

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.3670 of 2015 (O&M)
Date of Decision: August 17, 2017

Gurbachan Singh

...Petitioner

VERSUS

Palwinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.D.Sharma, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Gurbachan Singh against respondents Palwinder Singh and Gurdial Singh, challenging the impugned judgment of conviction and order of sentence dated 16.01.2015 passed by learned Judicial Magistrate Ist Class, Zira, vide which the accused-respondent Palwinder Singh was convicted under Section 323/34 IPC whereas accused-respondent Gurdial Singh was convicted under Section 323 IPC and they were sentenced to undergo rigorous imprisonment for a period of six months along with fine and were acquitted of the charges under Sections 326 and 324 IPC and also challenging judgment dated 11.06.2015 passed by learned Addl. Sessions Judge, Ferozepur, vide which the appeal filed by the petitioner-complainant against the judgment of acquittal under Sections 326 and 324 IPC was dismissed, whereas appeal filed by the accused-respondents was dismissed with the modification in the sentence and the accused-respondents were released on probation under the Probation of Offenders Act on their executing probation bonds in the sum of

₹10,000/- each with one surety in the like amount each.

I have heard learned counsel for the petitioner and have gone through the record.

The perusal of the record shows that complaint was filed by complainant Gurbachan Singh against Palwinder Singh and Gurdial Singh under Sections 326, 324, 323 and 34 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Zira, are as under:-

“2. The brief facts of the complaint are that the complainant and accused are relatives and it is alleged in the complaint that during family settlement the complainant was given land with the low fertility because of this reason he was given one killa (i.e., 8 kanals land) more than other relatives, the complainant was cultivating the land from last 20-30 years. It was alleged that about 12-13 days before 23.11.2009 accused No.1 Palwinder Singh illegally ploughed the land measuring 3 kanals out of one acre land. On dated 23.11.2009 at about 2:30 PM when complainant was again ploughing the land in dispute. Palwinder Singh armed with Kirpan and accused No.2 Gurdial Singh armed with Dang came at the spot. The accused No.1 gave Kirpan (Sword) blow, which landed on right Ulna of the complainant. Thereafter, accused No.2 Gurdial Singh gave a Dang blow on the left arm of the complainant, when complainant raised hue and cry accused fled away from the spot. Bakhshish Singh uncle and Gurmit Singh father witnessed the occurrence. Thereafter, complainant was shifted to the Hospital, his formal statement was recorded and on the basis of same an FIR was also lodged but ultimately police did not take any action against the accused persons. Hence, this complaint.”

Learned JMIC, on the basis of the evidence, acquitted the accused-respondents under Sections 326 and 324 IPC but convicted and sentenced them as stated above, vide judgment of conviction and order of sentence dated 16.01.2015. Appeals were filed by the petitioner-complainant challenging the acquittal under Sections 326 and 324 IPC and by accused-respondents challenging the conviction and sentence before

impugned judgment dated 11.06.2015, dismissed the appeal filed by the petitioner-complainant, whereas in the appeal filed by the accused-respondents, the conviction of the accused-respondents was upheld but they were released on probation, as stated above.

Aggrieved from the above-said judgments, present revision has been filed by the petitioner-complainant.

It is clear from the record that neither X-ray films have been produced and proved on record before learned Magistrate nor any radiologist has been examined. Merely by producing of X-ray report without examining the radiologist or without producing X-ray films, the grievous injury cannot be proved. Otherwise also, the accused have been convicted under Section 323 read with Section 34 IPC. Even the injury under Section 324 IPC is not believed by the Courts below as the Court held that possibility of injury No.1 caused with friendly hand cannot be ruled out.

From the evidence on record, I find that in the absence of X-ray films and non-examination of radiologist, the prosecution has not proved its case beyond reasonable doubt and the offence under Section 326 IPC is not proved. Therefore, the accused-respondents have rightly been acquitted under Section 326 IPC. The impugned judgments passed by the Courts below, are correct, as per law and evidence and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

August 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No