

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

CRR No.4446 of 2015 (O&M).
Decided on:-12.07.2016.

Kuldeep Singh and another

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

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

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Sultan Singh Gill, DAG, Punjab.

HARI PAL VERMA, J.

The petitioners have filed present revision petition against the judgment dated 24.9.2015 passed by learned Additional Sessions Judge, Ludhiana whereby their appeal against the judgment of conviction and order of sentence dated 4.3.2014 passed by learned Judicial Magistrate 1st Class, Jagraon was dismissed.

Vide judgment dated 4.3.2014, learned Magistrate has found the petitioners guilty for commission of offence under Section 382 read with Section 34 IPC. Vide separate order of even date, learned trial Court sentenced the petitioners to undergo rigorous imprisonment for a period of

two years and fine to the tune of Rs.3,000/- each and in default thereof to further undergo simple imprisonment for a period of fifteen days.

Briefly stated, case of the prosecution is that on 15.4.2008 complainant Balwinder Singh made a statement before the police that he is resident of Moga and is a motor mechanic by profession. He has a Maruti car bearing registration No.PB-29E-3297, white colour, Model 2004 for his domestic use. On that day, he had gone to railway station to drop his relatives. When he reached little bit ahead of Bharat Nagar Chowk towards Jagraon side, two persons standing along side road made a gesture to stop him. Noticing their gesture to be genuine, the complainant stopped his car. The petitioners-accused had shown their helplessness and requested the complainant to take them to Jagraon. It was about 3. 00 p.m. The complainant allowed those persons to sit in the car. Out of these persons, one was a Sikh person aged about 32-33 years having beard on his face and was wearing grey coloured safari suit and a Parna around his head. He sat on the front seat of the car adjoining the complainant. The other person was a Hindu gentleman wearing black shirt. He sat on the back seat of the car behind the complainant.

While the complainant had reached near Cattle Market, Jagraon, the Hindu person sitting behind the complainant strangled the complainant with his hands and the complainant stopped the car. These two persons threw the complainant out of car on the side of road and took away his car. On account of the strangulation effect, the complainant turned

unconscious. He got consciousness about 4.30 p.m. He borrowed phone of some passer-by and informed his relatives about the incident. Upon their reaching the spot, he started searching the car, but the same could not be traced out.

On the basis of aforesaid statement of the complainant, FIR No.78 dated 15.4.2008 under Section 382 read with Section 34 IPC was registered at Police Station Jagraon and investigation was started. The petitioners-accused were arrested. On completion of investigation, Challan was presented in the Court.

On appearance of the petitioners-accused, complete set of documents as required under Section 207 Cr.PC were supplied to them by learned trial Court. Finding a prima-facie case against the petitioners, the trial Court framed charge against them under Section 382 read with Section 34 IPC to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 Balwinder Singh, PW2 SI Gurnam Singh, PW3 HC Sham Singh and PW4 Gurnam Singh, Clerk, DTO Office and thereafter evidence of the prosecution was closed.

PW1 complainant Balwinder Singh has reiterated his version as stated in the FIR. He has specifically stated that on 15.4.2008, he had taken his car to drop his relatives at Railway Station, Ludhiana and while he was returning and had reached ahead of Bharat Nagar Chowk towards Jagraon side, two persons standing alongside road signalled him to stop. He stopped

his car and allowed them to sit in his car. While they reached near Cattle Market, Jagraon, the Hindu gentleman strangled him with his hands and the complainant stopped the car. Both the petitioners had thrown him out of the car in the pit. On account of strangulation of his throat, the complainant became unconscious. After gaining consciousness, he signalled many vehicles to stop, but no vehicle stopped.

Similarly, PW3 HC Sham Singh has proved on record Ex.PB and Ex.PC, the personal search memos, Ex.PD and Ex.PE arrest memos and Ex.PF recovery memo.

PW4 Gurnam Singh, Clerk, DTO Office has proved on record the RC Ex.P1.

The statements of the accused as required under Section 313 Cr.PC were recorded in which all incriminating circumstances appearing against them were put to them to which they denied all the allegations, rather, pleaded themselves to be innocent.

On the basis of consistent testimonies of prosecution witnesses, the charges were proved against the petitioners. Accordingly, the trial Court has convicted them for commission of offence under Section 382 read with Section 34 IPC vide judgment dated 4.3.2014 and vide separate order of even date, sentenced them for the period as mentioned above.

The petitioners preferred appeal against the judgment and order passed by the trial Court, which met the same fate and learned Additional Sessions Judge, Ludhiana upheld the conviction and sentence of petitioners

vide judgment dated 24.9.2015.

It is in the aforesaid circumstances, the present revision petition has been filed by the petitioners.

Learned counsel for the petitioners has made strenuous effort that the findings recorded by the Courts below are against law and facts. He has contended that the prosecution has not examined any independent witness and has not been able to prove ownership of the case property i.e. the car. There was no consistency in the statement of PW1 complainant Balwinder Singh, but still the Courts below have erroneously held that his testimony is consistent, cogent and convincing.

Learned counsel for the petitioners has further argued that the finding of learned Courts below that the car is recovered from the petitioners and recovery memo is proved on record, is also erroneous. Since PW2 Gurnam Singh has not appeared in the witness box after getting his examination-in-chief recorded on 18.1.2012, it is sufficient to believe that case of the prosecution is false. PW2 did not appear for his cross-examination and, therefore, his statement cannot be read in evidence.

Learned counsel for the petitioners has further submitted that as against the awarded sentence of 2 years, the petitioners are already in custody for the last about 1 year and 3 months. He has further contended that even the sentence awarded to the petitioners is on higher side despite the fact that the petitioners are first time offenders and are facing the agony of criminal proceedings for the last many years.

On the other hand, learned State counsel has contended that the scope of interference in the revisional jurisdiction is very limited. It has been duly proved that after strangulating the complainant, the petitioners had thrown him out of the car in a pit. Thus if such like offences are dealt with liberally, the people would lose faith and even genuine persons would not be offered any lift in the situation of dire need.

The custody certificates filed by learned State counsel in the Court today, are taken on record.

I have heard learned counsel for the parties.

The statement of PW1 complainant Balwinder Singh is very categorical. By extending lift to the petitioners, he has projected humanity. His statement is quite consistent to the effect that when he reached Cattle Market, Jagraon, one of the petitioners, who was sitting on the back side of the car, had strangulated his throat. He stopped the vehicle. The petitioners-accused had thrown him in the pit. The complainant become unconscious. It is only after gaining consciousness, he tried to signal many vehicles to stop, but no vehicle stopped. He had no option except to go to police and that too on feet and reported the matter.

On the one hand, the complainant, who is a victim for extending the lift, has acted on the gesture of the petitioners-accused and extended lift, even though the petitioners were not in need of such lift, whereas when the complainant really required help and tried to signal many vehicles, nobody stopped their respective vehicles. Here lies difference. The genuine need has

been disbelieved, whereas the petitioners, who had *mens rea* in their mind, succeeded in getting lift from the complainant.

Similarly, the plea of the petitioners that the complainant is not proved to be owner of the car cannot be accepted as when a vehicle is required to be registered after sale, there may be certain formalities required to be completed. The car in question was recovered from the possession of petitioners-accused. Accordingly, the recovery memo was proved on record. The car was taken away by the petitioners and ownership of the car was duly proved on record by complainant Balwinder Singh. It has been duly established that the car belonged to the complainant.

Plea as raised by learned counsel for the petitioners that there are certain discrepancies in the statements of prosecution witnesses does not carry much weight as after particular period of time, some minor discrepancies in the statements are bound to be there. Such discrepancies are not very crucial which can change the nature of case.

The argument of learned counsel for the petitioners that the sentence awarded to the petitioners is on the higher side is also not sustainable. Perusal of Section 382 IPC would reveal that the Act has provided rigorous imprisonment upto 10 years along with fine. The Courts below have duly considered this aspect at the time of awarding sentence to the petitioners. Therefore, even on the sentence part, no interference is warranted.

In view of the above, the impugned judgment of conviction and

order of sentence dated 4.3.2014 passed by learned trial Court and the judgment dated 24.9.2015 of learned appellate Court are affirmed and the present revision petition, being devoid of any merit, is dismissed.

July 12, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE