

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

(1) CRR-141 of 2013

Leela Singh and others

.... Petitioners

Versus

State of Haryana and another

..... Respondents

(2) CRR-1190 of 2013

Chanan Singh

.... Petitioner

Versus

State of Haryana and others

..... Respondents

Reserved on : 30.04.2019
Date of decision : 28.05.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. Vishal Rattan Lamba, Advocate,
for the petitioners in CRR-141 of 2013 and
for respondents No.2 to 10 in CRR-1190 of 2013.

None for the petitioner in CRR-1190 of 2013 and
for respondent No.2 in CRR-141 of 2013.

Mr. Apoorv Garg, Deputy Advocate General, Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these revision petitions, i.e. CRR-141 of 2013 and CRR-1190 of 2013, therefore, these are taken up together and being disposed of by a common

judgment.

2. Both these revision petitions are instituted against judgment dated 20.12.2012, rendered by learned Sessions Judge, Sirsa, in Criminal Appeal No. 272 of 30.09.2011, whereby while reversing the judgment of acquittal dated 13.09.2011 passed by learned Sub Divisional Judicial Magistrate, Dabwali, in Criminal Case No. 359-1 dated 30.03.2006, accused Leela Singh, Binder Singh alias Jaswinder, Gurlal Singh, Gurmel Singh, Bagga Singh, Kulwinder Singh, Dipty Singh, Harbans Singh and Nazar Singh were convicted and sentenced as under :-

<i>Offence</i>	<i>Sentence</i>
Under Section 148 IPC	Rigorous imprisonment for one month and to pay a fine of ₹ 100/- each and in default of payment of fine, to undergo simple imprisonment for 10 days.
Under Section 323/149 IPC	Rigorous imprisonment for one month and to pay fine of ₹ 100/- each and in default of payment of fine, to undergo simple imprisonment for 10 days.
Under Section 324/149 IPC	Rigorous imprisonment for one month and to pay fine of ₹ 100/- each and in default of payment of fine, to undergo simple imprisonment for 10 days.
Under Section 452/149 IPC	Rigorous imprisonment for six months and to pay fine of ₹ 500/- each and in default of payment of fine, to undergo simple imprisonment for two months.

<i>Offence</i>	<i>Sentence</i>
Under Section 506/149 IPC	Rigorous imprisonment for one month and to pay fine of ₹ 100/- each and in default of payment of fine, to undergo simple imprisonment for 10 days.

The substantive sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that respondent No.2 Chanan Singh lodged report with the police to the effect that on 26.12.2005 at about 8.00 PM, he was present in front of his house. Kulwinder Singh etc. started abusing him. They gave him slaps and fist blows. He ran away towards the house of Jagrup Singh, Ex Sarpanch. He was followed by Leela Singh and Bagga Singh etc. They gave him slap blows. Jagrup Singh was not present in his house. Then he fled away to his house and bolted the door from inside. Then he went to the roof of his house. The accused while carrying *gandasa*, pistol and lathi came to his roof from their roof. Gurmel Singh gave a lalkara to shoot him. Leela Singh handed over his pistol to Kulwinder Singh and then took his *gandasa*. He gave *gandasa* blow on his left arm. Then Balwinder Singh gave a push to him from the roof. He fell down. He suffered injury on his head. His wife Charanjit Kaur and his daughter Depender Kaur tried to rescue him. Binder Singh gave slaps to his wife. He raised alarm. The accused ran away from the spot. Challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely

implicated. Vide judgment dated 13.09.2011, the trial court acquitted all the accused of the charges framed against them. In appeal filed by the complainant, while reversing the aforesaid judgment, all the accused were convicted and sentenced, as indicated here-in-above. Accused Leela Singh etc. have challenged their conviction and sentence in CRR-141 of 2013, whereas complainant Chanan Singh has sought enhanced sentence to the accused persons in CRR-1190 of 2010.

5. Learned counsel appearing on behalf of the petitioners in CRR-141 of 2013 has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has supported the judgment of the learned appellate court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.1 Chanan Singh complainant deposed that the incident started in front of his house. When he was attacked by the accused, he ran towards the house of Jagrup Singh, Ex-Sarpanch. Jagrup Singh was not present in his house. Thereafter, he went to his house and bolted the door from inside. He went on the roof of his house. The accused climbed on the roof of their house and came to the roof of his house. His wife and daughter were also given beatings. According to him, the accused had come from the roof of their house. The complainant's wife Charanjit Kaur has also appeared as PW.2. She has not mentioned any weapon in the hands of the accused persons. According to her, her husband was pushed down from the roof. He received injury. She did not mention that she was given beatings by the accused. The daughter of the complainant was not examined. She was

also material witness. PW.4 Dr. Bhushan Garg deposed that the injuries received by the complainant could not be caused by *gandasa*. No independent witness was cited.

8. It has come on record that house of the complainant was bounded by a street on the southern side and on the eastern side as well. On the northern and western side of his house, the house of Joginder Singh was situated. No house of any of the accused was situated nearby his house. Then how the accused came to the roof of the house of the complainant from their roof. PW.1 Chanan Singh has admitted in his cross-examination that distance between his house and house of Leela Singh was about 17 feet and their houses were separated by street. According to the site plan Ex.PW.3/D, the accused had climbed to the roof of the complainant from point E. Point E is situated in street. The accused could not climb to the roof without the help of ladder.

9. It has come on record that various cases under NDPS Act, Excise Act and the Electricity Act were pending against the complainant. Since number of criminal cases were pending against him, he could not be informer of the police. Thus, the motive attributed by the complainant that he was pushed by the accused being police informer cannot be believed. It is also not believable that if the incident had happened in front of the house of the complainant, then instead of coming to his house, he will run towards the house of Jagrup Singh, Ex Sarpanch. According to PW.1 Chanan Singh, he was chased by the accused and he ran towards the house of Jagrup Singh. No member from the family of Jagrup Singh was cited as witness.

10. The first appellate court has not correctly appreciated the oral as well as documentary evidence.

11. Accordingly, CRR-141 of 2013 is allowed. The judgment dated 20.12.2012 rendered by learned Sessions Judge, Sirsa, is set aside and the judgment dated 13.09.2011 passed by learned Sub Divisional Judicial Magistrate, Dabwali, is upheld. CRR-1190 of 2013 filed by the complainant is also meritless and is, accordingly, dismissed. Bail and surety bonds of the petitioners in CRR-141 of 2013 are discharged.

May 28, 2019
ndj

(**RAJIV SHARMA**)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No