

In the High Court of Punjab and Haryana at Chandigarh

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(1) Cr. Revision No.3070 of 2016 (O&M)

Date of Decision:20.1.2017

Beera and others

...Petitioners

v.

State of Punjab

...Respondent

.....

(2) Cr. Revision No.3197 of 2016 (O&M)

.....

Bagga Singh

...Petitioner

v.

State of Punjab

...Respondent

.....

(3) Cr. Revision No.3225 of 2016 (O&M)

.....

Pargat Singh

...Petitioner

v.

State of Punjab

...Respondent

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Harinder Pal Singh Ishar, Advocate for the petitioners in Criminal Revision Nos.3070 and 3197 of 2016.

Mr. K.B. Raheja, Advocate for the petitioner in Criminal Revision No.3225 of 2016.

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

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Inderjit Singh, J.

This order will dispose of the above mentioned three criminal revision petitions filed under Section 401 Cr.P.C. challenging the impugned judgments dated 26.7.2016 passed by learned Additional Sessions Judge, Ferozepur dismissing the appeal against the impugned judgments of conviction and orders of sentence passed by learned Judicial Magistrate Ist Class, Ferozepur, with modification in sentence only.

Challan has been presented by the Police of Police Station, Kulgarhi against Baga Singh, Saka alias Krishan, Kala, Beera and Pargat Singh in FIR No.20 dated 20.3.2012 registered for the offences under Sections 341, 427, 326, 323, 148 read with Section 149 IPC at Police Station Kulgarhi. The brief facts of the cases as noted down in the judgment dated 8.4.2015 passed by learned Judicial Magistrate Ist Class, Ferozepur are as under:-

“The present case was registered on the basis of the statement made by complainant Pardeep Kumar son of Surinder Kumar, resident of Mamdot, before the police on 20.03.2012 to the effect that he is the owner of Krishan Lal Aggarwal B.K.O., Jhoke Hari Har. On that day, at about 11/11.30 A.M., he was present at his Brick Kiln. The complainant came to know that some people were stopping their tractor trolleys loaded with raw bricks, whereupon the complainant along with his partner Rajiv Kumar son of Vinod Kumar reached the spot on his car bearing registration No.PB-05M-6299. Accused Bagga Singh

who is President, along with 15/20 other persons, encircled the complainant and his partner Rajiv Kumar on the way and started throwing bricks upon them, as a result of which front glass of the case was broken. They also threatened the complainant as well as his partner Rajiv Kumar, who saved their lives while running from the spot. The complainant further stated that Bagga Singh, President used to instigate the other labourers not to work at the Brick Kiln of the complainant as he would get their wages enhanced.

On the basis of the statement made by complainant Pardeep Kumar, FIR under Sections 341/427/506/148/149 IPC was registered against the accused persons. Subsequently, on the basis of statement of injured Rajiv Kumar and on receipt of medico legal report regarding injured Rajiv Kumar, offence under Section 326 IPC was enhanced. The accused persons were granted pre-arrest bail by the Hon'ble High Court as well as by learned Addl. Sessions Judge and accordingly, they were joined in investigation. On completion of the investigation, challan against the present accused was presented in the Court.”

Finding *prima facie* case under Sections 148, 326, 323, 341, 427, 506 read with Section 149 IPC, charge was framed against the accused persons, to which they pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined PW-1 SI Kartar Singh, Investigating Officer, who has conducted part of the

investigation, PW-2 Dr. Manjit Kaur, who medico legally examined injured Rajiv Kumar and who has proved the MLR Ex.PW.2/A along with pictorial diagram Ex.PW.2/B and report regarding nature of injury given by medial Board of doctors Ex.PW.2/C. PW-3 Rajiv Kumar, injured-eye witness corroborated the version of the complainant. PW-4 Pardeep Kumar-complainant also deposed as per the prosecution version. PW-5 SI Baldev Singh, who conducted part of the investigation proved the memos of grounds of arrest Ex.PW.5/A to Ex.PW.5/D and the evidence of the prosecution was closed by order. At the close of the prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded, wherein the accused pleaded that they are innocent and have been falsely implicated. It is also stated that on account of labour dispute with the owner of the brick kiln, false case has been registered.

The learned Judicial Magistrate Ist Class, Ferozepur, convicted the accused for the offences under Sections 148, 326, 323, 341, 427 read with Section 149 IPC and sentenced them to undergo rigorous imprisonment for three years each and to pay a fine of ₹1,000/- each and in default of payment of fine to further undergo simple imprisonment for ten days for the offences under Sections 148 and 326 read with Section 149 IPC each on two count. The accused have further been sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹1,000/- each and in default of payment of fine to further undergo simple imprisonment for ten days for the offence under Section 323 read with Section 149 IPC each. They have further been sentenced to undergo rigorous imprisonment for one

month each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo simple imprisonment for five days for the offence under Section 341 read with Section 149 IPC each. They have further been sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹1,000/- each and in default of payment of fine to further undergo simple imprisonment for ten days for the offence under Section 427 IPC each. All the sentences have been ordered to run concurrently. Aggrieved from this judgment, the accused filed appeals which have also been dismissed by learned Additional Sessions Judge vide judgments dated 26.7.2016, but their sentence has been modified for the offence under Section 326 read with Section 149 IPC from three years to two years.

At the time of arguments, learned counsel for the petitioners argued that they have been wrongly convicted under Section 326 IPC as no Radiologist had been examined in the Court to prove the X-ray films nor the doctor, who gave the X-ray report, has been examined. Merely on the opinion of the Board Members regarding nature of injury, the accused have been wrongly convicted for the offence under Section 326 IPC. The learned counsel for the petitioners also prayed for reduction of sentence.

After hearing the learned counsel for the petitioners as well as the learned State counsel and after going through the record, I find that Radiologist has not been examined by the prosecution to prove the X-ray films. Again no doctor had been examined, who gave the X-ray report and X-ray report has not been proved on the file. The doctor has proved the injuries mentioned in the MLR and the pictorial diagram and also proved

the opinion of the Board of doctors declaring the injury grievous on the basis of documents. As no Radiologist has been examined, who conducted the X-ray on the person of Rajiv Kumar, therefore, the injury under Section 326 IPC has not been proved beyond reasonable doubt. It is necessary for the prosecution to examine the Radiologist and to prove the X-ray films and further to examine the doctors who gave the report on the basis of X-ray film and to prove the X-ray report. Opportunity to cross-examine these two material witnesses has been denied to the accused as these witnesses have not been examined. Therefore, the prosecution failed to prove the offence under Section 326 IPC. Qua other offences, nothing has been pointed out as to how the findings are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Courts and as to which material evidence has not been considered by the Courts below for holding the accused guilty for other offences.

Therefore, from the above, I acquit the accused/petitioners for offence under Section 326 IPC and uphold the conviction for the offences under Sections 148, 323, 341 and 427 read with Section 149 IPC.

As regards the prayer for reduction of sentence, I find that the petitioners are suffering for the last about five years from the long protracted criminal proceedings. Petitioners-accused Saka alias Krishan and Beera are about 22 and 23 years of age respectively. Pargat Singh and Bagga Singh are 46 and 40 years of age respectively and Kala is aged 32 years. The petitioners are the only bread earners of their families and poor persons and they have already undergone sentence of imprisonment as

under:-

Petitioner-Bagga Singh has undergone actual sentence of 5 months and 28 days as on 8.12.2016 including remission of one month 16 days. Petitioners-Saka alias Krishan and Kala have undergone actual sentence of four months 21 days including remission of 1 month and 8 days as on 31.10.2016. Petitioner Beera has undergone actual sentence of 5 months 14 days including remission of 1 month 12 days as on 19.11.2016. Petitioner-Pargat Singh has undergone actual sentence of 4 months 21 days including remission of 1 month 8 days as on 31.10.2016.

Keeping in view the facts and circumstances of the present cases and the above discussion, the criminal revision petitions are partly allowed. The sentence imposed upon the petitioners is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same. The petitioners, who are in custody, be set at liberty forthwith, if their custody is not required in connection with any other case, subject to payment of fine, if already not paid.

January 20, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No