

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

Criminal Revision No.4580 of 2016(O&M)

Date of Decision: April 18 , 2017.

Gurmej Singh @ Geju PETITIONER

Versus

State of Punjab RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harchand Singh Batth, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

LISA GILL, J.

The petitioner was convicted by the learned Judicial Magistrate First Class, Patti for the offences punishable under Sections 452/354/326/323/ 506 IPC vide judgment dated 27.07.2013. Vide separate order of even date, the petitioner was sentenced as under:-

Offence under Section	Sentence
452 IPC	To undergo simple imprisonment for two years, besides, fine of ₹1,000/- and in default thereof, to undergo further simple imprisonment for seven days.
354 IPC	To undergo simple imprisonment for two years.
326 IPC	To undergo simple imprisonment for two years, besides, fine of ₹1,000/- and in default thereof, to undergo further simple imprisonment for seven days.
323 IPC	To undergo simple imprisonment for one year.

506 IPC	To undergo simple imprisonment for two years.
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All the sentences were ordered to run concurrently. Aggrieved of his conviction and sentence, the petitioner preferred an appeal, which was dismissed by the learned Additional Sessions Judge, Tarn Taran vide judgment dated 03.10.2016. Aggrieved therefrom, the petitioner has filed the present revision petition impugning both the abovesaid judgments and order of sentence.

Brief facts of the case are that, FIR No.46/2009 under Sections 452/354/326/323/506 IPC was registered on the statement of Binder Kaur (PW1). SI Subhash Chander, MHC received medico-legal reports of Gian Singh (PW3), Binder Kaur (PW1) and Kashmir Kaur (PW2). PW5 SI Mulakh Raj, obtained the opinion of the doctor and recorded the statement of injured Binder Kaur. Binder Kaur (PW1) stated that she alongwith her mother Kashmir Kaur (PW2) and father Gian Singh (PW3) were sleeping in their house on different cots on 02.09.2009. Her cousin sister Renu was sleeping with her. An electric bulb was lit in the courtyard in the complainant's house. At about 12.30 at night, a person with a muffled face, armed with a naked kirpan entered their house. He sat on her cot and started molesting her. He whispered to the complainant to go inside the room and threatened to kill her if she did not obey his command. The complainant however raised alarm on which her father, mother and cousin sister woke up. The abovesaid person tried to escape by scaling the wall of the complainant's house. However, her parents dragged him down and prevented him from escaping. Thereupon, the petitioner gave a kirpan blow upon her mother, which hit on her middle finger and thumb of the

left hand. The said person inflicted another kirpan blow which hit the complainant's father on the thumb, fingers and palm of his right hand. The complainant, it is stated, went forward to rescue them. Thereupon, the accused person inflicted a kirpan blow hitting on her forehead. She removed the cloth from the mouth of the person and he was revealed to be the present petitioner i.e. Gurmej Singh @ Geju son of Kala Singh resident of Kalia. Alarm was raised by all of them. Kuldeep Singh and Nachattar Singh arrived at the spot on hearing their noise. Efforts were made to apprehend the petitioner who was successfully restrained. A number of people gathered at the spot. The petitioner's brother Hardial Singh arrived there and rescued him. He took away the petitioner while threatening the complainant and others. The complainant stated that the abovesaid occurrence was a result of the common intention of both the petitioner Gurmej Singh @ Geju and his brother Hardial Singh. The injured were admitted at the Civil Hospital. It was prayed that action be taken against the accused persons. Formal FIR No.46/2009 was registered on the statement of the complainant Binder Kaur.

Final report/challan under Section 173 Cr.P.C. was presented against the petitioner on completion of investigation. The petitioner pleaded innocence and claimed trial. The prosecution examined as many as seven witnesses to prove its case. The petitioner denied all the incriminating material and evidence put to him and pleaded false implication.

The learned trial court on considering the facts and circumstances of the case alongwith the evidence on record, concluded the petitioner to be guilty of the offences punishable under Sections 452/354/326/323/506 IPC. He was accordingly sentenced as noted above. The appeal filed by the petitioner

against his conviction and sentence was dismissed by the learned Additional Sessions Judge, Tarn Taran while holding that the evidence on record clearly points out to the guilt of the petitioner. Aggrieved therefrom, the present revision petition has been preferred by the petitioner.

Learned counsel for the petitioner submits that material improvements have been made by the witnesses especially the complainant. In the initial statement made by the complainant, there was no mention about any act committed by the petitioner attracting the rigors of Section 376 IPC whereas, in her statement before the court she stated that the petitioner violated her person. These allegations were rightly found to be palpably untrue by the learned trial court. Furthermore, she has attributed the commission of offences qua other persons not named initially in the FIR but were later sought to be inculpated in the case. These allegations were also found to be false as is indicated in the detailed order passed by the learned trial court while dismissing the application under Section 319 Cr.P.C. for summoning additional accused in this case. Therefore, it is submitted, that the entire testimony of the complainant should be discarded. In the alternate, it is submitted that the sentence imposed upon the petitioner is excessive. The petitioner, it is stated, was a young man of twenty one/twenty two (21/22) years at the time of alleged occurrence. He is now married having three children and an old mother who are totally dependant upon him. The petitioner is not involved in any other case. Therefore, the sentence imposed upon him be modified to that of one already undergone by him.

Learned counsel for the State while refuting the abovesaid arguments submitted that there is clear and cogent evidence on record pointing

to the guilt of the petitioner. Both the learned courts below have affirmed the conviction and sentence imposed upon the petitioner. There are no mitigating circumstances for modifying the sentence imposed upon the petitioner to that of one already undergone by him. It is thus prayed that this revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file of this case with their assistance.

It is not in dispute that there is no discrepancy in the statement of the complainant with respect to the allegations against the petitioner having entered into their house with a muffled face at about 12.30 midnight on 02.09.2009. The petitioner was duly identified and apprehended at the spot. There are specific allegations against the petitioner of molesting the complainant. Argument of learned counsel for the petitioner that the conviction of the petitioner should be set aside on account of the improvements made by the complainant in her statement before the trial court, is not tenable. It is a settled position of law that the court may rely upon a part of the testimony found to be trustworthy, reliable and corroborated by the evidence on record. It is not necessary to discard entire testimony of such a witness. The doctrine of 'falsus in uno falsus in omnibus' is not applicable in India.

The Hon'ble Supreme Court in State of Maharashtra v. Tulshiram Bhanudas Kamble and others, 2007(14) SCC 627 while refering to its earlier decision in Krishna Mochi and others v. State of Bihar, 2002 (6) SCC 81 has held as under:-

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It is well known that in India the doctrine of falsus in uno falsus in

omnibus (false in one false in all) does not apply. The court can partly reject and partly accept the evidence of a witness, and it is not correct to say that merely because some part of the evidence is found to be false the entire evidence has to be rejected.”

Similarly, in Leela Ram (dead) through Duli Chand v. State of Haryana and another, 1999(9) SCC 525, the Hon'ble Supreme Court has observed that,

“It is indeed necessary to note that hardly one comes across a witness whose evidence does not contain some exaggeration or embellishments sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give slightly exaggerated account. The Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, they ought to inspire confidence in the mind of the Court to accept the stated evidence though not however in the absence of the same.”

The learned trial court has therefore correctly proceeded to convict the petitioner under the abovesaid Sections. He has not been convicted for the offence punishable under Section 376 IPC. It is also a matter of record that an application filed by the prosecution under Section 319 Cr.P.C. for summoning the alleged co-accused was rejected. Testimony of the complainant and the eye-witnesses was rightly relied upon to the extent of the accused trespassing into their house as well as in respect to the injuries inflicted upon them and the act of the petitioner in outraging the modesty of the complainant. The version of the complainant in respect to the abovesaid allegations is consistent and trustworthy.

PW2 Kashmir Kaur and PW3 Gian Singh, the parents of the complainant have duly supported the prosecution version. The argument that their testimonies should be discarded as they are interested witnesses is not tenable. They are the most natural witnesses in the factual matrix of the case. Their presence at the spot cannot be doubted in any manner.

PW4 HC Sukhwinder Singh has testified about the arrest of the petitioner and the recovery of Kirpan from him. PW5 Inspector Mulakh Raj has deposed regarding investigation of the case. PW7 Dr. S.S.Dardi has proved the injuries on the person of the complainant as well as her parents. As per the testimony of PW7 Dr. S.S.Dardi, the injuries on the person of all the above three were on their hands. Reddish abrasion was present on the forearm of PW2 Kashmir Kaur and other abrasion was present on the left arm of PW3 Gian Singh. Injury No.1 on the hand of Gian Singh, Injury No.1 on the left thumb of the complainant Binder Kaur and Injury No.1 on the left hand of Kashmir Kaur were found to be grievous in nature. Dr. S.S.Dardi has specifically deposed that there is no possibility of the injuries to be self suffered or the result of a fall. The prosecution has indeed successfully proved the commission of the offences punishable under Sections 452/354/326/323/506 IPC by the petitioner. There is clear and cogent evidence on record to prove the commission of the said offences by the petitioner.

There is thus no infirmity, illegality or perversity in the impugned judgments passed by the learned courts below in this respect.

However, I find merit in the argument of learned counsel for the petitioner regarding the quantum of sentence. It is not denied by the learned counsel for the State that the petitioner is not involved in any other criminal

case. In this respect, reference is made to affidavit dated 20.30.2017 submitted by the Deputy Superintendent, Central Jail, Amritsar. The petitioner was admittedly twenty one/twenty two (21/22) years old at the time of the alleged occurrence. He has three minor children, a wife and an old mother who are wholly dependant upon him. The injuries inflicted upon the complainant and her parents are on non-vital parts i.e. their hands/arms. There is no injury on the forehead of the complainant as alleged.

Keeping in view the factual matrix of the case, it is considered just and appropriate to reduce the sentence imposed upon the petitioner under Sections 326, 354, 452 and 506 IPC from simple imprisonment for two years each to that of simple imprisonment for one (1) year and eight (8) months each. The amount of fine imposed under Sections 452 and 326 IPC is enhanced from ₹1,000/- each to ₹6,000/- each and in default thereof, to undergo further simple imprisonment for one month. Sentence of one year for the offence under Section 323 IPC is however maintained. The petitioner thus stands sentenced as under:-

Sr. No.	Offence under Section	Sentence
1.	323 IPC	To undergo simple imprisonment for one year
2.	326 IPC	To undergo simple imprisonment for one year and eight months, besides, fine of ₹6,000/- and in default thereof, to undergo further simple imprisonment for one month.
3.	354 IPC	To undergo simple imprisonment for one year and eight months.
4.	452 IPC	To undergo simple imprisonment for one year and eight months, besides, fine of ₹6,000/- and in default thereof, to undergo further simple imprisonment for one month.
5.	506 IPC	To undergo simple imprisonment for one year and eight months.

All the sentences shall run concurrently.

Conviction of the petitioner under the aforementioned offences is thus maintained while modifying the sentence imposed upon him as above.

The revision petition is disposed of in the aforesaid terms.

April 18 , 2017.
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(LISA GILL)
JUDGE

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