

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

Reserved on : 10.5.2019

Date of decision : 31.5.2019

1. Criminal Revision No. 1253 of 2013 (O&M)

Onkar Singh

.... Petitioner

versus

State of Punjab

... Respondent

2. Criminal Revision No. 1411 of 2013 (O&M)

Munish Kumar @ Vicky

.... Petitioner

versus

State of Punjab

... Respondent

Coram: Hon'ble Mr. Justice Rajiv Sharma

Present Ms. Sarbjeet Kaur, Advocate, for the petitioners.

Mr. Harbir Sandhu, Assistant Advocate General, Punjab.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these cases bearing **Criminal Revision No. 1253 of 2013** - Onkar Singh vs State of Punjab and **Criminal Revision No. 1411 of 2013** -Munish Kumar @ Vicky vs State of Punjab, therefore, the same are being disposed of by a common judgment.

2. These criminal revisions are instituted against judgment dated 1.4.2013, rendered by learned Additional Sessions Judge, Hoshiarpur, in Criminal Appeal No. 19 of 2012, whereby he upheld the judgment dated 1.2.2012, rendered by the trial Court, convicting and sentencing the

petitioners as under:-

<i>Name of the petitioner</i>	<i>under Section</i>	<i>Sentence awarded</i>
Onkar Singh	377 IPC	To undergo rigorous imprisonment for a period of six months and to pay fine of ₹ 200 and in default of payment of fine, to undergo further rigorous imprisonment for a period of seven days.
	323/34 IPC	To undergo rigorous imprisonment for a period of three months.
Munish Kumar @ Vicky	377 IPC	To undergo rigorous imprisonment for a period of six months and to pay fine of ₹ 200 and in default of payment of fine, to undergo further rigorous imprisonment for a period of seven days.
	323/34 IPC	To undergo rigorous imprisonment for a period of three months.

Both the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 22.12.2001, on receiving the MLR pertaining to Gurjeet Singh, the police party reached Civil Hospital, Tanda. The statement of injured complainant Gurjeet Singh was recorded to the effect that he was working in the shop of Wassan Readymade garments. On 21.12.2001, at about 6.00 P.M., he was going to his village. Onkar Singh and Munish Kumar @ Vicky met him. Both of them invited him to the dhaba of Darshan Singh. He went there. Three of them consumed liquor. Thereafter, about 10.00 P.M. on the same day, they all sat on the scooter driven by Onkar Singh Patwari. Thereafter both Onkar Singh and Munish Kumar @ Vicky suddenly started beating him. They put lot of soil in this mouth. He tried to run away towards Gurudwara Dera Baba Balwant Singh, however, the accused chased him. They took him in the fields on the back side of the Gurudwara. He was administered beatings again. His clothes were removed. Accused Munish Kumar @ Vicky pushed him towards the earth and again put soil in his mouth. He could not raise alarm. Onkar Singh then started committing sodomy with him. He was

given beatings. He was able to escape under the cover of darkness. He went to his father. His statement was recorded by the police. He received many injuries. The case property was sent for chemical examination at Chandigarh. FIR was registered. The challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated. They were convicted and sentenced by the learned trial Court vide judgment dated 1.2.2012, as noticed above. The learned Additional Sessions Judge vide judgment dated 1.4.2013 dismissed the appeals and upheld the conviction and sentence awarded by the learned trial Court. Hence, the present criminal revisions.

5. Learned counsel appearing on behalf of the petitioners vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

6. I have heard learned counsel for the parties and gone through the judgments and record very carefully.

7. PW1 Gurjeet Singh deposed that he was working at Wassan Readymade Store, Thana Chowk, Tanda. He was going towards his village on his cycle. At about 6.00 P.M., accused Onkar Singh and Munish Kumar @ Vicky met him at railway crossing Darapur. They were known to him earlier. They were on scooter. Onkar Singh told him to wait at Darshan

Dhaba. He reached the place. Accused consumed liquor. At about 10.00, they all proceeded towards village on the scooter. When they reached near the shop of Mehta Electricals, they started beating him. They also put soil in his mouth. He ran towards Gurudwara Baba Balwant Singh. They chased him and caught hold and started beating him near the Gurudwara. His clothes were torn. The accused after committing the illicit act with him again administered beatings. The owner of Mehta Electricals saw the accused persons beating and causing injuries to him. He went to the house.

8. PW2 Lekh Ram deposed that he was present in his house. On 21.12.2001 at about 10.00 P.M., he heard noise. He went to the roof and saw two unknown persons going on the scooter. One unknown person was raising alarm. His body was covered with mud. He was going towards Darapur railway crossing.

9. PW3 Constable Surjit Singh has proved recovery memo, Ex.PW3/A.

10. PW6 ASI Balwinder Singh has proved disclosure statement, Ex.PW6/A and site plan, Ex.PW6/B.

11. PW10 Dr. Ranjit Singh, Medical Officer, Civil Hospital, Tanda, had examined PW1 Gurjeet Singh. He noticed following injuries on his person:-

1. Patient was complaining of having been beaten and sodomized last night. He had defecated after the act and was walking with difficulty. No clothes were presented at the time of examination. There was diffused swelling present on the upper aspect of natal cleft small reddish abrasion was present in its center.

2. There was swelling present at around the anus. Some lubricants seems to have been applied around the opening. Multiple abrasions were present all around the orifice. More show on the left side in the area between 6'O clock to 12'O clock. Cuts were extending into the anal canal, anal sphincter was painful and tight. Tenderness was complained of sentinel pile was also present at 6'O clock position and multiple abrasion were present all around it. Swab was taken and sent to Chemical Examiner, Patiala.
3. Reddish blue abrasion 6 c.m. X 1.5 c.m. placed vertically on the left side of forehead.
4. Right eye was swollen and blood was present in it (Black eye).
5. Left eye was also having swelling and bleeding into it (black eye).
6. Upper lip was swollen on its left side.
7. Reddish blue diffused contusion on left cheek.
8. Nose was swollen on its upper aspect. Clotted blood was present on both thenars. X-ray nasal bone was advised.
9. Reddish contusion measuring 3 cm x 2 cm on the left parital area.
10. Multiple contusion in varying dimensions was present on whole of the trunk on more show on the scapular area.
11. Reddish blue contusion measuring 3 cm x 2 cm on the posterior aspect of the left ear.
12. Reddish contusion measuring 2 cm x 2 cm in front of left knee joint.
13. Left forearm was diffuser swollen on its distal half. Movements were painful and swear tenderness was complained of. X-ray was advised.

14. There was diffused swelling on the left hand. X-ray left hand was advised.”

12. According to the doctor, injury nos. 4, 5, 8, 14 and 15 were declared as simple vide report, Ex.PW10/F. On receipt of Chemical Examiner's report, Ex.PX, he declared that the possibility of sodomy on the person of PW1 Gurjeet Singh could not be ruled out.

13. The ownership of the scooter was proved by PW12 Amarjit Kaur.

14. The statement of PW1 Gurjeet Singh is duly corroborated by PW10 Dr. Ranjit Singh.

15. Learned counsel for the petitioners has vehemently argued that the Gurjeet Singh had gone voluntarily with the accused. He had not raised alarm.

16. PW1 Gurjeet Singh has categorically deposed that he was administered beatings many times before committing sodomy and thereafter. The absence of spermatozoa would not dilute the case of the prosecution. PW Lekh Ram has supported the version of PW1 Gurjeet Singh. The prosecution has proved the case against the petitioners beyond reasonable doubt. The judgments of conviction of both the courts are well reasoned and are affirmed.

17. Learned counsel for the petitioners has vehemently argued that taking into consideration the peculiar facts and circumstances of the case and the incident having happened on 21.12.2001 and one of the petitioners is a government employee, a lenient view may be taken.

18. The incident had happened on 21.12.2001. The petitioners have gone through the agony and trauma of facing criminal case for the last more than 18 years. Accordingly, while upholding the conviction of the petitioners, their sentence of imprisonment is reduced to the period already undergone.

19. The criminal revisions stand disposed of accordingly.

31.5.2019
vs

(Rajiv Sharma)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No