

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1056-2019 (O&M)

Date of decision : 07.05.2019

Nikka Singh @ Malkeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Parvesh Sachdeva, Advocate for the petitioner.

ANIL KSHETARPAL, J.

CRM-14440-2019

For the reasons stated in the application, which is duly supported by an affidavit, delay of 21 days in filing the present revision petition is condoned.

Application is allowed.

Main case

Petitioner has been convicted and sentenced for a period of three years for offence under Section 326 of the Indian Penal Code.

This revision has been filed against the judgment passed by the trial Court affirmed by the First Appellate Court.

Detailed facts have been noticed by the Courts below. However, it will be useful to notice some facts. It is the case of the prosecution that the complainant-Dharampal Singh has made a statement on 08.12.2016 to the effect that he alongwith accused-petitioner Nikka Singh had consumed liquor together at the house of Bhinder Singh at about 4.30 PM and thereafter he went to Fazilka for some domestic work on his

motorcycle. While he was coming back at about 8.30 PM and was at a distance of 2/3 killas of land from Saw Mill, accused-Nikka Singh who was present on the road called him due to which he stopped his motorcycle and then accused gave him knife blow on his face on the left side of his nose. Complainant immediately started his motorcycle. At some distance, Gaggu Singh armed with knife and Kulwant Singh armed with dang, brother and father of Nikka Singh, were present and the complainant stopped his motorcycle to complain regarding injuries given by the accused Nikka Singh but on hearing this, they also started beating him and broke the light of the motorcycle of the complainant. The complainant took the motorcycle to his home and narrated the facts to his family members and his wife arranged for the conveyance and took him to hospital. The motive behind the occurrence was that about 1 month back, accused-petitioner Nikka Singh had entered the house of the brother-in-law of the complainant to commit theft and the complainant had identified him on which Nikka Singh fled away.

Information was sent by the concerned Doctor at Civil Hospital and the Investigating Officer visited the Civil Hospital but Doctor declared him unfit to make a statement. Thereafter, Investigating officer again visited Civil Hospital, Fazilka on 08.12.2016 and after obtaining fitness certificate, statement was recorded on 08.12.2016.

Weapon of offence was got recovered by the petitioner and after completion of the investigation, challan was presented. Charges were framed.

The prosecution in order to prove its case, examined

complainant Dharampal Singh PW1, Smt. Chhinder Kaur, wife of the complainant PW2, Dr. Kamaldeep Kumar PW3, Head Constable Pritpal Singh PW4, Dr. Suneet Sandhu, Radiologist PW5, ASI Harbans Lal, Investigating Officer, PW6.

Accused were examined under Section 313 of the Code of Criminal Procedure and the entire incriminating evidence appearing against them was put to them which they denied being incorrect and pleaded innocence as well as false implication.

As noticed above, both the Courts on appreciation of evidence held that the prosecution has successfully established its case.

This Court has heard the learned counsel for the petitioner at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel appearing for the petitioner has made following four submissions:-

- 1). There was delay of 14 days in registration of the FIR which suggests that the petitioner has been falsely implicated.
- 2). The clothes which the complainant was wearing at the time of incident have not been produced and, therefore, the prosecution has failed to establish its case beyond reasonable doubt.
- 3). The damaged motorcycle has also not been produced.
- 4). The petitioner has already undergone actual sentence of 7 months and, therefore, this Court should consider to reduce the sentence to the period already undergone.

As regards first argument, it may be noticed that both the

Courts have dealt with this aspect in detail. It has been proved on file that the complainant on reaching home in injured condition was immediately taken to the Civil Hospital and the information was sent by the Doctor to the police. The Investigating Officer visited the hospital where the complainant was admitted but the Doctor declared him unfit to make a statement. The Investigating Officer thereafter once again visited on 08.12.2016 when Doctor declared him fit to make a statement and the Investigating Officer recorded the statement of the complainant. However, prosecution recorded a DDR and after carrying out the investigation, registered the FIR on 20.12.2016. In such circumstances, delay in registration of the FIR i.e. period of 14 days is not fatal to the case of the prosecution, particularly in view of the facts which have been noticed above.

As regards prosecution having failed to take in possession the blood-stained clothes of the complainant as well as his motorcycle on which he allegedly was travelling, in the considered view of this Court would not make case put up by the prosecution doubtful. It was the duty of the prosecution to collect the entire evidence. Small failure of the prosecution have been considered by both the Courts and found to be insignificant in view of the overwhelming evidence. As noticed above, on 06.12.2016 complainant suffered injuries and on the same day, he was admitted in the Civil Hospital and the concerned Doctor sent information to the police. The Investigating Officer was deputed who visited the hospital to record the statement of the complainant but he was declared unfit to make statement. The statement could be recorded only on 08.12.2016. Still after recording the statement, the Investigating Officer recorded the DDR and chose to

record the FIR only on 20.12.2016 i.e. after a period of 14 days. In such circumstances, non-production of blood-stained clothes and damaged motorcycle on which the complainant was travelling would not be fatal to the case of the prosecution. It has come in evidence that the complainant suffered multiple incised superficial linear wounds all over the face and one incised wound on left side of the face near upper lip region which was bone deep and another incised wound near left side angle of the mouth with bleeding. Main injury No.1 was on his nose. The medical evidence has been corroborated by examination of Dr. Kamaldeep Kumar. In view of the aforesaid, this Court does not find any good ground to interfere in exercise of its revisional jurisdiction.

Last argument of learned counsel that sympathetic view be taken is also does not have any substance. Offence under Section 326 of the Indian Penal Code is punishable for a term which may extend to 10 years and shall also be liable to fine. Learned trial Court has already awarded sentence of 3 years.

In the considered view of this Court, in view of the multiple injuries suffered by the complainant on his face, the petitioner does not deserves the leniency. Hence, criminal revision petition is dismissed.

07.05.2019*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**