

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRR No. 3018 of 2014 (O&M)
Date of decision : 1.11.2017

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Balbir KaurPetitioner

vs.

State of Punjab and othersRespondents

2) CRR No. 2506 of 2014 (O&M)

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Balbir KaurPetitioner

vs.

State of Punjab and othersRespondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Suminderdeep Kaur, Advocate for
Mr. Rajeev K. Kapila, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab

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H. S. Madaan, J. (Oral)

Vide this judgment, I propose to dispose of two revision petitions, bearing CRR No. 3018 of 2014 titled as 'Balbir Kaur vs. State of Punjab and others' and CRR No. 2506 of 2014 titled as 'Balbir Kaur vs. State of Punjab and others', as both these petitions have been filed against judgment dated 12.5.2014 passed by the Additional Sessions Judge, Fast Track Court, Hoshiarpur.

Gian Kaur, Balwinder Pal @ Binder, Babu Ram and Gurmit

Ram, all of them being accused in FIR No. 21 dated 11.11.2006 for

offences under Sections 326, 324, 506, 34 IPC, registered at police Station Bullowal, District Hoshiarpur, faced trial by JMJC, Hoshiarpur and vide order dated 22.8.2012, they were convicted for offences under Sections 452, 326, 324 IPC and were sentenced as follows:-

<i>Under Section</i>	<i>Name of the accused</i>	<i>Sentence</i>
U/s 452 IPC	Gurmit Ram Gian Kaur Balwinder Pal Babu Ram	Rigorous imprisonment for one year and fine of Rs.500/- each. In default of payment of fine to further undergo rigorous imprisonment for further 15 days.
U/s 326 IPC	Balwinder Pal	Rigorous imprisonment for two years and fine of Rs.500/-. In default of payment of fine to further undergo rigorous imprisonment for 15 days
U/s 326 read with Section 34 IC	Gian Kaur Gurmit Ram Babu Ram	Rigorous imprisonment for two years and fine of Rs.500/-. In default of payment of fine to further undergo rigorous imprisonment for 15 days
U/s 324 IPC	Balwinder Pal	Rigorous imprisonment for one and half year.
U/s 324 IPC read with Section 34 IPC	Gian Kaur Gurmit Ram Babu Ram	Rigorous imprisonment for one and half year.
U/s 324 IPC	Gurmit Ram	Rigorous imprisonment for one and half year.
U/s 324 IPC read with Section 34 IPC	Gian Kaur Balwinder Pal Babu Ram	Rigorous imprisonment for one and half year.

All the sentences were ordered to run concurrently.

Feeling aggrieved such accused had preferred an appeal, which was disposed of by Additional Sessions Judge (Adhoc), Fast Trak Court, Hoshiarpur, vide judgment dated 12.5.2014 in terms of which accused-appellants were acquitted of the charge under Section 452 IPC, Gian Kaur – appellant was acquitted of offences under Section 326/34, 324/34 and 324/34 IPC, accused-appellant Balwinder Pal @ Binder was convicted and sentenced under Sections 326, 324, 324/34

IPC, whereas appellant - Gurmit Ram had died, so appeal qua him was abated. Separate appeal filed by accused – appellant Babu Ram was accepted and he was acquitted of the charges framed against him.

In nutshell, facts of the case as per the prosecution story are that on 10.11.2016 at about 3.00 P.M. when complainant Piara Ram s/o Babu Ram, of Adharmi community, resident of village Fattowal Dhadhe, Police Station Bullowal, was present at his home, his daughter-in-law Balbir Kaur was collecting water from the tap, whereas his grandson Sandeep Kumar had returned home from school. Outer gate of the house was closed. However, it was opened forcibly. Complainant observed that accused Gurmit Ram s/o Bant Ram having a '*daat*' alongwith his son Binder having a '*kirpan*' and his wife Gian Kaur empty handed and Babu empty handed, raising *lalkaras* were there in the courtyard of his house. Binder gave a '*kirpan*' blow to Balbir Kaur which hit her on the left elbow. Gurmit Ram gave two '*daat*' blows to the complainant hitting him on the head. He did so with an intention to kill him. He gave another '*daat*' blow to the complainant hitting him on bicep of his left arm. Binder caused blows to Sandeep Kumar on head, back and near the elbow of his right arm. Hearing alarm being raised by complainant and his family members, several people gathered at the spot and on their arrival, the accused ran away alongwith their respective weapons. Kashmiri Lal took all the three injured to Civil Hospital, Sham Chaurasi. Complainant and Sandeep Kumar were admitted in Civil Hospital, Sham Chaurasi, whereas Balbir Kaur was shifted to Civil Hospital, Hoshiarpur. The motive behind the incident was that

complainant had constructed a drain for water. Binder was unwilling to share the expenses for construction of drain stating that he would not pass his cart from there. When the accused without asking the complainant party started constructing the slab, Balbir Kaur, daughter-in-law of the complainant objected to that. For that reason all the accused having common intention trespassed in the house of the complainant and caused injuries to him, his daughter-in-law and grandson. On getting information regarding hospitalization of the injured, the police party from Police Station Bullowal, District Hoshiarpur, went to Civil Hospital, Sham Chaurasi. Statement of complainant Piara Ram was recorded. The Investigating Officer appended his endorsement below the said statement sending ruqa to the police station, which formed the basis for registration of FIR.

After registration of FIR, the case was investigated. The accused were arrested in this case.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Area Magistrate, Hoshiarpur. On presentation of challan, copies of documents relied thereupon were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. and then finding a prima facie case, charge for offence under Sections 452, 326, 324, 506, 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of prosecution, during the course of which, the prosecution examined PW-1 Piara Ram complainant, PW-2 Balbir Kaur, PW-3 Dr. R.P. Saroa, PW-4

Kashmiri Lal, PW-5 Dr. Anil Saluja, PW-6 Sandeep Kumar, PW-7 Dr. S.S. Dardi, PW-8 ASI Harjinder Singh, PW-9 ASI Baldev Raj, PW-10 Dr. Surinder Singh and PW-11 ASI Kapoor Singh. With that the prosecution evidence stood concluded.

Statements of the accused were recorded under Section Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused was put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case. During their defence evidence, the accused examined DW1 Pritam Singh and DW 2 Amrik Singh who supported their version. With that the defence evidence was closed.

After hearing the arguments, the trial Court convicted and sentenced the accused as detailed above, which left them aggrieved and they had filed appeals; Babu Ram had filed a separate appeal from that of three other convicts, who jointly preferred appeal. The appeals filed by the accused were disposed of by the Ist Appellate Court, as detailed above.

Feeling aggrieved, the complainant has approached this Court by filing two revision petitions.

Notice of the petitions was given to the State, which has appeared through State counsel.

I have heard learned counsel for the parties, besides going through the record of the case. The reasoning given by the Ist Appellate Court in arriving at the conclusion is as under:-

“ 14. So far as the case of present appellant Babu Ram is concerned, the simple allegations against him are that

he came alongwith other accused raising lalkaras to the house of the complainant but no overt has been attributed to him. He never gave any injury to anybody and it cannot be believed that after coming with all the other accused, he will remain standing there as a silent spectator and therefore, the circumstances shows that even if he was present there, he would not have shared his common intention with the co-accused in giving injuries on the person of the injured.

To apply Section 34 of IPC apart from the fact that there should be two or more accused, two factors must be established (i) common intention (ii) participation of the accused in the commission of the offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 of IPC will be attributed as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 of IPC cannot be invoked. In the present case also, his common intention is not proved on record by the prosecution and therefore, in my view, he cannot be held guilty for the offence under Section 326/34, 324/34 and 324/34 of IPC. Though it is a case of the prosecution that the accused-appellant caused injuries on the person of complainant and others by entering into their house after opening the gate, yet the perusal of site plan

Exhibit PW11/C shows that in the site plan, no construction of the house has been shown so, when the prosecution has failed to prove the construction of any house in the site plan Exhibit PW11/D where the occurrence took place, then certainly the said act of the appellants cannot be said to be a house tress pass. So in my view the ingredients as required for the offence under Section 452 of IPC are \not proved on record.

15. In view of my aforementioned discussion and reasons, I am of the view that the findings given by the trial Court, so far as the offence under Section 452 IPC are concerned, is not in accordance with law and evidence on the file and the offence under Section 452 of IPC is not proved against the accused-appellant. So far as the offence committed by appellant Babu Ram under Section 326/34 and 324/34 of IPC are concerned, in view of my aforementioned discussion, his common intention to share with the co-accused is not proved and Babu Ram has been wrongly convicted for the offence under Section 326/34, 324/34 and 324/34 of IPC and accordingly, in these circumstances, the findings of the trial Court in this regard are reversed and the appellant is acquitted from the charges under Section 452 of IPC. He is also acquitted for the offences under Section 326/34, 324/34 and 324/34 of IPC.

16. With these observations, I am of the considered

opinion that the prosecution has not been able to connect the accused-appellant Babu Ram with the alleged offence and proved its case against him beyond all shadow of reasonable doubt. So the appeal filed by the appellant is accepted and the accused/appellant Babu Ram is acquitted from the charges levelled against him and his bail bonds and surety bonds are also discharged.”

After hearing the rival contentions, I find that there is no illegality or infirmity with the impugned judgment passed by the Ist Appellate Court, which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge or that the conclusion arrived at by the Courts below is perverse. This is not a case here. Therefore, I do not find any ground to interfere with the judgment passed by the Ist Appellate Court.

In view of the above discussion, both the petitions stand dismissed.

(H.S. Madaan)
Judge

1.11.2017

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Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No