

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Revision No.4490 of 2017 (O&M)
Date of Decision: September 06, 2018

Lakha Singh and another
.....PETITIONER(s).

VERSUS

State of Punjab
...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. A.S. Dhaliwal, D.A.G., Punjab.

Mr. P.K.S. Phoolka, Advocate
for the complainant.

SURINDER GUPTA, J.

Learned Additional Chief Judicial Magistrate, Mansa convicted petitioners Lakha Singh and Ninder Singh along with Bikkar Singh (non-petitioner) in case bearing FIR No.139 dated 04.08.2006 registered at Police Station Sadar Mansa for the offences punishable under Sections 326, 323 read with Section 34 Indian Penal Code (for short-IPC) and sentenced them as follows:-

Sr. No.	Name of convict	Under Section	Sentence
1	Ninder Singh	326 IPC	Three years' rigorous imprisonment with a fine of Rs.500/-. In default of payment of fine, the convict would have to further undergo R.I. for six months.
		323 IPC	Six months' rigorous imprisonment.
2	Bikkar Singh	326/34 IPC	Three years' rigorous imprisonment with a fine of Rs.500/-. In default of payment of fine, the convict would have to further undergo R.I. for six months.
		323/34 IPC	Six months' rigorous imprisonment.

Sr. No.	Name of convict	Under Section	Sentence
3	Lakha Singh	326/34 IPC	Three years' rigorous imprisonment with a fine of Rs.500/-. In default of payment of fine, the convict would have to further undergo R.I. for six months.
		323/34 IPC	Six months' rigorous imprisonment.

All the three convicts filed appeal, which was dismissed by learned Additional Sessions Judge, Mansa vide judgment dated 30.10.2017. It is pertinent to mention that one of the convict Bikkar Singh expired during pendency of appeal, as such, proceedings against him stood abated.

Against the judgment of conviction, Ninder Singh and Lakha Singh have filed the present revision petition, challenging the legality and validity of the judgment passed by the Courts below.

Brief facts of the case are that FIR (Ex.PA/1) was registered on the statement of Uggar Singh, wherein he stated that he was constructing his house on the *Phirni* of the village. On 02.08.2006, he along with his son Binta Singh were lying in their plot. At about 11.00 p.m, some persons came from the side of house of Ninder Singh son of Mehma Singh neighbour of complainant, hurling abuses. Complainant and his son came out on the road and advised them not to do so. At this, Bikkar Singh, who was having *Kassia* in his hand, gave it to Ninder Singh and exhorted him to kill the complainant. Ninder Singh gave *Kassia* blow, which hit right hand of the complainant. He gave another *Kassia* blow which hit on the left hand near the wrist. Son of complainant raised *raula* at which all the accused ran away from the spot. Complainant was taken to Civil Hospital, Mansa where he was examined by Dr. Vijay Kumar Singla, who found following injuries on the person of complainant Uggar Singh:-

- (1) Incised wound 6 cm x 0.5 cm bone deep lying transversely over the anterior surface of right forearm, 5 cm below the elbow joint. Fresh bleeding was present.
- (2) Tenderness over the back of left wrist joint.

In the opinion of the doctor, injury No.1 was caused with sharp edged weapon, whereas injury No.2 was caused by blunt weapon. X-ray was advised for both the injuries. On x-ray examination, fracture upper part of shaft of radius of right forearm was found. However, there was no bony injury on the wrist of left hand. Injury No.1 was declared grievous while injury No.2 was declared as simple in nature. Police recorded statement of complainant after he was declared fit for statement by the doctor on 04.08.2006. Accused were arrested and after completion of necessary investigation final report under Section 173 of the Code of Criminal Procedure (for short-Cr.P.C.) was presented before the Court.

On finding a prima facie case, petitioners along with Bikkar Singh were charge-sheeted for the offences punishable under Sections 326, 323 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined Dr. Vijay Kumar Singla as PW1, Complainant Uggar Singh as PW2, Binta Singh eyewitness as PW3, ASI Gurdev Singh, Investigating Officer as PW4 SI/SHO Ranjit Singh as PW5. Prosecution gave up PW Geja Singh being won over by the accused and PWs HC Yadwinder Singh and HC Shivji Ram being unnecessary. Thereafter, the evidence of prosecution was closed by APP.

Entire incriminating material was put to the petitioners and

Bikkar Singh while recording their statements under Section 313 Cr.P.C. They denied all the allegations against them and pleaded innocence. Petitioner Lakha Singh in his defence has stated as follows:-

“I along with Ninder Singh, Bikkar Singh was coming to our home after irrigating our land. When we were passing in front of the house of Ugger Singh, under the influence of liquor, Ugger Singh abusing (abused) us. We inform the Panchayat regarding this incident. Ugger Singh felt sorry before the Panchayat. Next day, Ugger Singh fell from the newly constructed wall and received injuries. I am innocent and false case has been planted against me, Bikker Singh and Ninder Singh by Uggar Singh with the connivance of police.”

Similar defence was taken by Ninder Singh petitioner. Petitioners did not lead any evidence in their defence and closed the same.

After hearing arguments, learned trial Court convicted and sentenced the petitioners and Bikkar Singh, as detailed in opening para of this judgment.

Learned counsel for the petitioners has argued that as per the allegations in the FIR and statements of prosecution witnesses, Lakha Singh petitioner has no role in the occurrence. The complainant has alleged that he along with Ninder Singh and Bikkar Singh came hurling abuses. However, no specific abusive words have been attributed to him. He was empty handed and no evidence of his common intention with other co-accused to cause the injuries to Uggar Singh has been attributed. It is nowhere case of the prosecution that he exhorted Ninder Singh to cause injuries to the complainant. Two injuries have been attributed Ninder Singh

but no blood stains were found at the spot. The testimony of the prosecution is not supported by independent witnesses. It is not proved on file that the injuries on the person of complainant were caused by weapon called '*Kassia*' which was not even shown to the doctor.

Learned State counsel and learned counsel for the complainant have argued that both the petitioners along with Bikkar Singh were coming to the plot of complainant, hurling abuses. When the complainant inquired about the reason for their using abusive language, he was caused injuries with *Kaissa*, which was handed over to Ninder Singh by Bikkar Singh. This shows that injuries were caused to the complainant in furtherance of common intention of all the three accused. This argument of learned counsel for the petitioners that version of the prosecution is not supported by independent witness has no merits as the testimony of complainant and eyewitness corroborated by medical evidence, cannot be discarded on this ground.

While upholding the conviction of petitioner Lakha Singh, learned Appellate Court has observed that he shared common intention with Ninder Singh, who caused injuries on the person of complainant. On perusal of the complaint and statements of witnesses, I find that above conclusions of the Courts below are not based on proper appreciation of evidence on record.

As per allegations in the FIR, Ninder Singh neighbour of complainant accompanied by two persons (Bikkar Singh and Lakha Singh) was coming towards plot of complainant, hurling abuses. No specific abuse has been attributed to petitioner Lakha Singh. When the complainant came

out, he found Lakha Singh, Ninder Singh were hurling abuses. When he asked them not to abuse him Bikkar Singh gave his *Kassia* to Ninder Singh, who caused injuries on the person of complainant. No allegations have been levelled against Lakha Singh that he either exhorted Ninder Singh to cause injuries to the complainant or in any manner associated with Ninder Singh in causing injuries. There is no allegation in the FIR that Lakha Singh along with other co-accused had come to the spot with intention to cause injuries to the complainant.

Complainant Uggar Singh while appearing as PW2 has stated that all the three accused were coming from their house hurling abuses and when he asked them for the reason to abuse, Ninder Singh after taking *Kassia* from Bikkar Singh caused him injuries. He has not attributed any role to Lakha Singh in causing injury to him. He has rather stated that before this incident, he had no enmity with the accused.

Binta Singh, who was examined as PW, has also not attributed any role to Lakha Singh except that he was with other co-accused Ninder Singh and Bikkar Singh, when coming to their house hurling abuses. He has stated that when his father inquired about abuses, Bikkar Singh gave his *Kassia* to Ninder Singh, who caused injuries to him (his father).

From the allegations in the FIR and statements of witnesses, no inference can be drawn that the injuries on the person of complainant were caused by Ninder Singh in furtherance of common intention of all the three. The conclusion to this effect drawn by the Courts below are erroneous and not based on proper appreciation of evidence on record. Even if, it be believed that Lakha Singh was accompanying Bikkar Singh and Ninder

Singh at the time of occurrence, he cannot be held guilty with the help of Section 34 IPC for the injuries caused to the complainant by Ninder Singh. To prove his common intention in this regard, the prosecution was required to produce some evidence that the injuries by Ninder Singh were caused in furtherance of common intention of Lakha Singh with other co-accused. The Courts below have committed error while holding petitioner Lakha Singh guilty for offence punishable under Section 326 and 323 read with Section 34 IPC. This petition filed by him has merits and is accepted.

Regarding the role of petitioner Ninder Singh in causing injuries to the complainant, the allegations in the FIR have been corroborated by the testimony of complainant, eyewitness Binta Singh, who was present at the spot and the medical evidence. The occurrence had taken place during odd hours i.e. 11.00 p.m. in the street, as such, there could not be any independent witness present at that time. Even otherwise, there is no reason to discard the testimony of complainant and his son, which is supported by medical evidence and both the Courts below have committed no error while relying on their statements and holding the petitioner Ninder Singh guilty for the offence punishable under Sections 326 and 323 IPC. The mere fact that blood was not picked up from the spot by the Investigating Officer and the weapon of offence was not produced in Court is no reason to discard their statements particularly when Dr. Vijay Kumar Singla has given specific opinion that the injuries on the person of complainant could be caused by *Kassia* blow.

In view of my above discussion, I find no merits in this petition so far as the conviction of petitioner Ninder Singh is concerned and the

same is maintained.

Learned counsel for the petitioners has also sought leniency regarding the quantum of sentence awarded to the petitioner Ninder Singh. He has argued that Ninder Singh was a young boy of 21 years of age at the time of occurrence. He has faced the agony of trial for the last about 11 years. As per custody certificate produced on file, he has already undergone about 10 months of imprisonment and suffered for the offence committed by him. He is not a previous convict and taking note of his tender age at the time of committing offence, his sentence be reduced to the period of imprisonment already undergone by him.

Admittedly, petitioner Ninder Singh is not a previous convict and was 21 years of age at the time of occurrence. Keeping in view his age, antecedents and nature of offence and the injuries caused to the complainant, I am of the opinion that sentence of three years rigorous imprisonment awarded to him by the trial Court and upheld by the Appellate Court is on higher side. The ends of justice will be fully met if the same is reduced to rigorous imprisonment for one year for offence punishable under Section 326 IPC.

As a sequel of my above discussion, this petition is disposed of as follows:-

- (i) Petition filed on behalf of petitioner Lakha Singh is accepted. Judgment of the Courts below convicting him for the offence punishable under Sections 326, 323 read with Section 34 IPC is set aside and he is acquitted of the charges framed against him in this case. Lakha Singh is in custody. His release warrants in this case be sent to Superintendent, District

Prison, Mansa.

(ii) Conviction of petitioner Ninder Singh for the offence punishable under Sections 326 and 323 IPC is maintained. However, the sentence awarded to him for the offence punishable under Section 326 IPC is reduced from rigorous imprisonment for three years to rigorous imprisonment for one year. However, the sentence of fine and sentence awarded to him under Section 323 IPC is maintained. Intimation of reduction of his sentence be also sent to District Prison, Mansa.

September 06, 2018

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No