

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1038 of 2016 (O/M)
Date of decision : 19.12.2017

Vijay Dev and others

..... Revisionists

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sumeet Mahajan, Advocate, for,
Mr. A.K. Walia, Advocate, for revisionists.

Ms. Monika Jalota, DAG Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

This is revision against judgment dated 19.2.2016, passed by the learned Additional Sessions Judge, Patiala, affirming the judgment of conviction and order of sentence dated 14.5.2014, passed by the learned Judicial Magistrate 1st Class, Patiala, vide which revisionists were convicted under Sections 323 IPC read with Section 149 IPC, 341, 148, 149, 353 IPC and were sentenced as under :-

<u>“Offence committed under Section</u>	<u>Sentence awarded to all accused</u>
Under Section 323 read with Section 149 of IPC	Rigorous imprisonment for six months and to pay a fine of Rs. 200/- and in default of payment of fine rigorous imprisonment for 10 days.
Under Section 341 of IPC	Rigorous imprisonment for six months and to pay a fine of Rs. 200/- and in default of payment of fine rigorous

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	imprisonment for 10 days.
Under Section 148 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs. 200/- and in default of payment of fine rigorous imprisonment for 10 days.
Under Section 353 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs. 200/- and in default of payment of fine rigorous imprisonment for 10 days.”

All the sentences were directed to run concurrently.

Present case was registered on the written complaint (Ex.PW2/A), submitted by Er. Gurpal Singh, the then Assistant Executive Engineer, East Division, Patiala. In the complaint, Er. Gurpal Singh stated that on 13.9.2007, he was sitting in his office. Er. D.P. Sethi, Senior Executive Engineer (Enforcement), Er. Harjit Singh, AEE, East Sub Division, Patiala, Er. Ram Singh, AAE, Sub Division Rohar Jagir were also sitting with him. It was about 11:00 AM when the light of his room went off. He inquired from his Steno Ravinder Singh as to why the electricity has failed. Ravinder Singh, Steno, went outside and thereafter informed the complainant Er. Gurpal Singh that Vijay Dev accused has switched off the MCB. After sometime, complainant Er. Gurpal Singh went outside and switched on the MCB. He was returning to his room when Vijay Dev accused accompanied by his companions surrounded the complainant and did not allow him to go inside the room. He was pushed and taken outside. In the meanwhile, Er. Bhupinder Sharma, Senior Executive Engineer, who was sitting in a room opposite the building, after hearing the noise, came out. He was also pushed and misbehaved by accused. Accused maltreated the complainant and beaten him. They also used filthy language against him.

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In the meanwhile, complainant fell down. His turban was also removed. One Member of the union also tried to hit him with a plier. According to complainant, Vijay Dev, JE, Banarasi Dass, Rajinder Singh, Tirath Bahadur, Rameshwer Dass, Amar Dev, Ram Singh, all employees of Punjab State Electricity Board were prominently involved in the crime. It was further stated in the complaint that the learned Civil Judge, Senior Division, Patiala, passed an injunction order against employees of union from organizing any rally under 300 meters of the office. Therefore, prayer was made for registration of the case.

On receipt of complaint, the police made the endorsement (Ex.PW3/A) and accordingly, a case under Sections 353, 186, 341, 323, 148, 149 IPC was registered against accused at Police Station Kotwali, Patiala. The site plan of place of occurrence (Ex.PW3/D) was prepared. Accused were arrested. After completion of investigation, challan was presented against them.

All accused were chargesheeted under Sections 341, 353, 186, 323, 148, 149 IPC.

In support of its case, prosecution examined Er. Harjit Singh (PW1), Er. Gurpal Singh, complainant (PW2), Bakhshish Singh, retired Inspector (PW3), Er. Ram Singh (PW4), Anant Singh, retired Superintendent, PSPCL, Patiala (PW5), Hira Ballabh (PW6). Remaining prosecution evidence was closed by orders.

When examined under Section 313 Cr.P.C., accused Rajinder Singh pleaded that he is innocent. On 13.9.2007, he was working as a Lineman in North Sub Division, Patiala. For whole of the day, he remained present in the North Sub Division. He was the then President of Sub

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Urban Division of Technical Services Union. He produced his pay ledger (Ex.DX).

Accused Vijay Dev claimed that he was the then Circle President, Punjab Technical Service Union, Punjab. He has been falsely implicated at the hands of management.

Accused Banarsi Dass claimed that he was the then President of Technical Services Union, PSEB, West Division, Patiala, and has been falsely implicated.

Accused Amar Dev claimed that on 13.9.2007, he was the present in North Sub Division, Patiala. He was then Joint Secretary of Technical Sub Urban Union of PSEB, Patiala. He also produced his salary ledger (Ex.Z/1).

Accused Tirath Bahadur, claimed that he has been falsely involved as he was the then President of Technical Union Fort Sub Division, Patiala.

Accused Ram Singh pleaded that for whole of day, he was present on duty at Central Store. He was the then President of Central Store Division of Technical Services Union, PSEB. He has been falsely implicated. He produced attendance register (Ex.DZ).

Accused Rameshwar Dass pleaded that he was the then Senior Vice President of Technical Services Union, Punjab, PSEB, Patiala. He has been falsely involved.

In defence, accused produced documents Ex.DX, Ex.DY, Ex.DZ and EX.Z/1 and closed the evidence.

After hearing the prosecution and after going through the evidence, the learned Judicial Magistrate 1st Class, Patiala, convicted and

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sentenced the revisionists, as abovenoted. The judgment was upheld in appeal.

I have heard the learned proxy counsel appearing for learned counsel for revisionists, learned State counsel and have also carefully gone through file and lower Court file as well.

The learned proxy counsel appearing for learned counsel for revisionists has vehemently argued that in this case, no sanction under Section 195 Cr.P.C. was obtained for prosecution under Section 186 Cr.P.C.

The matter has already been dealt with by the lower appellate Court and it has been held that offence under Section 353 IPC is cognizable. In this case, there was a written complaint of Er. Gurpal Singh. The conviction is under Sections 353, 341, 323, 148, 149 IPC, for which no sanction is required.

The learned proxy counsel appearing for learned counsel for revisionists has vehemently argued that in this case, complainant has nowhere mentioned that after hearing the noise, Er. Harjit Singh also came out of room. Therefore, the statement of Er. Harjit Singh (PW1) cannot be believed. It is further contended that Er. Ram Singh (PW4) had turned hostile. Therefore, there is sole testimony of Er. Gurpal Singh, which cannot be relied upon.

I am of the view that from the examination of file, a different picture emerges. Er. Gurpal Singh (PW2) has fully supported the prosecution case, though, he has stated that he could not recall the names of some of accused, but he identified all of them in Court. He has specifically stated that when he went outside to switch on the electricity, he was surrounded. He was dragged from the varandah. There was 70/80 persons,

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who misbehaved with him. They misbehaved and abused him. He was also beaten up and thrown on the ground and his turban was removed. He has specifically stated that at that time, officers including Er. D.P. Sethi, Er. Harjit Singh and Er. Ram Singh were also present in his office. Er. Harjit Singh, while appearing as PW1, has also supported the story put forth by Gurpal Singh, stating that accused misbehaved with Er. Bhupinder Sharma and gave beatings to Er. Gurpal Singh. They used filthy language. Er. Gurpal Singh fell down and his turban was removed by said assailants. When Er. Gurpal Singh was lying down on the ground and surrounded by 70/80 persons, he might not be in a position to see as to who has come out from his office and witnessed the occurrence. Therefore, statement of Er. Harjit Singh that he came out of the office and witnessed the occurrence was rightly believed by both the Courts below. Moreover though, Er. Ram Singh (PW4) turned hostile and projected that he came outside only after the occurrence had taken place, but he stated that several people were raising slogans and they had switched off the light of office. Thereafter, Er. Gurpal Singh went outside the room and they heard the shouting. They went outside the room and saw that Bhupinder Sharma, XEN Sub Urban Division alongwith Gurpal Singh was in shocked condition and Gurpal Singh was not wearing his turban. He identified accused present in Court. Therefore, Ram Singh had also affirmed that occurrence had taken place, in which accused misbehaved with Gurpal Singh and Bhupinder Sharma and also removed the turban of Er. Gurpal Singh.

I am of the view that an officer will not fabricate such incident and remove his turban simply to falsely implicate the trade unionists. Accused are trade unionists. It is established from the statement of

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complainant, supported by the statements of Er. Harjit Singh and Er. Ram Singh that accused had gathered outside the office. They misbehaved with Er. Gurpal Singh and one Bhupinder Sharma. Though, Bhupinder Sharma had not appeared, but story qua Er. Gurpal Singh has been fully proved.

The learned proxy counsel appearing for learned counsel for revisionists has argued that in the departmental proceedings, revisionists were exonerated. He has also referred to application placed with present file wherein electricity board has written a letter to withdraw from the prosecution.

I am of the view that this Court cannot look into any document, which is not part of the lower Court file. Anyway, the fact remains that prosecution was never withdrawn. All accused are trade unionists and it is not difficult for them to pressurize the department to withdraw departmental proceedings against them.

The learned proxy counsel appearing for learned counsel for revisionists also referred to the statements made by Er. Gurpal Singh before the departmental authorities.

The perusal of statement shows that he has affirmed the statement made before the Court but he named only particular employee in each chargesheet who are individually chargesheeted and referred to others as his colleagues. There are concurrent findings of two Courts below. I do not find any ground to differ with findings recorded by both the Courts below. The action of accused in assaulting their officer and removing his turban is a serious matter and does not call for any leniency. As such, the present revision is found to be without any force and is

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dismissed. Let all accused be rearrested and committed to jail to undergo remaining part of sentence.

(KULDIP SINGH)
JUDGE

19.12.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes