

In the High Court of Punjab and Haryana at Chandigarh

CRR No.3077 of 2017 (O&M)

Date of decision: November 16, 2017

Gurmukh Singh.....Petitioner

Versus

Gurdeep Singh @ Gandhi and others.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Vijay Lath, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J.

Respondents had faced trial in FIR No. 34 dated 23.6.2004 under Section 325 read with Section 34 of the Indian Penal Code, 1860 ('IPC' for short) registered at Police Station Nurpur Bedi. The trial Court, vide judgment dated 20.10.2015 acquitted both the accused of the charges . The said judgment was upheld in appeal by the appellate Court vide order dated 30.7.2016 Hence, the present revision petition along with an application under Section 5 of the Limitation Act, 1963 has been filed by the petitioner praying for condonation of the delay of 254 days in the filing the appeal.

Brief facts of the case are that the FIR No.34 dated 23.6.2004 was got registered by the petitioner-complainant under Section 325 IPC read with Section 34 IPC registered at Police Station Nurpur Bedi, Tehsil

Anand Pur Sahib against four persons namely, Ranjit Singh, Jarnail Kaur and respondents-Gurdeep Singh and Krishna Devi. The petitioner-complainant compromised the matter with aforesaid Ranjit Singh and Jarnail Kaur and the FIR qua them was quashed by this Court vide two orders dated 17.5.2011 and 23.3.2015. However, the respondents faced the trial.

As per the prosecution version on 17.6.2004, the brother of the petitioner-complainant i.e. co-accused-Ranjit Singh came to his house and raised a *lalkara* regarding construction of his house and then Ranjit Singh gave an iron rod blow which hit on the little finger of his left hand. Co-accused- Jarnail Kaur was also accompanying Ranjit Singh. Thereafter, the respondent-Gurdeep Singh @ Gandhi came there armed with Iron rod and gave a blow on the right bicep. Thereafter, Krishna Devi, wife of Gurdeep Singh @ Gandhi and Jarnail Kaur wife of Ranjit Singh came there and caused injuries on their person. Thereafter, his sister Gurwinder Kaur and Krishan came there and rescued him. Later on, the petitioner was taken to PHC Singhpur and then referred to Civil Hospital, Ropar where he was medico legally examined by the doctor and X-ray was conducted and, on completion of the investigation, Police submitted the challan against four persons and the charges were framed.

In prosecution evidence, petitioner-complainant-Gurmukh Singh appeared as PW1; his sister, eye witness- Gurwinder Kaur appeared as PW2; Investigating Officer Baldev Singh, Assistant Sub Inspector appeared as PW3, and Dr.Gurbinderbir Singh Radiologist appeared as PW4 and Dr. Surjit Singh appeared as PW5.

Thereafter, the statement of accused was recorded under Section 313 Cr.P.C and they denied all incriminating evidence against them.

In defence, petitioner examined DW1, Dev Raj and DW2 Kamal Singh and submitted judgment in FIR No.43 dated 6.9.2001 under Sections 306 read with 34 IPC registered against the complainant regarding unnatural death of his mother-Harbans Kaur.

PW1 Gurmukh Singh stated on the line of the allegations in the FIR. PW2 Gurwinder Kaur also deposed on the same line. In cross-examination, he denied the suggestion that the complainant was involved in FIR No.43 under Section 306 IPC and remained in judicial lock up. This witness further attributed injuries to respondent-accused-Krishna Devi.

PW3 Investigating Officer deposed about the investigation of the case and PW4 proved the X-ray report. PW5 , Doctor proved the MLR.

The defence witnesses DW1 and DW2 stated that the complainant was an accused regarding the unnatural death of his mother-Harbans Kaur and faced the trial. It was also stated that his father disinherited him from all property as he was alcoholic and due to this reason he was a bachelor. It was also stated that he had fallen from wooden stairs and accused have been falsely implicated at the instance of his sister and brother-in-law who was employee in Punjab Police. The trial Court, vide its judgment dated 20.10.2015, acquitted the respondents-accused and thereafter the appeal filed by the petitioner was also dismissed. Hence, present revision petition.

The operative part of the judgment of the lower appellate Court

is as under:-

“I have heard Sh. D. S. Deol, learned counsel for appellant/complainant, Sh. M L Saini learned counsel for accused and perused the record on the file, minutely.

Shri D. S. Deol, learned counsel for appellant argued that impugned judgment dated 20.10.2015 passed by trial court is against law and facts and is liable to be set aside. Referring the statements of PWs, he asserted that complainant examined himself as PW-1 and Gurwinder Kaur an eye witness as PW-2 who fully supported the allegations. Besides, Investigating Officer is also examined to corroborate his version. But, the trial court erroneously discarded their statements and believed the version of DW-1 Dev Raj, a procured witness. He conceded that FIR against accused Ranjit Singh and Jarnail Kaur was quashed by the Hon'ble High Court but asserted that complainant/prosecution was able to prove its allegations against the remaining respondents and prayed for acceptance of appeal.

Sh. M L Saini Adv. counsel for respondents came down heavily on these contentions. He stressed that the complainant along with his father Rachan Singh and sister in law Jarnail was tried under Section 306,34 IPC which FIR was registered at the instance of one Sucha Singh and accused Gurdeep Singh was witness. Due to that grudge in his mind, he lodged the present FIR falsely against the respondents by forging injuries as evident from the statement of Dr. Gurbinderbir Singh who did not find any external mark of injury on the person of complainant and also falsified his version regarding receiving of injuries at the disclosed time and date. Counsel for respondents further assailed the statements of PWs examined by the appellant/complainant to point out that same are not only discrepant but contradictory also which were rightly discarded by the trial court. He further pointed out that FIR against Ranjit Singh and Jarnail Kaur has already been quashed by the Hon'ble High Court and finally concluded that the trial court

rightly appreciated the evidence led on record while acquitting the respondents from the charges by giving them benefit of doubt.

Going into background of the allegations, FIR of this case was lodged on the statement of Gurmukh Singh when he inter-alia; disclosed that on 16.6.2004 at about 5:00 PM, he was present in his house when his brother Ranjit Singh came there and raised lalkaras and when he (Gurmukh Singh) came out from the house and asked his brother Ranjit Singh as to why he was raising lalkaras then Ranjit Singh told as to why he was constructing house and on saying so, opened the attack by giving a rod blow to him. The complainant further disclosed in the said statement Ex.PA that he raised his left forearm to save that blow which hit on his ring finger of his left hand. Gurdeep Singh alias Gandhi was also accompanied his brother and gave a rod blow which fell on shoulder of his right arm. Krishna Devi wife of Gurdeep Singh, Jarnail Kaur wife of Ranjit Singh also arrived there and gave him beatings. He raised alarm which attracted his sister Gurwinder Kaur and Krishan who saved from the clutches of the accused. After that, the accused along with their respective weapons ran away. The said complainant, when examined by the prosecution as PW-1, told a different version when he deposed that Ranjit Singh was armed with a stick when he came to his house with the further improvement that accused Krishna Devi caught hold him from his hair and gave stick blow on his person. The complainant also deposed that Jarnail Kaur was also accompanying the accused and further deposed that his sister Gurwinder Kaur raised hue and cry. Thus, the statement of Gurwinder Kaur PW-2 assumes importance but she also deposed that accused Ranjit Singh was armed with stick and Jarnail Kaur was accompanying Ranjit Singh. It is pertinent to mention here that complainant Gurmukh Singh did not depose that Ranjit Singh was accompanying Jarnail Kaur. Thus, PW-1 complainant falsified the version of PW-2 in respect of the presence of Jarnail Kaur, for having accompanied the accused on the date of occurrence. It is also to be relevant here that in his first version Ex.PA given to the police, complainant had deposed that it was Ranjit

Singh who armed with rod came to him and thereafter, Gurdeep Singh came and thereafter Krisha Devi and Jarnail Kaur also entered the site and gave him injuries.

According to the version of complainant, one Krishana Devi and Balbir Kaur independent witnesses were also available at the spot who witnessed the occurrence but prosecution miserably failed to examine both these witnesses and relied upon the statement of Gurwinder kaur PW-2 who happens to be sister of the complainant. Even her statement in the court does not inspire confidence because not only she, but also complainant made improvements and gave different version from the statement Ex.PA given to the police. The trial court has rightly discarded the statement of PW-2 Gurwinder Kaur being not worthy of credit by observing that she was an interested witness and told a lie in the court while denying that her brother i.e. complainant was tried by the court with regard to death of his mother whereas this fact becomes evident from the copy of judgment Ex.D1 which reveals that complainant alongwith his father Rachan Singh and sister in law Jarnail Kaur were tried by the court of Id. Additional Sessions Judge, Rupnagar for having committed an offence under Section 306 read with Section 34 IPC. Moreover, complainant himself admitted this fact in his cross-examination that FIR regarding murder of his mother was registered against him and he was also tried for the same and remained in jail.

Dr. Gurinderbir Singh was examined by the prosecution as PW-4 to prove the injuries on the person of complainant Gurmukh Singh but in vain. The said PW testified that on 16.6.2004, at 9:30 PM he medico legally examined Gurmukh Singh son of Rachan Singh and found two injuries on his person i.e severe pain in his right arm and patient was unable to lift arm but there was no external mark present on his person. Therefore, testimony of complainant that accused Gurdeep Singh gave an blow with iron rod due to which his right arm was broken, cannot be believed when no external mark of injury was found on his right arm during his medico legal examination by Doctor Gurbinderbir Singh which definitely puts a shadow of doubt over the story of complainant. Thus, trial

court rightly held that, with regard to causing any injury on his right arm, the version of complainant is not believable and puts a shadow of doubt over his story.

No legal ground, whatsoever, to interfere in the well reasoned judgment of the trial court is made out.

In view of the above nature of evidence adduced by prosecution, the trial court rightly came to the opinion that it (prosecution) had miserably failed to prove its allegations against the accused beyond shadow of reasonable doubt and it is settled law of criminal jurisprudence that benefit of doubt always goes to the accused. Therefore, respondents were rightly acquitted by the trial court by giving them benefit of doubt. Hence, present appeal is liable to be and is hereby dismissed with costs."

It is also argued on behalf of the counsel for the petitioner that it is proved from the statement of the complainant that accused-Gurdeep Singh caused an iron blow on his right bicep which resulted into a fracture and this fact is proved by his sister PW2 Gurwinder Kaur. It is also submitted that from the statement of two doctors i.e. PW4 and PW5, who had proved the MLR and X-ray report, the causing of injury is duly corroborated. It is also submitted that the Courts below have taken into consideration minor contradiction which occurred due to lapse of time and the defence witnesses who deposed about the convening of Panchayat in the village are not reliable as no such plea was put to such witnesses during cross-examination. It is also submitted that though the prosecution have given up the independent witness Krishna Devi, this fact will not result into acquittal as the complainant and his sister had proved the prosecution

After hearing the learned for the petitioner, I find no merit in the present petition.

As per the version given in the FIR, at the first instance, it is stated that co-accused Ranjit Singh, the real brother of the complainant came to his house, and had raised a *lalkara* about the construction of his house and gave a stick blow which hit on the left little finger. It is also stated that his wife Jarnail Kaur was also there. Later on, respondent Gurmukh Singh came and gave an iron rod blow which hit him on his right bicep and thereafter PW2 Gurwinder Kaur, sister of the complainant and one Krishan Kumar rescued him. Thus, the first version given in the FIR regarding the injuries caused by the brother of the complainant with whom he had compromised the matter, remains unexplained. Though, the motive has been attributed to Ranjit Singh for causing injuries, yet no motive is attributed to respondent-Gurdeep Singh, who allegedly caused injury with the Iron rod, later on. It is not the case set up by the prosecution that Gurdeep Singh caused injuries on the asking of the Ranjit Singh and, therefore, no motive on the part of the respondent-Gurdeep Singh for causing injury to the complainant is proved.

The eye witness-Gurwinder Kaur PW2 has not deposed the truth before the trial Court. Firstly, she had denied that complainant-Gurmukh Singh faced trial under Section 306 IPC regarding unnatural death of their mother, which is a matter of record. She even denied that he remained in judicial lock up during the trial whereas, a perusal of the judgment Exhibit D1 shows that Gurmukh Singh faced criminal trial before the Court of Additional Sessions Judge, Rupnagar. The testimony of this

witness is otherwise not trust-worthy as she had made improvement in the statement Exhibit PA given to the Police in which nothing was stated about respondent No.2 Krishna Devi that she caused any injury. However, she made drastic improvement in Court deposition by stating that she also caused injury to Gurmukh Singh with a stick and thirdly, she is a highly interested witness being real sister of Gurmukh Singh, who had already compromised the matter in part with his brother Ranjit Singh and Jarnail Kaur both co-accused, against whom there are allegations that at the first instance he had caused injury with a motive regarding construction of a house.

The prosecution has further failed to produce the independent witness i.e. Krishan to corroborate the version given by the complainant as PW2 Gurwinder Kaur is not a trust-worthy witness for the reasons stated above.

Both the Courts below had concurrently held that Gurmukh Singh, PW1 and Gurwinder Kaur, PW2 have even made improvement in the statement given before the police by levelling allegations against respondent No. 2, Krishna Devi wife of Gurdeep Singh that she had caused injury to the complainant. It is also rightly held that PW2 is not a trust-worthy witness and the prosecution has failed to attribute any motive to the respondents for causing any injury and that the injury caused to the complainant as per the version of PW4 Dr. Gurbinderbir Singh could not be caused with blunt weapon like an iron rod as this witness has stated that there was no external mark of injury on the right arm which raises a doubt over the prosecution version. The Courts below have also rightly believed

the statement of defence witnesses DW1 and DW2 who have stated that no such occasion took place between the Gurdeep Singh and Gurmukh Singh and Gurdeep Singh was not having good relations with his father and family members as he was accused of killing his own mother-Harbans Kaur. His father had disinherited him and even a Panchayat was convened in which it was found that Gurmukh Singh received the above stated injury by falling from the wooden ladder and in order to take revenge, he had initially named his brother Ranjit Singh, sister-in-law Jarnail Kaur with whom he had already compromised the matter and FIR had been quashed qua them and, therefore, no motive could be proved against respondents No. 1 and 2.

Since both the Courts below had concurrently held that no offence is made out against the respondents, I find no error in the judgments passed by the Courts below calling for interference in the present revision petition, therefore, the same is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

November 16, 2017
arya

Whether speaking/reasoned: Yes
Whether Reportable: Yes

