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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-33-2019 (O&M)
Date of Decision : July 04, 2019

Kewal Singh and others Petitioners

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by : Mr. Piyush Sharma, Advocate
for the petitioners.

Mr. Pawan Sharda, Sr. Deputy Advocate General,
Punjab, for the respondent-State.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment of conviction and order of sentence dated 12.09.2018 passed by learned Judicial Magistrate Ist Class, Zira vide which the petitioners were convicted and sentenced as under:-

Sr. No.	Name of convict	Offence under Sections	To undergo RI for a period of	Fine of Rs.	In default, RI
1.	Kewal Singh	326 IPC	2 Years	500/-	10 days
		324/149 IPC	9 Months	500/-	10 days
		323/149 IPC	6 Months	500/-	10 days
		148 IPC	6 Months	--	--
2.	Varinder Singh	326/149 IPC	1 Year	500/-	10 days
		324 IPC	9 Months	500/-	10 days
		323/149 IPC	6 Months	500/-	10 days
		148 IPC	6 Months	--	--

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3.	Jaswant Singh	326/149 IPC	1 Year	500/-	10 days
		324/149 IPC	9 Months	500/-	10 days
		323 IPC	6 Months	500/-	10 days
		148 IPC	6 Months	--	--
4.	Jagjit Singh	326/149 IPC	1 Year	500/-	10 days
		324/149 IPC	9 Months	500/-	10 days
		323 IPC	6 Months	500/-	10 days
		148 IPC	6 Months	--	--
5.	Kulwant Singh	326/149 IPC	1 Year	500/-	10 days
		324/149 IPC	9 Months	500/-	10 days
		323/149 IPC	6 Months	500/-	10 days
		148 IPC	6 Months	--	--

Both the sentences were ordered to run concurrently.

2. The appeal preferred by the present petitioner against the said judgment of conviction and order of sentence was dismissed by learned Additional Sessions Judge, Ferozepur vide judgment dated 29.11.2018.

3.. Facts relevant for the purpose of decision of the present revision petition; that on 12.11.2015, complainant Arshdeep Singh son of Gurbhej Singh alongwith Ramandeep Singh son of Gurmail Singh were sowing wheat crop in the land of Ramandeep Singh, where they saw that accused Jagjit Singh, Varinder Singh alias Mani, Kewal Singh, Jaswant Singh alias Jassa, Kulwant Singh were playing cards at the motor room of Ramandeep Singh. Complainant, Arshdeep Singh and Ramandeep Singh stopped them from doing so and because of that, the above named persons became angry and left the place. After some time, at about 6:15 PM, accused Jagjit Singh and Varinder Singh, both armed with *kappas*, Kewal Singh and Jaswant Singh both armed with *kulhari* (Axe) and Kulwant Singh armed with motorcycle chain came there and raised *lalkara*. Varinder

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Singh gave kappa blow to him, hitting on the right side of his head near ear. Jaswant Singh gave a blow of *kulhari* with its reverse side, hitting him on left side of his head. Accused Jagjit Singh gave a blow of *kappa* from its reverse side, hitting him on the palm of his right hand. In the meantime, his father Gurbhej Singh came at the spot and when he tried to rescue him, Kewal Singh and Kulwant Singh also caused injuries to his father. They raised hue and cry and on that all the accused fled away from the spot alongwith their respective weapons. Injured persons were shifted to Civil Hospital, Zira and on the basis of statement of the complainant, the present FIR was registered against accused persons. Accused persons were arrested.

3. After completion of investigation proceedings, challan was presented before the trial Court.

4. During trial, learned trial Court completed various proceedings of trial including framing of charge, recording statements of prosecution witnesses and examination of the accused (petitioners herein) under Section 313 Cr.P.C. After considering the material and evidence available on record, vide judgment dated 12.09.2018, learned trial Court held the petitioners guilty and convicted and sentenced them as detailed in para No.1 above.

5. The appeal preferred by the present petitioners against the said judgment of conviction and order of sentence was dismissed by learned first appellate Court vide judgment dated 29.11.2018.

6. At the time of arguments, learned counsel for the petitioners mainly contended that both the Courts below have not considered some

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material facts which resulted into erroneous findings and caused injustice to the present petitioners.

7. Learned counsel for the petitioners further contended that as per prosecution case, Ramandeep Singh was the main eye-witness in whose fields complainant, Arshdeep Singh was sowing wheat crop but he has not been examined during trial and on that account, the prosecution case becomes doubtful.

8. Learned counsel for the petitioners also raised another argument on the point that the petitioners have been convicted and sentenced for commission of offence punishable under Section 326 IPC as well, but the X-ray films were not produced on the record and without production of said material evidence, conviction, *at least* under Section 326 IPC, could not be maintained and both the Courts below have completely ignored this fact.

9. Learned counsel for the petitioners also contended that the opinion of the expert is not binding in such like cases and even any opinion given on the basis of X-ray films cannot be looked into evidence unless X-ray films are produced during trial. On this point, reliance was placed on the decision of Hon'ble Apex Court in case **Machindra vs. Sajjan Galfa Rankhamb and others, 2017(2) R.C.R. (Criminal) 985**. On the same point reliance was also placed upon decision of co-ordinate Bench of this Court in case **Naib Singh vs. State of Punjab, 2007(3) R.C.R. (Criminal) 14** and **Babu Lal and others vs. State of Haryana, 2009(2) R.C.R. (Criminal) 753**.

10. While arguing this point, learned counsel for the respondent-

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State contended that both the Courts below have considered the entire prosecution evidence which consists of testimony of injured/complainant Arshdeep Singh (PW-1) and Gurbhej Singh (PW-2) who have given complete picture of the incident attributing specific injuries to the accused persons and the weapons used by the petitioners. The medical opinion by way of statement of PW4 Dr. Gurinderbir Singh and PW5 Dr. Pritpal Singh proved the nature of injuries. The opinion given by the doctors in the medical board was on the basis of X-ray films itself and on the basis of report of radiologist. Both the doctors were cross examined at length and as such, there is no question of having any doubt regarding nature of injuries of both the Courts below have already considered all these facts. As such, the present revision petition is absolutely without any merit and the same is liable to be dismissed.

11. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that prosecution case is based on the testimony of PW-1, Arshdeep Singh, injured-complainant and PW-2, Gurbhej Singh, another injured in this case and they had sustained injuries as under :-

Injured	Accused	Weapon	Hit	Nature
Arashdeep Singh	Varinder Singh	Kappa	Near Right Ear	Simple
	Jaswant Singh	Axe	Left side of Head	Simple
	Jagjit Singh	Kappa	Upper side of left hand	Simple
Gurbhej Singh	Kewal Singh	Axe	Nose	Grievous
	Kulwant Singh	Chain of Motorcycle	Right Shoulder	Simple

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12. Both these witnesses were cross-examined at length, but they have not been proved to be liar. The ocular testimony is well supported and corroborated by testimony of PW-4, Dr. Gurinderbir Singh and PW-5, Dr. Pritpal Singh. PW-4, Dr. Gurinderbir Singh, who is posted at Civil Hospital, Zira admitted in his cross-examination that after medico-legally examining Arashdeep Singh and Gurbhej Singh, the Radiographer had given X-ray films and the concerned doctor had given his opinion regarding the injuries. As per report, Ex. PW-4/C, there was no bone injury on Arshdeep Singh as shown in the X-ray film.

13. PW-5, Dr. Pritpal Singh, Ortho Specialist at Civil Hospital, Zira had taken a plea in the cross-examination that a Board was constituted to assess the nature of injuries of Gurbhej Singh son of Avtar Singh and report, Ex. PW-4/G is proved on medical record, which includes X-ray films as well. As per medical record of injured Gurbhej Singh, there were two X-ray films and both where of Gurbhej Singh. At the time of ascertaining the injuries, Radiographer was also called by the Board of Doctors and in this case, Radiographer, Pavittar Singh was called by the Board. As such, it cannot be said that the members of the Board of Doctors had not considered the X-ray films while submitting report Ex. PW-4/G as regard to nature of injuries of Gurbhej Singh. The said report also bears signatures of Radiographer, Pavittar Singh and on the basis of such a medical evidence, there is no doubt that the nature of injuries of Gurbhej Singh to be under Section 326 IPC was duly proved on the file. As such, the judgments referred to and relied upon by learned counsel for the petitioners are not applicable to the present set of facts because in this case, there is

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complete medical evidence on the file and it was not a case that the report of the Doctors was binding on the Court, but the Court considered the medical evidence as well as ocular testimony alongwith other prosecution evidence and held the present petitioners guilty and convicted and sentenced them accordingly.

14. In view of the above, the prosecution case was duly proved and both the Courts below have already appreciated the relevant material and evidence available on the file and there is no ground to set-aside the judgment of conviction passed by learned trial Judge, which has been duly affirmed by learned Additional Sessions Judge in appeal.

15. Learned Courts below have already taken reasonable view on the point of sentence part and there is no ground for further interference by this Court in the present revision petition.

16. Resultantly, the present revision petition stands dismissed in the above terms.

**(SHEKHER DHAWAN)
JUDGE**

July 04, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes