

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

208

CRM-A-2483-2019
Date of decision: 03.08.2022

Gurnam Singh

....Applicant/Appellant

Versus

Jarnail Singh and others

...Respondents

**CORAM : HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present : Mr. Ajay Kumar, Advocate for
Mr. Rishu Mahajan, Advocate for the applicant/appellant.

ASHOK KUMAR VERMA, J.

1. The applicant/appellant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 02.03.2019 passed by the learned Additional Sessions Judge, Jalandhar in CIS Case No.CRA-56-2018 titled as 'Jarnail Singh and others Vs. State of Punjab' whereby the accused/respondents were released on probation.

2. Brief facts of the case giving rise to this appeal are that the instant case has been registered on the statement of Gurnam Singh in which he stated that he is resident of village Bhullar. There is one plot adjoining to the house of accused Jagdish Singh to which he wants to forcibly possessed, regarding which parties agreed to compromise. On 21.10.2012 his aunt Mohinder Kaur called him and his brother Sodhi at Village Sohal Jagir for compromise. At about 12:30 p.m. when he and his brother reached near the plot, accused Jagdish Singh armed with *dattar*, accused Jarnail Singh armed with *dang*, accused Gurdev Singh, Bhupinder Singh and Joginder Singh

empty handed came at the spot. Accused Jagdish Singh gave *dattar* blow on his left forearm. Accused Jarnail Singh gave *dang* blow on his right shoulder. Accused Gurdev Singh gave brick blow on right side of his chest and remaining accused also gave pushes and blows to him. Thereafter, his brother admitted him in Civil Hospital, Nakodar.

3. On the basis of aforesaid statement, the FIR was registered. Investigation was carried out. The accused/respondents were arrested. After completion of investigation, the challan was presented in the trial Court and the accused/respondents were charge-sheeted under Sections 323, 326, 148 and 149 of the IPC to which they pleaded not guilty and claimed trial.

4. After hearing learned counsel for the parties and going through the evidence, learned Judicial Magistrate Ist Class, Nakodar vide judgment of conviction and order of sentence dated 09.01.2018 convicted and sentenced the accused/respondents as under:-

Under Sections	Imprisonment for	Fine Rs.	In Default Imprisonment for
Jagdish Singh			
148 IPC	01 year	200/-	07 days
326 IPC	02 years	300/-	07 days
323 IPC	01 year	200/-	07 days
Jarnail Singh, Gurdev Singh, Bhupinder Singh and Joginder Singh			
148 IPC	01 year	200/-	07 days
326 r/w 149 IPC	02 years	300/-	07 days
323 IPC	01 year	200/-	07 days
All the sentences shall run concurrently.			

5. Against the above-said judgment dated 09.01.2018, the accused/respondents have filed appeal before the Court of Sessions which was partly allowed by learned Additional Sessions Judge, Jalandhar vide judgment dated 02.03.2019. The accused/respondents were acquitted for

the offence under Section 326 IPC and order of sentence dated 09.01.2018 qua the offences under Sections 323, 148 and 149 IPC was modified to the extent that the accused/respondents have been ordered to be released on probation under Section 4(1) of the Probation of Offenders Act for a period of 01 year after furnishing personal bonds in the sum of Rs.50,000/- each with one surety each in the like amount with the conditions that the respondents will keep and maintain peace and be of good behavior during this period of 01 year.

6. Being aggrieved by and dissatisfied with the impugned judgment dated 02.03.2019, present application for grant of leave to appeal has been filed by the applicant/appellant.

7. Learned counsel for the applicant/appellant has argued that the findings recorded by the Appellate Court in the impugned judgment are totally wrong and baseless. The Appellate Court did not properly appreciate the prosecution evidence. The impugned judgment acquitting the accused/respondents under Section 326 IPC and releasing them on probation is illegal and perverse. Therefore, leave to appeal against the impugned judgment may be granted.

8. Heard.

9. Before advertng to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of

innocence is available to him under the Fundamental Principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the Trial Court.

10. A perusal of file shows that although the doctors had declared the injury No.1 alleged to have been suffered by the complainant-Gurnam Singh on his forearm as *grievous*, but Gurnam Singh has nowhere stated that where he suffered the *datar* blow. The MLR Ex-PW5/A shows that injury No.1 was caused with sharp weapon and injuries No.2 and 3 were with blunt weapon and x-ray was advised for all the said three injuries. It is in the opinion of Dr. Ajay Gupta (PW-4), Dr. Anuradha Malhotra (PW-5) and Dr. Rakesh Kumar, Ex-PW4/A that the injury No.1 has been declared to be grievous. Further, the same doctors have declared injuries No.2 and 3 simple in nature. The said doctors have given both the opinions on the basis of x-ray report submitted by Dr. Jatinder Pal Singh, Radiologist (PW-7). Whereas, Dr. Jatinder Pal (PW-7) in his opinion Ex-PW7/A has nowhere stated injury No.1 to be grievous. Moreover, Dr, Jatinder Pal (PW-7) while stepping into the witness box has also not stated any injury to be grievous in nature. The report of Dr. Jatinder Pal Ex-PW7/A mentions that "*For injury No.1 the linear breaks in cortex with irregular outline was seen in radius at about 4 cm above the wrist joint and in ulna at about 6 cm above wrist joint and obliquely directed*", which does not fall under the category of grievous injury. Therefore, learned Additional Sessions Judge, Jalandhar vide impugned judgment dated 02.03.2019 has rightly observed that offence

under Section 326 IPC was not made out from the medical evidence on record. In this context reference can be made to the judgment passed by this Court in the case of **State of Punjab Vs. Kaka Singh & Others : 2008(1) AICLR 138**, wherein it was held that "*it transpires that the injuries were grievous for reason that tendon of the index finger was cut and underline muscles were cut. The cut of the tendon or the muscles does not fall within the purview of any of the clauses of Section 320. No specific opinion was recorded by the doctor as to on what basis he declared these injuries as grievous in nature.*" Since the oral evidence given by the complainant-Gurnam Singh and his brother Sodhi Singh does not corroborate the medical evidence regarding grievous injury, the accused/respondents cannot be held guilty of causing grievous injury.

11. So far as the release of accused/respondents under Sections 323, 148 and 149 of the IPC on probation for a period of 01 year is concerned, keeping in view the facts that both the parties are residents of same village, all the accused/respondents are first offenders and not habitual offenders and nature of offences under which the accused/respondents were convicted, the order of release them on probation under Section 4(1) of the Probation of Offenders Act cannot be faulted with and said to be unreasonable.

12. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. Reference in this regard be made from the judgment of Hon'ble Supreme Court passed in the case of **State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463**.

13. In view of above, no case is made out for interference in the impugned judgment dated 02.03.2019 passed by learned Additional Sessions Judge, Jalandhar. Accordingly, the present application filed under Section 378(4) of the Cr.P.C., being devoid of merits, is hereby dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

03.08.2022

Kothiyal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No