

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 3849 of 2014
Date of Decision: 03.4.2019

Parkash Masih @ Parkash Chand and others

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rajesh Kapila, Advocate
for the petitioners.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

The present petition has arisen out of the judgment dated 15.9.2014 passed by Additional Sessions Judge (Adhoc), Fast Tract Court, Gurdaspur vide which the appeal filed by the petitioners, challenging the judgment of conviction and order of sentence dated 21.11.2011, passed by Additional Chief Judicial Magistrate, Gurdaspur in case FIR No. 163 dated 12.8.2005 under Sections 323, 324, 326, 34 of the Indian Penal Code, registered at Police Station Sadar Gurdaspur, was dismissed.

The brief facts of the present case are that the aforementioned FIR was registered on the statement of complainant-Mukhtiar Masih whereby he had alleged that on 8.8.2005, he was coming to his house from Gurdaspur on a bicycle after finishing the labour work. At about 7.30 P.M.,

when he reached in front of the house of Rajwinder Masih, then petitioners-

accused Vijay Kumar armed with *dang*, Parkash Masih armed with *datar*, Thura Masih armed with *dang* and one unknown person came there. Petitioner-accused Vijay Kumar raised lalkara to catch hold the complainant and teach him a lesson for not allowing them to use common utensils belonging to Christian community. On this, petitioner-accused Parkash Masih gave a *datar* blow on the right leg of the complainant. Accused Thura Masih gave a *dang* blow on his right wrist. On an alarm raised by the complainant, his brother Gulzar Masih came at the spot to rescue him from the clutches of the accused but he was also not spared and was inflicted injuries. The complainant and his brother fell down on the ground. While lying down on the ground, Vijay Kumar and Thura Masih inflicted injuries on the back and other parts of his body. The petitioners also gave fist and kick blows to his brother. In the meantime, Rajwinder Masih and Balbir Singh reached the spot. On seeing them, all the petitioners fled away from the spot along with their respective weapons. The motive behind the occurrence was that there were common utensils of Christian community which were being used at the time of marriages but the petitioners had used the same for construction of their house and when the complainant refused to give the utensils, they had inflicted injuries to the complainant and his brother. After arranging a vehicle, the injured were got admitted in Civil Hospital, Gurdaspur by Rajwinder Masih. The respectables of the village tried to settle the matter, but of no avail.

After completion of investigation and necessary formalities, challan was presented against accused Parkash Masih and Thura Masih.

When the case was at the stage of evidence of PW-1, Mukhtiar Masih, the prosecution moved an application under Section 319 of the Code

of Criminal Procedure, 1973 ('Cr.P.C.' for short) for summoning Vijay Kumar/petitioner No. 3 as additional accused which was allowed and Vijay Kumar was summoned as additional accused.

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

In order to prove its case, the prosecution had examined as many as 08 witnesses.

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

After taking into consideration the evidence on record and the testimonies of the witnesses, the trial Court vide judgement and order dated 21.11.2011 convicted the petitioners under Sections 326, 323, read with Section 34 IPC and sentenced them as under:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>R.I.</i>	<i>Fine</i>	<i>In default</i>
<i>Parkash Masih</i>	<i>326 IPC 323/34</i>	<i>1 ½ years 3 months</i>	<i>Rs. 500/- Rs. 300/-</i>	<i>One month 10 days</i>
<i>Thura Masih</i>	<i>323 IPC 326/34</i>	<i>3 months 1 ½ years</i>	<i>Rs. 300/- Rs. 500/-</i>	<i>10 days One month</i>
<i>Vijay Masih</i>	<i>323 IPC 326/34</i>	<i>3 months 1 ½ years</i>	<i>Rs. 300/- Rs. 500/-</i>	<i>10 days One month</i>

Aggrieved of the said judgment and order, the petitioners preferred an appeal before the Additional Sessions Judge (Adhoc), Fast Tract Court, Gurdaspur which was dismissed by the Appellate Court vide judgment dated 15.9.2014.

Still aggrieved, the petitioners have preferred the present revision petition.

I have heard the learned counsel for the petitioners as well as

the learned State counsel and have gone through the records of the Courts below, with their able assistance.

It has been argued by the learned counsel for the petitioners that petitioner No. 3-Vijay Kumar was declared innocent, but during the evidence of PW-1 Mukhtiar Masih, petitioner Vijay Kumar was summoned under Section 319 Cr.P.C. It has been further argued by the learned counsel for the petitioners that the Courts below have failed to appreciate that the prosecution story is doubtful as PW-2 Gulzar Masih, who is stated to be the injured and the eye witness of the case, in his cross-examination had not supported the prosecution story. Moreover, PW-1 i.e. complainant-Mukhtiar Masih, in his cross-examination, has stated that he had not mentioned the time of occurrence which shows that the entire version is false and, thus, the prosecution has failed to make out a case against the petitioners. It has been also argued that PW-1 in his examination-in-chief, has stated that the unknown persons had caused injuries to his brother. Therefore, there is inconsistency in his statement and, thus, the petitioners had been falsely implicated in the present case. Not only this, there is unexplained delay of four days in lodging the FIR as the occurrence took place on 8.8.2005 whereas the FIR in question was registered on 12.8.2005.

Per contra, learned State counsel has argued that the occurrence took place on 8.8.2005. The injured/eye witnesses while stepping into the witness box had duly supported and proved the prosecution case. The injuries were inflicted by the petitioners and, thus, they were rightly convicted by the Courts below. It has also been stated by the learned State counsel that compared to the nature of injuries and the weapon used, the Courts below have taken a lenient view against the petitioners.

In the present case, the occurrence took place on 8.8.2005. The petitioners were convicted and sentenced by the trial Court vide judgment and order dated 21.11.2011. The appeal preferred by them was dismissed by the Additional Sessions Judge on 15.9.2014 and they were taken into custody. Both the eye witnesses/injured have supported and corroborated testimony of each other and attributed the injuries to the accused-petitioners. Medical evidence is also in consonance with the ocular version of the eye witnesses/injured. Both the Courts below after having scrutinized the evidence on record, have rightly convicted the petitioners for the offences under Sections 326, 323 read with Section 34 IPC. Therefore, in my opinion, in view of the cogent and trustworthy evidence on record, there is no scope for interference in the findings of the Courts below, so far as the conviction part is concerned. Hence, the conviction of the petitioners under Sections 326, 323 read with Section 34 IPC is upheld.

While coming to the sentence part, the petitioners have remained in custody for about 10 months. Taking into consideration that the FIR in this case was registered on 8.8.2005 and the fact that the petitioners have been facing the agony of trial for the last 14 years, in my opinion, no useful purpose would be served by sending the petitioners behind the bars once again, to undergo the remaining sentence. The ends of justice would be suitably met, if the substantive sentence imposed upon the petitioners is reduced to the one already undergone by them. There is no report of misuse of concession of bail by the petitioners and no other case is pending or decided against them.

The purpose of criminal law justice is to bring peace, discipline and harmony in the society. An opportunity has also to be given to an erring

individual to reform himself. The Apex Court in ***Karamjit Singh v. State (Delhi Admn.)***, 2000(3) RCR (Crl.) 561 (SC) : 2001(9) Supreme Court Cases 161 has observed as under :-

"Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the Court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided again within the permissible limits of law."

In view of the above, while upholding the conviction of the petitioners under Sections 326, 323 read with Section 34 IPC, the substantive sentence imposed upon the petitioners is reduced to the one already undergone by them. However, there shall be no

modification in the fine.

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

(HARNARESH SINGH GILL)
JUDGE

April 03, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes