

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

CRR-595-2005

Date of decision : 07.09.2017

Harcharan Singh and others

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. H.S. Jalal, Advocate for
Mr. Sandeep Punchhi, Advocate
for the petitioners.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This criminal revision is directed against judgment dated 02.03.2005 passed by the Court of learned Additional Sessions Judge, Sirsa vide which he had dismissed appeal filed by accused Harchand Singh, Harpal Singh @ Pal Singh, Hazoora Singh, Hargovind Singh and Jagsir Singh against judgment of their conviction dated 07.09.2000 passed by

Judicial Magistrate Ist Class, Dabwali and order of sentence dated 08.09.2000 vide which they were sentenced to undergo rigorous imprisonment for three years each and to pay a fine of ₹1,000/- each for commission of offence under Sections 326/149 of the Indian Penal Code ("IPC" - for short) and in default of payment of fine, to further undergo simple imprisonment for three months each; to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹500/- each for commission of offence under Sections 324/149 IPC and in default of payment of fine to further undergo simple imprisonment for a period of one month each, to undergo rigorous imprisonment for a period of six months each and to pay a fine of ₹500/- each for commission of offence punishable under Sections 323/149 IPC and in default of payment of fine to further undergo simple imprisonment for a period of one month each and to undergo rigorous imprisonment for a period of one year each and to pay a fine of ₹1,000/- each, for commission of offence under Section 148 IPC and in default of payment of fine to further undergo simple imprisonment for a period of three months each.

All the sentences were ordered to run concurrently.

Out of the fine so realized, a sum of ₹5,000/- each was ordered to be paid to the injured Gurcharan Singh and Kartar Singh after the expiry of time of filing of appeal or revision.

The accused-convict has impugned the judgments / orders passed by both the Courts below praying that those be set aside by way of acceptance of the revision petition and he be acquitted of the charge framed against them.

Briefly stated facts of the case as per prosecution version are that the criminal machinery in this case was set into motion by complainant

– Gurcharan Singh son of Lal Singh, who got his statement recorded with the police on 30.07.1992, in which he stated that on 29.07.1992 he was working in his fields, accused Hargovind was spotted passing through his such land at which complainant protested, which led to exchange of hot words between accused - Hargovind and the complainant. After some time accused Pal Singh appeared on the scene and started abusing the complainant. The complainant went home out of fear and informed his brothers Kartar Singh and Maghar Singh about the incident; that at about 6/6:30 p.m. when the complainant came out of his house then he was assaulted by accused – Hargovind armed with a *Gandasa* (axe), accused Jagsir and Hazoor Singh armed with *Kasolas*, accused Harchand and Pal Singh armed with *Lathies* (clubs). Accused - Hargovind gave a *Gandasa* blow hitting complainant on the head, whereas Hazoor Singh and Pal Singh gave *Lathies* blows to the complainant; that on an alarm having been raised his brothers Kartar Singh and Maghar Singh arrived at the scene of the incident. Then Hargovind gave a *Gandasa* blow hitting Kartar Singh on right hand whereas Hazoor Singh gave a *Kasola* blow hitting Maghar Singh on his back. Jagsir Singh also gave a *Kasola* blow on the thumb and fingers of left hand of Kartar Singh. Accused Pal Singh gave a *Lathi* blow hitting Maghar Singh on his back. Harchand gave a *Lathi* blow to Maghar Singh hitting him on the back of his arm. On an alarm was being raised, Lal Singh and Angrej Kaur arrived at the spot. The complainant had also caused some injuries to accused party in self-defence, thereafter injured in the incident were removed to the hospital where they were medico legally examined. The Investigating Officer sent *ruqa* to the police station, on the basis of which formal FIR was registered. The Police party went to the spot. The Investigating Officer prepared the necessary documents during the course of

investigation and the accused were arrested.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Dabwali.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Dabwali, he supplied copies of documents relied upon in the challan to the accused free of cost as envisaged under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Dabwali finding that charge for offences under Sections 148/323/324/326/149 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for the evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as seven witnesses as per following details:-

PW-1, Dr. R.C. Chaudhary, Medical Officer, CHC, Rania deposed that on 29.07.1992 while he was posted at CHC, Dabwali, he medico legally examined Gurcharan Singh son of Lal Singh aged about 38 years male resident of Nillanwali and found the following injuries:-

- 1. An incised wound was present on left parietal area of left side of head, size was 3x1 cm x bone deep and fresh bleeding was present.*
- 2. An incised wound was present in the area of tempo- parietal region of left side of head, size was 3x1 cm x scalp deep and fresh bleeding was present. It was 3 cm anterior to injury No.1.*
- 3. An incised wound was present in front of head of left side, it was 4 cm above from left eye-brow.*

4. *A tender swelling was present in the left side of chest in mid-axillary line, it was 25 cm, below from axilla and size was 6 cm x 4 cm and was red coloured contusion, size 4 cm x 2 cm.*
5. *Abrasion size 4 x 2 cm was present on right lower leg, 6 cm, above from right ankle joint.*

Injury No.1 to 5 were kept under observation and advised X-ray, skull and chest, Injury No.1, 2 and 3 were caused by sharp edged weapon and rest were by blunt. Probable duration of injuries was fresh in nature. He proved carbon copy of MLR in this behalf as Ex.DW1/A and diagram showing the seats of injuries as Ex.PW1/B.

On 29.07.1992 he also medico legally examined Partap Singh son of Lal Singh, 40 years male resident of Nillanwali and found following injuries on his person:-

1. *An incised wound was present 4 cm below from medial side of right wrist joint at lower 1/3 of right forearm on medial side, size of flap of eversion of skin attached with a small tag of skin in an area of size 6 cm x 4 cm x bone deep and fresh bleeding was present.*
2. *An incised wound was present at dorsum of right base of little finger at metacarpophalangeal joint, size 1 ½ cm x ½ cm x skin deep was present.*
3. *An incised wound was present on the medial side of tip of index finger, size 2 cm x ¼ cm x skin deep, fresh bleeding was present.*
4. *An abrasion at left upper arm, size was 6 cm, above to left elbow, size 4 cm x ½ x bone deep.*

Injury No.1, 2 and 3 were kept under observation while No.4 was simple. Injury No.1, 2 and 3 were caused by sharp edged weapon within the duration of fresh in nature, whereas injury No.4 was caused by blunt within probable duration of fresh in nature. The witness proved carbon copy of MLR in this behalf as Ex.PW1/C and diagram showing the seats of injuries as Ex.PW1/D.

On the same day, he also medically examined Maghar Singh son of Lal Singh, 35 years male resident of Nillanwali and found following injuries on his person:-

- 1. An incised wound was present at back of chest. It was 18 cm. above from right iliac erect, size was 10 cm x 1 cm x skin deep, with fresh bleeding.*
- 2. A red coloured contusion mark was present in an area of left scapular region, size was 4 x 2 cm.*
- 3. An abrasion was present on the back of left upper arm, 10 cm above from left elbow, size was 4 cm x 2 cm.*

All injuries were simple in nature, injury No.1 was caused by sharp edged weapon, whereas remaining were by blunt weapon. The probable duration of injuries was fresh in nature. The witness proved carbon copy of MLR as Ex.PW1/E and diagram showing the seats of injury as Ex.PW1/F.

He also sent *ruqa* regarding admission of injured being Ex.P1/G to Police Station, Sadar Dabwali. He also opined vide endorsement Ex.PW1/H the injured fit to make statement. He also conducted the X-ray of Gurcharan Singh vide MLR No.127/1992 and MLR No.246 to 249 regarding injuries No.1, 2 and 3. There was a fracture of parietal bone of skull seen in the X-ray films. Regarding injury No.4, there was no bony

injury was seen in the X-ray film and regarding injury No.5 there was no bony injury were seen in the X-ray film. Hence, the nature of injury of Gurcharan Singh of Injury No.1 was declared as grievous in nature, while the remaining declared simple in nature. His X-ray report in this respect was Ex.PW1/I and X-ray film Ex.PW1/J. He also X-rayed Kartar Singh for injury No.1, 2 and 3 and there was fracture of radius bone seen in the X-ray films for injury No.1 and there was a fracture of index finger at the base of terminal phalanx seen in the X-ray film for injury No.3, while injury No.4 was declared simple. The witness proved report as Ex.PW1/K and X-ray film Ex.PW1/L vide Ex.PW1/M adding that he had sent forwarding letter of report to the police. He stated that on the application of police enquiry regarding kind of weapon used for causing injuries on the person of Gurcharan Singh and Kartar Singh possibility could not be ruled out regarding injury No.1 on the person of Gurcharan Singh having been caused by Gandasa, Kasola like weapon, simultaneously, the injury No.4 on the person of Kartar Singh was declared simple vide Ex.PW1/N.

PW-2 Gurcharan Singh, complainant-injured provided the eye-witness account of the incident deposing as per prosecution story.

PW-3 HC Om Parkash deposed that on 30.07.1992, while he was posted at Police Station, Sadar Dabwali as MHC on that day on receipt of *ruqa* Ex.PW2/A, he had recorded formal FIR Ex.PW3/A and copy of FIR had been sent to Judicial Magistrate Ist Class, Dabwali.

PW-4 ASI Naresh Kumar who had participated in the investigation deposed regarding his part.

PW-5 C. Sat Narain who was member of the police party before whom complainant had got recorded his statement and who had gone to the spot testified in that regard.

PW-6 Kartar Singh gave eye-witness on account of the incident deposing in consonance with the prosecution story.

PW-7 Maghar Singh supported the case of prosecution on material points.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

It is further pleaded by accused Harchand Singh that when he was coming from the passage, which was left with joint consent, where, he was abused and was restrained to pass through that passage and thereafter, the complainant came back to his house and disclosed the whole occurrence to his brothers and the complainant in collusion with the doctor and police, planted the present case and they rather caused injuries upon them and the arm of the accused Kartar was broken by camel and in the present case, the accused were implicated at the behest of Jagraj, Sarpanch and his son Makhan. It has been further pleaded that they also inflicted injuries in their self-defence, whereas the remaining accused have pleaded that the complainant party rather caused injuries to them in front of the house of Harchand accused as the complainant party had already made preparation.

During their defence evidence accused examined DW-1 Dr. R.C. Chaudhary, Medical Officer, General Hospital, Sirsa who had already been examined as PW-1. He deposed that on 29.07.1992 while he was posted at CHC, Dabwali, he medically examined Harchand Singh son of Dan Singh, 47 years male resident of Nillanwali and found the following injuries on his person:-

1. *An incised wound was present on right side of parietal area, it was 10 cm above from right side ear, size was 4cm x 2 cm bone deep and fresh bleeding was present.*
2. *An incised wound was present at right forearm on medial side of hand, it was 3 cm above from wrist joint, size was 4x2 cm muscle deep with fresh bleeding.*

Injuries were kept under observation and advised for X-ray and both injuries were caused by sharp edged weapon. Attested carbon copy of MLR to this effect is Ex.DW1/A and diagram showing the seats of injuries being Ex.DW1/B.

On the same day, he also medically examined Jagsir Singh son of Hazoora Singh 21 years males, resident of Nillianwali and found following injuries on his person:-

1. *An incised wound was present on the right side of front of head, it was 5 cm above from right eye brow, it was longitudinal size was 5 cm x 1cm scalp deep, fresh bleeding was present.*
2. *An incised wound was present on the left shoulder region at the top of shoulder, size was 6 x 1cm skin deep.*

Both the injuries were kept under observation for X-ray. Injury No.1 and 2 were caused by sharp edged weapon and probable duration of injuries was fresh in nature. Carbon attested copy of MLR to this effect being Ex.DW1/C and diagram showing the seats of injuries being Ex.DW1/D.

On the same day ie. On 30.07.1992 at 1.30 pm. He also medically examined Hargobind Singh son of Dan Singh, 42 years male, resident of Nillanwali and found the following injuries on his person:-

1. *A tender swelling associated with reddish colour contusion mark was present on left fore-arm in middle 1/3rd size was 6cm x 4 cm.*
2. *A tender swelling was present on right forearm middle 1/3rd size was 4x4 cm.*
3. *A tender swelling at right shoulder joint, size was 4x4 cm.*

All the injuries were kept under observation and caused by blunt weapon within probable duration of fresh in nature. Attested carbon copy of MLR to this effect being Ex.DW1/E and diagram showing the seats of injuries being DW1/F.

Mr. S.C. Gupta, Advocate appeared as DW-2, Sh. Baltej Singh appeared as DW-3 and Hargovind Singh appeared as DW-4, all of them supported the defence version.

After hearing arguments learned trial Court convicted and sentenced the accused mentioned above, against that they have preferred appeal before learned Sessions Judge, Sirsa but were unsuccessful there, as such they have preferred the present criminal revision petition.

I have heard learned counsel for the petitioners, learned State counsel, besides going through the record.

In this case the eye-witnesses on account of the incident was provided by PW-2 Gurcharan Singh-complainant, PW-6 Kartar Singh and PW-7 Maghar Singh, both injured. All three of them supported the prosecution story on material aspects though they were subjected to lengthy

cross-examination but they stuck to their guns and could not be shattered on

any material point. A view minor contradictions and variations in their statements as regards the time, distance etc. are of no consequence. Keeping in view the fact that those occasioned by lapse of memory on account of passage of time and difference in power of observations, perception and memorization of events of various individuals. Rather that goes to show that witnesses are truthful unlike the tutored one who deposed in a parrot like manner. Such witnesses are stamped witnesses and their presence at the spot at the relevant time cannot be doubted. Even otherwise since the accused Harchand Singh and Kartar Singh have taken a plea of self-defence, in that way they have admitted the incident. The incident as per prosecution story had taken place on 29.07.1992 at about 6/6:30 pm, after the incident injured had been taken to hospital and were medico legally examined. The police was informed and policy party had arrived at hospital seeking opinion of attending doctor regarding fitness of the injured to make statement, but the doctor had declared them unfit to make statement on 30.07.1992 at 3:30 am, the police party again went to hospital on that very day and made similar application at 1:50 p.m, but again the opinion was given in negative, it was at 6:30 p.m. on 30.07.1992 when the injured was declared fit to make statement. The police had recorded their statements, thus there is no unexplained delay in reporting the matter to the police. The complainant besides both the injured having suffered injuries would have been the last persons to substitute the real culprits and involve the accused in this case falsely. Since in such type of cases its earnest endeavour of the persons suffering injuries to ensure that persons who had actually caused such injuries are brought to book and punish suitably rather than trying to shield the real culprits and involve innocent persons in their place without any rhyme or reason.

The medical evidence in this case corroborates the ocular evidence; the investigation in this case has been conducted in a fair and impartial manner. The other evidence on file supports the prosecution story, though the accused have taken plea of self-defence, but then as rightly observed by the Courts below that this plea was not available to them rather it comes out that they were aggressors and while armed with deadly weapons had attacked the complainant-party causing injuries to three of them, though some injuries were caused to Harchand Singh and Hazoor Singh accused, but those were found to be simple in nature and in a scuffle those were caused. This is exactly the version of the prosecution, therefore, injuries on person of accused side stand explained but those do not go to show that complainant and other injured were aggressors, rather from the record it clearly comes out that it were the accused who armed with deadly weapons having a pre-meditated plan had attacked complainant and both the injured causing them injuries, therefore, it comes that no proper right of self-defence was available to the accused.

The authorities referred to by learned counsel for the petitioners **Kulwant Singh vs. State of Punjab 2005(2) RCR (Criminal) 975** related to compound of offences, here there is reference to the parties having compromised the matter, but then nobody from side of complainant came forward to concede this fact. Therefore, the offences more particularly one under Section 326 IPC cannot be allowed to be compounded.

Coming to citation **Suresh Kumar vs. State of Haryana 2000(1) RCR (Criminal) 50** by a Co-ordinate Bench of this Court that had different facts where accused was a teenager at the time of commission of crime and more than 12 years had elapsed passed from the date of incident.

Furthermore, offence of trespassing was not meted out, there were several

other circumstances keeping in view the sentence had been reduced whereas in the incident no mitigating circumstances are there to reduce the sentence.

In view of the reasons given above, the other authorities referred to by learned counsel for the petitioners **Sadhu Singh vs. State of Punjab 2004(2) RCR (Criminal) 108** by a Coordinate Bench of this Court and **Nirmal Singh vs. State of Punjab 2005(1) RCR (Criminal) 477** by another Co-ordinate Bench are not applicable and do not help the case of petitioners.

The judgments passed by trial Court and by the first Appellate Court are well reasoned one, based on proper appraisal of evidence and correct interpretation of law, those do not suffer from any illegality or infirmity, as far as conviction and sentence of petitioner/accused are concerned. Therefore, the impugned judgments are upheld, whereas the revision petition is found to be without merit and is dismissed accordingly.

The order regarding suspension of sentence and grant of bail to the petitioners passed on 31.05.2005 is recalled. Chief Judicial Magistrate, Sirsa is directed to issue non-bailable warrant of arrest against the petitioners / accused so as to get them arrested and confined in the jail to undergo the remaining sentence.

Intimation in this regard be sent to the quarter concerned.

07.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**