

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-38494-2019 in/and
CRA-S-2285-SB-2009
Reserved on : 3.8.2022
Date of Decision: 25.8.2022

Joginder Singh and others

....Appellants

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present at the time of arguments :

Mr. Ashu Kaushik, Advocate,
for the appellants.

Ms. Jaspreet Kaur, AAG, Punjab.

KARAMJIT SINGH, J.

Present appeal has been filed by the appellant/accused against the judgment and order dated 30.7.2009 passed by the Court of Additional Sessions Judge, Nawanshahr whereby the appellants were convicted and sentenced along with other accused persons as follows in criminal case having FIR No.74 dated 21.5.2003 registered under Sections 307, 323, 341, 506, 148, 149 IPC at Police Station Balachaur : -

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
148 IPC (All the accused including appellants)	RI for two years each	₹ 1,000/- each	One month RI each

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
323 IPC (Appellants Joginder Singh and Arjun Singh)	RI for one year each	₹ 1,000/- each	One Month RI each
323 IPC read with Section 149 IPC (Surinder Singh appellant, Ram Parvez, Niranjana Singh and Rama Shankar)	RI for one year each	₹ 1,000/- each	One month RI each

All the sentences were ordered to run concurrently.

Brief facts of the case are that FIR in this case was registered on the basis of statement of PW Ram Bias Singh who at that time was working as Senior Engineer in felting shop of DCM factory, Aasron. In his statement PW Ram Bias Singh alleged that on 20.5.2003, he went to attend his duty in the factory and on completion of his duty, he started for home on his Hero Honda Motorcycle at about 12 in the midnight. When he reached outside the main gate of the factory at about 12:20 a.m., he was intercepted by Ram Parvez, Joginder Singh @ Ranan, Surinder Singh (since dead) resident of Mazari Jattan, Surinder Singh resident of village Gahoon, Arjun Singh and Rama Shankar. Ram Parvez was empty handed while his companions were armed with sticks and all of them started saying that they are leaders of the workers union of DCM factory and have come to know that the complainant was harassing the workers who are working in the factory. Then Surinder Singh resident of Mazari Jattan raised *lalkara* that the complainant be not spared and then he gave stick blow which hit on the backside of the head of the complainant. Surinder Singh resident of village

Gahoon gave repeated blows with his stick, hitting on the back of his right and left shoulders while Joginder Singh gave stick blow on the right side of the back of the complainant and Arjun Singh gave stick blow which hit on the left side of his forehead, while Rama Shankar gave stick blow which hit on the right side of the forehead of the complainant. The complainant raised alarm and in the meantime, all the accused persons gave fist blows to the complainant and thereafter, fled away from the spot along with their respective weapons, after extending threats to him. The aforesaid occurrence was witnessed by PW Ajaib Singh Security Guard and one Surinder Singh son of Subedar Singh. The complainant was taken to Civil Hospital, Ropar for his medical treatment.

In pursuance of the registration of FIR, Investigating Officer inspected the place of occurrence and prepared its rough site plan and also recorded statements of PWs under Section 161 Cr.P.C. Accused Joginder Singh, Ram Parvez and Surinder Singh were arrested by the police on 16.7.2003. Accused Arjun Singh was arrested on 23.5.2003 and accused Rama Shankar was arrested on 21.11.2003. Subsequently, accused Surinder Singh resident of village Mazari Jattan was arrested by the police on 3.12.2003. After completion of investigation, challan was presented in the Court of Illaqa Magistrate. The case was committed to the Court of Sessions vide order dated 30.1.2004.

The trial Court framed charges under Section 148, 307, 341, 323 read with Section 149 IPC to which the accused did not plead guilty.

The prosecution examined PW1 Constable Kulwaran Singh, PW2 Ajaib Singh, PW Ram Bias Singh, PW3 ASI Rajiv Kumar, PW4

Jatinder Pal Singh, PW5 SI Naveenpal Singh and PW6 Dr. Harkirat Singh. The prosecution gave up PW Surinder Singh, PW Dr. Subhash Chander, Radiologist, PW Dr. D.S. Sodhi being unnecessary.

During the trial, Surinder Singh son of Ajmer Singh resident of village Mazari Jattan died and proceedings against him were abated vide order dated 9.7.2009.

The accused were examined under Section 313 Cr.P.C. They denied all the incriminating circumstances appearing against them in the prosecution evidence and pleaded innocence and took plea that they have been falsely implicated in this case being union leaders.

After hearing the Public Prosecutor for the State and the defence counsel, the trial Court convicted and sentenced all the accused as has been detailed in the opening paragraph of this judgment.

Being aggrieved, the present appeal has been filed by appellants-Joginder Singh, Arjun Singh and Surinder Singh.

I have heard the counsel for the appellants and the State counsel and gone through the record of the trial Court.

Counsel for the appellants while assailing the impugned judgment submitted that all the accused persons including the appellants were members of the workers union of DCM Factory, Aasron while complainant-Ram Bias Singh was working as Senior Engineer in the said factory. It was further contended that the accused persons used to raise voice against the management of the said factory regarding the rights of the workers and due to the same reason, senior officers of the said factory including the complainant were nursing grudge against the accused persons.

He further submitted that only due to this reason, the appellants and other accused persons were falsely implicated in the present case.

Counsel for the appellants further contended that as per prosecution version, PW2 Ajaib Singh who was on duty as a security guard on the main gate of the factory, witnessed the alleged occurrence. However, while appearing in the witness box, PW2 Ajaib Singh clearly stated that it was night time and there was darkness and the occurrence lasted for about one minute and that the accused persons were having muffled faces and further admitted that he did not participate in any test identification parade of the accused persons. Counsel for the appellants further contended that in the absence of any test identification parade and it being total dark at the time of the occurrence, it is highly improbable that complainant-Ram Bias Singh and PW2 Ajaib Singh were able to identify the miscreants who attacked the complainant at the time of the alleged occurrence.

Counsel for the appellants further submitted that even otherwise, complainant and PW2 Ajaib Singh being employees of DCM factory were interested witnesses and in the absence of any independent corroboration, their testimonies could not be believed.

Counsel for the appellant further submitted that the occurrence in question took place at about 12.00 in the midnight of 20/21.5.2003. That whereas the FIR was registered at about 4.00 PM on 21.05.2003 and thus, there was unexplained delay in registration of FIR.

On the other hand learned counsel for the State supporting the impugned judgment, submitted that the ocular version given by complainant Ram Bias Singh and PW2 Ajaib Singh is fully corroborated by the medical

evidence and that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants and other accused persons vide impugned judgment which calls for no interference by this Court.

I have considered the contentions advanced by both the sides.

Complainant-injured Ram Bias Singh while appearing in the witness box clearly deposed that at the time of the occurrence which took place at about 12.20 midnight of 20/21.05.2003, he was coming back to his house on his motorcycle after attending his duties in DCM Factory Aasron on his motorcycle and in the way he was waylaid by the accused persons namely Ram Parvez empty handed, Joginder Singh, Surinder Singh, Arjun Singh, Rama Shankar and one another Surinder Singh armed with wooden sticks and they started proclaiming that he be taught lesson for harassing the workers of the factory and Surinder Singh (since deceased) raised lalkara that he be not sparred and then all of them attacked him and caused injuries on his person and complainant further deposed that he identified all the accused in the light of electric bulb which was glowing at the spot. The complainant also proved his statement Exhibit PA which was recorded by the police with regard to aforesaid occurrence. This apart PW2 Ajaib Singh who was on duty at the main gate of the factory as a security guard also corroborated the testimony of complainant-injured Ram Bias Singh with regard to material aspects of the case.

PW6 doctor Harkirat Singh who medico-legally examined the complainant-injured Ram Bias Singh on 21.05.2003 in civil hospital Ropar, proved medico-legal report Exhibit PD and pictorial diagram Exhibit PD/1.

From the perusal of exhibit PD, it is evident that complainant-injured reached the said hospital at about 1.15 am on 21.05.2003 and the following injuries were found on his person:-

1. 3 cm long lacerated wound skin deep in left parietal region. Advised X-ray and CT Scan.
2. Multiple contusions blue coloured varying from 2 inches to 6 inches in size on both shoulders.
3. Complained of pain on left shoulder joint. Advised X-ray.
4. Complained of pain on right lumbar region. There was contusion of red colour and swelling.
5. 1 cm abrasion on right temple.
6. 1x .3 cm abrasion lateral to left eye.

All the injuries were caused with the blunt weapon and injuries no.2 and 6 were found to be simple in nature while the other injuries were kept under observation subject to x-ray examination and the probable duration of injuries was within 2 to 6 hours. Admittedly the prosecution failed to examine the concerned doctor who conducted x-ray examination and as such, all the injuries were rightly treated as simple in nature by the trial court. No suggestion was put to PW6 that the aforesaid injuries were self suffered or were caused by friendly hand.

The Investigating Officer while appearing in the witness box as PW5, testified that on 21.05.2003 he received message regarding admission of injured Ram Bias Singh in civil hospital Ropar and then he went to said hospital and recorded the statement Exhibit PA of the injured and consequently FIR Exhibit PA/2 was recorded in this case.

From the above it stands proved that immediately after the

occurrence, complainant injured Ram Bias Singh was taken to civil hospital, Ropar where he was medico legally examined by PW6 and information was also sent to the concerned police station and on receiving the said information PW5 reached the said hospital and recorded the statement of complainant-injured Exhibit PA and resultantly FIR Exhibit PA/2 was registered in this case. PW5 also proved the investigation part including the rough site plan of the place of occurrence Exhibit PE which was prepared by him after inspecting the spot. The delay, if any, in lodging of FIR stands fully explained. The accused persons have not led any evidence in their defence to show that complainant-injured Ram Bias Singh was nursing grudge against them or that they have been falsely implicated in this case.

So it stands proved that Ram Parvez (empty handed), Joginder Singh, Surinder Singh, Arjun Singh, Rama Shankar and one another Surinder Singh (since deceased) armed with wooden sticks constituted unlawful assembly and in furtherance of their common object caused simple injuries to complainant-injured Ram Bias Singh at the time of the aforesaid occurrence and at that time Joginder Singh, Surinder Singh, Arjun Singh, Rama Shankar and Surinder Singh (since deceased) were armed with blunt weapons (wooden sticks). Thus, trial Court rightly convicted all the accused persons including the appellants under Section 148 IPC, Joginder Singh and Arjun Singh under Section 323 IPC and the remaining accused under Section 323 read with Section 149 IPC. Accordingly, the conviction of the appellants is hereby upheld.

The occurrence in question took place about 19 years back in the year 2003 and since then, the appellants are facing protracted trial which also includes time taken for disposal of the present appeal. Further there is no evidence on record to show that the appellants are previous convicts. Thus, taking into consideration the fact that the appellants are first offenders and have faced protracted trial, I deem it fit to grant the concession of probation to them, while keeping in view the nature of the injuries caused by them and the facts and circumstances of the case.

Consequently, the present appeal is partly allowed and while upholding, the judgment of conviction passed by the learned trial Court, the appellants are hereby ordered to be released on probation of good conduct for a period of one year on their furnishing personal bond each in the sum of ₹25,000/- with one surety each in the like amount to the satisfaction of the trial Court undertaking therein that during the period of probation, the appellants shall maintain good behaviour and shall not indulge in any criminal activity and would come and receive sentence during the said period on breach of any of the conditions of the bond and the requisite probation bonds be furnished before the learned trial Court within a period of one month from today, failing which, this appeal shall be deemed to have been dismissed.

(KARAMJIT SINGH)
JUDGE

August 25, 2022
Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No