

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 3254 of 2012 (O&M)
Date of Decision: 27.03.2019

Gurcharan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. C.L.Verma, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

This revision has been filed by the petitioner-complainant challenging the judgment dated 4.9.2012 passed by Additional Sessions Judge, Ludhiana, vide which the appeal filed by accused/respondents No. 2 and 3, challenging the judgment of conviction and order of sentence dated 23.2.2010, passed by Judicial Magistrate Ist Class, Ludhiana, in case FIR No. 44 dated 29.1.2000 under Sections 326, 324, 323, 34 of the Indian Penal Code ('IPC' for short), registered at Police Station Sadar Ludhiana, was partly allowed and they were ordered to be released on probation.

The brief facts of the present case are that on 28.1.2000, at about 7.00 P.M., complainant Gurcharan Singh along with his father Ranjit Singh was returning from their fields. When they reached the metalled road, Gurcharan Singh son of Labh Singh, armed with *gandasi* and Jaswant Singh alias Bhinder armed with stick were standing on their way. On seeing them,

Gurcharan Singh-accused raised lalkara and thereafter, he gave a *gandasi* blow on the right hand of the complainant. Gurcharan Singh gave another two blows on his right leg. Respondent No. 3-accused Jaswant Singh gave a stick blow on the back of the complainant. Both the accused gave blows with their respective weapons on the left thigh, left eye, left wrist and on the fingers of right hand on the person of Ranjit Singh-father of the complainant. On raising an alarm by the complainant and his father, both the accused ran away from the spot with their respective weapons.

After completion of investigation and necessary formalities, challan was presented against the accused-respondents No. 2 and 3.

Charges were framed against the accused under Sections 324, 326, 323, 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 04 witnesses.

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

In defence, the accused examined two witnesses.

After taking into consideration the evidence on record, the trial Court vide judgement and order dated 23.2.2010 convicted and sentenced the accused as under:-

<i>Accused</i>	<i>Under Sections</i>	<i>Imprisonment</i>	<i>Fine</i>
<i>Gurcharan Singh</i>	<i>326 IPC</i>	<i>2 ½ years R.I.</i>	<i>Rs. 1000/-</i>
	<i>324 IPC</i>	<i>1 Year R.I.</i>	<i>Rs. 500/-</i>
	<i>323 R/w 34 IPC</i>	<i>6 months</i>	<i>Rs. 500/-</i>

(In case of default of payment of fine in u/s 326 IPC further imprisonment of two months, u/s 324 and 323 r/w 34 IPC he will have to undergo further imprisonment of one month each.)

Jaswant Singh	326 r/w 34 IPC	2 ½ years.	Rs. 1000/-
	324 r/w 34 IPC	1 Year.	Rs. 500/-
	323	6 months	Rs. 500/-

(In case of default of payment of fine in u/s 326 r/w 34 IPC further imprisonment of two months, u/s 324 r/w 34 and 323 IPC he will have to undergo further imprisonment of one month each.)

Aggrieved by the said judgment and order, accused-respondents No. 2 and 3 preferred an appeal before the Sessions Judge, Ludhiana. The Additional Sessions Judge, Ludhiana, vide judgment dated 4.9.2012 while partly allowing the appeal, converted the conviction of the accused from Section 326 IPC to Section 324 IPC. However, on the point of sentence, respondents No. 2 and 3 were ordered to be released on probation on furnishing the probation bonds in the sum of Rs. 1,00,000/- to keep peace and be of good behaviour for a period of one year.

Aggrieved of the said judgment dated 4.9.2012, the petitioner has preferred the present revision.

Learned counsel for the petitioner has argued that complainant Gurcharan Singh, who had stepped into the witness box as PW-2, had specifically stated that Gurcharan Singh son of Labh Singh was armed with gandasi and had inflicted injuries on him as well as on his father. The other accused Jaswant Singh (brother of accused-respondent No. 1) was also armed with a stick and he had also inflicted injuries on the person of the complainant and Ranjit Singh, who had also stepped into the witness box as PW-1. It is further argued that the injuries were further corroborated by the medical evidence by examining Dr. Ashok Raswant as PW-3 and Dr. R.S.Deol who was examined as PW-4. The x-ray report (Ex.P3/A) and

copy of the MLR (Ex. PW4/D) had been produced on record which shows that injury No. 1, on the person of the complainant was declared grievous in nature. Thus, it has been argued that respondents No. 2 and 3 were rightly convicted by the trial Court. Releasing respondents No. 2 and 3 on probation amounts to their acquittal. The accused were not entitled to probation, as they had inflicted injuries after raising lalkara which clearly shows their intention. Furthermore, they were armed with deadly weapons when they had attacked the complainant and his father Ranjit Singh. In support of his arguments, learned counsel for the petitioner has placed reliance on ***Buri and another versus State of Punjab 1984(1) RCR 579.***

Per contra, learned State counsel has argued that accused-respondents No. 2 and 3 were in the business of sale and purchase of property with Ranjit Singh son of Nikka Singh. There was a sale transaction and being the property dealers, an amount of Rs. 5.00 lacs was due towards respondents No. 2 and 3 as the same was to be paid by Ranjit Singh. The said share was not given and thus, in order to deviate the intention of taking the money back, the present FIR had been got registered against respondents No. 2 and 3. Learned State counsel has further argued that Amarjit Singh who stepped into the witness box as DW-1, had stated that he was a shopkeeper and complainant Gurcharan Singh and his father Ranjit Singh had been quarrelling with some unknown person on 28.1.2000. Similarly, Gurcharan Singh son of Bachan Singh while appearing as DW-2 stated that Gurcharan Singh son of Labh Singh-respondent No. 2 and Gurcharan Singh son of Ranjit Singh-petitioner were in property business. The petitioner/complainant had to pay Rs. 5.00 lacs to respondent No. 2 Gurcharan Singh son of Labh Singh. Thus, learned State counsel has

submitted that keeping in view the fact that respondents No. 2 and 3 are not previous convicts and have suffered prolonged trial, they were rightly ordered to be released on probation by the Appellate Court.

I have heard the learned counsel for the petitioner as well as the learned State counsel and have gone through the record of the Courts below with their able assistance.

The judgment relied upon by the learned counsel for the petitioner does not support the case of the petitioner as in the said case the injury was on vulnerable part of the body but being a chip fraction, the sentence was reduced from two years to one year.

As per the evidence on record, the Appellant Court has drawn the conclusion that in the present case, there is a chip fracture on the person of complainant-petitioner Gurcharan Singh which was declared as a grievous injury but in the cross-examination of Dr. R.S.Deol (PW-4), he stated that injury No. 1 on the person of Gurcharan Singh was muscle deep and the depth of the wound is ascertained, generally by inserting a needle. But this witness admitted that no such method had been adopted in this case. This witness had also admitted that he was not Doctor of Medicine (M.D.) in surgery, rather he was Doctor of Medicine (M.D.) in chest diseases and T.B. (Tuberculosis).

After taking into consideration the fact that accused-respondents No. 2 and 3 were not previous convicts and had already suffered prolonged trial of 12 years, they were granted benefit of probation. They were released on probation by the Appellate Court on furnishing of probation bonds to keep peace and be of good behaviour for the period of one year and to appear to receive the sentence as and when called upon to

do so. They were also ordered to pay Rs. 25,000/- each as compensation to complainant Gurcharan Singh.

After a long span of time i.e. from 4.9.2012, it will not be proper for this Court to interfere in the order, vide which accused-respondents No. 2 and 3 had been granted probation by the Appellate Court. Moreover, even at this stage it has not been pointed if respondents No. 2 and 3 have indulged in any other crime. The view taken by the Appellate Court is a plausible view taking into consideration the mandate of Sections 360 and 361 Cr.P.C. Moreover, in a plethora of judgments, this Court as also the Hon'ble Apex Court, have ruled that exercise of the mandate of the aforesaid provisions cannot be found fault with, unless the offence committed is grave in nature.

Thus, in my view, the Appellate Court has taken a conscious decision to release accused-respondents No. 2 and 3 on probation and, therefore, calls for no interference by this Court.

The revision petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

March 27, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No