.e. PW1 Gopal Singh, complainant, PW-2 Nirmaljit Singh, eyewitness of the occurrence, PW-3 HC Lakhwinder Singh, PW-4

HC Santokh Singh, PW-5 HC Hardip Singh, who deposed about the investigation part of the case and PW-6 Dr. Tara Singh, who proved the carbon copy of the MLR of injured Gopal Singh (Ex.PW-6/B) and pictorial diagram (Ex.PW6/C).

After completion of evidence of prosecution, statements of accused under Section 313 Cr.PC were recorded, wherein all incriminating evidence appearing against them was put to them, to which they pleaded false implication and claimed innocence. In defence, the accused Nirbhail Singh himself appeared as DW-2 and examined Shingara Singh as DW-1 and deposed that no such occurrence had taken place and they have been implicated falsely due to old enmity.

The trial Court vide judgment and order dated 11.9.2012, after hearing the parties and appreciating the evidence on record, convicted the petitioners for offence under Sections 323 and 326 IPC and sentenced them as under:-

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
1.	Nirbhail Singh	323 IPC	RI for 6 months	Rs.500/-	1 month
2.	Nirbhail Singh	326 IPC	RI for 2 years	Rs.1000/-	6 months
3.	Piara Singh	323 IPC	RI for 6 months	Rs.500/-	1 month
4.	Piara Singh	326 IPC	RI for 2 years	Rs.1000/-	6 months

Both the sentences were ordered to run concurrently.

Aggrieved from the aforesaid judgment of conviction and order of sentence dated 11.9.2012, the petitioners filed an appeal before

learned Additional Sessions Judge, Tarn Taran, however, the same was dismissed by the appellate Court vide judgment dated 19.1.2016.

It is in these circumstances that the petitioners have filed the present revision petition, impugning their conviction and sentence ordered by learned trial Court and affirmed by learned appellate Court.

On 28.5.2016, following order was passed by this Court:-

“The petitioners have filed the present revision petition against the judgment dated 19.1.2016 passed by learned Additional Sessions Judge, Tarn Taran, whereby the appeal against the judgment of conviction and order of sentence dated 11.9.2012 in FIR No.78 of 2004, under Sections 326, 323, 324, 34 IPC, registered at Police Station Sadar, Tarn Taran, passed by learned Additional Chief Judicial Magistrate, Tarn Taran, was dismissed.

Learned counsel for the petitioners states that after the conviction passed by learned Magistrate and maintained by learned Additional Sessions Judge, Tarn Taran, the matter has been compromised between the parties.

Mr. Sandeep Sharma, Advocate has put in appearance on behalf of complainant and admits the factum of compromise.

The parties are directed to appear before the Court of Chief Judicial Magistrate, Tarn Taran for recording their respective statements with regard to compromise/settlement on 8.7.2016.

The said Court is directed to submit a report on or before the next date of hearing containing the following information as well:-

(i) number of persons arrayed as accused in FIR.

(ii) whether any accused is proclaimed offender.

(iii) whether the compromise is genuine, voluntary, and

without any coercion or undue influence.

Adjourned to 31.8.2016.

Meanwhile, the remaining sentence of the petitioners is suspended during pendency of the revision petition subject to their furnishing bail bonds and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Tarn Taran.”

Pursuant to aforesaid order dated 28.5.2016, the parties have also appeared before learned Chief Judicial Magistrate, Tarn Taran and got their statements recorded. On the basis of statements of the parties, learned Magistrate has forwarded her report dated 27.9.2016 to the effect that the compromise effected between the parties is voluntary and the same has been arrived at without any pressure. The statement of the complainant - Gopal Singh, which has been annexed along with the report of learned Magistrate, reads as under:-

“That FIR No.78/2004 under section 326/324/323/34 IPC registered at Police Station Sadar, Tarn Taran, District Tarn Taran was registered at his statement against the accused persons. Now, the matter has been compromised with the intervention of respectables with the accused persons. The compromise has been effected without any undue pressure and voluntarily. I have no objection if the said FIR No.78/2004 is quashed.

*RO & AC
(Sd/-)*

*Sd/-
(Rana Kanwardeep Kaur)
Chief Judicial Magistrate,
Tarn Taran.”*

The petitioners-accused, in their statements, have also undertaken to maintain peace in the village.

Learned counsel for the petitioners has relied upon the judgment of Hon'ble the Apex Court in the case of **Gulab Das and others Versus State of M.P. 2012(1) RCR (Criminal) 220**, wherein the parties had entered into settlement during appeal in the Apex Court and sought permission to compound the offence. In that case, the Apex Court had reduced the sentence to the period already undergone by the accused, as the incident had taken place 17 years back and the accused were young at that time. In this manner, the Apex Court had reduced the sentence even for offence under Section 307 IPC despite the fact that the accused were convicted and sentenced to undergo RI for three years.

Learned counsel for the petitioners has further submitted that as against the awarded maximum sentence of two years, petitioner no.1 - Nirbhail Singh has remained in custody for 5 months and 19 days whereas as far as petitioner no.2 Piara Singh is concerned, he has remained in custody for 4 months and 23 days. Therefore, considering the fact that the petitioners are first time offenders, having their respective families to look after and also the fact that they are suffering the agony of criminal proceedings since 31.5.2004, when the FIR was registered against them, the sentence awarded to them be reduced to the period already undergone by them.

On the other hand, learned State counsel has filed the custody certificates of the petitioners and has not disputed the custody of the petitioners, however, he has opposed the plea of taking a liberal view, as raised by learned counsel for the petitioners.

I have heard learned counsel for the parties.

This Court in the case of **Sohan Lal v. State of Punjab 1979 CLJ (Criminal) 113**, wherein the accused was first time offender and had undergone the sentence of 3½ months, had reduced his sentence to the period already undergone by him. Similarly, in the case of **Balwinder Singh v. State of Punjab CRR No.2574 fo 2012 decided on 31.10.2012** this Court has reduced the sentence of the accused therein under Sections 323, 325 and 326 IPC.

Admittedly, the petitioners have been convicted under Sections 323 and 326 IPC and as against the awarded maximum sentence of two years, petitioner no.1 - Nirbhail Singh has remained in custody for 5 months and 19 days whereas petitioner no.2 - Piara Singh has remained in custody for 4 months and 23 days. They are first time offenders and have their families to support. Therefore, taking into account the fact that the petitioners, who are closely related to the complainant, are undergoing the agony of protracted trial since 31.5.2004 and they have effected a compromise with the complainant with the intervention of respectable people of the village and have undertook to maintain peace, this Court feels that ends of the justice would be met if the sentence awarded to them is reduced to the period already undergone by them.

Accordingly, the present revision petition is dismissed. However, the sentence awarded to the petitioners is reduced to the period already undergone by them.

November 17, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No