

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1935-2019(O&M)
Date of decision: 28.11.2019

Gagandeep Singh @ Gaganjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ankit Kumar, Advocate, Legal Aid counsel

Mr. S.P.S.Tinna, Addl. AG, Punjab

ANIL KSHETARPAL, J.

Through the present revision petition, correctness of judgment of conviction passed by the learned Judicial Magistrate First Class, Dhuri affirmed in appeal by the Court of Sessions has been assailed.

At the outset it must be noticed that Judicial Magistrate convicted Gagandeep Singh and his father Darshan Singh whereas learned Court of Sessions dismissed the appeal, however, released Darshan Singh on probation.

As per the case of the prosecution, on 4.5.2016 the complainant along with his nephew i.e Amandeep Singh had gone to their fields for leasing the land. At about 4:00 pm when they reached their fields on motorcycle and found Darshan Singh (brother of first informant-injured) alongwith his son petitioner present there. On seeing the injured, the petitioner and his father exhorted to teach the injured a lesson for proposing to lease the land to an outsider. On this, the petitioner picked a gandas

from a room constructed for tubewell motor and gave a blow of the same on the right leg of the complainant. Thereafter, the accused Darshan Singh gave a blow with wooden baton on the left arm of the complainant due to which his left arm was fractured. Gagandeep Singh-petitioner gave a Gandasa blow from its reverse side on the left leg of the injured/ first informant due to which his left leg got fractured. The injured fell down on the ground, but both the accused persons did not stop and continued to give him blows. They also gave blow with wooden baton and reverse side of Gandasa on the back side of right arm and legs. On raising hue and cry by Amandeep Singh, the petitioner alongwith his father ran away from the spot alongwith their respective weapons while threatening Amandeep Singh. During this fight Rs.4/5 thousands and a samsung mobile also fell down and the same might have been taken by the convicts.

Prosecution in order to prove its case has examined Satpal Head Constable as PW1, Paramjit Jindal – Radiographer as PW2, Dr. Usha Kandara as PW3, Bant Singh-Retired SI as PW4, Balwinder Singh-complainant/injured as PW5 and Amandeep Singh-eye witness as PW6.

On the other hand, defence examined Kashmir Singh, Draftsman as DW1, Dr. Neha, Civil Hospital, Pripuri Patiala as DW2 and closed their evidence.

On appreciation of evidence as noticed above, the Judicial Magistrate as well as the Court of Sessions has recorded a judgment of conviction and order of sentence which is extracted as under:-

Name of the convict	Offence u/s	Sentence of rigorous imprisonment	In default of payment of fine SI for
Gagandeep	i. 325 IPC	2 years+5000 fine only	1 month

Singh	ii. 324	1 year+4000 fine only	1 month
	iii. 323 r/w 34 IPC	6 months+1000 fine only	15 days

This Court has heard learned counsel appearing for the petitioner and for the State and with their able assistance has gone through the record and the judgments passed.

Learned counsel for the petitioner, a counsel deputed by the legal aid, submitted that there is 28 hours delay in lodging the FIR. Further the alleged motive has not been proved. Presence of the alleged eye witness Amandeep Singh on the spot is doubtful and there are contradictions in the ocular and medical evidence.

On the other hand learned counsel for the State has submitted that two Courts have already examined the evidence and therefore, in the absence of any substantive error this Court would not like to interfere.

As regards first argument of learned counsel for the petitioner, the incident in question is alleged to be of 4.5.2016 at about 4:00 P.M. On careful perusal of medico legal report of Jagjit Singh, it is apparent that he was examined at 5:05 pm on 4.5.2016 at Civil Hospital, Dhuri. Thereafter, the injured was referred to Civil Hospital, Rajpura. The FIR was registered on the statement of the injured on the next day i.e 5.5.2016. The injured was brought in the Civil Hosptial, Dhuri at 5:05 pm on 4th May, 2016 i.e on the day of incident. Hence, there is no delay in registration of the FIR in the facts and circumstances of the present case. As regards motive, it would be noted that injured is alleged to be working as Driver on a truck. The injured was desirous to give his share of land on lease to an outsider. There is civil

litigation pending between the parties. Petitioner, alongwith his father attacked when injured had gone to his fields. Hence, it cannot be said that prosecution has failed to establish motive.

Next argument of the learned counsel for the petitioner is with regard to presence of alleged eye witness being doubtful. He submits that the eye witness Amandeep Singh did not make efforts to save his uncle from the clutches of the convicts.

This Court has considered submission. Accused were armed. They had attacked Jagjit Singh. Usually the person present would make an attempt to save and intervene but it all depends upon personal perception. From the suggestions given to the prosecution witnesses it is apparent that the occurrence is not being disputed.

Difference in the ocular and the medical evidence. In this regard it may be noticed that human memory is neither photographic nor usually it is possible to re-collect entire sequence of events in correct order. In the present case, injured had suffered two fractures. He was taken to the hospital at Dhuri immediately and thereafter referred to Civil Hospital, Rajpura. The injuries have been proved by examining Dr. Usha Kandara alongwith technician Radiographer. The question as to whether the injury was first caused at the left leg or right leg or right arm or left arm would not be sufficient to discard the case of the prosecution.

Keeping in view the aforesaid facts, this Court is not inclined to interfere with the judgments of conviction passed by the Courts below.

However, it is noticed that petitioner-Gagandeep Singh is a first time offender. As per the custody certificate dated 13.11.2019, petitioner has already undergone 7 months and 12 days. The petition has

been filed through legal aid therefore, it is safe to presume that the petitioner is a poor person. The injured is uncle of the petitioner. Petitioner has remained on parole for 16 weeks and there is no overt act on the part of the petitioner during this period.

Keeping in view the aforesaid facts, while maintaining the judgment of conviction and the order of sentence, petitioner is directed to be released on probation for a period of two years. He will enter into bond with surety for a sum of Rs.20,000/- and receive sentence when called upon during the period of two years. He shall also, in the meantime, keep the peace and be of good behaviour.

Disposed of.

28.11. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No