

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2249-2010 (O&M)

Reserved on: 26th October, 2017

Date of Decision: 2nd November, 2017

Inderjit and others

..Petitioners

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Subhash Godara, Advocate,
for Mr. S.S.Dinarpur, Advocate, for the petitioners

Mr. Vikas Chopra, Deputy Advocate General, Haryana
for the respondent.

RAMENDRA JAIN, J.

1. Through this instant petition under section 401 of the Code of Criminal Procedure, the petitioner has assailed the impugned judgment of conviction and order of sentence dated 09.08.2010 of the first appellate court under sections 323/325 read with section 34 IPC, dismissing the appeal of the appellant, thereby affirming the judgment of conviction and order of sentence dated 20.11.2006 of the trial court in the following terms:-

under sections 323/34 IPC	To undergo RI for a period of six months
	each. In default thereof, further undergo
	imprisonment for a period of one month
-do- 325/34 IPC	To undergo RI for a period of 1 ½ years
	each and pay a fine of Rs.1000/-each. In
	default thereof, further undergo
	imprisonment for a period of one month.

As per the provisions of Section 357 of the Code of Criminal Procedure, the petitioners were also burdened to pay compensation to the tune of Rs.10,000/- (Rs.2500/-) each to the family members of deceased Prem Singh. Both the sentences were ordered to run concurrently.

2. Concisely, the facts, as projected by the prosecution, are that complainant Jasvinder Singh lodged a rapat no.18 dated 18.8.1996 levelling allegations that on 14.8.1996, Avtar Singh @ Tara under the influence of liquor, abused his brother Ravinder Singh and also gave slap and fist blows to him. At around 3.40 P.M. On 18.8.1996, when his father was waiting for a bus for going to Narnaul at Bus Stand Darsu, Avtar @ Tara came there, abused his father and gave him a lathi blow. Thereafter, accused Inderjit Singh, Jaspal Singh, Ladhu Singh and Jaipal Singh armed with lathis and axe also came there. On hearing a noise, he along with Papinder, Ravinder and Joginder also reached the spot. The accused persons caused injuries to them with their respective weapons. In the altercation, his chain had broken, which may be in the possession of accused Ladhu Singh. On hearing their rescue calls, Balvinder Singh and Lal Chand reached the spot and rescued them from the clutches of the accused persons. On the basis of this statement and on receipt of copies of Medico-legal reports of the injured, a case under sections 323/325 read with section 34 IPC was registered. After completion of necessary investigation, a final report under section 173 of the Code of Criminal Procedure was presented before the trial court.

3. Pursuant to the provisions as enshrined under section 207 of the code of Criminal Procedure, copies of challan was supplied to the accused. They were charge sheeted under sections 323/324 read with section 34 IPC, to which they pleaded not guilty and claimed trial.

4. After closure of the evidence by the prosecution, the statement of the petitioners under section 313 of the Code of Criminal Procedure were recorded, putting the entire incriminating evidence appearing against them, wherein they pleaded innocence and false implication. They, however, did not lead any evidence in defence.

5. After analysing the ocular as well as documentary evidence, and hearing arguments by both the sides, both the learned courts below convicted and sentenced the petitioners in the manner as set out in the opening paragraph of this judgment.

6. Learned counsel for the petitioners contended that both the learned courts below did not appreciate that as to how the occurrence took place and what was the exact reasons at the background of the incident. In fact, this was a case of cross version in which both the parties received injuries. The statements of the witnesses produced by the prosecution are highly inconsistent and the version put forward in the FIR has not been proved. The injuries on the person of the accused persons are not in consonance with the evidence produced by the prosecution. Even the medico-legal reports and X-ray film of the injured were not proved on the record. The accused persons also sustained injuries in the altercation, but the prosecution failed to explain them. They filed a private complaint, but the same was dismissed for non-prosecution. The prosecution also failed to examine Prem Singh-injured-father of the complainant. Both the learned courts below did not appreciate that the occurrence pertained to the year 1996 and they had suffered mental agony of protracted trial for more than 14 years and on this count alone, they are entitled for the benefit of probation under the Probation of Offenders Act, 1958 (for short “the Act”).

In support of his arguments, learned counsel has placed reliance upon judgments in Ramesh Kumar @ Babla versus State of Punjab, 2016 (2) RCR (Criminal) 849, Kesar Singh and others versus State of Punjab, 2015 (3) RCR (Criminal) 288 and Balwinder Singh and others versus State of Punjab, 2015 (4) RCR (Criminal) 74.

7. On the other hand, learned counsel for the State vehemently opposed the submissions made by learned counsel for the petitioners, contending that both the learned courts below have dealt with the evidence on record in its correct perspective and has rightly convicted and sentenced the petitioners of the charges.

8. Having given thoughtful consideration to the submissions made by learned counsel for the parties, this court is of the opinion that the revision deserves to be partly allowed, modifying the sentence awarded to the petitioners by both the learned courts below for the reasons to follow:-

9. The prosecution, in order to prove its case, examined as many as 14 witnesses. As per the testimony of complainant-injured PW6 Jasvinder Singh, the eye witness, the occurrence took place at 3.30 P.M. on 18.8.1996 at bus stand of village Darsu, where his father was sitting. Avtar Singh, Inderjit Singh, Jaspal Singh and Ladhu Singh caused injuries to his father with their respective lathis. On hearing hue and cry, his brother Ravinder and Papinder also came there. Accused persons started beating them. Avtar Singh gave two blows of lathi on his left hand ulna and on the back side of his head. He also gave further two blows of lathi on his left leg and on his back. Inderjit Singh gave two blows of lathi on his left finger and right shoulder. Ladhu Singh gave a lathi blow on his left leg. Jaspal Singh caused injuries on the back side of his left shoulder. Thereafter, Balvinder

and Lal Chand came there and rescued them from the clutches of the accused persons. The statement of this witness is corroborated by the eye witnesses, namely, PW-7 Chana Singh, PW8 Ravinder Singh, the brother of the complainant, PW9 Balvinder Singh and PW10 Joginder Singh, injured, who have supported the version of the prosecution in its entirety.

10. The depositions of afore-mentioned witnesses as to the injuries suffered by the injured-eye witnesses, are corroborated by the medical evidence. Dr. Vinay Chaudhary stepped into the witness box as PW1 and deposed that he radiologically examined Ravinder son of Prem Singh on the basis of medico-legal report No.AM/26/96 dated 18.08.1996 and found fracture of shaft of left ulna and proved his report Ex.PW1/A and skiagram Ex.PW1/B on the file. He further radiologically examined Prem Singh son of Santa Singh on the basis of medico-legal report No.AM/25/96 dated 18.08.1996 and found fracture of shaft of left ulna and fracture of lower and end of left ulna as per his report and its skiagrams are Exs.PW1/D and Ex.PW1/E. On that very day, he also radiologically examined injured Joginder Singh son of Prem Singh and Inderjit Singh son of Katha Singh and found no bone injury.

11 It has been established on the record beyond reasonable doubt that the injured persons, who sustained injuries in the altercation, were medico-legally examined by the prosecution. While appearing in the witness box as PW5, Dr. Ajay Mam deposed that on 18.8.1996, he medico-legally examined the injured witnesses and proved the medico-legal reports of Prem Singh, Ravinder Singh, Jasvinder Singh, Papinder Singh and Joginder Singh, Ex. PW5/A to Ex. PW5/E and stated that on medical examination, he found three injuries on the person of Prem Singh, three injuries on the

person of Ravinder Singh, nine injuries on the person of Jasvinder Singh, one injury on the person of Papinder Singh and five injuries on the person of Joginder Singh. In the considered opinion of this court, the prosecution has been able to prove the injuries suffered by the injured witnesses in the scuffle took place between the parties.

12 It is evident on record that Prem Singh died during the pendency of the trial and therefore, he could not be produced by the prosecution in the witness box. However, the other injured witnesses have specifically deposed as to the injuries sustained by them at the hands of the appellants in the altercation. In such circumstances, non-examination of Prem Singh injured is not fatal to the case of the prosecution.

13 So far as the discrepancies coming out in the statements of the witnesses are concerned, this court is of the view that they are bound to occur, when they do depose before the court truthfully after a lapse of sufficient time. The testimony of the witnesses should not be discarded merely on the ground that they were discrepant with each other while deposing before the court, inasmuch as no one is perfect in this imperfect world, who could exactly determine as to how many blows were inflicted by whom and on which part of the body of the person. The contention of the learned counsel, being without any basis, is rejected, especially when the occurrence took place between the accused and complainant party in which the injured sustained injuries, which have been explained by PW5 Dr. Ajay Mam. It is not necessary for the prosecution to explain minor injuries in detail which were sustained by petitioner Inderjit Singh in the altercation on the basis of which, it cannot be said the complainant party was aggressor.

From the testimony of the witnesses, it can easily be inferred that the

appellants were the aggressors and not the complainant party. Though the appellants filed a private complaint against the complainant party before the court pertaining to the occurrence, but the same was dismissed for non-prosecution.

14 The contention of the learned counsel that the prosecution did not disclose the genesis of occurrence, does not find force, keeping in view the fact that the appellants should have disclosed the motive behind the occurrence in their statements under section 313 of the Code of Criminal Procedure, but they did not opt to do so, except for taking the plea in defence that they were innocent and falsely implicated in the present case. No suggestion was put to any of the prosecution witnesses regarding the genesis of the occurrence while recording their statements before the court. Moreso, the altercation took place between the accused and the complainant party at Bus Stand of village Darsu, where Prem Singh, father of the complainant was waiting for a bus for going to Narnaul. On the basis of the statement of the complainant-injured Jasvinder Singh reported the matter to the police. The concurrent findings recorded by both the learned courts below, in the considered opinion of this court in convicting the petitioners are liable to be maintained and as such, do not call for interference.

15 So far as the argument of the learned counsel that the petitioners deserve for the benefit of probation of good conduct under the Act is concerned, this court finds force therein, keeping in view the fact that the petitioners have been facing agony of protracted trial for more than 21 years. The maximum sentence awarded by both the courts below is 1 ½ years. As per the custody certificate, the petitioners have undergone actual sentence of 02 months and 08 days out of a total sentence of 1 ½ years. The

petitioners were released on bail by this court on 15.10.2010. Both the parties are living peacefully in the village. No useful purpose would be served by sending them behind bars now after spanning over a period of 21 years for serving out the remaining sentence awarded to them, therefore, in the considered opinion of this court, the ends of justice would be met by granting them the benefit of Probation of good conduct under the Act. Accordingly, this court finds it a fit case where the benefit of probation can be granted to the petitioners.

16 In view of the foregoing reasons, I do not see any illegality or perversity in the concurrent findings recorded by both the learned courts below qua the conviction of the petitioners and as such, their conviction is maintained. However, the order of quantum of sentence is modified. Instead of awarding the substantive sentence, the petitioners are ordered to be released on probation on their furnishing probation bonds in the sum of Rs.20,000/-each with one surety in the like amount to the satisfaction of the trial court for a period of one year. During this period, they shall maintain peace and be of good behaviour and will come to receive the sentence as and when called upon to do so. The probation bonds be furnished before the trial court within one months from the date of receipt of certified copy of this order.

17 With the aforesaid modification in sentence, revision is partly allowed.

2nd November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |