

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 608 of 2007
Date of Decision: February 21, 2017

Surjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Aditi Girdhar, Legal Aid Counsel
for the petitioner.

Mr. Surjeet Singh Chaudhary, D.A.G., Punjab.

AUGUSTINE GEORGE MASIH, J.:

This revision petition has been preferred by the petitioner challenging the judgment passed by the learned Additional Sessions Judge, Jalandhar, dated 24.02.2007, dismissing his appeal and upholding the judgment of conviction and order of sentence dated 10.08.2005 passed by the Judicial Magistrate First Class, Jalandhar, whereby, the petitioner was awarded the sentence as follows:-

Sr. No.	Under Section(s)	Sentence
1	452 IPC	R.I. for 2 years and fine of ₹ 1000/- in default of payment of fine, to undergo S.I. for one month.
2	324 IPC	R.I. for one year and fine of ₹ 500/- in default of payment of fine, to undergo S.I. for one month.
3	323 IPC	R.I. for six months and fine of ₹ 500/- in default of payment of fine, to undergo S.I. for one month.

It may be pointed out here that the Judicial Magistrate First

Class, Jalandhar, had not only convicted and sentenced the petitioner but had also convicted and sentenced his mother-in-law Smt. Simar Kaur co-accused, on whose appeal, the learned Additional Sessions Judge, Jalandhar, vide impugned judgment, has acquitted her on the ground that complainant-Gian Singh has not stated that she was also present at the time of occurrence nor was a common intention being found between her and the petitioner.

2. Briefly the facts are that on receipt of medico legal report on 27.03.1999 of injured-complainant-Gian Singh (PW-4), ASI Dev Raj alongwith other police officials reached the Civil Hospital, Jalandhar, to record his statement. Complainant-Gian Singh stated that he is resident of Mohalla Gobindgarh and working as a Football Coach in Lyallpur Khalsa College, Jalandhar. He is residing in a house as a tenant for the last 30 years. On 26.03.1999, at around 10.30 PM, he was present in his room alongwith his wife and the light of the room was on. Accused-petitioner-Surjit Singh, who is son-in-law of Smt. Simar Kaur (landlady), armed with a base ball bat alongwith two other unidentified persons who were armed with hockey stick and cricket bat, entered into the room. They caught hold of the complainant. When he resisted and asked them as to why they have entered in the room, the two unidentified persons threw him on the floor and the petitioner then gave blows with his base ball bat on his left side of his mouth, left knee, left arm and left side of his stomach. The two unidentified persons gave blows with their hockey stick and cricket bat on his right arm, right leg, left leg and on his back. At this, his wife came forward to save him but she was pushed aside by them. The complainant

and his wife raised alarm for help, on which, the petitioner alongwith the other two ran away from the place of occurrence. He further stated that landlady-Smt. Simar Kaur, with the help of her son-in-law Surjit Singh (petitioner) and others, had beaten him as they had insisted upon him to vacate her house. Smt. Simar Kaur and her son-in-law had been threatening him for the last one year to vacate the premises. FIR No.53 dated 27.03.1999, under Sections 323, 324, 452 and 34 of the Indian Penal Code, was registered at Police Station Division No.2, Jalandhar, on the basis of this statement of complainant-Gian Singh.

3. After investigation and arrest of the accused, challan was presented and trial commenced, in which, on the basis of the evidence led by the prosecution, petitioner as well as his mother-in-law Smt. Simar Kaur were convicted and sentenced on 10.08.2005 by the Judicial Magistrate First Class, Jalandhar. Appeal of Smt. Simar Kaur has been accepted and she has been acquitted of the charge framed against her by setting aside the judgment of the trial Court while upholding the conviction and sentence of the petitioner vide judgment dated 24.02.2007 passed by the Additional Sessions Judge, Jalandhar.

4. It is the contention of the counsel for the petitioner that complainant-Gian Singh in his cross-examination has not supported the prosecution version as he has stated that he could not identify the accused because they were with muffled faces. She contends that the identity of the three accused having not been disclosed and the complainant having admitted in the cross-examination that he was unable to identify the

accused, the conviction and sentence cannot sustain and the findings recorded by the Courts below deserve to be set aside. She submits that the present is a case which is a counter-blast to the FIR which has been registered against the complainant in which after the trial, he has been found guilty and sentenced, which fact is admitted by the complainant in his cross-examination. She, thus, contends that there is an inbuilt grudge against the petitioner which had been brewing in the heart of the complainant. The injuries which have been shown are self inflicted and a concocted story has been made which is to take revenge from the petitioner. That apart, she contends that no recovery has been effected from the petitioner or anyone else. Even the wife of the complainant has not been produced as a prosecution witness, what to say of any neighbour etc. as it is the case of the prosecution that on the injuries having been inflicted upon the complainant, the complainant and his wife had called out for help and raised alarm. In support of these contentions, learned counsel for the petitioner places reliance upon the judgments passed in **Sita Devi Vs. State of Uttaranchal & others**, 2008 NCC 871, **Chotudas Vs. State of M.P.**, 2010 (22) R.C.R. (Criminal) 583, **State of Maharashtra Vs. Deorao Sampatrao Hiwase & another**, 2012 (17) R.C.R. (Criminal) 657 and **Manoj Kumar Pani & others Vs. State of Orrisa**, 2016 (167) AIC 816. She, thus, contends that the conviction and sentence of the petitioner cannot sustain and deserves to be set aside and he be acquitted of the charges framed against him.

5. On the other hand, counsel for the State submits that the statement of the complainant is most reliable and forthcoming as he has not

tried to hide anything and had openly admitted the facts which had actually happened with him including his own conviction in an FIR which had been registered against the complainant. His further contention is that the statement of the complainant is fully corroborated by the medical evidence of Dr. Prem Nath Dutta, Medical Officer, Civil Hospital, Jalandhar. He submits that the complainant was immediately taken to the hospital after the incident and the medico legal examination was carried out by Dr. Prem Nath Dutta (PW-1) at 11.30 PM on 26.03.1999 when eleven injuries were found on his person. Injuries No.1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 were caused by a blunt object while injury No.4 was with a sharp one. He contends that when the statement of the complainant has been duly corroborated by the medical evidence, no further witnesses were required to be examined and therefore, the prosecution having proved its case to the hilt beyond doubt, the judgment of conviction and order of sentence as passed by the Courts below cannot be said to be, in any manner, illegal, which would call for any interference by this Court.

6. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records.

7. As regards the first submission of the learned counsel for the petitioner that the complainant-Gian Singh (PW-4) has failed to identify the accused and therefore, his statement cannot be relied upon, suffice it to say that the said aspect which has been referred to qua the identity of the accused who were with muffled faces relate to the two unknown accomplices of Surjit Singh who were armed with hockey stick and cricket

bat. It did not relate to Surjit Singh as he (Surjit Singh) has been specifically named in the FIR and specific role has been attributed to him. The injuries which have been attributed to the petitioner find corroboration from the medical evidence which has been brought on record in the form of medico legal report (Ex.P-X). Therefore, this contention of the counsel for the petitioner fails.

8. The next submission of the learned counsel for the petitioner that the present FIR is a counter-blast to the FIR which has been registered against the complainant in which he admittedly had been convicted and sentenced, this again would not make any difference for the reason that no evidence has been led by the defence pointing out the details with regard to the FIR having been registered against the complainant and the date of punishment which would be relevant for the present case. In any case, the reason and the motive which has been assigned for such an action taken by the petitioner who is none else, but the son-in-law of the owner of the house i.e. for putting pressure to vacate the house is justified. The motive having been established and the medical evidence corroborating the ocular version of the complainant, this submission of the counsel for the petitioner also cannot be accepted.

9. As regards the contention of the counsel for the petitioner that the base ball bat which is alleged to be the weapon of offence in the hands of the petitioner which has been used to inflict injuries, has not been recovered apart from there being no witness who had come forth to depose and support the ocular version of the complainant and thus, creates a doubt

upon the veracity of the statement of the complainant, again cannot be accepted as it would not be essential that all the eye-witnesses or others have to be examined. What has to be seen and required to be assessed is the veracity of the witness. If the statement given by the injured witness has not been dented in any manner nor has the credibility of the said witness tampered in the cross-examination, the said evidence has to be accepted especially when it is duly corroborated and supported by the medical evidence.

10. In the present case, the time of the occurrence is 10.30 PM on 26.03.1999 in the house of the complainant. The occurrence is at the night and therefore, there is hardly any person out in the open. Further, there is one more eye-witness i.e. wife of the complainant, who would not be an essential witness in the light of the fact that the ocular version of the complainant has been duly supported and established by the medical evidence led by the prosecution.

11. Dr. Prem Nath Dutta, Medical Officer, Civil Hospital, Jalandhar, has appeared as PW-1 and given the details of the injuries total eleven in numbers which have been found on the person of the complainant. The medico legal report has been proved on record as Ex.P-X, X-ray form as Ex.P-1 and injury report as Ex.P-2. The evidence which has been brought on record by the prosecution proved beyond doubt the motive and the injuries which have been caused to the complainant by the petitioner. Merely because the weapon of offence has not been recovered, would not prove fatal to the prosecution case.

12. Reliance has been placed by the counsel for the petitioner on the decision of the Uttarakhand High Court in the case of *Sita Devi* (supra) wherein, a private complaint was filed against the accused-respondents who had been acquitted by the trial Court. In such a case where criminal case against the son of the complainant was found pending, the Court, on the basis of the evidence on record, held that the complaint which was preferred by Sita Devi had been instituted actuated by enmity and was a counter-blast to the criminal proceedings pending against the son of the complainant. Present is not such a case which could be termed as a counter-blast to the FIR as the facts of the present case are quite different, further no details have been come on record which would indicate the nature of the case or the details with regard to the case which has resulted in the conviction of the complainant.

13. As regards the other cases i.e. *Chotudas's* case (supra), *Deorao Sampatrao Hiwase's* case (supra) and *Manoj Kumar Pani's* case (supra), the High Courts had held that where the medical evidence did not support the ocular version and there were discrepancies in the testimony of the witnesses, the conviction and sentence could not sustain and benefit of doubt should go to the accused. In the case in hand, there is no such discrepancy which could be said to be of such a nature which would dent the veracity of the statement of the complainant. Further, the medical evidence which has been produced on record fully supports the oral statement of the complainant. In these facts and circumstances, the judgments on which reliance has been placed by the counsel for the

petitioner, would not be applicable and therefore, no benefit can be claimed or granted to the petitioner.

14. In view of the above, especially in the light of the statement of the stamped witness i.e. injured-complainant-Gian Singh (PW-4) whose oral evidence has been fully supported by the medical evidence, the present revision petition being devoid of merit stands dismissed.

15. The petitioner is on bail in this case, his bail bond shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence.

February 21, 2017
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No