

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 3046 of 2015 (O&M)
Date of Decision: 10.5.2019

Chamkaur Singh and others

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.K.Saini, Advocate
for the petitioners.

Mr. S.S.Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J

The present petition has arisen out of the judgment dated 17.7.2015 passed by Additional Sessions Judge, Patiala vide which the appeal filed by the petitioners, challenging the judgment of conviction and order of sentence dated 23.3.2015, passed by Judicial Magistrate Ist Class, Nabha in case FIR No. 47 dated 14.6.2014 under Sections 323, 325, 34 of the Indian Penal Code ('IPC' for short), registered at Police Station Bhadson, was dismissed.

As per the prosecution case, on 15.5.2014 a medical *ruqa* and two MLRs of Gurdeep Singh and Kulwinder Kaur, who had been referred to Civil Hospital, Nabha were received from police station CHC Bhadson. On 16.5.2014, statement of complainant Gurdeep Singh son of Didar Singh was recorded stating that on 15.5.2014, he came back to his house from *Satsang*

raised by his mother. On hearing the alarm, when he went inside, he saw that accused-petitioners Chamkaur Singh, Pargat Singh and Harbans Singh alias Kaka were giving beatings to his mother with wooden sticks. He tried to rescue his mother from the clutches of the accused-petitioners. The accused-petitioners also gave beatings to him and caused injuries on his head, left thigh and other parts of the body. They also caused injuries on the right arm, stomach and right leg of his mother-Kulwinder Kaur. The complainant and his mother raised alarm, upon which Charanjit Singh, Banti wife of Charanjit Singh and Billo reached there and rescued them from the accused-petitioners. On the basis of said complaint, DDR No. 14 dated 16.5.2014 was registered and after getting the opinion about the nature of injuries, the present case was registered against the accused-petitioners. On 20.6.2014, complainant Gurdeep Singh moved another application and after enquiry, Section 452 IPC was added.

After completion of investigation and necessary formalities, challan was presented against the petitioners.

Charges were framed against the petitioners under Sections 452, 323, 325 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined nine witnesses.

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

After taking into consideration the evidence on record, the trial Court has drawn a conclusion that the present case pertained to simple injuries to complainant Gurdeep Singh and his mother Kulwinder Kaur and

all the prosecution witnesses especially PW-1 complainant-Gurdeep Singh, PW-2 Kulwinder Kaur, injured and the eye witness, PW-3 Charanjeet Singh had duly supported the case of the prosecution. Moreover, the injuries on the person of complainant Gurdeep Singh were also proved by PW-5 Dr. Kanwalpreet Singh and PW-8 Dr. Baljit Kaur. Similarly the simple and grievous injuries on the person of Kulwinder Kaur were also proved by the Doctors i.e. PW-5 and PW-8. The factum regarding the fracture on the right hand of Kulwinder Kaur was also proved by PW-8 Dr. Baljit Kaur vide her report Ex. PW-8/A. The trial Court vide judgement and order dated 23.3.2015 convicted the petitioner under Sections 452, 323, 325 read with Section 34 IPC and sentenced them as under:-

<i>Sr. No.</i>	<i>Under Sections</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
<i>1.</i>	<i>325 IPC r/w 34 IPC</i>	<i>SI for two years each</i>	<i>Rs. 1000/- each</i>	<i>SI for two months each.</i>
<i>2.</i>	<i>323 IPC r/w 34 IPC</i>	<i>SI for four months each</i>	<i>Rs. 500/- each</i>	<i>SI for 7 days each</i>
<i>3.</i>	<i>452 IPC r/w 34 IPC</i>	<i>SI for two years each</i>	<i>Rs. 1000/- each</i>	<i>SI for two months each</i>

Aggrieved of the said judgment and order, the petitioners preferred an appeal before the Sessions Judge, Patiala which was dismissed by the Appellate Court vide judgment dated 17.7.2015.

Still aggrieved, the petitioners have preferred the present revision petition before this Court.

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

Learned counsel for the petitioners has argued that there is delay in registration of the FIR because the occurrence took place on 15.5.2014 but the FIR in question was registered on 14.6.2014 i.e. after about a month later. Thus, it creates doubt in the prosecution story being an

afterthought. Learned counsel has further argued that the prosecution has failed to prove any document regarding the ownership of the property where the alleged occurrence took place. Since ownership has not been proved, Section 452 IPC cannot be invoked. It has been further argued that the case property was not produced in the Court at the time of cross-examination of prosecution witnesses and the right thumb impression of Kulwinder Kaur has been affixed on the statement of the complainant recorded by the police as Ex. PA. Thus, this fact shows that she did not sustain any injury on her right hand as she had affixed her right thumb impressions on the said document.

Per contra, learned counsel for the State has argued that the prosecution has successfully proved its case. The Investigating Officer in the present case i.e. PW-4 ASI Surjit Singh and the other witnesses including PW-8 Dr. Blajit Kaur had stepped into the witness box and fully supported the prosecution case. As far as delay part is concerned, the learned State counsel has argued that the first version of the complainant was recorded by the police on 16.5.2014 which is on record as Ex. PA i.e. on the date of occurrence and on the basis of the said statement, DDR No. 14 dated 16.5.2014 was registered which has been proved as Ex. PW-7/A by PW-7 HC Parveen Kumar. It is further argued that the present FIR was registered only after obtaining the medial opinion regarding the nature of injuries on the person of the injured and the said opinion is on record as Ex. PW-5/5 which had been proved by PW-5 Dr. Kamalpreet Singh. As far as the ownership of the property, where the alleged occurrence had taken place, is concerned, it has been argued by the State counsel that only possession of the property is sufficient to prove that the complainant and his

mother were residing in the said house and from the oral testimonies of PW-1, PW-2, PW-3 and the investigating officer PW-4, it is clear that the complainant and his mother were residing in the said house where the petitioners-accused had entered and caused injuries to them.

In the present case, the occurrence took place on 15.5.2014. Petitioner Harbans Singh, who is now aged 65 years was involved along with his two sons, namely, Chamkaur Singh and Pargat Singh i.e. petitioners. While admitting the present appeal, this Court vide order dated 15.10.2015 had directed petitioner No. 1-Chamkaur Singh to deposit a sum of Rs. 30,000/- with the trial Court to be released to the injured by issuing notice to her towards interim compensation for the injury under Section 357(1) of the Code of Criminal Procedure, 1973. In this very order, this Court after taking into consideration the nature of injury had observed that there was scope of interference in the quantum of sentence.

At this stage, learned counsel for the petitioners has confined his prayer only to the quantum of sentence.

In the present case, the petitioners were convicted and sentenced by the trial Court vide judgment and order dated 23.3.2015. The appeal preferred by them was dismissed by the Sessions Court on 17.7.2015. Petitioner No. 3-Harbans Singh @ Kaka is aged about 65 years. The petitioners are the first offenders and have been facing the agony of trial for the last five years. Moreover, as per the custody certificates, petitioners Chamkaur Singh, Pargat Singh and Harbans Singh @ Kaka have undergone 03 months and 08 days, 02 months and 17 days and 01 month and 11 days of actual sentence, respectively. There is no other case pending or decided against them. There is no report of misuse of concession of bail

by them.

As the prayer made by the petitioners is restricted only to the sentence, the findings recorded by the Courts below convicting the petitioners are affirmed.

However, keeping in view the above facts and circumstances of the present case, I feel that ends of justice would be suitably met, if the sentence awarded to the petitioners is reduced to the period already undergone subject to payment of fine of Rs. 30,000/- to be paid as compensation by the petitioners to the complainant and his mother.

Accordingly, the conviction of the petitioners under Sections 452, 323, 325 read with Section 34 IPC is maintained. However, sentence qua imprisonment of the petitioners, is reduced to the period already undergone by them. The fine already imposed by the Court below is enhanced to Rs. 30,000/-. which shall be deposited by the petitioners with the Chief Judicial Magistrate concerned who would disburse the said amount to complainant Gurdeep Singh and his mother Kulwinder Kaur against proper receipt and identification.

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

(HARNARESH SINGH GILL)
JUDGE

May 10, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No