

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.2961of 2017 (O&M)

Reserved on : 25.9.2017

Pronounced on:-07.10.2017

Jai Singh and another

..Petitioners

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjiv Gupta, Advocate, for the petitioners.

RAMENDRA JAIN, J (ORAL)

1. The instant revision petition under section 401 of the Code of Criminal Procedure is directed against the judgment dated 05.08.2017 passed by learned Additional Sessions Judge, Kurukshetra, dismissing the appeal of the petitioners against the judgment of conviction dated 15.01.2015 and order of sentence dated 17.01.2015 of learned Judicial Magistrate 1st Class, Kurukshetra, holding guilty and convicting petitioner no.1 Jai Singh to undergo rigorous imprisonment for a period of six months under Section 323 of the Indian Penal Code (for short, 'IPC') and petitioner no.2 Surender @ Rinku to undergo rigorous imprisonment for a period of six months under Section 323 IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/- under section 326 IPC. In default of payment of fine, further undergo simple imprisonment for three months.

2. Briefly stated, on 25.11.2008, upon receipt of a telephonic information from Apna Hospital, Kurukshetra, regarding admission of

injured Malkhan Singh, ASI Mahender Pal reached there and moved an application to the Medical Officer seeking opinion about the fitness of injured to make a statement. However, the Medical Officer treating injured Malkhan Singh declared him unfit. Finally, on 02.12.2008, statement of injured Malkhan Singh was recorded to the effect that on the date of incident, i.e., 25.11.2008, he accompanied his maternal uncle Baldhir Singh to their fields, where his uncle had sold some standing trees to a contractor. At around 1.00 P.M., his elder maternal uncle Jai Singh and his son Surender @ Rinku (petitioners herein) along with three persons came at the spot. Surender @ Rinku was armed with an axe. Jai Singh was armed with lathi and the other three persons were armed with gandasi and barma. Petitioner Jai Singh asked his son to cut the tyre of tempo, whereupon petitioner Surender @ Rinku broke the glass of tempo with the axe in his hand. On asking of injured Malkhan Singh not to do, petitioner Surender @ Rinku gave an axe blow on his left arm. Immediately thereafter, his maternal uncle Baldhir Singh raised a noise and fled away from the spot. The petitioners along with their companions put a rope in the neck of injured Malkhan Singh and dragged him. He was rescued by some unknown persons. On the basis of above statement of injured Malkhan Singh, FIR No.274 dated 02.12.2008 was recorded in Police Station, Kurukshetra University, Kurukshetra. The Investigating Officer, on completion of investigation and other necessary formalities, presented a final report under section 173 (2) Cr.P.C. in the court against the petitioners.

3. The trial court, after completion of the trial, held the petitioners guilty and convicted them in the manner as narrated above in the opening paragraph of this judgment.

4. In the first appeal, the petitioners remained unsuccessful before the first appellate court also as the same was dismissed on 05.08.2017.

5. Learned counsel for the petitioners contends that the occurrence took place on 25.11.2008 regarding a dispute about cutting of trees in between the co-sharers, who are real brothers. The trial court has held that it was a free fight between the parties, i.e., the petitioners and the complainant party as it was not ascertainable as to who of them was aggressor, therefore, the petitioners were liable to be acquitted. There is a delay in lodging the FIR, which was fatal to the prosecution, because as per the record, injured Malkhan Singh was declared fit on 27.11.2008, but he gave his statement on 02.12.2008. Three independent witnesses, namely, PW6 Raj Kishan, PW7 Hukam Chand and PW8 Rajbir had turned hostile. In the cross case, the persons from the complainant party, namely, Balldhir Singh and his son Vikas have been convicted. The complainant party did not prefer any revision against their conviction, therefore, the conviction of the petitioners is liable to be set aside. Lastly, learned counsel for the petitioners prays for release of the petitioners on probation. In support of his contention, learned counsel placed reliance upon the law laid down in ***Maya Bai and others versus State of Punjab, 2006(1) R.C.R. (Criminal) 687.***

6. Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, this court is of the considered opinion that the revision, being without any merit, deserves to be dismissed for the reasons to follow:-

7. There is no denying fact that both the parties, i.e., complainant and accused are closely related to each other. Petitioner Jai Singh and

Baldhir Singh are real brothers. Baldhir Singh is the maternal uncle of Malkhan Singh complainant. The bone of contention between the parties was with regard to cutting of trees standing in the fields of Jai Singh and Baldhir Singh. The land is alleged to be joint and has not been partitioned amongst members of both the families. Both the parties were claiming their rights on the said trees. According to the version of the prosecution, both the parties present at the spot, became aggressive with respect to lifting of cut wood of the trees, which led to a scuffle between the parties. Both the parties opened an attack upon each other. Malkhan Singh complainant sustained injuries at the hands of the petitioners. Both the parties were challaned. In the cross-case, police has also registered a case under sections 323/324/325 read with section 34 IPC against PW5 Baldhir Singh and his son Vikas arising out of the same FIR. The incident took place on 25.11.2008 in the fields of village Amin. The time of incident and place of occurrence is the same in both cases. However, the petitioners, in the instant revision, did not take a plea, in defence, that they had also caused injuries to Malkhan Singh-complainant in the exercise of right of private defence. Even in the statement recorded under section 313 Cr.P.C, the petitioners denied all incriminating evidence put to them, but did not take the plea of right of private defence. In the cross-case, the persons from the complainant party, namely, Baldhir Singh and his son Vikas have been convicted against which they did not prefer any revision.

8. From the facts narrated above, it is clearly evident that it is a case of free fight between the parties, i.e., the petitioners and the complainant, therefore, each and every accused, who participated in the commission of the crime is responsible for his individual act. The learned trial court has,

keeping in view the ratio of law laid down in **Harbhagwant Singh and others versus State of Punjab**, 2005 (2) RCR (Criminal) 327, in my considered opinion, rightly held that “each accused in the present case was responsible for his individual act and thus, Section 34 of the Indian Penal Code will not play any role.”

9. The plea of the learned counsel for the petitioners that since the learned trial court held that it was a case of free fight between the parties and it was, not ascertainable as to which of the parties was aggressor, therefore, the petitioners were liable to be acquitted, cannot be acceded to, keeping in view the fact that each and every member of both the group actively participated in the commission of the crime and two separate cases of version and cross-version in the same FIR were registered against both the parties. Again the plea of the learned counsel for the petitioners that since the complainant party, i.e., Baldhir Singh and Vikas (accused in the cross-case) did not prefer any revision against their conviction, therefore, the conviction of the petitioners is liable to be set aside, does not cut any ice for the simple reason that they preferred to accept the decision of the learned courts below and chose not to file any revision before this court against their conviction and sentence. In such circumstances, this court is of the view that due to not filing revision against the judgment of conviction and sentence by the complainant party, the conviction and sentence recorded against the petitioners, can not be held to be illegal or perverse.

10. A perusal of the record clearly spells out that the occurrence took place on 25.11.2008 wherein complainant Malkhan Singh sustained injuries and he was got admitted in the hospital on the same day. The doctor, treating the injured, declared him unfit to make a statement on

25.11.2008 and 26.11.2008, which fact is evident from the opinion Ex.PW10/C given by the doctor concerned. The reason for not lodging the FIR assigned by the prosecution was that injured Malkhan Singh made his statement Ex.PW2/A before the police that some talks of compromise were going on between the parties, which, ultimately, could not be materialised and therefore, delay in lodging the FIR occurred. The explanation furnished by the prosecution for non lodging the FIR in the matter, in my considered view, is satisfactorily explained on account of the fact that both the parties were closely related to each other and there was every possibility of the matter being compromised with the intervention of the relatives and respectables of the village. The argument of the learned counsel for the petitioners that there was an inordinate and unexplained delay in lodging the FIR, has no legs to stand, keeping in view the statement Ex.PW2/A made by the complainant-injured Malkhan Singh before the police. The concurrent findings recorded by both the courts below, in my considered view, with respect to explanation furnished by the prosecution in the matter of lodging the FIR, can not at all be said to be incorrect and as such, do not call for interference.

11. The contention of the learned counsel for the petitioners that PW6 Raj Kishan, PW7 Hukam Chand and PW8 Rajbir, cited as independent witnesses in the case, turned hostile and did not support the prosecution version. These witnesses were cross-examined by the learned Public Prosecutor and confronted with their statements given before the police under section 161, Cr.P.C., but they specifically deposed that they never gave such statements to the police. Therefore, in the facts and circumstances of the case, both the learned courts below have rightly recorded concurrent

findings on the aspect that they are to see the quality of evidence and not the quantity, especially when PW3 Malkhan Singh-complainant-injured and PW5 Baldhir Singh, the maternal uncle, have narrated the entire incident corroborating with each other before the trial court in a very natural manner. PW5 Baldhir Singh, an eye witness account to the occurrence, corroborated the version of PW3 Malkhan Singh-complainant that petitioners Surrender @ Rinku and Jai Singh had inflicted injuries to Malkhan Singh and thus, his testimony remained unimpeachable, which inspires confidence and cannot be discarded only on account of the fact that PW6 Raj Kishan, PW7 Hukam Chand and PW8 Rajbir did not support the case of the prosecution.

12 A perusal of the record shows that in the occurrence took place between the parties on 25.11.2008, complainant Malkhan Singh sustained injuries and was got admitted in the hospital on the same day. In order to prove injuries, Dr Vikas Goel, Orthopedic Surgeon stepped into the witness box as PW10 and proved the following three injuries on the person of the complainant Malkhan Singh:-

1. Abrasion mark over neck circular in fashion 1 to 2 cm. Broad placed anteriorly medially on right and left side of neck.
2. Pain swelling deformity left elbow present. Sharp margin, bone deep 7 cm. Long wound over elbow vertically placed poster medially present. X-ray was advised.
3. Pain over right side of back. Injury no.2 is a sharp margin, bone deep 7 cm. long sharp margin, bone deep 7 cm. long wound over elbow vertically. As per X-ray report, there was olecranon bone fracture of left elbow.

13 The learned trial court, on the strength of ocular evidence of

PW3 Malkhan Singh complainant-injured and PW5 Baldhir Singh, the eye witness to the occurrence, corroborated by medical evidence, as noted above, have rightly observed that injury no.2 was inflicted by accused Surender and said injury is a grievous in nature, caused by a sharp edged weapon, i.e., axe, whereas injury no.1 is only an abrasion mark over neck and injury no.3 is only a complaint of pain over right side of back which are simple in nature and the same were inflicted by both the accused do not call for interference by this court.

14 Lastly, learned counsel for the petitioners prays that petitioner Jai Singh is an old man of 70 years at the time of commission of the offence., whereas petitioner no.2 Surender, his son, was aged 26 years. The occurrence had taken place on account of cutting of trees in between the co-sharers who are real brothers. The petitioners do not have any track record of indulging in any criminal activities and as such, they deserve to be released on probation of good conduct.

15 Having regard to the facts and circumstances of the case and also the fact, discernible from the facts narrated above, that the petitioners are so cruel that they tied the neck of PW3 Malkhan Singh-complainant with a rope and dragged him mercilessly inflicting him grievous bodily injury with their respective deadly weapons, like, axe, gandasi and barma. A dispute, being a trivial matter in nature, that arose about cutting of trees standing in the alleged joint holding of the parties could be resolved by both the parties amicably, but ultimately, could not be culminated to its logical end. Therefore, in facts and circumstances of the case, this court does not find it a fit case to release the petitioners on probation. The plea of the learned counsel that the petitioners may be released on probation, is not

acceptable to this court, keeping in view the fact that they caused injury no.2, grievous in nature, on the left elbow of injured Malkhan Singh, thereby committing an offence punishable under section 326 IPC. More so, the facts and circumstances narrated in Maya Bai's case (supra) are not applicable to the facts of the case in hand and, therefore, does not render any assistance to the petitioners in any manner.

16. In view of the above discussion, this court does not find any illegality or infirmity in the concurrent findings recorded by both the learned courts below that may warrant interference in exercise of revisional jurisdiction of this court. Consequently, the judgments of conviction and order of sentence passed by both the courts below are upheld.

Accordingly, the revision, being without any merit, fails and is dismissed.

07th October, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |