

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: February 16 ,2018

CRR-1390-2016

Jarnail Singh.....Petitioner

Versus

State of Punjab and another.....Respondents

CRR-1479-2016

Jarnail Singh.....Petitioner

Versus

State of Punjab and anotherRespondents

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr.Liaqat Ali,Advocate for the petitioner

ARVIND SINGH SANGWAN, J.

Vide this order, the abovementioned two revision petitions filed under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) would be disposed of.

Respondents-accused-Baljinder Singh and Budh Singh @

Baljit Singh along with Mehar Singh (since deceased and proceedings qua him were abated before the trial Court) faced trial for an offence under Sections 323, 324 read with Section 34 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 33 dated 2.2.2006 registered at the instance of Jarnail Singh at Police Station Jagraon, District Ludhiana . The trial Court, vide impugned judgment dated 12.8.2015, convicted accused-Baljinder Singh under Sections 323,324 read with Section 34 IPC and, however, acquitted him of the offence punishable under Section 326 IPC. Accused-Budh Singh was acquitted of the charges framed against him. Thereafter, the trial Court vide order of sentence dated 12.8.2015 released the accused-Baljinder Singh on Probation on executing a personal bond in the sum of ₹ 50,000/- with one surety of the like amount for a period of two years being a first offender. The trial Court observed that since the convict deserve a chance of rehabilitation in the arrest, therefore, he is entitled to be released on probation under Section 4 (1)(a) of the Probation of Offenders Act,1958. Petitioner-Jarnail Singh challenged this judgment and order of sentence by filing two appeals and both were dismissed by the appellate Court vide impugned judgment dated 30.1.2016.

Hence, the present revision petitions wherein prayer in CRR-1479-2016 is to set aside the judgment of acquittal passed by both the Courts below qua Budh Singh and prayer in CRR-1390-2016 is for setting aside the judgment acquitting Baljinder Singh

under Section 326/34 IPC and to further award appropriate sentence instead of releasing him on probation.

The brief facts of the case, as noticed by the trial Court in para 2 of its judgment, are as under:-

“Jarnail Singh has land which was joint ownership with his father-Gurbax Singh, his uncles Mehar Singh and Gulzar Singh in equal share, but they have already divided this land at Panchayat level and the possession of this land of each share holder is separate. They all cultivating their land there is one electric poll in their agricultural land due to this they have hindrance in cultivating their land. Complainant had moved an application with PSEB with a request to remove this electric poll from their land and to shift it on the common boundary (Butt) of their land as well as the land of the accused persons. On 1.2.2016, the employees of PSEB removed the electric pole from their field and got it installed on the joint boundary of the land. Uncle of the complainant Mehar Singh protested that his crop has been spoiled due to the installation of electric pole in the common boundary (butt). On this at about 3.00 p.m., his uncle Mehar Singh along with his sons Budh Singh and Baljinder Singh came there on their tractor make HMT-3511. They all were armed with Kahi. Mehar Singh gave a lalkara and Budh Singh gave a spade blow from its sharp edge side on

the right shoulder of complainant. Accused Budh Singh gave two spade blows which hit on his back left shoulder. Mehar Singh gave spade blow on its reverse side which hit on his left shoulder. Budh Singh gave another spade blow which hit on his right shoulder. Budh Singh gave another spade blow which hit on his right hand. Then complainant raised alarm and his father Gurbax Singh, who was present in the field, came there to rescue him. Budh Singh gave two spade blows which hit on his head and another hit on his forehead. He fell down on the ground. Then Baljinder Singh gave spade blow from its sharp side which hit on his head. Then all accused gave some more spade blows from its sharp side as well from its reverse side on the body of the complainant. Thereafter complainant was taken to hospital by his cousin Avtar Singh. IO recorded the statement of the complainant and FIR was registered. Accused were arrested. Statements of witnesses were recorded, site plan of alleged place of recovery, relevant memos were prepared and after completion of usual investigation, challan was prepared and presented in the Court.”

The trial Court framed charges against accused Baljinder Singh, Budh Singh and Mehar Singh under Sections 326,324,323,442 read with Section 34 IPC. It may be noticed that accused Mehar Singh

died and trial qua him was abated.

Prosecution in its evidence examined PW2 Dr. Sukhdev Singh, who medico legally examined complainant- Jarnail Singh and proved the MLR Exhibit PH. This witness stated that as per X-ray report, injury No.1 was declared grievous and injury Nos. 3 to 6 were declared simple vide Exhibit PJ/PJ1. This witness also proved X-ray as Exhibits P2 to P6 and bed head ticket of Jarnail Singh as Exhibit PK.

PW2 Sat Pal Patwari proved on record a copy of the Jamabandi, according to which, the holding of the parties was joint. Complainant himself appeared as PW3 and proved his statement Exhibit PA which was recorded by the Police. One Baljinder Singh, son of complainant appeared as PW4 and stated that on hearing the hue and cry made by his father, he and his grand father-Gurbax Singh rushed to the spot from the fields where they were cutting fodder and rescued him.

PW5 Dr. Arun Kumar Gupta also proved the x-ray reports as Exhibits PW3A and PW3/B. Similar statement was made by Doctor H.K.Singla,PW6 regarding X-ray examination of complainant Jarnail Singh. Dr. H.K.Singla also proved the x-ray report of Jarnail Singh as Exhibit P5 and x-ray reports Exhibits P2 to P6. Investigating Officer ASI Rajinderpal Singh,PW8 proved the statement of the complainant, Exhibit PA, Ruqa Exhibit PB, FIR Exhibit P6/A and the application given to the doctor Exhibit P1,

recovery memo of blood stained earth as Exhibit PW6/B, site plan Exhibit PC, arrest memo of accused persons as Exhibit PW6/B/C and the recovery of the Tractor and two spades as Exhibits PI and PH . Thereafter, the remaining prosecution evidence was closed and the accused under Section 313 Cr.P.C. denied all the incriminating evidence.

Learned counsel for the petitioner has argued that the accused have been falsely implicated and the prosecution has failed to prove its case beyond reasonable doubt.

After hearing the learned counsel for the petitioner and going through the record, I am of the considered view that these petitions deserve dismissal as the testimony of the complainant that, while he was being given blows, his father and his brother immediately rushed to the spot, cannot be believed in view of the contradictions in his cross examination and the testimony of Baljinder Singh, who stated that the father of the complainant had only arrived after 20 minutes of the occurrence. Still further, the version of the complainant that he was given injuries by a sharp edged weapon does not inspire confidence for the reasons that the doctor in the MLR found that the injuries had been caused with blunt weapon and even doctor had deposed that possibility of injuries on the person of appellant Jarnail Singh can, being after made could not be ruled out. Even further Investigating Officer Rajinder Pal Singh in his cross-examination deposed that he neither noted any

injury, blood stained nor had taken into possession anything pertaining to Jarnail Singh, which also creates a doubt about the presence of Budh Singh. Even as per the complainant, a cross-version FIR case titled as State vs. Jarnail Singh stands registered and on the same day, Doctor Arun Kumar Gupta had examined Baljinder Singh who was found to have received injuries. This proves the presence of appellant-Jarnail Singh and respondent-Baljinder Singh at the spot. Thus, the appellate Court has rightly acquitted Budh Singh and convicted Baljinder Singh and Jarnail Singh. Hence, no ground for interference in the judgment passed by the trial Court is made out.

A Division Bench of this Court in **State of Punjab v. Hansa Singh** 2001(1) RCR (Criminal) 775, while dealing with an appeal against acquittal, has held as under:-

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in **Ashok Kumar vs. State of Rajasthan, 1991(1) SCC 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

Since both the Courts below have recorded the

concurrent finding that the petitioner-complainant has failed to prove his case, in view of the judgment of Hon'ble the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, holding that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court, the impugned judgments do not call for interference. Accordingly, both the abovementioned revision petitions are dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

February 16,2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No