

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

**CRR No.2449 of 2017 (O&M)
Date of decision : July 18, 2017**

Raju Petitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jagjit Gill, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CRM-21946-2017

There is delay of 76 days in filing the present revision petition.

For the reasons mentioned in the application, delay of 76 days in filing the present revision petition is condoned, subject to all just exception.

Application stands disposed of.

Main case

Heard.

This revision is directed against the judgment dated 30.01.2017 passed by the learned Addl. Sessions Judge, Sirsa, affirming the judgment of conviction dated 29.09.2015 and order of sentence dated 30.09.2015

passed by the learned Sub Divisional Judicial Magistrate, Ellenabad, vide which the present petitioner Raju was convicted and sentenced as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
1	452 IPC	R.I. for six months	₹500/-	R.I. for six months
2	323 IPC	R.I. for three months	₹100/-	R.I. for six months
3	324 IPC	R.I. for three months	₹100/-	R.I. for six months
4	325 IPC	R.I. for 1 year	₹500/-	R.I. for six months

All the sentences were directed to run concurrently.

It also comes out that Jagir Kaur, mother of the petitioner was also convicted and sentenced as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>
1	452 IPC	--	₹500/-
2	323 IPC	--	₹100/-
3	324 IPC	--	₹100/-
4	325 IPC	--	₹500/-

As per prosecution case, accused Raju along with his mother Jagir Kaur carrying *gandasa* entered the house of Kartar Kaur and Krishan and caused injuries to Krishan hubsand of Kartar Kaur and also attacked the the complainant. During trial, Kartar Kaur as well as her husband Krishan supported the prosecution case. As per statement of the doctor, following three injuries were found on the person of Krishan:

- A. *Lacerated wound at right forearm KUO Blunt within 6 hours. Xray right forearm AP, Lat. Ortho opinion.*
- B. *Defuse swelling left forearm KUO Blunt within 6 hours. Xray left forearm ortho opinion.*
- C. *Defuse swelling left arc KUO blunt within 6 hours. Xray left arc Ortho Opinion.”*

As per statement of Dr. Munish Singla, on X-ray, fractures in both bones, one in left forearm in lower half and another fracture in left ulna

in upper 1/3rd portion were found.

Following one injury was found on the person of Kartar Kaur

A. Incised wound skin deep with defuse swelling at left upper arm KUO sharp, size 6.5x.2cm x skin deep within 6 hours. Advised xray left arm AP lat. . Ortho opinion.

The fracture was also found on the left humerus.

The said fracture was declared to be grievous in nature. The injuries on the person of Krishan are attributed to the present petitioner stating that he had attacked Krishan. There are two fractures, which cannot be self inflicted injuries.

Learned counsel for the petitioner has contended that it is alleged against the present petitioner that he attacked with *gandasa*. However, the injuries are caused with a blunt weapon.

I am of the view that it is not alleged that the injuries were given from the sharp side of the *gandasa*. Therefore, possibility is that the injuries were inflicted from the reverse side of the *gandasa*, causing blunt injuries.

Learned counsel for the petitioner has further contended that X-ray films of both the injured were not produced.

The first appellate court has dealt with this aspect of the matter and has taken the view that the X-ray films were not inadvertently exhibited by the learned APP. However, Dr. Munish Singla, PW4, who had conducted the X-ray examination appeared and proved his report.

I am of the view that the evidence of Dr. Munish Singla, who proved his report is sufficient to hold that the fractures are proved.

Learned counsel for the petitioner has further contended that the injuries on the person of Kartar Kaur was incised wound, which was declared grievous in nature. There was no charge under Section 326 IPC and Dr. Om Parkash, PW1 stated that it was caused with the blunt weapon.

I am of the view that since the lower court did not frame the charge under Section 326 IPC, therefore, at this stage, this Court cannot go into the matter as to whether charges under Section 326 IPC should have been framed or not? However, for the two fractures on the person of Krishan with blunt weapon, conviction under Section 325 IPC is justified. Similarly, the allegations are that the petitioner entered the house of the complainant. Therefore, the conviction under Section 452 IPC is also justified. Since, one of the injuries was found simple in nature, therefore, conviction under Section 323 IPC is also justified. Since, the injury on the person of Kartar Kaur is incised wound, therefore, with the aid of Section 34 IPC the petitioner could be convicted under Section 324 IPC, even if, the fracture of Kartar Kaur is not proved or is not found convincing. However, the lower court has not added Section 34 while convicting the petitioner. The same cannot be looked into at this stage.

The over all perusal of the judgments of both the courts below shows that the findings recorded by both the courts below are legal and justified and no interference is called for by this Court while exercising the revisional power.

Therefore, the present petition is dismissed.

Before parting with the judgment, it comes out that Ms. Anudeep Kaur Bhatti, the then Sub Divisional Judicial Magistrate,

Ellenabad while sentencing Jagir Kaur had passed the sentence of fine only for the commission of offence punishable under Sections 452 and 325 IPC, whereas the said Section carry sentence up to seven years and fine. Therefore, only fine could not be imposed. Before taking any action in the matter, let explanation of Ms. Anudeep Kaur Bhatti, the then Sub Divisional Judicial Magistrate, Ellenabad, wherever she is posted be called for as to why and in which circumstances, she imposed sentence of fine only for the commission of offence punishable under Sections 452 and 325 IPC against eye of law. Be put up within three weeks.

(KULDIP SINGH)
JUDGE

July 18, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No