

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision No.1043 of 2017 (O&M)
Date of Decision: May 18, 2017

Nirvail Singh and others
.....PETITIONER(s).

VERSUS

State of Punjab
....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.M. Gulati, Advocate
for the petitioner (s).

Mr. Jashanpreet Singh, A.A.G., Punjab.

SURINDER GUPTA, J.

Petitioners Nirvail Singh, Sawinder Singh and Baljinder Singh were convicted by Judicial Magistrate 1st Class, Amritsar for offences punishable under Sections 326, 323 read with Section 34 of Indian Penal Code (for short-IPC) and sentenced as follows:-

Under Section	Sentence	Fine	In default
326 IPC	To undergo rigorous imprisonment for 3 years	₹1000/-	To undergo simple imprisonment for 6 months
323 IPC	To undergo rigorous imprisonment for 1 year	--	--

The appeal filed by the petitioners was dismissed by Additional Sessions Judge, Amritsar.

Learned counsel for the petitioners while assailing the judgments of the Courts below has argued that there was delay of 6 days in loading the FIR and admittedly, there was previous enmity and civil

litigation between the parties, which resulted in false implication of the

petitioners in this case.

Perusal of the judgments shows that occurrence took place on 21.01.2012 at about 07.30p.m. When complainant Baj Singh along with his brother Kulwinder Singh was going to the house of Jarnail Singh. On the way, Nirvail Singh armed with sharp edged weapon, Baljinder Singh armed with a long stick and Sawinder Singh armed with a brick, caused injuries to complainant. Sawinder Singh threw brick on the complainant which hit on his upper lip towards left side of the face and he fell on the road. Nirvail Singh caused injury on right leg of the complainant with sharp edged weapon while Baljinder Singh hit the right knee joint of the complainant with his stick. Complainant became unconscious and was taken to Manawala Hospital, where his medical examination was conducted by Dr. Amarbir Singh Sidhu PW5 and he found the following injuries on his person:-

- (i) 2 x 2 cm abrasion at right knee.
- (ii) Incised wound 6 x 0.5 cm at right shin 10 cm below knee joint bone visible on examination.
- (iii) Lacerated wound at inner side of cheek on left side measuring about 2 cm. No injury at teeth.

In the opinion of the doctor, injuries No.1 and 3 were caused by blunt weapon while injury No.2 was caused with sharp edged weapon and was grievous in nature.

The issue of six days' delay in lodging the FIR was raised before the trial Court and was discussed in para 20 of the judgment, which reads as follows:-

“20. It is argued by the learned counsel for the accused that there is delay of six days in reporting the matter to the police which is sufficient for fabricating the

injuries and for falsely implicating the accused. I am of the considered opinion that there is no merit in the said arguments raised on behalf of learned counsel for the accused. It has not been explained on behalf of accused that the delay was used by the complainant party to fabricate any injury on the person of complainant and to falsely implicate the accused. It has come on record that the complainant was examined by the doctor on 21.1.2012. Further, in the testimony of IO, it has come on record that the complainant and the eye witness did not meet the IO as the complainant party was contemplating compromise with the accused. Therefore, the delay in lodging the FIR has been explained as earlier the complainant was deliberating over the compromise with the accused. Since, the complainant party even did not meet the IO during the period of delay, therefore, it can not be said that the complainant party was hand in glove with the police authorities for not lodging the proceedings earlier. It is not proved on behalf of accused that the wife of the complainant is posted as a nurse in the same hospital in which the complainant was treated. As per the testimony of PW5 it is clearly stated that the grievous injury present on the person of complainant can not be fabricated with friendly hand. Therefore, it is not proved on record that complainant party was benefited in any manner during the period of delay and further that the complainant managed to lodge false proceedings against the accused due to the delay. The delay in lodging the FIR is not fatal to the case of prosecution. I take support from case law cited as "***State of Himachal Pradesh versus Gian Chand, 2012 CLJ Criminal 171 Supreme Court***", in which it has been held that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the

ground of delay in lodging the first information report - Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not - If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution - However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, the prosecution has duly explained the delay in lodging the FIR and therefore, no such benefit of the delay can be given to the accused.”

I find that trial Court had appreciated the plea of petitioners keeping in view the evidence, facts and circumstances on record and no reason is made out to take a different view on this score.

This fact is not disputed that the relations of the parties were inimical but the petitioner cannot get benefit of this fact as enmity is a double edged weapon. The Complainant while narrating motive for the petitioners for causing injuries had stated that they were annoyed as complainant had interfered in cultivation of their land. The prosecution case was supported by complainant and eyewitnesses Kulwinder Singh and their testimony found corroboration from the medical evidence.

On perusal of the judgment of the Courts below, I find that the same are well-reasoned and call for no interference so far as the conviction of petitioners for the offences punishable under Section 326 and 323 read with Section 34 IPC is concerned. However, I find reasons to interfere in the quantum of sentence as petitioner No.1 is 72 years of age and petitioner

No.2 is also 70 years of age and both are in the evening of their lives. Baljinder Singh petitioner No.3 is a young boy of 23 years of age and there is nothing that he has adverse antecedents or is a previous convict. He has been attributed only one stick injury to the complainant which was declared simple in nature.

As a sequel of my above discussion, this petition is partly allowed. Conviction of the petitioners for the offences punishable under Sections 326 and 323 read with Section 34 IPC is maintained. However, sentence of petitioners No.1 and 2 (Nirvail Singh and Sawinder Singh) for the offence punishable under Section 326 IPC is reduced from rigorous imprisonment for three years to rigorous imprisonment for one year. However, the amount of fine is increased from ₹1000/- to ₹6000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for three months. Sentence awarded to them for the offence under Section 323 (read with Section 34) IPC is maintained.

Keeping in view the age and antecedents of petitioner Baljinder Singh, who is not a previous convict, he is ordered to be released on probation of good conduct for one year on furnishing probation bond and surety bond to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Amritsar. He is also directed to pay ₹11,000/- as costs of litigation and the amount of ₹1000/- already paid by him as fine shall be adjusted towards the costs of litigation. He will keep peace and be of good behaviour during this period and be called upon to receive sentence in case of violation of any condition of the probation bond.

Out of the amount of fine and costs of litigation, ₹20,000/- will

be paid to the complainant towards compensation for the expenses he has borne for treatment of his injuries.

May 18, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*