

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3-2017 (O&M)

Reserved on: 24th October, 2017

Pronounced on: 3rd November, 2017

Jagmail Singh

..Petitioner

versus

State of Haryana

..Respondent

and

CRR-634-2017 (O&M)

Reserved on: 24th October, 2017

Pronounced on 3rd November, 2017

Kulwinder Kaur

..Petitioner

versus

Jagmail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. G.K.Mann, Advocate,
for Mr. Rakesh Gupta, Advocate, for the petitioner
(in CRR-3-2017)

Mr. Daldeep Singh, Advocate
for the petitioner (in CRR-634-2017) and
for respondent-complainant (in CRR-3-2017).

Mr. Surender Singh, AAG, Haryana.

RAMENDRA JAIN, J.

1. By this common judgment, the above noted two criminal revisions i.e., one filed by accused Jagmail Singh against judgment dated 09.11.2016 of the first appellate court, dismissing his appeal, thereby affirming the judgment of conviction of the petitioner dated 8.8.2014 with that of his co-accused Gurmeet Kaur, his wife, under sections 323 and 326

read with section 34 IPC and order of sentence dated 12.8.2014 of the trial court, sentencing both of them to undergo rigorous imprisonment for a period of one year each and pay a fine of Rs.500/- each for the offence under section 323/34 IPC. In default thereof, further undergo simple imprisonment for a period of one month. They were further sentenced to undergo rigorous imprisonment for a period of three years each and pay a fine of Rs.2500/ each for the offence under section 326/34 IPC. In default thereof, further undergo for a period of three months, and another one, filed by complainant Kulwinder Kaur against that very judgment of the first appellate court dated 09.11.2016 releasing the wife of the petitioner, namely, Gurmeet Kaur, on probation under the provisions of Section 360 of the Code of Criminal Procedure.

2. Briefly stated the facts of the prosecution case are that around 9.00 A.M on 21.12.2006 complainant Kulwinder Kaur along with her husband Jagjit Singh, who had come back home on leave, were feeding their cattle in the courtyard. In the meantime, Petitioner Jagmail Singh armed with a gandasi, his wife Gurmeet Kaur armed with a ballam along with six other accused, namely, Kuldip Kaur, Paramjit Kaur, Jagmail Singh, Karamjit Singh, Harbans Singh and his son Surjit Singh and two other persons armed with iron rods and dandas, trespassed in the courtyard of the complainant and attacked upon them. Petitioner Jagmail Singh gave a gandasi blow on the head of the complainant, whereas his wife Gurmeet Kaur gave a blow from the reverse side of ballam on her right arm. As a result of which, the complainant fell down. Co-accused kuldeep Kaur gave a danda blow on the left side of her waist. Petitioner Jagmail Singh also gave a gandasi blow on the head of the husband of the complainant,

whereas remaining accomplices gave danda blows. On hearing a noise, many persons gathered at the spot and saved them. On seeing the people, the petitioner, his wife and their companions ran away from the spot along with their respective weapons. After the occurrence, Jagjit Singh, husband of the complainant, was taken to General Hospital, Naraingarh, from where a telephonic message was given to the Police Station Shahzadpur about his admission. Consequently, HC Sadhu Ram along with other police officials reached there and came to know that the injured Jagjit Singh had already been referred to the Command Hospital, Chandimandir. After collecting the medico-legal reports of injured Jagjit Singh and complainant Kulwinder Kaur, opinion of the doctor was sought, who declared the injured unfit to make a statement, whereas complainant Kulwinder Kaur was declared fit to give her statement. Consequently, the statement of complainant Kulwinder Kaur was recorded narrating the above facts.

3. On the basis of her statement, FIR was recorded. Police swung into action and filed a final report against the petitioner Jagmail Singh, his wife Gurmeet Kaur, six other accused and accordingly, they were charge sheeted under sections 148, 323, 326 read with section 149 IPC by the trial court.

4. Prosecution in support of its case, examined as many as 16 witnesses. After closure of the prosecution evidence, the statement of the petitioner and his co-accused were recorded under section 313, Code of Criminal Procedure, putting entire incriminating evidence came on record against them, to which they denied and pleaded their false implication. However, they did not lead any evidence in defence despite availing several opportunities.

5. The learned trial court, after hearing both the sides, convicted and sentenced the petitioner and his wife Gurmeet Kaur in the manner narrated in the opening paragraph of this judgment acquitting the remaining accused.

6. Being aggrieved, the petitioner and his wife Gurmeet Kaur approached the first appellate court. Simultaneously, complainant Kulwinder Kaur also filed an appeal against the acquittal of six co accused of petitioner Jagmail Singh and to enhance the punishment awarded to the petitioner Jagmail Singh and that of his wife Gurmeet Kaur.

7. After hearing both the sides, the first appellate court dismissed both the appeals of the petitioner Jagmail Singh, his wife Gurmeet Kaur as well as of the complainant Kulwinder Kaur and maintained the conviction and order of sentence of the trial court. However, wife of the petitioner, namely, Gurmeet Kaur was released on probation considering her age factor, she being a lady of old age, having an unmarried daughter to look after and also the fact that she was not a previous convict.

8. Learned counsel for the petitioner Jagmail Singh contends that according to the prosecution, allegations against the petitioner are that he gave a gandasi blow on the head of injured Jagjit Singh and another gandasi blow on the head of complainant Kulwinder Kaur. The petitioner has already undergone substantial part of his sentence, i.e., one year and four months out of a total sentence of three years awarded to him. He is ready to compensate the complainant. He has already suffered the agony of protracted trial for the last more than 11 years. A lenient view may be taken by reducing his sentence to the period already undergone by him. In support of his arguments, learned counsel has placed reliance upon the

decisions rendered in Pritam Singh and another versus State of Punjab, 2010 (3) RCR (Criminal) 395 Satpal Singh versus State of Punjab 2011(3) RCR (Criminal) 410 and Surjeet versus State of Haryana, 2005(1) RCR (Criminal) 982, to contend that in similar circumstances, the sentence awarded by the trial court was reduced to the period already undergone by him.

9. Learned counsel for complainant Kulwinder Kaur vehemently opposed the arguments and prayed for quashing the judgment of the first appellate court in the matter of sentence granting probation to co-accused Gurmeet Kaur submitting that she had given a ballam blow on her right arm which is duly corroborated by the medical evidence. No reason, whatsoever, has been given by the first appellate court for releasing Gurmeet Kaur on probation and therefore, the impugned judgment is liable to be set aside. Even otherwise, Gurmeet Kaur was criminally liable to be punished under section 326 with the aid of section 34 IPC as she had common intention with her husband-petitioner Jagmail Singh and caused injuries to the complainant.

10 Having given thoughtful consideration to the submissions made by the learned counsel for both the sides, both the revision petitions, being without any merit, are liable to be dismissed for the reasons to follow:-

11 From the testimony of PW-1 complainant-Kulwinder Kaur, PW2 Gurvinder Singh, the son of the injured-complainant and Jagjit Singh himself, while appearing as PW5 before the trial court, it has been established on the record beyond a reasonable doubt that petitioner Jagmail Singh armed with a gandasi, inflicted a grievous injury on the head of Jagjit Singh, whereas his wife Gurmeet Kaur, armed with a ballam, gave a blow of

its reverse side on the right arm of complainant Kulwinder Kaur. The depositions of the aforesaid witnesses are corroborated by the medical evidence. PW7 Dr. S.K.Singhal, Incharge, SRM Hospital, Naraingarh, deposed that on 21.12.2006, he was posted as Medical Officer on emergency duty at General, Hospital, Naraingarh. On that day, Jagjit Singh was given necessary first aid and treatment by him at around 9.45 A.M. He further deposed that since the condition of the patient was very serious and he was required to be referred immediately to some higher center, therefore he referred injured Jagjit Singh to Command Hospital, Chandimandir. Information Ex.PW7/A, in this regard, was sent to the police station. PW3 Dr. J.R.Sharma stepped into the witness box and deposed that on 24.1.2007, he was posted as Senior Advisor Surgery and Neuro Command Hospital, Chandimandir. He proved his application and the report regarding fitness of injured as Ex.PW3/A and Ex.PW3/B. Thereafter, this witness was recalled for further examination under section 311, Cr.P.C. In his re-examination, he again tendered affidavit Ex.PW3/A and deposed that "Major Nitika Singh initiated medico-legal report of Naib Subedar Jagjit Singh who was admitted in critical condition in Command Hospital, Chandimandir, with alleged history of hit by sharp weapon over the head on its left side leading to slurring of speech and inability to move. On examination, he was found to be drowsy, pallor, difficulty in breathing. Rt. Hemiplegic, lacerated wound over left side of head actively bleeding. Brain matter was coming out through the wound. C.T. Scan showed elevated, fracture left side of the head and contusion of the brain. Life saving surgery was conducted upon him with removal of damage brain and duro-plasty. He was sent on sick leave in March, 2007 for eight weeks and was readmitted in July, 2007

when he underwent cranio plasty and finally discharged in 2007. In his cross-examination, he stated that patient was in semi conscious condition.”

12 On a perusal of medical evidence, referred to above, it is evident that the blow of gandasi on the head of the injured was so severe that by sheer of luck, his life could be saved. He was operated upon, sent on sick leave for eight months and then re-admitted in July, 2007 and finally discharged in 2007. In such circumstances, this court is of the view that both the courts below have rightly convicted both petitioner Jarnail Singh and his wife Gurmeet Kaur on the strength of ocular as well as documentary evidence available on the record. The argument that the sentence of the petitioner Jagmail Singh may be modified by reducing his sentence to the period already undergone by him, cannot at all be accepted, keeping in view the ocular as well as medical evidence, as referred to above. In the case in hand, the density of gandasi blow inflicted on the head of the injured Jagjit Singh as noted above, was so severe that it was his luck that his life could be saved from the jaws of cruel death. Such types of violators, who take the law in their own hands, are required to be dealt with iron hands. Therefore, this court is not inclined to modify the conviction and sentence awarded by both the courts below and as such, do not warrant interference by this court. Therefore, the observations made by both the courts below in convicting and sentencing the petitioner do not call for interference.

13 So far as the contention raised by the learned counsel for the complainant with respect to releasing Gurmeet Kaur on probation of good conduct by the first appellate court is concerned, this court is of the view that the learned first appellate is correct in its observation directing the release of Gurmeet Kaur on probation of good conduct, imposing certain

conditions therein, keeping in view the fact that she, being an old lady of 55 years, with no previous background of committing any offence, and an unmarried daughter to look after, coupled with the fact that the probation is both punitive and reformatory in nature. Therefore, the contention of the learned counsel that the order of releasing Gurmeet Kaur on probation by the first appellate court, being without any reason, is meritless. So far as the authorities produced and relied upon by the learned counsel are concerned, there are no two opinions with respect to law laid down therein, but at the same time, it has to be kept in mind that each case has its own independent facts and circumstance and has to be dealt with as per its own facts. The observation made by the first appellate court in granting probation to the co-accused of the petitioner on the basis of evidence and material available on the record, in my considered view, does not call for interference.

14 In view of the foregoing reasons, this court is of the considered opinion that there is no illegality or perversity in the concurrent finding recorded by both the courts below in convicting and sentencing the petitioner. Accordingly, CRR-3-2017 filed by petitioner Jagmail Singh and CRR-634-2017 filed by complainant Kulwinder Kaur for enhancement of sentence of the petitioner and against the order of releasing Gurmeet Kaur on probation of good conduct by the first appellate court, being without any merit, fail and are dismissed in exercise of revisional jurisdiction of this court.

3rd November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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