

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3880-2012 (O&M)
Date of Decision: 19.04.2023

Shera Ram & Ors.

... Petitioners

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. GP Singh, Advocate for the petitioners

Mr. GS Dhillon, AAG Haryana

Sandeep Moudgil, J.

1. This criminal revision petition has been preferred by the petitioners against the judgment dated 30.11.2012 passed by the Addl. Sessions Judge, Fatehabad and the judgment of conviction and order of sentence dated 01.09.2010 and 03.09.2010, respectively, passed by ACJM, Fatehabad vide which the petitioners have been convicted under Section 323/325/506(II) IPC read with Section 34 IPC and sentenced to undergo RI for a period of 4 months, 2 years and 2 years, respectively, in case FIR No.200 dated 16.05.2004, registered at Police Station Sadar Fatehabad.

2. On 16.5.2004, on receipt of V.T. message from police station Sadar, Fatehabad regarding admission of Buta Ram, Guro Bai and Lekh Raj at General hospital, Fatehabad, ASI Rajender Singh along with other police officials visited General Hospital, Fatehabad and after taking opinion of the duty doctor recorded the statement of injured Buta Ram to the effect that he had his fields in village Ahlisadar and he had constructed his house in the fields. He had 1/10 share in the tubewell of Harbans Lal Mahajan from where they used to irrigate their fields. There was a dispute regarding sharing of the water from the

tubewell with Shera Ram etc for which a civil suit was pending at civil Court, Fatehabad. His house was situated 8-10 acre away from the tubewell in question. On that day, he alongwith his wife Guro Bai and son of Lekh Raj had gone to tubewell room to irrigate their paddy sapling. Shera Ram had already taken water from the common tubewell. When he started tubewell, Sher Ram son of Kishan Chand asked him why he had started the tubewell on which he (the complainant) replied that he being the co- owner of the tubewell had every right to start it on which Shera Ram got angry. He went to tubewell room and came with a gandasi in his hand, Harnam son of Kishan Chand armed with gandasi, Madan and Bittu armed with lathis in their hand came there. They all asked why he started the tubewell and Sher Ram gave a gandasi blow from reverse side on his left thumb. Harnam gave a gandasi blow on the left forearm of Lekh Raj. Harnam gave second gandasi blow on his back. Madan gave lathi blow on left elbow of Lekh Raj, Shera Ram gave gandasi blow from reverse side near the temporal region of Lekh Raj. Bittu gave a lathi blow on the right hand of Lekh Raj. When Guro Bai tried to rescue them, Shera Ram gave a lathi blow from reverse side on her head. Harnam gave a gandasi blow on the right foot of his wife. After that Sher Ram and Harnam asked that in future they would be killed if they tried to take water from that tubewell. After that they were got admitted in the hospital. On the basis of the statement Ex.PW2/A, a report was made by Investigating Officer and sent for registration of case on which FIR was lodged. Medico-legal examination of the injured were got done. Opinion of the doctor was sought. Investigating Officer visited the site of incident and prepared rough site plan Ex.PW3/E. Statement of witnesses under Section 161 CrPC recorded. Accused were arrested. After usual investigation,

the police found sufficient grounds to proceed against the accused and as such, final report under Section 173 Cr.P.C. was submitted in the Court of learned Area Magistrate to face trial.

3. The trial court vide judgment dated 01.09.2010 convicted all the accused persons and sentenced the petitioners to undergo RI for four months under Section 323 IPC, RI for two years under Section 325 IPC and RI for two years under Section 506(II) IPC. The petitioners challenged the said judgment/order before the appellate Court, however, their appeal too has been dismissed vide judgment dated 30.11.2012. Hence, this petition.

4. Learned counsel for the petitioners argued that it is not disputed that there was a tubewell which was jointly used by the complainant party as well as accused. He pointed out that it is also not disputed that in a scuffle the accused as well as the complainant party received injuries. However, the injuries sustained by the accused have not been explained by the complainant/injured. Thus, they have suppressed the genesis of the incident. He further pointed out that in this case the prosecution has miserably failed to show that it was the petitioners who were aggressor in this case. The courts below have not been able to reach at this decision. He argued that the Investigating Officer had admitted that the dispute relates to tubewell.

5. It is further contended that the petitioners also suffered injuries on their person. The petitioners suffered three injuries, one of which is incised wound. The petitioner Harnam suffered two injuries and petitioner Madan suffered one grievous hurt on his right thumb. All these injuries cannot be self inflicted. He further pointed out that when the courts below was not able to find out which party was the aggressor, it was safe course to acquit both the parties

and for this purpose he relied on case titled **Joginder Singh Vs. Avtar Singh, 2000(1), RCR (Crl.) 7** and **Mohinder Singh Vs. The State, (1973-77) Suppl. C.L.R. 581, Raghbir & Ors. Vs. The State of Haryana, 1984(2), C.L.R. 501.**

6. On the other hand, learned State counsel submits that in this case it was the petitioners who inflicted injuries on the person of complainant Buta Ram etc. He pointed out that in fact Sher Ram, Harnam, Madan did not suffer any injury on their person. They have shown the infliction of injuries in collusion with doctor.

7. I have heard learned counsel for the parties and gone through the record.

8. Since this case is connected and cross-case related to same incident, wherein another FIR bearing No.200 dated 16.05.2004 and also that the parties to the dispute are closely related, without going further into the merits, the detailed order of even date passed in **CRR-58-2013 titled as Lekhraj vs. State of Haryana** after going through in details minutely considering the custody period, the relationship among the parties to the dispute and custody period as well as conduct, Lekhraj accused in that FIR has been ordered to be released on probation, though upholding the conviction, I do not find any other distinguishing fact or circumstance to deviate from those findings and therefore, order the release of petitioners-accused in the instant petition namely Shera Ram, Harnam Chand, Madan Lal and Suresh Kumar @ Bittu, who have undergone more than four months of custody out of total two years conviction deserve a concession to be granted under the provisions of Probation of Offenders Act, 1958, since there is no previous conviction against any of the accused-convict either alleged or proved and also considering the other relevant

facts, it is hereby ordered that benefit of probation to the petitioners is to be granted, though conviction is upheld. In this way, the petitioners are ordered to be released from the conviction by reducing the sentences awarded to them to the extent actually undergone by them.

9. Such direction will however be with a rider that fine amount shall be paid as originally awarded by the trial Court and be disbursed to the complainant or his family members.

10. Ordered accordingly.

11. The revision, is thus, disposed of.

12. The petitioners are on bail. They are released in terms of observations recorded hereinabove.

19.04.2023

V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No