

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 2985 of 2017

Date of Decision: 07.11.2017

Sukhdev Singh alias Sanny

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. R.S.Mamli, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present revision petition against the judgment of conviction and order of sentence dated 10.4.2013, passed by the learned Judicial Magistrate Ist Class, Kurukshetra, whereby petitioner was held guilty and convicted for the offence punishable under Section 326 IPC and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default whereof, he was further ordered to undergo simple imprisonment for a period of six months. Petitioner preferred an appeal against the judgment of conviction and order of sentence and the same was dismissed by the learned Additional Sessions Judge, Kurukshetra vide judgment dated 26.7.2017 and as such present revision petition.

Facts relevant for the purpose of decision of revision petition that on 20.8.2006 at about 10.30 p.m., complainant Gurnam Singh along with his brother Ram Kumar were going on three-wheeler of Nyorti Ram.

The said three-wheeler was being driven by Ashok Kumar son of Nyorti Ram. Being late hours, Nyorti Ram also joined them. At about 11.00 p.m., they reached near the gate of Kamal Hospital, Ladwa, where petitioner-Sukhdev Singh alias Sanny, who was armed with *Palta (danta)*, Raghav alias Leelu, Vikas, who were armed with *dandas* and Abhishek alias Ashu were already present. Accused-Abhishek alias Ashu asked Ashok Kumar to drop them near Government School but Ashok shown his inability to accommodate them as he was carrying a patient along with him. On this, petitioner started abusing him and Abhishek alias Ashu caught hold of Ashok's neck and dragged him outside the three-wheeler. Petitioner-Sukhdev Singh alias Sanny gave a *Palta* blow on the left wrist of Ashok Kumar. The remaining accused persons also assaulted Ashok Kumar with *dandas*. The complainant raised hue and cry. On hearing noise, some persons came out of the hospital and on this, petitioner along with his co-accused fled away from the spot along with their respective weapons. Ashok Kumar was admitted in CHC, Ladwa and then he was referred to LNJP Hospital, Kurukshetra from where he was referred to PGI, Chandigarh as his condition was serious. The matter was reported to the police. The police investigated the matter and accused persons were arrested.

During the course of trial, the learned trial Judge recorded the statements of injured, eye-witnesses, Medical Officer and other police officials apart from examining the accused persons under Section 313 Cr.P.C. After considering the prosecution as well as defence versions, held the petitioner guilty and convicted him under Section 326 IPC and sentenced him as above. Petitioner, being aggrieved of the judgment of conviction and

order of sentence, preferred an appeal and the same was dismissed by the learned Additional Sessions Judge, Kurukshetra.

Learned counsel for the petitioner raised contentions that both the Courts below have not considered many facts involved in this case. Firstly, both the Courts below have not considered that conviction has been recorded under Section 326 IPC without there being any support from medical evidence and Mark "A" has not been proved on the file.

Learned counsel for the petitioner also contended that accused persons were not known to the complainant and eye-witnesses and there was no test identification parade and as such there was no question of identity of the accused having been established during the trial and both the Courts below have not considered these material legal points, which resulted into erroneous findings.

At the end, learned counsel for the petitioner contended that the matter relates to the year 2006 and a period of more than 11 years has already been passed and petitioner has already suffered much agony of law by facing this protracted litigation. So, the present petition be accepted and the proceedings against the petitioner be dropped.

The present revision petition is being considered without issuance of notice to other party i.e. State of Haryana.

This Court has considered the matter at its entirety besides going through record of the case file and the pleas raised by learned counsel for the petitioner. Certain facts are not disputed in the case that the alleged occurrence had taken place on 20.8.2006 which resulted into injuries to

Ashok Kumar, who was admitted to CHC, Ladwa and then he was referred

to LNJP Hospital, Kurukshetra and as Ashok Kumar was suffering serious injuries, he was referred to PGI, Chandigarh for further treatment. The prosecution case is based upon the statement of injured Ashok Kumar (PW.2) apart from the statement of complainant Gurnam Singh as PW.1 and eye-witness Nyorti Ram (PW.3). Apart from that, the prosecution examined Dr. Parveen Kumar as PW.7, who had given treatment to injured Ashok Kumar and medicolegally examined him apart from statement of official witness, namely Assistant Sub Inspector Sukhwinder Singh (PW.6). Against the above discussed prosecution evidence, the defence version is plea of denial only.

As regard to the plea taken by learned counsel for the petitioner that the medical record has not been proved and as such the nature of injury is not established and conviction of petitioner under Section 326 IPC is not legally sustainable, both the Courts below have considered the statement of injured-Ashok Kumar (PW.2) apart from the statement of Dr. Parveen Kumar (PW.7), who had corroborated the testimony of injured. As per injured-Ashok Kumar, the injuries were caused to him by the petitioner with *Palta*. The testimony of Dr. Parveen Kumar (PW.7) would be relevant, which reads as under:-

“State that on 20.8.2006, when I was posted at CHC Ladwa as MO, I medico-legally examined Mr. Ashok Kumar son of Shri Niroti Ram, 30 years male, Chamar by Caste, resident of VPO Shahajadpur, P.S. Ladwa, Distt. Kurukshetra vide MLR No. PK/101/2006/Ladwa. Th patient had come with alleged history of assault. He was conscious, cooperative and

was having following injury on his person:

- 1. Incised wound left forearm, lower part on anterior and posterior aspect bony deep and upto muscle cut with dimension 6X2.5 cm and he was advised X-Ray forearm, anterior, posterior/lateral aspect and ortho opinion.*

Duration of the injury was within six hours and was caused by sharp edged weapon. Final opinion was kept pending till X-Ray report and expert opinion as per MLR. The MLR is Ex.PW7/A and Rukka is Ex.PW7/B which bear my signatures. I have brought the original record today.

XX XX XX Shri B.S. Bhinder and Shri Rajbir Saini, Advocate.

The injured had not disclosed me the name of weapon nor had he shown any weapon to me. The possibility of such type of injury by fall on any sharp edged object either by accident or otherwise cannot be ruled out.”

Undisputedly, Mark “A” i.e. certificate issued regarding treatment of injured-Ashok Kumar at PGI, Chandigarh was not exhibited. As per Dr. Parveen Kumar (PW.7), Ashok Kumar was having incised wound on the left forearm, lower part on anterior and posterior aspect, bony deep and muscle cut with dimension of 6X2.5 cm. Both the Courts below have rightly relied upon the testimony of Dr.Parveen Kumar (PW.7) while he was deposing on the basis of nature of injuries and that the injuries were caused with sharp-edged weapon. Both the Courts below have rightly recorded the conviction of petitioner under Section 326 IPC.

On the basis of ocular and medical evidence on the point,

learned trial Judge rightly recorded the judgment of conviction under Section 326 IPC against the present petitioner and the First Appellate Court affirmed the same. The medicolegal case summary Mark "A" from PGI, Chandigarh has also been brought on record and that was also considered by the Courts below.

As regard to the plea taken by learned counsel for the petitioner that identity of the petitioner is not established in the case, this plea has also been rightly negated by both the Courts below because the assailants remained on the spot for a sufficient long period and during that period injured as well as eye witnesses were in a position to identify them and lateron they had identified the accused persons during trial of the case. The names of accused persons were disclosed on the spot by the persons present on the spot, who had come after raising alarm by the injured and the eye-witnesses. That way, identity of the accused persons was established and it was not a case where test identification parade was required to be carried out. On this point, learned trial Court had rightly placed reliance upon the judgment rendered by the Hon'ble Apex Court in ***Dana Yadav alias Dahu v. State of Bihar 2002(4) RCR (Criminal) 314***, wherein it was observed that test identification parade, though primary evidence, but not substantive one and the same can be used only to corroborate the identity of the accused by a witness in the Court. Failure to hold test identification parade does not make the evidence of identification in Court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in Court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is

corroborated by his previous identification in the test identification parade or any other evidence. As in the present case, injured and the eye witnesses had identified them on the spot at the time of alleged occurrence and their identification was established by the persons present on the spot and they were named in the first version and subsequently, they were identified by the injured and the eye witnesses in the Court. Thus, there is no dispute about identification of the accused persons.

As regard to the period of custody and continuation of the proceedings, undisputedly, the occurrence relates back to the year 2006 and both the parties to the litigation had been looking towards the verdict of the Court. Undisputedly, the petitioner had been facing protracted litigation but this Court cannot ignore the aspect that the complainant/victim of the case had also been looking to the verdict of the Court throughout and on this ground no case is made out for setting aside the impugned judgment of conviction and order of sentence or taking a lenient view qua the petitioner. Moreso, the learned trial Judge has already taken most lenient view on the point of sentence and no further leniency is called for.

In view of the discussions made above, the present revision petition stands dismissed.

(Shekher Dhawan)
Judge

November 07, 2017

“DK”

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

