

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

**Crl. Revision No.353 of 2017 (O&M)
Date of Decision: March 20, 2017**

Chand and others

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Ms. Neelam Kashyap, D.A.G. Haryana.

SURINDER GUPTA, J.

This is revision petition against the concurrent judgments of the Courts below, whereby the petitioners were convicted for the offences punishable under Sections 148, 323, 325 read with Section 149 and 506 of Indian Penal Code (for short-IPC) and sentenced to undergo simple imprisonment for two years for the offence punishable under Section 148 IPC; three months for the offence punishable under Section 323 read with Section 149 IPC; three years and to pay a fine of ₹1000/- for the offence punishable under Section 325 read with Section 149 IPC and ten months for the offence punishable under Section 506 IPC.

First Appellate Court has discussed the case of the prosecution in para 2 of the judgment as follows:-

“2. As per prosecution version, complainant Ram

Kumar made a complaint to the effect that on 26.01.2009 at about 1.00 p.m. when he had gone towards his ancestral plot, he saw that Chand son of Hari Singh, Murari son of Hari Singh, Devender, Dinesh sons of Murari, Vinod son of Sat Narain and Roshni wife of Chand were digging earth in the said plot. That when he stopped them, they all had attacked upon the complainant. That Chand Ram gave a blow on his head with some sword like weapon. That he raised hue and cry and upon hearing the noise of complainant, his cousin, namely, Rajbir son of Surat Singh came at the spot, however, the above-said assailants also started beating him up. That thereafter on hearing the voice of quarrel, Dinesh son of complainant and Karambir younger brother of complainant along with other persons came at the spot and on seeing them, all the assailants fled away from the spot and while leaving the spot, they threatened them to face dire consequences as and when they get chance. That thereafter Surender and Dinesh shifted the injured to Government Hospital, Sonipat. On the basis of said complaint, the present case was registered. Thereafter investigation was carried out and during investigation accused were arrested and on completion of other legal formalities of investigation, challan was presented in the court against the accused persons.”

Learned trial Court while evaluating the allegations that the petitioners have intruded the plot of complainant and were digging earth in the said plot observed that the plot in dispute is owned and possessed by accused Chand Ram and Murari. This shows that there was no criminal trespass on the disputed plot of complainant. However, both the Courts below held the occurrence as proved with the allegations that injuries on the

person of complainant Ram Kumar, Rajbir and Karambir are duly proved and convicted and sentenced the petitioners as mentioned in opening para of this judgment.

As per observation of the trial Court, the petitioners were present in their own plot where the complainant party had gone. This shows that there was no unlawful assembly of the petitioners. If some persons are present in their own plot or house, it does not amount to an unlawful assembly. It is nowhere case of the complainant that petitioners were present in their plot with their common object to overawe the complainant to show criminal force or to resist the execution of any law or of any legal process; to commit mischief etc.

From the above, it transpires that occurrence took place in which injuries were caused to complainant Ram Kumar, Rajbir and Karambir and two injuries i.e. one on the person of Ram Kumar and one on the person of Karambir, were found grievous in nature caused by blunt weapon.

Learned counsel for the petitioners submits that very genesis of the occurrence as per the version of complainant is not proved and both the Courts below have committed grave error while relying on the testimony of injured witnesses, ignoring the fact that it was complainant and his associates who came to the plot owned and possessed by petitioners Chand and Murari. The injuries, if any, were caused to the complainant party were in self defence when they attempted to intrude the plot of petitioners.

The argument advanced by learned counsel for the petitioners has raised altogether a new plea for the first time. Admittedly, neither any

such plea was set up by the petitioners that they have caused injuries to Ram Kumar, Rajbir and Karambir in their self defence nor any such suggestion was given to Ram Kumar PW3, Rajbir PW4 and Karambir PW5 (copies of statements of above-referred witnesses have been produced during the course of arguments by learned counsel for the petitioners). It is evident that plea to this effect has been raised by learned counsel for the petitioners for the first time without any material on record, as such, the same is liable to be discarded.

In view of my above discussion, I find that both the Courts have committed grave error while convicting the petitioners for the offence punishable under Section 148 IPC without looking into the ingredients of provisions of Sections 141, 146 and 148 IPC or going into the genesis of the occurrence. The conviction of the petitioners for the offence punishable under Section 148 IPC is set aside. However, the conviction of petitioners for the offences punishable under Sections 323, 325 read with Section 149 and 506 IPC is maintained.

Once conclusion was drawn by learned trial Court that the plot which as per version of complainant, the petitioners were digging, belonged to petitioners Chand and Murari, it is evident that petitioners have not gone to cause any injury to the complainant party, rather complainant party had come to the plot owned by petitioners, where occurrence took place. There is nothing that occurrence was pre-planned. The enmity of the parties over the property dispute is also evident. This coupled with the fact that the petitioners have no previous adverse antecedents, rather they all belong to a family and occurrence appears to have occurred over the dispute regarding

possession of the plot, I find it to be a fit case, where instead of sentencing the petitioners to undergo imprisonment, they should be allowed to reform themselves.

Perusal of the custody certificate placed on record shows that all the petitioners have already undergone almost one month 25/26 days of imprisonment.

Taking note of the above facts, I am of the considered opinion that the interest of justice will be fully met if the petitioners instead of being directed to undergo imprisonment as awarded by the trial Court, are ordered to be released on probation of good conduct for a period of one year on their furnishing probation bonds to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Sonapat. During this period, they will keep peace and be of good behaviour and be called upon to receive sentence in case of violation of any condition of probation bonds. However, in addition to it, petitioners are also directed to pay ₹10,000 each as costs of litigation in addition to amount of fine already deposited, which shall also be considered as costs of litigation. Out of costs of litigation, injured Rajbir, Ram Kumar and Karambir shall be paid ₹20,000/- each as compensation.

With modification of judgments of Courts below on above terms, this appeal is disposed of.

March 20, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No