

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

**CRR No.1789 of 2013(O&M)
Date of Decision: 02.03.2020**

Bawa Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Kuldeep V. Singh Ahluwalia, Advocate
for the petitioner.

Mr. J.S. Ghumman, DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. This criminal revision has been remanded back by the Hon'ble Apex Court vide order dated 15.01.2015 on the ground that the order earlier passed by the High Court while reducing the sentence of the petitioner to the period already undergone by him would show that the High Court has not considered the law. Order dated 11.11.2013 passed by the High Court was set aside and the case was remanded back to the High Court to pass a fresh order after taking into consideration the legal

position and after giving an opportunity of hearing to the parties. That is how, the present criminal revision has been listed before this Court.

[2]. Petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 3 years with fine of Rs.1000/- along with default clause under Section 326 IPC and rigorous imprisonment for a period of 1 year with fine of Rs.500/- along with default clause under Section 323 IPC vide order dated 18.08.2011 passed by the trial Court. Both the sentences were ordered to run concurrently.

[3]. Petitioner along with co-accused filed criminal appeal before Sessions Judge, Mansa. The Lower Appellate Court on perusal of material on record, recorded following findings in para Nos.15, 16, 17 and 18:-

“15. The question is whether prosecution has been able to establish beyond shadow of doubt that injury No.2 on the person of complainant was grievous in nature. Dr. Resham Chand Singh PW-6 proved the copy of the MLR Ex.PW-6/A pertaining to Binder Singh complainant. He stated that injury No.2 was caused with sharp edged weapon. He further deposed that he declared injury No.2 as grievous in nature vide his endorsement Ex.PW-6/C. Dr. Resham Chand Singh PW-6 did not depose that he conducted the X-ray examination of the injured. Skiagram is not proved on

the file. Although, Dr. Resham Chand Singh PW-6 gave his report Ex.PW-6/C on the basis of X-ray report, but the Radiologist who conducted the X-ray examination of injury No.2 on the person of Binder Singh was not examined and skiagram was not proved. In the absence of said evidence, it remained unproved on the file that injury No.2 on the person of Binder Singh was grievous in nature. In case State of Haryana Vs. Prem Singh, cited supra, the doctor opined that one injury was dangerous to life on the basis of X-ray report. Radiologist, who X-rayed the injuries, was not examined. X-ray report was not proved. It was held by the Division Bench of our Hon'ble High Court that opinion of doctor could be of no avail and not admissible in evidence and accused was held guilty under Section 324 of the IPC and not under Section 307 IPC. In the case in hand, the doctor, who conducted the X-ray examination of injured Binder Singh, was not examined. So, opinion of the doctor Ex.PW-6/C is not sufficient to come to the conclusion that injury No.2 on the person of Binder Singh was grievous in nature. It is the duty of the prosecution to prove each and every fact beyond shadow of doubt on the file. If there is any doubt then benefit goes to accused. Since, the prosecution failed to prove beyond doubt that injury No.2 was grievous in nature, so I am of the view that the learned trial Court has wrongly decided point No.3 that injury No.2 on the person of Binder Singh was grievous in nature. The accused were wrongly convicted under Section 326 and 326/34 of the IPC whereas the accused were required to be

convicted under Section 324 and 324/34 of the IPC.

16. In the light of above discussion, the conviction of appellant-accused Bawa Singh under Section 326 IPC is set aside and consequently conviction of appellant-accused Labh Kaur under Section 326/34 IPC is set aside. Appellant-accused Bawa Singh is convicted under Section 324 IPC and appellant-accused Labh Kaur is convicted under Section 324/34 IPC. Since, Bawa Singh also caused simple injuries in pursuance of common intention of Labh Kaur on the person of Binder Singh, so conviction of appellants-accused Bawa Singh under Section 323 of the IPC and of Labh Kaur under Section 323 read with Section 34 of the IPC and hereby maintained.

17. The learned counsel for the appellants-accused has pleaded that appellants-accused are poor persons. The case was registered on 31.10.2004. They are facing the wrath of the case for the last nine years. Appellant-accused Labh Kaur is a lady of more than 50 years old. She is suffering from cancer. Only lalkara was attributed to her but no injury was attributed to her. So, benefit of probation be given to the appellants-accused. The learned Public Prosecutor assisted by learned counsel for the complainant has opposed the request.

18. After considering the submissions of learned counsel for the appellants-accused and learned Public Prosecutor for the State assisted by learned counsel for the complainant, I am of the view that Bawa Singh

caused injuries on the person of complainant with a Gandasa and dispute between the parties was already pending so Bawa Singh is not entitled for benefit of probation and said benefit is declined to him. In view of nature of injuries caused by him and weapon used, Bawa Singh is ordered to undergo rigorous imprisonment for a period of 1 ½ years and to pay a fine of Rs.1000/-. In default of payment of fine to further undergo rigorous imprisonment for three months. The fine of Rs.1000/- is already paid by him under Section 326 IPC is ordered to be adjusted. The sentence of imprisonment and fine under Section 323 IPC awarded by the learned trial Court would remain the same.”

[4]. Perusal of the aforesaid findings would show that the petitioner was acquitted for the offence under Section 326 IPC and was convicted for the offence under Section 324 IPC. Petitioner was sentenced to undergo rigorous imprisonment for a period of 1 ½ years and to pay fine of Rs.1000/- along with default clause. Fine already paid under Section 326 IPC was also ordered to be adjusted. The sentence awarded under Section 323 IPC was ordered to remain intact.

[5]. Co-accused Labh Kaur was granted benefit of probation under the provision of Probation of Offenders Act and was ordered to be released on probation under Section 4(1) of the Probation of Offenders Act on furnishing probation bond for certified amount with one surety of the like amount to the

satisfaction of the trial Court. The appeal was partly allowed vide judgment dated 18.03.2013.

[6]. Feeling aggrieved against the order dated 18.03.2013 passed by the Sessions Judge, Mansa, the petitioner has filed criminal revision before the High Court in which sentence of the petitioner was reduced to the period already undergone by him subject to the condition that the petitioner shall make a payment of Rs.20,000/- to the complainant within a period of two months. However, in case, the petitioner fails to pay the said amount within the stipulated period, he shall have to undergo the remaining sentence.

[7]. Feeling aggrieved against the aforesaid order, State of Punjab filed SLP (Crl.) No.5382 of 2014 which was converted into Criminal Appeal No.90 of 2015. The Hon'ble Apex Court has noticed the factual details of the case in para Nos.7 and 8 of the order which are necessary to be reproduced hereasunder:-

“7. Aggrieved by the judgment of the trial Court, the respondent and his wife preferred appeal to the Sessions Court, which noted that there was documentary evidence proving that the accused and the complainant were treated by the same doctor. The presence of the accused at the crime spot was thereby held to be proven. Labh Kaur had no injuries on her

person and the six injuries on the respondent were held to be simple and its non-explanation was, therefore, held to be not fatal to the prosecution case. The Sessions Judge held that though PW-2 and PW-3 reached the spot afterwards, the statement of the complainant was enough to conclude that it was the accused who inflicted the injuries. The Sessions Judge, however, held that the finger injury was erroneously held to have been grievous as the radiologist who conducted the X-ray of the said injury and whose report was relied upon. The Sessions Court set aside the conviction of the accused under Section 326 IPC but upheld their conviction under Section 323 IPC upholding other findings of the trial Court. The Sessions Judge also noted that Labh Kaur was an old lady, who herself had not caused any injury to the complainant and was a first time offender and released her on probation on a bond of Rs.20,000/- after setting aside her sentence of imprisonment with fine. The respondent was however sentenced to imprisonment of one and half years with fine of Rs.1000/-.

8. Aggrieved by the judgment of the Sessions Court, the respondent preferred revision before the High Court. The respondent did not challenge the order of conviction but sought reduction of the sentence awarded to the period of imprisonment already undergone by him. The High Court noted that the respondent had been in jail for 4 months with remission of 15 days and that the incident took place on 30.10.2004 resulting in a trial for 9 years and granted the prayer of the respondent subject to payment of

Rs.20,000/- to the complainant within two months. The revision petition was disposed off accordingly vide the impugned judgment reducing the sentence of the accused-respondent to the period already undergone. Hence, the present appeal by special leave by the State.”

[8]. The Hon'ble Apex Court after noticing the aforesaid factual matrix of the case, recorded the following observations in para Nos.10 and 11 of the judgment:-

“10. We are of the opinion that, in the instant case, after proper appreciation of evidence the trial Court as well as the Sessions Court rightly came to the conclusion that the accused-respondent is not entitled for benefit to probation since he caused injuries on the person of the complainant with Gandasa and dispute between the parties was already pending. We are further of the opinion that the trial Court has not committed any illegality in passing the order of conviction and in the appeal preferred by the accused findings of the trial Court was affirmed. However, without proper appreciation of learned Single Judge of the High Court has taken lenient stand, if not casual and shown undue sympathy by modifying the conviction to the period already undergone.

11. In our considered opinion, the High Court while passing the impugned order has completely failed to follow the principles enunciated by this Court in catena of decisions. Undue sympathy by means of imposing

*inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the society cannot endure long under serious threats. If the Courts do not protect the injured, the injured would then resort to personal vengeance. Therefore, the duty of any Court is to award proper sentence having regard to the nature of the offence and the manner in which it was committed. (See **Sevaka Perumal Vs. State of Tamil Nadu**, (1991) 3 SCC 471)."*

[9]. Evidently, the Hon'ble Apex Court has set aside the earlier order dated 11.11.2013 passed by this Court after holding in para No.10 of the order that the trial Court has not committed any illegality in passing the order of conviction of the petitioner. With the reversal of the order dated 11.11.2013 passed by this Court, the Hon'ble Apex Court has reversed the order of acquittal under Section 326 IPC with a direction to this Court to pass a fresh order after hearing both the parties.

[10]. Notice of motion was issued qua quantum of sentence only on 27.05.2013. Thereafter, vide order dated 16.07.2013, the complainant was ordered to be impleaded as party respondent in the case and notice was issued to the complainant and sentence of the petitioner was ordered to be suspended subject to his furnishing fresh bail bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Mansa.

Thereafter, this Court proceeded to pass the order dated 11.11.2013 on the ground that learned counsel for the petitioner has not challenged the order of conviction, but restricted his prayer only to the extent of quantum of sentence. The prayer was made for reducing the sentence for the period already undergone by the petitioner as he is facing the agony of protracted trial since 2004. This Court upheld the judgments of convictions while taking lenient view by reducing the sentence already undergone by the petitioner who had already undergone 4 months of actual sentence besides earned remissions of 15 days. The injuries attributed to the petitioner were on the knee, index finger and shoulder. The petitioner was armed with gandasa. There was some mis-communication with regard to acquittal of the petitioner under Section 326 IPC by the Lower Appellate Court. The factum of his acquittal by the Lower Appellate Court was not brought to the notice of the High Court at the time of passing of order dated 11.11.2013 and this Court upheld the conviction of the petitioner under Sections 326 and 323 IPC. There was no reference that the sentence was modified by the Lower Appellate Court thereby acquitting the petitioner for the offence under Section 326 IPC and convicted and sentenced the petitioner under Section 324 IPC for a period of one and half years and to pay fine of Rs.1000/- along with default clause.

[11]. Against the order dated 18.03.2013 passed by the Lower Appellate Court, the State did not file any cross revision in the High Court. It is only after passing of the order dated 11.11.2013 in criminal revision filed by the petitioner, State of Punjab ventured to file the aforesaid SLP in the Hon'ble Apex Court, wherein the case has been remanded back to the High Court.

[12]. Since this Court has already upheld the conviction under Section 326 IPC (though on the basis of some uncommunicated material that the Lower Appellate Court has already acquitted the petitioner for the offence under Section 326 IPC and converted the same under Section 324 IPC) and the Hon'ble Apex Court has set aside the lenient view taken by the High Court on the quantum of sentence and has also held in para No.10 that the trial Court has not committed any illegality while passing the order of conviction and the gravity of offence ought not to have been ignored by taking lenient view. This Court upheld the conviction under Section 326 IPC (may be by ignoring the factum of acquittal under Section 326 IPC by the Lower Appellate Court). The Hon'ble Apex Court had upheld the order of the trial Court.

[13]. Learned counsel for the petitioner had confined his prayer only to the extent of quantum of sentence, therefore,

before proceeding further in the case, this Court deems it appropriate to advert to the complicity of the petitioner in the context of inflicting injuries upon the complainant party. Injury No.2 on the person of the complainant was grievous injury. MLR Ex.PW6/A in respect of injury on the person of complainant Binder Singh has been proved by Dr. Resham Chand Singh (PW 6). The said injury No.2 was caused by sharp edged weapon. Doctor declared the said injury as grievous in nature. The statement of doctor in the context of endorsement Ex.PW6/C i.e. declaring the injury to be grievous in nature, was not based on any X-ray report as the doctor did not say anything about the said aspect. Skiagram was not proved on record. Though the opinion was given by the doctor on the basis of X-ray report, but the radiologist who conducted the X-ray was not examined and skiagram was not proved.

[14]. In terms of Section 320 IPC (Eightly), any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits would be grievous hurt. Any enhanced culpability in terms of opinion of the Doctor would be subject to the opinion in terms of sufficiency of injury to cause death in ordinary course of nature.

[15]. Evidently, this Court has also upheld the conviction

under Section 326 IPC and the Hon'ble Apex Court has remanded back this case with an observation to re-decide the issue, therefore, I deem it appropriate to consider the case on the quantum of sentence. As per custody certificate, the petitioner has already undergone about 10 months and 27 days of actual sentence as on date. Petitioner has been granted indulgence by this Court for suspension of sentence even after remand by the Hon'ble Apex Court on the ground of his critical health.

[16]. Vide order dated 15.10.2019, direction was issued to Chief Medical Officer, Civil Hospital, Mansa to constitute a Board and examine the petitioner and send a report. Petitioner was examined by the Medical Board and it was found that he was suffering from COPD with OSA with HTN with PUI. Arterial hypertension. The report of Medical Board reads as under:-

“BP: 145/80 mm of Hg

PR:55/min

RR:24/min

SPO2-92% on room air

CVS-SI, S2 (N) Systolic murmur in tricuspid region(+)

Resp-B/L Wheezing (+), Crepts in Right insfrascapular region”

[17]. Petitioner is a senior citizen and is suffering from aforesaid medical problems and is surviving with the assistance

of the artificial supply of the oxygen.

[18]. Keeping in view the aforesaid medical status of the petitioner, he was directed to be released on interim suspension of sentence on medical ground by this Court vide order dated 17.10.2019 and the said order is still in operation.

[19]. Keeping in view the facts and circumstances of the case, I deem it appropriate to reduce the sentence from 3 years rigorous imprisonment to 1 ½ years rigorous imprisonment with fine of Rs.1000/- in default whereof to undergo rigorous imprisonment for one month under Section 326 IPC. The sentence awarded under Section 323 IPC shall remain intact. Both the sentences are ordered to run concurrently.

[20]. With the aforesaid modification, this criminal revision is disposed of.

02.03.2020

Prince

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No