

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.92 of 2015

.....

Date of decision:16.1.2017

Vijay Pal

...Petitioner

v.

Bal Kishan and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ajay Pal Singh, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 22.9.2014 passed by learned Additional Sessions Judge, Fazilka, vide which the appeal filed by the accused-appellants (respondents herein) against judgment of conviction and order of sentence dated 12.3.2013 passed by learned Chief Judicial Magistrate, Fazilka, convicting the accused for the offences under Sections 354, 323, 509, 148 read with Section 149 IPC and sentencing them to undergo rigorous imprisonment for three years each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo rigorous imprisonment for fifteen days each for the offence under Section 148 IPC; further sentencing them to undergo rigorous imprisonment for two years each and to pay a fine of ₹500/- each and in default of payment of fine to

further undergo rigorous imprisonment for fifteen days each for the offence under Section 354 read with section 149 IPC and further sentencing them to undergo rigorous imprisonment for one year each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo rigorous imprisonment for fifteen days each for the offence under Section 323 read with section 149 IPC and further sentencing them to undergo rigorous imprisonment for one year each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo rigorous imprisonment for fifteen days each for the offence under Section 509 read with section 149 IPC, has been only upheld conviction for the offence under Section 323 read with Section 149 IPC. The accused (respondents herein) have been ordered to be released on probation of good conduct under Section 4(1) of Probation of Offenders' Act, 1985 on their personal bonds of probation in the sum of ₹50,000/- each for a period of six months undertaking to keep peace and be of good behaviour during the period of probation.

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

The brief facts as noted down by the learned Chief Judicial Magistrate, Fazilka, in the judgment dated 12.3.2013 are as under:-

“Briefly, it is alleged by the complainant that he is resident of Village Bazidpur Kattianwali and is an agriculturist by profession and that on 5.5.2004, at about 12.00 noon, he alongwith his wife Kalawanti, daughters Savitri Devi, Parmeshwari, sons Surinder Kumar and Pawan Kumar were

present in his fields for sowing the cotton crop and at that time his (i.e. complainant) brother Bal Krishan, his brother in law Krishan Lal, Tara Chand, his sister's son Om Parkash, his sisters Kamla Devi, Chandrawali, Maya, Bhagwanti and Kashmiro forcibly entered in his fields and at that time the accused were armed with sticks and that accused Bal Krishan, Krishan Lal, Tara Chand and Om Parkash raised a lalkara to teach them a lesson for sowing cotton crop and all the accused started running behind them with a purpose to beat them and due to fear they (i.e. complainant etc.) started running towards their fields. That his daughter Sumitra Devi started running towards water course and other started running towards other/opposite side and that when his daughter Sumitra Devi reached near the water course, in the meanwhile, Kamla Devi who was armed with stick struck two stick blows on his daughter Sumitra Devi which hit on her right and left arm due to which she fell down and then Kashmiro Bai caused injuries on her left cheek and accused Kamla Devi caught hold the arms of his daughter, whereas, accused Maya and Bhagwanti caught hold the legs of his daughter. That accused Chandrawali by filled her (i.e. Chandrawali) urine in shoe put the same in the mouth of her daughter Kamla and some urine fell down outside the mouth. It is further alleged by the complainant that when his wife tried to escape his daughter then Bal Krishan struck

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stick blow on her back and also put his wife on the earth by catching her arms and Tara Chand forcibly snatched gold “OM” weighing half tola worn by his wife. That accused Om Parkash gave filthy abuses to his wife and daughter and threatened them with dire consequences. That on raising noise by him (i.e. complainant) and his sons all the accused ran away from the spot along with their respective weapons and also took with them the gold “OM” worn by his wife. That after arranging the vehicle he got admitted his daughter at Civil Hospital, Abohar where she was medico legally examined. That police of P.S. Khui Khera came to the hospital and he narrated the entire occurrence and at that time the police officials obtained his signatures as well as his daughter on some blank papers and assured that they will take action against the accused persons but no effect. Hence, the filing of the complaint.”

The learned Chief Judicial Magistrate, Fazilka, convicted the accused for the offences under Sections 323, 354, 509, 148 read with Section 149 IPC and sentenced them as mentioned above. An appeal was filed by the appellants-accused before the Sessions Court and the learned Additional Sessions Judge, Fazilka, vide judgment dated 22.9.2014 only convicted the accused under Section 323 read with Section 149 IPC and released them on probation of good conduct under Section 4(1) of Probation of Offenders' Act, 1985. Aggrieved from this order of the learned Additional Sessions Judge, the present revision petition has been filed.

I have gone through the judgment passed by the learned Additional Sessions Judge. This is correct as per law. The evidence has been appreciated in right perspective. In no way, the findings given by the learned Additional Sessions Judge can be held as perverse i.e. against the evidence or illegal i.e. against the law. Nothing has been pointed out as to which material evidence has been misread by the learned Additional Sessions Judge and nothing has been pointed out as to which material evidence has not been considered by the learned Additional Sessions Judge.

It is a revision petition and in the revision petition the Court is not to re-appreciate the evidence like the Court of appeal. The Court is to see whether the order passed by the learned Court below is illegal, perverse or some material evidence has not been discussed or the evidence has not been discussed in the right perspective. Learned counsel for the petitioner has not pointed out anything as to which material evidence has not been considered and discussed in the right perspective by the learned Additional Sessions Judge.

A perusal of the record shows that the dispute is between the family members regarding the possession of the land. As per the allegations accused Bal Krishan, Krishan Lal, Tara Chand and Om Parkash raised a 'Lalkara' to teach them (complainant party) a lesson for sowing cotton crop. As per the allegations, Sumitra Devi daughter of the complainant was given two stick blows by Kamla Devi and Kashmiro Bai caused injuries on her left cheek and accused Kamla Devi caught hold the arms of complainant's daughter, whereas, accused Maya and Bhagwanti caught hold the legs of his

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daughter and accused Chandrawali filled her urine in shoe and put the same in the mouth of Sumitra Devi. There is also allegation that Bal Krishan struck stick blow on the wife of the complainant.

A perusal of the record shows that only MLR has been tendered and the doctor has not been examined to prove the injuries. The MLR is not per se admissible document which means the injuries have been proved only by way of oral evidence. Further more, the learned Additional Sessions Judge correctly held that the offence under Section 354 IPC is not committed by the accused since only ladies-accused stated to have caught Sumitra Devi and no male person/accused touched her body. The Court below further dealt with the threat given and found that the offence under Section 509 IPC is also not made out.

Keeping in view the facts and circumstances of the present case and the reasoning given by the learned Additional Sessions Judge, I find that the judgment dated 22.9.2014 passed by the learned Additional Sessions Judge, Fazilka, is correct as per law and does not require any interference from this Court and the same is upheld.

Finding no merit in the criminal revision petition, the same is dismissed.

January 16, 2017.

(Inderjit Singh)
Judge

hsp

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