

In the High Court of Punjab and Haryana at Chandigarh

(1)

CRR No.3048 of 2010

Date of Decision:-September 8, 2017

Puran Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

(2)

CRR No.3060 of 2010

Swaran Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. R.S.Rai, Senior Advocate with
Mr. Anurag Arora, Advocate, for the petitioners.

Ms. Ruchika Sabbarwal, Additional Advocate, General, Punjab.

None for the complainant.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned two revision petitions, one filed on behalf of accused Puran Singh, Dilbagh @ Bagga and Neeta and another filed on behalf of accused Swaran Singh challenging judgment dated 12.11.2010 passed by learned Sessions Judge, Rupnagar whereby the conviction of all the petitioners under Sections 323, 324 and 325 read with

Section 34 of Indian Penal Code, 1860 (for short, IPC) as recorded by learned Judicial Magistrate Ist Class, Rupnagar vide judgment dated 27.02.2009 has been upheld.

2. The case of complainant is that on 11.01.2002 the petitioners namely Puran Singh, Dilbagh @ Bagga, Neeta and Swaran Singh along with other co-accused (who have since been acquitted) formed an unlawful assembly and petitioner Swaran Singh gave a fist blow on the mouth of complainant Amar Kaur as a result of which her lower lip started bleeding. It is further alleged that petitioner Neeta, thereafter, gave a blow with axe on her right arm and right hand from the sharp side and petitioner Dilbagh @ Bagga gave blows with *lathi* to Gurpreet Singh (son of complainant). Puran Singh, petitioner is also alleged to have given kick blows in the abdomen of Baljit Kaur, daughter-in-law of the complainant.
3. Initially FIR No.9 dated 12.01.2002 was registered at Police Station Kurali on the basis of statement of Amar Kaur but the police filed cancellation report and the complainant was thus constrained to file the present complaint. The cancellation report was however ordered to be tagged with the complaint filed by Amar Kaur. The present petitioners along with Gurmail Kaur, Jasbir Kaur and Shisho were summoned by the trial Court to face trial for offences under Sections 323, 324, 325, 148, 149 and 120-B IPC. However, the trial Court vide judgment dated 27.02.2009, while acquitting three of the accused namely Gurmail Kaur, Jasbir Kaur and Shisho, convicted the present petitioners for offences under Sections 323, 324 and 325 read with Section 34 IPC. The appeal filed by the petitioners challenging the aforesaid judgment was also dismissed by the learned Sessions Judge, Rupnagar vide impugned judgment

dated 12.11.2010. Aggrieved with the same, the petitioners have filed the present revision petition.

4. The learned counsel for the petitioners, while assailing the impugned judgement, has first of all submitted that Doctor who gave the opinion regarding injury of Amar Kaur being 'grievous' has not been examined at all and that CW-4 Dr. Pushpinder Singh has merely referred to the opinion(Ex.CW-4/B) in the following manner:

“Injury No.1 after observation and dental
opinion is grievous in nature.”

5. The learned counsel for the petitioners has submitted that in the absence of examination of Doctor who gave the aforesaid opinion, the petitioners cannot be held liable for having inflicted 'grievous hurt'. He has further submitted that even the MLRs of injured can't be said to have been properly proved and that as such the conviction of petitioners can not sustain.
6. On the other hand, the learned counsel representing the State has submitted the oral evidence led by the complainant is in tune with the medical evidence and that there is no infirmity in the impugned judgement. He has, thus, prayed for dismissal of the revision petition.
7. I have considered the rival submissions addressed before this Court and with assistance of learned counsel have also perused the record of the case.
8. In a case, where allegations are to the effect that the accused have caused hurt/grievous hurt to the complainant it is *sine qua non* for the prosecution/complainant to establish the factum of existence of the injuries on the person of the victim. In the present case, as per the MLRs of Amar Kaur

(Ex.CW-4/A), Gurpreet Singh (Ex.CW-4/D) and Baljit Kaur(Ex.CW-4/J), which were produced by CW-4 Dr. Pushpinder Singh, the following injuries were found on the person of the injured

Injuries of Amar Kaur:

- “1. Central left upper incisor tooth was missing. Blood was present in the socket. Abrasion of size 0.7 x 0.5 cm on the inner side of upper lip. Corresponding to the tooth missing. Blood was present. Advised dental opinion.
2. Abrasion was present on the outer surface of the lower lip on the left side on the centre. Size was 0.7 x 0.5 cm Blood was present over the injury.
3. Incised wound 1 cm x 0.1 cm x 0.1 cm size present on the lateral side of middle phalan of right hand little finger clotted blood was present.
4. Incised wound 3.5 cm x 0.4 cm x 0.2 cm in size present on the posterior aspect of right forearm at the level of upper 1/3 and lower 2/3 clotted blood was present.”

Injuries of Gurpreet Singh:

- “1. Multiple bruises present on the left side of back in thoracic region, 8-10 in number, size varying from 3 cm x 1 cm to 6 cm x 1 cm, red in colour.
2. Multiple bruises present on the right side of back, thoracic region 10-15 in number size vary from 2 cm x 1 cm to 4 cm x 1 cm reddish in colour.
3. Abrasion linear 2.5 cm x 0.6 cm in size, present in right scapular region, X-ray was advised of chest.
4. M. Bruises, 4-6 in numbers size varying 2 cm x 1 cm to 7 cm x 1 cm present in the right lumbar region. Reddish in colour.”

Injuries of Baljeet Kaur:

“1. Complaint of pain on lower abdomen. History of being hit in the abdomen by fist and kicks. There is no external injury seen over abdomen. History of Ammenorrhoea 5 months. On PA Examination uterus 22 weeks in size, after kept under observation. After observation injury No.1 was declared simple in nature.”

9. As per the statement of CW-4 Dr. Pushpinder Singh, injury No.1, after obtaining dental opinion, was declared as 'grievous'. Amar Kaur, as per the MLR (Ex.CW-4/A) had lost her tooth and blood was present in the socket. It is not such a case where an opinion of Radiologist would be required as is required in case of a fracture. In case the tooth is found to be absolutely missing and blood is found in the socket, the opinion of the Radiologist would not strictly be required to declare it 'grievous'. Section 320 of IPC which defines 'grievous hurt' reads as follows:

“Grievous Hurt – The following kinds of hurt only are designated as “grievous' :—

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|------------|---|--|
| First. | – | Emasculation. |
| Secondly. | – | Permanent privation of the sight of either eye. |
| Thirdly. | – | Permanent privation of the hearing of either ear. |
| Fourthly. | – | Privation of any member or joint. |
| Fifthly. | – | Destruction or permanent impairing of the powers of any member or joint. |
| Sixthly. | – | Permanent disfiguration of the head or face. |
| Seventhly. | – | Fracture or dislocation of a bone or tooth. |
| Eighthly. | – | Any hurt which endangers life or which causes the |

sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

10. A perusal of the aforesaid definition shows that a case of dislocation of tooth would be covered under clause '*seventhly*' of Section 320 IPC. A case where an injury results in absolute dislocation leading to removal of the tooth from the socket would not require X-Ray examination to ascertain the said physical condition. The factum of a missing tooth, apparently due to receipt of injury, if duly proved by the Doctor who has medico-legally examined the injured in the first instance would be sufficient to categorize the hurt as a 'grievous hurt'. In view of the discussion made above, the contention put forth by the learned counsel that failure to examine the Doctor who declared the injury no.1 of Amar Kaur to be 'grievous' is fatal to the case of prosecution would not hold much water.
11. However, the material issue in the present case is that the MLRs of the injured including the MLR of Amar Kaur are sought to be proved by examining a Doctor other than the one who had medico legally examined the injured. While the injured had been medically examined examined by Dr. Shalinder Kaur who had prepared the MLRs but the same have been produced in the Court through Dr. Pushpinder Singh who deposed as follows:

“I am posted as medical officer at Civil Hospital, Kharar. I have been authorised by SMO to produce the MLR and other record of injured mentioned in the complaint. Injured was examined by Dr. Shalinder Kaur who has now gone abroad and I have brought the original record today in Court.

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I was posted at Civil Hospital Kharar on 12.01.2002. I was not on duty when the injured were examined. I do not know the injured personally. I have not examined any of the injured of this case nor the examination of the injured were conducted in my presence. One Class four employee namely Amrej Singh is posted at Kharar. It is incorrect to suggest that I have been brought by Amrej Singh today in Court. Dr. Shailinder Kaur has gone abroad, but he is still employed at Civil Hospital Kharar. It is wrong to suggest that I have deposed falsely.”

12. A perusal of the aforesaid statement of CW-4 Dr. Pushpinder Singh shows that the reason assigned for not examining Dr. Shailinder Kaur is that she had gone abroad. However, during cross-examination he has stated that she is still employed in Civil Hospital, Kharar. Though, ideally the prosecution should have examined Shailinder Kaur herself but even if, due to some unavoidable circumstances, her presence could not be secured then the documents prepared by Dr. Shailinder Kaur i.e. the MLRs could have been proved by someone who is familiar with her signatures and hand writing. CW-4 Dr. Pushpinder Singh somehow has not stated a word as to how long he had served with Dr. Shailinder Kaur or as to whether he had ever seen her writing or signing. He has not stated a word regarding identification of signatures of Dr. Shailinder Kaur on the MLRs or her hand writing. He has simply stated that he has been authorized by the SMO to bring all the summoned record of the injured.
13. Since, a case where allegations pertain to causing of hurt, the entire case hinges on the medical evidence, the prosecution/complainant should have taken care to get the MLRs proved properly. In case, the presence of Dr. Shailinder Kaur could not be secured, then some of her colleague/official who was familiar with her signature or handwriting could have been summoned

from the hospital so as to prove the MLRs. In the absence of proper evidence in this regard, the MLRs cannot be said to be duly proved so as to be made a basis to prove the factum of existence of the injuries on the person of the complainant and other injured.

14. Once it is held that the complainant has been unable to establish the factum of injuries on account of the fact that MLRs have not been properly proved, the conviction of the accused for having caused hurt/grievous hurt to the complainant and other injured cannot sustain. The revision petitions accordingly merit acceptance and hereby accepted. The impugned judgments dated 12.11.2010 and 27.02.2009 are hereby set aside and the accused are acquitted of all the charges framed against them.

(Gurvinder Singh Gill)
Judge

September 8, 2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No