

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

(i)

CRR No.2943 of 2016 (O&M)

Ram Lubhaya

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(ii)

CRR No.3150 of 2016 (O&M)

Rachpal Singh and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

Date of Decision: February 15, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Khaira, Advocate
for the petitioner (in CRR No.2943 of 2016).

Mr.K.S.Kahlon, Advocate
for the petitioners (in CRR No.3150 of 2016).

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Chandan Singh Rana, Advocate
for respondent No.2.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected
revisions as the same have been arisen from same impugned judgment.

The above-mentioned revision petitions have been filed by

petitioners against respondents State of Punjab and Boor Singh, challenging the impugned judgment of conviction and order of sentence dated 20.11.2013 passed by learned Judicial Magistrate First Class, Gurdaspur, vide which the petitioners were convicted under Sections 148, 326, 324, 506 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for a maximum period of three years under Section 326 IPC along with fine and also challenging the judgment dated 26.07.2016 passed by learned Addl. Sessions Judge, Gurdaspur, vide which the appeal filed by petitioners was dismissed. All the sentences were ordered to run concurrently.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that a complaint was filed by Boor Singh complainant against accused Rachpal Singh, Paramjit Singh, Ram Lubhaya, Nirmal Singh and Lakwinder Singh under Sections 326, 324, 506 and 149 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMFC, Gurdaspur, are as under:-

“1. Complainant Boor Singh has filed the present complaint against accused Rachpal Singh, Paramjit Singh, Ram Lubhaya, Nirmal Singh and Lakwinder Singh with allegations that he is permanent resident of above noted address and running STD and Karyana Shop, which is situated within his house. On 10.07.2005 at about 8.30 pm, when complainant was present at his shop along with his wife, all the accused, above noted came there on motorcycle and scooter and raised slogan that complainant should be taught a lesson for helping Sucha Singh Chottepur in Shiromani Committee Election. Then accused Paramjit Singh sprinkled petrol on complainant, while accused Rashpal Singh and Lakhwinder Singh caught hold complainant from his arm and accused Nirmal Singh ignited a match stick and set complainant on fire. Jarnail Kaur, wife of complainant, tried to rescue Boor Singh and

extinguish the fire, but due to fire she and complainant Boor Singh received burn injuries. All accused then snatched ear rings of Jarnail Kaur and looted Rs.3000/- therefrom. On raising alarm, all the accused fled away from the occurrence, whereas the whole occurrence was witnessed by Sukhwinder Singh son of Charan Singh and Gurwinder Singh son and daughter of complainant. Thereafter, complainant Boor Singh and Jarnail Singh were admitted at Civil Hospital Gurdaspur, where they remained under treatment till 10.08.2005. In the mean time, on 12.07.2005 police came at Civil Hospital, Gurdaspur and took signatures of complainant on 4-5 blank papers, on pretext of taking action against accused. Whereas till filing of present complaint no action was taken by police against the accused. Hence, complainant has filed present complaint.”

In pre-charge evidence, the complainant examined CW-1 Gurwinder Singh, CW-2 Sukhwinder Singh, CW-3 Jarnail Kaur, CW-4 Dr.Ajay Kumar and examined himself as CW-5. At the close of the pre-charge evidence, charges were framed under Sections 326, 324, 506 read with Section 149 IPC. After framing of the charge, accused cross-examined the witnesses of the complainant and thereafter, complainant closed the evidence.

In the statement under Section 313 Cr.P.C., the accused denied the allegations in the complaint as false and asserted their innocence. The accused further stated that they had joined the investigation in a case of demolition of mandir against complainant. So, to take revenge, present case has been launched. Accused examined three witnesses in defence i.e. DW-1 Gurnam Masih, DW-2 Randhir Singh and DW-3 Karam Singh. The accused tendered into evidence documents; certified copy of report under Section 173 Cr.P.C. in case titled as 'State vs. Sukhwinder Singh and Boor Singh as Ex.DB, certified copy of FIR No.15/2005 as Ex.DC, certified copy of list of witnesses of FIR No.15 as Ex.DD, certified copy of the statement

of Sukhwinder Singh in case of 'Mahinder Singh vs. Parupkar Singh' as Ex.DE, copy of the report sent by Medical Officer to SHO Mark DF, enquiry report made by Inspector/SHO on application of Jarnail Kaur, copy of FIR No.64/2006 in case titled as 'State vs. Sukhwinder and others' as Mark DD, copy of enquiry report made by DSP Harinder Singh Sandhu on application of Jarnail Kaur Mark DE and closed defence evidence.

Learned JMIC, Gurdaspur, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Gurdaspur, vide judgment dated 26.07.2016.

Aggrieved from the above-said judgments, present revision petitions have been filed.

From the record, I find that in the present case, the matter was reported to the police and admittedly, the police came in the hospital and recorded the statements. After investigation, the police found this case as false. It is also admitted fact that accused appeared as witness in the case against present complainant and one Sukhwinder Singh for demolishing the Mandir etc. Learned counsel for the petitioners argued that this complaint has been filed to take revenge that accused appeared as witness.

Furthermore, from the record, I find that it is in the evidence that Ram Lubhaya remained sitting on the motorcycle and did not participate in the commission of the offence nor any attribution is there against him. Secondly, Rashpal and Lakhwinder Singh were attributed that they caught hold the injured-complainant Boor Singh. As per the complainant's version, Paramjit Singh sprinkled petrol on Boor Singh and

Nirmal Singh has ignited matchstick. Boor Singh received 35% burn

injuries and Jarnail Kaur received 10% burn injuries while extinguishing the fire. The case of the defence is that Boor Singh received burn injuries while putting kerosene etc. when the electricity had gone.

Learned counsel for the petitioners argued that in the document Ex.DG, which was sent by the doctor to the police, place of accident is mentioned as 'Village Ali-Nangal'. The MLR has been prepared on 19.7.2005 whereas the occurrence took place on 10.07.2005. This MLR was prepared on the order of learned Magistrate and on the basis of bed head tickets but bed head tickets have not been proved by the doctor. The Doctor stated in his statement that Boor Singh was examined vide MLR dated 19.07.2005 at about 2.05 P.M. and the MLR was reproduced from Bed Head Ticket as per orders of the Court Gurdaspur. He stated that the police was already informed for above-said case vide number 876 dated 10.07.2005 and found following injuries on the person of Boor Singh:-

1. There was approximately 35 burnt area involving back part of the front of left side of the chest and abdomen, whole of the left upper limb, patches in front of right side of chest and abdomen, a patch in right axilla, a patch on medial side of the right upper arm, a patch on the medial side of left thigh and upper leg. These burns were superficial at some places and deep in some areas. Slough was present on the back and over left upper limb. Probable duration of this injury was more than 7 days and weapon cannot be ascertained.

He further deposed that on the same day, he also examined Jarnail Kaur and MLR was reproduced from the Bed Head Ticket. As per the doctor, there was approximately 10% burnt area of the body involving left fore arm left hand, right forearm, right hand and face. Most of the burnt area was having superficial burns, which had healed now. Doctor Ajay Mahajan only proved the MLR, but has not proved the Bed Head Tickets

from where these MLRs are prepared and it creates reasonable doubt in the complainant's case. He admitted that they prepared MLR on the very admission of the patient/injured if he states that he received injury at the hands of assailants. He further admitted that injured were admitted on 10.07.2005 but the MLR was prepared on 19.07.2005. He also admitted that patient also told at the time of admission that they like to get treatment only but not made any complaint for getting prepared medico legal. The doctor further stated that 10% burns are in the category of simple injury.

Keeping in view the above facts, I find that injuries cannot be held as supported by medical evidence as the MLR has been prepared after more than 8 days of the injuries so received, on the basis of the Bed Head tickets. The record of Bed Head tickets has not been produced. Rather, to show all these observations and to prove the injuries, the record of Bed Head tickets is necessary.

Learned counsel for the petitioners argued that motive was shown that they (accused side) have raised *lalkara* to teach the lesson for opposing in the SGPC Elections but learned counsel submitted that the elections in question took place much after the alleged occurrence. CW-2 Sukhwinder Singh in cross-examination admitted his signatures at point 'A' of Ex.DA and also admitted that police enquiry was conducted and his statement was recorded. This witness was confronted with Ex.DA recorded by DSP where this witness stated that he was at a distance of 10/12 karams from the house of Boor Singh and saw one motorcycle and one scooter, who put Boor Singh on fire and ran away towards the village but he did not identify those persons. He was also confronted with his statement Ex.DA,

confronted with earlier statement in which these facts regarding the present occurrence and he being eye witness, have not been mentioned. So, in this case, the complainant examined his son, himself and his wife. Statement of Sukhwinder Singh is totally unreliable.

Further, the defence has proved that in Ex.D4 which was complaint made to the police, four persons were implicated and later on name of Lakhwinder Singh was added. In Ex.D4, no *lalkara* is attributed. It is also stated that 5 litres kerosene poured but this fact that 5 litres of kerosene was poured upon Boor Singh, is not supported from the injuries. In Ex.D4, there is also no mention regarding giving any threat nor the names of additional witnesses are there, which also creates doubt that occurrence took place like this.

Both the Courts below have not discussed the delay in filing the complaint which was filed on 02.09.2005 and the occurrence took place on 10.07.2005. On the information given to the police, enquiry was conducted and it was found as false case. There being no Bed Head ticket on the record, the oral statements are not supported by medical evidence. Furthermore, there is motive to falsely implicate the accused. The version is contradictory to the complaint made to the police, which is Ex.D4 and material improvements have been made. Lakhwinder Singh accused and Gurwinder Singh witness have been introduced while filing this complaint.

Keeping in view all these facts and in view of the above discussion, I find that reasonable doubt exists in the present case and the Courts below have not appreciated the evidence in right perspective. Therefore, the judgments passed by the Courts below are not as per

evidence and law and the same are set aside. The accused are acquitted of

the charges framed against them.

Resultantly, finding merit in both the revisions, the same are allowed. Petitioners Ram Lubhaya, Rachpal Singh, Paramjit Singh, Nirmal Singh and Lakhwinder Singh, who are in custody, be released forthwith, if their custody is not required in connection with any other case.

February 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No