

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

CRR-48-2020 (O&M).
Date of Decision:-16.08.2021.

Darshan Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Argued by: Mr. P.S. Dhaliwal, Advocate for the petitioners.
Mr. Saurav Khurana, DAG, Punjab.
(Through Video Conferencing)

VIKAS BAHL, J.

The present Revision has been filed by Darshan Singh son of Bant Singh and Harjinder Singh son of Darshan Singh against the judgment dated 09.12.2019 passed by the learned Sessions Judge, Barnala, *vide* which the appeal of the private respondent has been allowed against the judgment dated 03.05.2019 and the petitioners have also been convicted for the offence under Section 452 IPC along with offence under Sections 323 and 325 IPC. Challenge is laid to both the judgments dated 09.12.2019 passed by the learned Sessions Judge, Barnala and the judgment dated 03.05.2019 passed by the Judicial Magistrate Ist Class, Barnala. Prayer has been made for setting aside both the judgments and for acquittal of the petitioners.

The case of the prosecution, in brief, is that on 10.10.2017, a telephonic message was received regarding admission of Niranjana Singh, son of Moti Singh, in injured condition, at Civil Hospital, Tapa. On

account of it being late night, no action could be taken on 10.10.2017 and on the next day i.e., 11.10.2017, ASI Balwinder Singh along with other officials, recorded the statement of the complainant-Niranjan Singh after he was declared fit by the Doctor. Niranjan Singh, in his statement, has stated that petitioner No.1 Darshan Singh was his cousin and his agricultural land was on lease with Darshan Singh and Harjinder Singh. It was stated that four months from the date of occurrence, he had taken possession from the accused Darshan Singh due to which he had a grudge against the complainant. It was further stated by the complainant that on 10.10.2017 when he and his son Dalbir Singh were present at their house, then at about 6:00 p.m., Darshan Singh armed with a wooden stick and Rajinder Singh armed with *ghope* entered their house and attacked the complainant because of which he suffered injuries and his left ankle and left arm were badly injured. The complainant's son Dalbir Singh was also attacked and he also received injuries. The accused persons fled from the spot and on the basis of the statement made by the complainant, FIR No.87 dated 11.10.2017 under Sections 452, 328, 323/34 IPC was registered against the petitioners in Police Station Bhadaur. Charges were framed against the said persons under Sections 452, 323, 325, 506/34 IPC on 16.02.2018. The petitioners pleading not guilty to the same and claimed trial.

The prosecution had examined six witnesses, namely, PW 1 Niranjan Singh (Complainant), PW-2 Dalbir Singh (eye-witness), PW-3 Dr. Jyoti Yadav, PW-4 HC Sukhwinder Singh, PW-5 ASI Balwinder Singh and PW-6 Rajinder Singh. PW-1 Niranjan Singh, complainant, in his evidence,

narrated the story of the prosecution and identified the accused. PW-2 Dalbir Singh, who was an eye-witness also supported the case of the prosecution. PW-3 Dr. Jyoti Yadav, Medical Officer, medico-legally examined Dalbir Singh and found the following injuries on his person:-

“1. Linear lacerated wound approximately. 4-5 x 1-1.5 cm approx present in between right and left parietal region, starting hair line. Advice xray.

2. Linear lacerated wound approximately. 3-4 x 1-1.5 cm approx present over left parietal region. Advice xray.

3. Diffused swelling present at the base of right thumb of hand over dorsal aspect associated with abrasion 0.5 x 0.3 cm present at the base of nail. Advice xray and ortho opinion.”

It was stated in her evidence that weapons used for causing all injuries were blunt in nature and the said injuries were declared as simple. The said PW-3 prepared the MLR and the pictorial diagram showing the seats of injury. She has further stated that she had medico-legally examined Niranjana Singh and found the following injuries on her person:-

“1. Abrasion approx 2 x 1.5 cm present over left parietal region. Advice xray.

2. Diffused swelling present all over middle of left forearm over dorsal aspect associated with linear abrasion 5-6 x 0.5 cm present over dorsal aspect. Advice

xray and ortho opinion.

3. Diffused reddish bruise approx 4-5x 3-4 cm present on postero lateral aspect of left shoulder joint associated with pain. Advice xray and ortho opinion.

4. Lacerated wound 0.5 x 0.2 cm present over left scapular region. Advice xray.

5. Abrasion approx 1 x 0.5 cm, lacerated wound to approx 1.5 x 0.5 cm present over anterior aspect of left leg in lower 1/3rd. Advice xray.

6. Complaint of pain over left ankle joint. Advice xray and ortho opinion.”

It is further stated in her evidence that the weapons used for causing all the injuries were blunt in nature and injury Nos.1, 3, 4 and 6 were simple, whereas, injury Nos.2 and 5 were declared to be grievous. She prepared the MLR and pictorial diagram of the said Niranjana Singh also, which has been duly produced and proved on the record. The prosecution also examined PW-4 Head Constable Sukhwinder Singh, PW-5 ASI Balwinder Singh and PW-6 Constable Rajinder Singh, so as to prove the prosecution version. Learned Judicial Magistrate Ist Class after considering the evidence on record, came to the conclusion that the charges against the accused were proved beyond shadow of reasonable doubt and the presence of the petitioners at the spot was also proved and, thus, the petitioners were convicted under Sections 323, 325/34 IPC. However, the learned Judicial Magistrate, Ist Class acquitted the petitioners for the offence under Section

452 IPC. The following punishment was awarded by the learned JMIC vide his judgment dated 03.05.2019:-

“Convict Darshan Singh

<i>For offences punishable u/s</i>	<i>To undergo Rigorous imprisonment for</i>	<i>And to Pay fine</i>	<i>To further undergo simple imprisonment in default of non-payment of fine</i>
325 IPC	1 years	--	30 days
323/34 IPC	6 months	--	30 days

Convict Harjinder Singh

<i>For offences punishable u/s</i>	<i>To undergo Rigorous imprisonment for</i>	<i>And to Pay fine</i>	<i>To further undergo simple imprisonment in default of non-payment of fine</i>
325 IPC	1 years	--	30 days
323/34 IPC	6 months	--	30 days

“It is made clear that any period of this sentence already undergone by the present convict shall be set off against the sentence awarded. Case property be disposed of after the expiration of period of appeal or revision, if any.”

That against the judgment dated 03.05.2019, two appeals were filed, one by the petitioners and the other by the complainant-Niranjan Singh. The learned Sessions Judge, Barnala, dismissed the appeal of the accused/petitioners against the conviction and sentence but, however, observed that since there was no fine imposed by the learned JMIC, thus, the question of sentence in lieu of payment of fine did not arise and the said aspect of the judgment was set aside. The appeal filed by the complainant

was allowed and the petitioners were held guilty for the commission of offence punishable under Section 452 IPC also. The learned Sessions Judge, Barnala, ordered the petitioners to undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs.25,000/- each and out of the said fine imposed, Rs.20,000/- was ordered to be paid as compensation to the complainant under Section 357 (1) (b) Cr.P.C. The quantum of sentence ordered by the learned Sessions Judge is reproduced hereinbelow:-

“29. I have heard the convicts on sentence.

The convicts prayed that they are not previous convict and are facing the trial since long. They are sole bread winners of their family. So they be treated with leniency. On the other hand learned Public Prosecutor for the State opposed this plea of leniency and prayed for maximum imprisonment for the convicts.

30. Keeping in view the totality of the facts and circumstances of the case as well as nature of the offence committed by the convicts, the convicts are sentenced as under:

<i>U/s. 452 of IPC</i>	<i>To undergo rigorous imprisonment for a period of two years each and to pay fine of ₹ 25,000/- (Twenty Five Thousand only) each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three years each.</i>
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“The sentence awarded by this court as well

as by the trial court shall run concurrently. The period of detention already undergone by the convicts during investigation and trial be set off against the term of substantive sentences. Out of the fine amount imposed upon convicts, amount of . ₹ 20,000/- shall be paid as compensation to the complainant U/s.357(1)(b) of CrPC, but such payment shall be subject to provisions of section 357(2) of CrPC. Copy of this judgment be placed in connected file CNR No.PBBR01-002166-2019 as well as in the trial court file. Record of trial court be sent back and appeal file be consigned to the record room.”

Learned counsel for the petitioners has stated during the course of arguments that he would not challenge the conviction of the petitioners as ordered by the learned Sessions Judge, Barnala, and would be satisfied in case the sentence of the petitioners is reduced to the period already undergone. Learned counsel for the petitioners has submitted that the petitioner No.1 has already undergone 04 months and 23 days of actual sentence, and petitioner No.2 has undergone actual sentence of 07 months and 07 days. The said facts are borne out of the custody certificate, which has been taken on record. It has further been stated that the petitioners have not been involved in any case although they were released on bail/parole even during the pendency of the present case. It has further been stated that the incident is of the year 2017 and the petitioners have suffered the agony of trial. The petitioners are stated to be married and bread winners of their

families. It is stated that petitioner No.1 is 57 years of age and petitioner No.2 is 33 years of age.

Learned counsel for the petitioners has further submitted that the petitioners are ready to compensate the complainant-Niranjan Singh by paying an amount of Rs.30,000/- each totalling Rs.60,000/- in addition to the fine already imposed. Learned counsel for the petitioners submitted that the ends of justice would be met if leniency is shown to the accused petitioners in the matter of sentence. Learned counsel for the petitioners has relied upon decision of this Court in **CRR-1244-2013** decided on 14.01.2019 titled **“Anju @ Naresh and another Vs. State of Haryana”** as well as the judgment of this Court dated 08.03.2010 passed in **CRR-1859-2008** titled **“Gaya Prashad Vs. State of Haryana”**, while praying for reduction of sentence to the period already undergone.

Learned State counsel has re-affirmed the fact that the petitioner No.1 has undergone actual sentence of 04 months and 23 days out of the total sentence of 02 years and petitioner No.2 has undergone 07 months and 07 days of actual sentence out of the total sentence of 02 years. He has not disputed the fact that there is no other case against the petitioners nor the petitioners had ever misused the concession of bail/parole.

This Court has heard learned counsel for the parties and has gone through the judgments passed by the learned Lower Courts and has considered the merits of the case. This Court is of the opinion that the conviction of the petitioners under Sections 325, 323/34 and 452 IPC deserves to be upheld.

The prosecution has been able to establish the guilt of the petitioners beyond reasonable doubt by examining the complainant/injured PW-1 and PW-2 who were also eye-witnesses of the occurrence. The evidence of the Doctor PW-3 proved beyond doubt that injuries have been caused to the petitioners out of which two injuries were grievous injuries with blunt weapon. The fact that the occurrence took place after the petitioners had committed trespass is also proved beyond doubt. Thus, the petitioners have been rightly convicted under Sections 325, 323/34 and 452 IPC. However, this Court finds that the present case is a fit case to reduce the sentence of the petitioners to the period already undergone by them. The FIR is of the year 2017 and the petitioners have suffered agony of trial for the last four years. The petitioners never misused the concession of bail/parole nor were involved in any other case and they are also married and are bread-winners for their family. The petitioners are also ready to compensate the complainant.

It is, therefore, ordered that while maintaining the impugned judgment of conviction dated 09.12.2009, the sentence awarded by the Courts below to the petitioners is reduced to the period already undergone by them. Their bail bonds and surety bonds are discharged. The sentence of fine is enhanced from Rs.25,000/- each to Rs.55,000/- each. Thus, the total amount of fine with respect to both the petitioners would come to Rs.1,10,000/-. Out of the said fine imposed, an amount of Rs.1,00,000/- shall be paid as compensation to the complainant or in case the complainant cannot be found for any reason, then to his son Dalbir Singh. The said

amount of Rs.1,10,000/- (minus any amount, if already deposited) shall be deposited before the learned Trial Court within a period of two months from the date of receipt of certified copy of the present judgment and the learned Trial Court is directed to disburse Rs.1,00,000/- out of the said fine to the complainant-Niranjan Singh son of Moti Singh, resident of Chhanna Road, Bhadaur, Tehsil Tapa, District Barnala, or in case the said complainant cannot be found for any reason, then to his son Dalbir Singh son of Niranjan Singh.

The present Revision Petition is, thus, disposed of with the above modification/observations. It is, however, made clear that if the petitioners fail to deposit the aforesaid amount within the stipulated time, then this petition shall be deemed to have been dismissed with no further orders.

Since the main Revision has been disposed of, pending Civil Miscellaneous Applications, if any, also stand disposed of.

(VIKAS BAHL)
JUDGE

August 16 , 2021.

sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes