

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3182-2014 (O&M)
Date of decision: 30.07.2018

Rohtash and others

... Petitioners

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Surender Lamba, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this revision petition is for setting aside the judgment of conviction dated 19.09.2011 passed by the trial Court, vide which the petitioners were held guilty for commission of offence punishable under Sections 147, 323, 325 of the Indian Penal Code (for short 'IPC') and the order of sentence dated 21.09.2011, vide which the petitioners sentenced to undergo R.I. for 09 months with a fine of Rs.200/- each for the offence punishable under Section 325 IPC, with a rider that in case of default of payment of fine, the convicts shall further undergo simple imprisonment for a period of 01 month as well as the judgment dated 12.09.2014 passed by the Additional Sessions Judge, vide which the appeal filed by the petitioners was dismissed.

Brief facts of the case are that Om Parkash son of Bani Singh made

a statement with the allegations that he is resident of Ghikara road, Charkhi-Dadri and is a vegetable vendor. About one year ago, a quarrel took place between him and Satyadev Shastri, Chander Master, Jai Parkash Master, Pali, Phulla, Amarpal, Sombir, Satbir, Rohtash, Mahender, Deen Dayal, Umed and Babu and in connection with that quarrel, one case was registered at police station City, Dadri against these persons, which is pending adjudication. All these persons were pressurizing the complainant for the withdrawal of that case. On 26.8.2003, at about 9.00 p.m. Satya Dev Sastri, Chander Master, Jai Paraksh Master and Pali came at the house of the complainant and started hurling abuses to him. When he came in the street from his house, these persons started giving slap and fist blows on him for not withdrawing the case. He raised noise of mar-diya mar-diya, upon which, his wife Kailash Devi tried to rescue him and thereafter, all the accused persons ran away from the spot. After some time, Phullar, Amarpal and Somvir came there and gave abuses to him. Thereafter, they started giving beatings upon him in front of his house. Amarpal was having Danda, who gave a danda blow on his head. Amarpal also gave a fist blow on the face, which hit on his teeth. These persons were saying while inflicting the injuries that the complainant had got registered a case against them and that case would have to be withdrawn by him. Complainant and his wife raised noise of mar-diya mar-diya, on which all these persons went away from the spot. After some time, Satbir, Rohtash, Mahender and Deen Dayal came there and also stated hurling abuses. These persons also told the complainant for the withdrawal of the case registered against them. Thereafter on raising noise, these persons ran away from the spot. After some time, Umed and Bablu came there and also told the complainant for the withdrawal of the

case got registered against them. When the complainant did not accept their request, then they also started giving beatings on his person. When complainant raised the noise, then his wife Kailash Devi rescued him and these persons also went away from the spot. Thereafter, his wife got admitted him in the hospital for treatment and prayed that the action be taken against the accused persons.

After completion of the investigation, police submitted the challan and the trial Court framed the charges against the petitioners under Sections 323, 325, 147 IPC.

The prosecution in its evidence examined the injured Om Parkash as PW1, who stated that the petitioners had come to his house on 26.08.2003 and started hurling abuses. On an earlier occasion also, they had quarreled with him and a case is pending before the Court in this respect. This witness has further stated that the motive was to pressurize him to withdraw the earlier case pending against the petitioners and on refusal by him, the accused inflicted injuries by kicks and fist blows and Amarpal was having danda in his hands and gave blows on his head and thereafter, gave fist blows on his face, due to which one upper tooth was broken. Accused Somvir and Phul Singh @ Phullar gave slap and fist blows and when his wife raised a voice, the other co-accused gave him slap and kick blows. The complainant was admitted in a hospital for 4-5 days. It is also stated that 2-3 other cases are also pending between them. On 22.08.2003, the police recorded his statement and gave the description.

PW2 Dr. Ishwar Singh, who medico-legally examined Om Parkash PW1, found the following injuries: -

1. Multiple abrasion on the middle of scalp on parietal region size varying from 0.5 x 0.25 cm to 1.5 x 0.75 cm. Clotted blood was

present.

2. Upper right lateral incisor was freshly missing. Clotted blood was present. Dental Surgeon's opinion was advised.

In cross-examination, PW2 has stated that the possibility of injury No.2 being self-inflicted or by a friendly hand, cannot be ruled out. This witness proved MLR as Ex.PW2/A and sent a ruqa to police station Ex.PW2/B. On 28.10.2009, he had given opinion about injury No.2 that it was grievous in nature subject to dental surgeon's opinion.

PW3 Kailash Devi, wife of PW1 Om Parkash, also deposed on the line of allegations made in the FIR and further stated that accused Amarpal was having a danda and gave a blow on her husband and gave a fist blow on the teeth of her husband. She also deposed that other accused Omvir and Phullar also gave kick and fist blows on the person of her husband and all the accused exhorted that they will be killed in case they do not withdraw the case pending against them.

PW4 ASI Mahender proved endorsement Ex.PW4/A made on the statement of Om Parkash Ex.PW1/A and also proved on record the other documents including the FIR Ex.PW4/B and site plan Ex.PW4/C.

Thereafter, the statement of accused persons under Section 313 Cr.P.C. was recorded, in which they denied all the incriminating evidence put to them. In defence, the accused persons had examined five witnesses.

DW1 Pawan stated that on 26.08.2003, there was Jagran in a temple in front of his house and accused persons were present there till 4 o'clock in the morning. DW2 Satywan stated that petitioner Satbir was not present at the spot on that day and he was present at his residence. DW3 Ajeet

stated that he is resident of Village Mirch and Dharmender and Umed were present at his residence on 26.08.2003. DW4 Rajesh deposed that Deen Dayal and Rohtash were with him at Bhiwani on 26.08.2003 and reached the village at about 11.30 pm. DW5 Ramesh also stated that Somvir was present at his shop at Charkhi Dadri.

Thereafter, the trial Court vide impugned judgment of conviction dated 19.09.2011 held the petitioners guilty and sentenced them to undergo 09 months R.I. The appeal filed by the petitioners was also dismissed by the lower appellate Court.

Learned counsel for the petitioners has submitted that the petitioners/accused persona are residents of different villages and are not related with each other and no common motive is attributed to them, as per version of PW1. Counsel for the petitioners has further submitted that Satyadev Shastri, Jai Parkash, Chander Master, Pali are residents of Ward No.1, Charkhi Dadri and Amarpal, Somvir, Phullar are residents of Birhi Kalan, PS Sadar Dadri. Accused Deen Dayal is resident of Village Kohlawas, PS Bond Kalan, accused Umed, Bablu are residents of Village Mirch. It is further submitted that in the statement of PW1 Om Parkash itself, it is mentioned that all the accused persons are residents of different places and have not given any detail of their previous case, for which the petitioners, with a common intention, had gone to his place for putting pressure on him to withdraw such case. It is also submitted that even in the statement of the Investigating Officer, nothing has come on record that the complainant has given any details of the previous case pending between the parties.

Learned counsel for the petitioners has further argued that a perusal

of the statement of PW1 further shows that at the first instance, Amarpal gave a stick blow on his head and then gave a fist blow on his face due to which one tooth was broken and thereafter, Somvir and Phullar gave him fist blows and when the wife of this witness raised voice, accused Rohtash, Satbir, Mahender and Deen Dayal said that he should withdraw the case and on refusal, they gave him fist and kick blows. Thereafter, when this witness and his wife raised voice, these persons left them and then Umed and Bablu came there and repeated the same thing. It is further submitted that this witness has stated that accused persons caused him injuries in three stages and injury under Section 325 IPC is attributed to Amarpal, whereas the names of other petitioners have been given in the subsequent chain of events, which is unbelievable.

Learned counsel for the petitioners has further argued that as per statement of PW3 Kailash Devi also, all the accused persons in three groups came to their house and at the first instance, Satyadev, Chander Master, Jai Parkash and Sunder gave fist and kick blows and when she raised voice, these persons left her husband and thereafter, another group of Amarpal, Rohtash and Somvir came and in a similar manner, after abusing her husband, Amarpal gave a stick blow on the head of her husband and then gave a fist blow on his face, as a result of which, a tooth was broken. Somvir and Phullar also gave fist blows and when she raised voice, they also left her husband and ran away. After some time, Rohtash, Satyadev, Deen Dayal and Mahender started abusing and gave beatings to her husband with kick and fist blows. It is thus submitted that the motive in this case attributed to all the petitioners is not proved and except for the statement of the complainant, no other evidence has been collected by the prosecution to show that there was any previous case pending between the

complainant and the accused persons.

Learned counsel for the petitioners has next argued that in the absence of such evidence, the meeting of mind of all the petitioners together for causing injuries to the complainant is highly doubtful as they are residents of different villages and the complainant at the first instance has levelled allegations of causing injuries towards Amarpal and Somvir. It is further argued that as per the version given by the complainant, incident occurred on 26.08.2003 at about 9 pm, whereas the FIR was registered on 28.10.2003 without there being any proper explanation for the delay. It is also submitted that even the Investigating Officer could not explain the delay in registration of the FIR, which is more than two months and the version of the complainant that he remained in hospital for 4-5 days is not proved from the statement of PW2 Dr. Ishwar Singh, who stated that he had medico-legally examined the complainant on 26.08.2003 and nowhere stated that the complainant was admitted in the hospital on that day and therefore, there is unexplained delay of two months in registration of the FIR.

Learned counsel for the petitioners has argued that the Courts below have not at all discussed the evidence led by the petitioners except for referring the deposition made by DW1 to DW5, who stated that on the date of incident, some of the accused persons were not present at the place of occurrence and they were at different places as noticed above. Learned counsel has further argued that there are contradiction in the statement of PW1 and PW3 with regard to manner, in which they have attributed the injuries to the petitioners and injury No.2, which was declared grievous by PW2 Dr. Ishwar Singh, as per his own deposition, could be caused by self-infliction or by a

friendly hand, therefore, the defence taken by the petitioners by putting a suggestion to PW1 that he had suffered the injuries by falling on account of consuming liquor, has been wrongly disbelieved by the Courts below.

Learned counsel for the petitioners has lastly argued that all the petitioners are first offenders and the Courts below have wrongly declined the concession of probation to them under Section 360 Cr.P.C. and Section 4 of the Probation of Offenders Act, 1958.

In reply, learned State counsel has submitted that the version given by PW1 regarding injuries caused by the accused persons is duly corroborated by the statement of PW2 Dr. Ishwar Singh, who medico-legally examined the complainant and is further corroborated from the statement of PW3, wife of the complainant, therefore, the Courts below have rightly convicted the petitioners.

After hearing learned counsel for the parties, I find merit in the present petition qua the sentence awarded to the petitioners by the Courts below, for the following reasons: -

- (a) There is unexplained delay of about two months in registration of the FIR.
- (b) The petitioners have undergone approximately two months of actual sentence as per the custody certificates filed in the Court and they are not involved in any other case and are not previous convict except petitioner Somvir, who is facing trial in one more FIR.
- (c) The petitioners are facing the protracted trial since 2003 and have not repeated the offence subsequently nor have extended any threat to life and liberty of the complainant or his wife during the intervening period of about 15 years.

(d) As per the statement made by the petitioners before the trial Court at the time of pronouncement of order of sentence, they have stated that they are poor persons and only bread-earners of their respective families.

(e) As per opinion given by PW2 Dr. Ishwar Singh, injury No.2, which was declared grievous in nature, could be self-inflicted or suffered by a friendly hand.

(f) The Courts below have not assigned any reason in declining the concession of probation to the petitioners.

In view of the above, present petition is partly allowed and the order of sentence dated 21.09.2011 passed by the trial Court is modified to the extent that the petitioners are directed to be released on probation for a period of six months on furnishing the bonds of Rs.50,000/- each before the trial Court, for maintaining peace and good behaviour under Section 4 of the Probation of Offenders Act, 1958.

With the aforesaid modification, this petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

30.07.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No