

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 4498 of 2015
Date of Decision: 08.05.2018

Jaswant Singh @ Laddi and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mohan Singh Chauhan, Advocate, for
Mr. R.S. Bains, Advocate,
for the petitioners.

Mr. J.S. Walia, Sr. D.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

By this revision petition, the two petitioners challenge the judgments of the learned Sub-Divisional Judicial Magistrate, Batala (trial Court), dated 09.01.2013 and of the learned Additional Sessions Judge, Gurdaspur, dated 12.10.2015 (appellate Court), convicting the first petitioner herein, Jaswant Singh @ Laddi, of the charges framed against him in respect of offence punishable under Sections 326, 452 and 506, all read with Section 34 of the IPC; and as regards petitioner no. 2 Mehar Singh, convicting him for the commission of offences punishable under Sections 323, 452 and 506 IPC, again all read with Section 34 of the IPC. They have consequently been awarded various terms of imprisonment for each of the aforesaid offences, the maximum being 02 years rigorous imprisonment (along with a fine of Rs. 1,000/-) imposed upon petitioner no. 1 for the commission of the offence punishable under Section 326 IPC, with a 'default

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imprisonment' to be undergone by him for 07 days, in case of non-payment of fine. He has also been sentenced to rigorous imprisonment for a period of one year each for the offences punishable under Sections 452 and 506 IPC, with a similar fine of Rs. 1,000/- imposed for each offence, with the same 'default imprisonment' of 07 days each.

2. Mehar Singh has been sentenced to a maximum of one years' rigorous imprisonment in respect of each of the offences punishable under Sections 452 and 506, with the sentence in respect of the offence punishable under Sections 323 being 06 months, again with a fine of Rs. 1,000/- to be also paid, in respect of each offence.

The imprisonment for default in payment of fine in his case also is 07 days for each of the three offences.

In the cases of both the petitioners, all sentences were ordered to run concurrently.

Petitioner no. 1 is stated to be the son of petitioner no. 2.

3. The facts giving rise to criminal proceedings against the petitioners, are that the complainant, Gurbachan Singh, got recorded a statement with ASI Daljit Singh of Police Station Dera Bana Nanak, District Gurdaspur on 22.11.2004, that on 20.11.2004, at about 12:00 noon, while he was working in his fields, petitioner no. 1, Jaswant Singh @ Laddi, came to him and asked him to work as a labourer for one day, but the complainant expressed his inability to do so, as he was working in his own fields.

Jaswant Singh became angry on the complainant refusing to be persuaded to work on his fields and therefore, at that point he is stated to have gone away in a state of anger, muttering some words.

Thereafter, at about 8:30 p.m. on the same evening, Jaswant Singh armed with a *kirpan*, and petitioner no. 2 Mehar Singh armed with a *Sota* (stick), are stated to have forcibly entered into the house of the complainant, with petitioner no. 2 having exhorted petitioner no. 1 that the complainant be taught a lesson for refusing to work in their fields, upon which petitioner no. 1 (Jaswant Singh), is stated to have given a *kirpan* blow on the left arm of the complainant, with petitioner no. 2 having given two *Sota* blows, which hit the complainant on his right shoulder and right hip.

Upon the complainant having raised a hue and cry, Ajit Singh and Kunan Singh are stated to have come to the spot and witnessed the occurrence. Upon seeing them both the accused are said to have fled away from the spot along with their weapons, while issuing threats that today they had caused injuries with a *kirpan* but thereafter they would also kill him with the rifle that they had.

4. As per the complainants' version, due to the threat given by the accused, he kept sitting in his house and on the next day he was taken to the Civil Hospital, Dera Baba Nanak by his brother Kunan Singh, where he was medically examined.

Thereafter, the FIR was got registered against the accused, with the medical evidence collected and statements of witnesses said to have been taken by the police, after which the accused were arrested.

5. A '*challan*' having been submitted to the competent court, both the accused were charged with offences punishable under Sections 452, 326, 323 and 506, all read with Section 34 of the IPC, and upon them entering a plea of not being guilty, they were tried by the learned Magistrate.

6. The prosecution examined 06 witnesses, including the complainant himself, as also the aforementioned Ajit Singh and Kunan Singh (eye witnesses),

the investigating officer, ASI Daljit Singh, Head Constable Sukhwinder Singh and Dr. Kishan Chand, Senior Medical Officer.

The accused made their statements under Section 313 Cr.P.C., but did not lead any evidence in their defence.

7. Upon appraising the evidence, including the testimonies of the complainant in terms of his complaint, supported by the two eye witnesses, as also the medical evidence, which showed an incised wound on the left forearm of the complainant with a diffused swelling around it, as also a diffused swelling on his right shoulder and a bruise on his buttock, with injury no. 1 found to be grievous in nature, that Court found both the petitioners guilty of the offences first enumerated hereinabove in this judgment.

8. Before the learned trial Court, it was argued on behalf of the accused that one Gurdial Singh was an accused in another FIR, dated 29.09.1999, registered for an offence punishable under Section 302 IPC along with other lesser offences, and that the said Gurdial Singh had a grudge against petitioner no. 1 Jaswant Singh, as he had deposed against him in that FIR.

The trial Court however found that Gurdial Singh had not figured anywhere in the FIR in question presently, and that the suggestions put to the witnesses regarding the deposition of Jaswant Singh in the other FIR, were not relevant to the case at hand, especially as the FIR in question presently was registered after a period of about 05 years from date of the FIR registered on 29.09.1999.

9. Thus, believing the testimony of the witnesses for the prosecution, including the complainant himself and the two persons stated to be eye witnesses (PWs 2 and 3-Ajit Singh and Kunan Singh respectively), the petitioners were held guilty by the trial Court of the commission of the offences earlier stated.

10. In appeal, the learned Additional Sessions Judge also, after noticing the facts and the evidence on record, came to the same conclusion as had the trial Court, with the appeal therefore, dismissed.

An argument having been raised before the appellate Court that there was an unreasonable delay of two days in lodging the FIR, that was rejected by that Court on the ground that the occurrence took place at 08:30 p.m. on 20.11.2004, with the FIR registered on 22.11.2004, and the version of the complainant being that due to the threat extended to him, he remained confined to his home during the night and was admitted to hospital on the next day, i.e. 21.11.2004, with him not found to be fit to make a statement on that day.

Consequently, with the injured having been declared fit only on 22.11.2004, the FIR came to be recorded on that date and therefore there was actually no delay in lodging it.

11. Another argument raised before that Court was that though injury no. 1 was declared to be grievous in nature on the basis of an X-ray report, the radiologist who had performed the X-ray examination had not been examined in Court and in fact neither was the X-ray film proved on record.

That argument was also rejected on the ground that as per Section 320 of the IPC, a grievous hurt is one where a person having knowledge causes such hurt voluntarily, resulting in any of the eight consequences enumerated in the said provision.

Judgments of the Supreme Court in Hori Lal and another vs. The State of U.P. AIR 1970 SC 1969 and in Nain Singh vs. State of Punjab AIR 1986 SC 2192, as also in Sattan Sahani vs. State of Bihar and others 2002 (4) RCR (Criminal) 611, were discussed by that Court to hold that even a small fracture by way of a rupture or fissure in the bone would amount to a fracture in

terms of “Clause seventhly” of Section 320.

12. Further, PW-5 Dr. Kishan Chand, had also deposed that an X-ray was conducted on the complainant-injured, with the said doctor also having proved the X-ray report as Ex. PW-5/C.

Holding as above, the appeal was dismissed, thereby upholding the judgment of the learned trial Court in *toto*.

13. Before this Court, Mr. Mohan Singh Chauhan, Advocate, learned counsel appearing for the petitioners, submitted that there was a contradiction between the statements of PWs 1 and 2 as regards the injury inflicted, that there was a delay in lodging the FIR, and that no X-ray report was on record to prove an injury received by the complainant, as would be punishable under Section 326 of the IPC.

Learned counsel also referred to the testimony of PW-5 (Dr. Kishan Chand) to submit that the injury could also have been self-inflicted.

Lastly, learned counsel for the petitioners submitted that the complainant, Gurbachan Singh, is a friend of Pritam Singh, who was an accused in FIR No. 113 registered on 29.09.1999, alleging therein the commission of an offence punishable under Section 302 IPC, and therefore it was only to “take revenge” on petitioner no. 1 (Jaswant Singh), that the complainant made a false complaint against him.

He therefore submitted that the findings of the learned courts below being perverse, in not understanding the true nature of the dispute, deserve to be set aside and the petitioners acquitted.

14. Per contra, Mr. J.S. Walia, Sr. D.A.G., Punjab, submitted that two independent witnesses (PWs 2 and 3), corroborated the version of the occurrence as given by the complainant (PW-1), with the injuries inflicted also corroborated

by the doctor (PW-5), and that as regards the alleged delay in lodging the FIR, it was fully explained, with the complainant at first having been declared to be unfit to make a statement on 21.11.2004.

15. In rebuttal, learned counsel for the petitioners submitted that as a matter of fact there was no corroboration in the statements of PWs 2 and 3, they being contradictory statements, and further, that the motive for the occurrence was totally unacceptable, because other labourers would also have been available for the petitioners, even if the complainant had refused to work in their fields and as such, refusal to work would not warrant such kind of an attack on him.

16. Lastly, learned counsel submitted that petitioner no. 1 already having undergone 08 months of actual sentence out of the one year sentence imposed upon him and petitioner no. 2 having undergone 04 months out of the one year sentence imposed upon him (in respect of the offences punishable under Sections 326 and 323 respectively), if this Court eventually comes to the conclusion that the conviction of the petitioners cannot be faulted in any manner, then the sentences imposed upon them may be reduced to the extent already undergone, they not having been shown to be habitual offenders even as per the custody certificates filed in Court by learned State counsel.

17. Having heard learned counsel in detail and having noticed all facts as above, it is seen at this stage by this Court that as a matter of fact when notice was issued in this petition, vide an order dated 26.11.2015 (by a co-ordinate Bench), learned counsel then appearing for the petitioners had specifically restricted his prayer to the quantum of sentence alone.

This fact should have at the outset been actually brought to the notice of this Court by the counsel who finally appeared to argue the matter when judgment was reserved on 15.02.2018. That not having been done and this Court

also obviously, not having gone to the initial order at that stage, the entire case of the prosecution, the arguments of the defence etc., have been noticed hereinabove.

18. That having been done, it would be sufficient to state here that as a matter of fact, I find no perversity in the judgments of the learned courts below, the entire evidence having been thoroughly appraised by those Courts, and it having been found that indeed a grievous injury was caused to the complainant by way of a fracture on his forearm. Consequently, the arguments made to the contrary by learned counsel for the petitioners, cannot be accepted. Simply because the radiologist who had conducted the X-ray examination was not examined, that does not alter the fact that the doctor (Senior Medical Officer) who had examined the patient (the complainant), duly testified before the learned trial Court to the effect that the X-ray report (Ex. P-5/C) was correct, by which such fracture was found in the ulna bone of the left forearm of the complainant.

The delay in the lodging of the FIR was also fully explained and therefore accepted by the learned Courts below, to the effect that the occurrence having taken place on 20.11.2004 at about 08:30 p.m., and the complainant having been declared unfit to make a statement on 21.11.2004, but having been declared fit on the next day, i.e. 22.11.2004, that was the date when the FIR was registered. Again, I too find that the delay was duly explained.

19. In view of the above, as regards the judgments of the courts below regarding the conviction of the petitioners, I find no reason to interfere with them. However, eventually coming to the question of sentences imposed, that being the only question on which notice was issued at the first instance in this revision petition, I find that petitioner no. 2, Mehar Singh, is shown to be a man between 70-80 years old (stated to be now 80 years), and he having already undergone more than 04 month of actual custody, as per the custody certificate on record, with

petitioner no. 1, Jaswant Singh @ Laddi, also stated to be near about 52-55 years presently and he also having undergone 07 months of actual custody when his sentence was suspended by this Court on 19.07.2016, looking also at the nature of the injuries received by the complainant, this petition is allowed to the extent that the sentences imposed upon both the petitioners in respect of all the offences for the commission of which they have been convicted, i.e. Section 326 IPC in the case of petitioner no. 1 Jaswant Singh @ Laddi, Section 323 IPC in the case of petitioner no. 2 Mehar Singh, and Sections 452 and 506 IPC (again read with Section 34) as regards both the petitioners, are reduced to the extent of imprisonment already undergone by them; with them, however, directed to deposit the fine of Rs. 1,000/- imposed by the courts below in respect of each of the offences for which they have been convicted, within a period of 02 months from the date of receipt of a certified copy of this order, upon which their bail and surety bonds shall be discharged, as per the procedure.

20. If they do not deposit the aforesaid amounts within the aforesaid period of 02 months, they shall then be taken into custody to suffer the default imprisonment of 07 days in case of each of the offences for which they do not deposit the fine.

May 08, 2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes