

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1204 of 2010 (O&M)

Date of Decision: 17.10.2019

Baru Ram @ Satpal and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Drishtana Singh, Advocate
for the petitioners.

Ms. Bhavna Gupta, Sr. DAG, Punjab.

Mr. Sudhir Rana, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J

The petitioners have preferred this petition being aggrieved of the judgment dated 23.4.2010, passed by Sessions Judge, Shaheed Bhagat Singh Nagar, vide which the appeal filed by them along with their co-convict, namely, Daman Bali, challenging the judgment of conviction and order of sentence dated 25.5.2007, passed by Sub Divisional Judicial Magistrate, Balachaur in a complaint filed by the complainant under Sections 392/427/34 IPC, was dismissed. However, conviction and sentence as awarded to the petitioners by the trial Court, was modified and their conviction under Section 382 IPC was set aside and they were convicted

under Section 379 IPC. The sentence awarded to the petitioners was also reduced from rigorous imprisonment for two years to rigorous imprisonment for one year. The Appellate Court, after taking into consideration the age of the co-accused, namely, Daman Bali, released him on probation.

Complainant Gurmukh Bhagat, in his complaint dated 19.12.2002, before Judicial Magistrate Ist Class, Balachaur stated that his uncle Shri Ram was the owner in possession of one house situated in khasra No. 28//15/9, measuring 03 marlas, situated within the revenue estate of village Siana/215, Tehsil Balachaur, District Nawanshahr and he was an attorney of Shri Ram. He further stated that he had constructed a boundary wall on the said plot and constructed one room with tin sheets on the roof. All the accused had the knowledge about the ownership of the said land. On 11.7.2002 at about 8.00 P.M, the accused had forcibly entered the house of the complainant and threatened him and his family members that in case the complainant started residing in the newly constructed house, he would be killed. On the next day i.e. 12.7.2002, at about 6.00 A.M. when the complainant went to the site along with his father, he saw that the accused were having hammer and iron rod (sabbal) and were demolishing the newly constructed room and boundary wall. Accused Baru Ram and Daman Bali took away five tin sheets each, after removing the same from the roof of the room. When they had asked the accused persons regarding their act, the accused persons caught hold of the complainant. On the alarm raised by them, Satwinder Singh, Harbhajan Singh and Paramjit Kumar reached the spot and rescued them from the clutches of the accused.

The complainant informed the police on the same day by moving an application. On 14.7.2002, the accused persons were called at the

police station where they had admitted their guilt and agreed to compensate the complainant for the loss caused by them. However despite repeated requests made by the complainant, no action was taken by the police. Hence, the complaint in question was filed on 19.12.2002.

After recording of preliminary evidence, the accused were summoned to face trial under Sections 382 and 427 read with Section 34 IPC.

In pre-charge evidence, the complainant stepped into witness box as CW-1 and examined Bhajan Singh as CW-2 and Gulzara Ram as CW-3.

After closure of pre-charge evidence, charges were framed against the accused under Sections 382 and 427 IPC to which they pleaded not guilty and claimed trial.

In the statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

After taking into consideration the evidence, the trial Court vide judgement and order dated 25.5.2007 convicted the petitioners along with co-accused Daman Bali under Section 382 IPC and sentenced them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 2000/- and, in default of payment of fine, to further undergo rigorous imprisonment for one month.

The appeal preferred by the accused was dismissed by the Appellate Court vide judgment dated 23.4.2010 but with modification as recorded above.

Learned senior counsel for petitioners has submitted that the allegation against the petitioners was that after demolishing the wall and

room, they had taken away the tin sheets but no recovery of tin sheets had been effected by the prosecution agency in the present case. It is further argued that the father of the complainant, namely, Guljara Ram along with his brother Shri Ram filed a civil suit on 15.6.2004 regarding the same property i.e. khasra No. 28//15/9 (0-3) for possession against Surjit Kaur, but Additional Civil Judge (Sr. Divn.), Balachaur while passing the judgment and decree dated 11.10.2006 (Ex. D-2) held that the property did not form the part of khasra No. 28/11/15/9 (0-3).

It is further argued that in application dated 12.7.2002 (Ex. C1) made to the local police, it was not mentioned that the petitioners were carrying hammer and iron rod (sabbal) along, when they were allegedly demolishing the boundary wall and tin room of the complainant. It is also argued that the incident took place on 11.7.2002 whereas the complaint before the Magistrate was filed on 19.12.2002. Hence, the delay in filing the complaint had been used for the concoctions and deliberations.

On the other hand, learned State counsel as well as learned counsel for the complainant/respondent No. 2 has argued that the petitioners had been convicted after taking into consideration evidence on record. Rather, a lenient view was taken by the Courts below against the petitioners as it stood established that loss of Rs. 60,000/- had been caused to the complainant and his family by demolishing the construction and by taking away the tin sheets.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record of the Courts below.

The contentions raised by the learned counsel for the petitioner,

had been dealt with by the trial Court in para 20 of its judgment, which reads as under:-

“In the light of my above discussion, it is found that complainant has been able to prove that accused have stolen his tin-sheets from his property and thus, they are liable for offence under Section 382 of Indian Penal Code and arguments raised by learned counsel for defence are found to be devoid of any merit. So far as document Ex. D-1 is concerned, that relates to motive part and it is always a double-edged weapon. Motive can be both ways. Ex. D-2 is also of no help for accused. In Ex. D-2, it was held that property in possession of Surjit Kaur did not form part of Khasra No. 28//15/9 (0-3) and that was entirely a different controversy, having no axe to grind with present occurrence. So, defence version is also of no avail to accused.”

In appeal, the Appellate Court drew the conclusion that simple offence of theft was only proved and that Section 382 IPC was aggravated form of Section 379 IPC and in case the aggravated form was not proved, at least the offence of theft was proved against the accused. The Appellate Court, thus, in para 11 of the judgment concluded as under:-

“In view of above discussion, the appeal of the appellants/accused is dismissed with the modification that their conviction under Section 382 of the Indian Penal Code is set aside. However, they are convicted under Section 379 of the Indian Penal Code. Since accused/appellant Daman Bali was less than 21 years of age at the time of commission of the offence, therefore, he is ordered to be released on probation, on his furnishing probation bonds in the sum of Rs. 10,000/- with one surety of the like amount, for the period of one year, undertaking therein to ensure that he does not repeat the offence and to keep peace and to maintain good behaviour as well as to appear in the Court to receive sentence whenever

called upon during the said period. His fine amount already paid before trial Court is ordered to be treated as cost of proceedings. So far as other accused/appellants Baru Ram, Kala and Harmesh Rangila are concerned, their sentence is reduced from two years rigorous imprisonment to one year rigorous imprisonment. However, the amount of fine will remain the same. ”

I have also gone through the grounds of appeal preferred by the petitioners where no specific issue has been raised by them. The grounds taken up in the revision were not pleaded before the Appellate Court. Thus, revisional jurisdiction, being limited one, no re-appreciation of evidence can be allowed.

Both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioners. Learned counsel for the petitioners has failed to point out any misreading of evidence by the Courts below warranting interference by this Court. Accordingly, the findings recorded by the Courts below convicting the petitioners do not call for any interference and the same are accordingly affirmed.

While coming to the sentence part, by now, the petitioners have undergone incarceration for a period of more than two months out of substantive sentence of one year. Taking into consideration that the incident in question took place in 2002 and the petitioners have been facing the agony of trial for the last 17 years, in my opinion, the ends of justice would be suitably met if the sentence awarded to the petitioners is reduced to the period already undergone by them.

In view of the above, while upholding the conviction of the petitioners under Sections 379 IPC, the substantive sentence imposed upon the petitioners is reduced to the period already undergone by them.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

October 17, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes