

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-4339-2017(O&M)

Date of Decision:-01.05.2023

Kulwinder Singh @ Laddu & Ors.

.....Petitioners.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vivek Goel, Advocate for the Petitioner.

Mr. Sanish Girdhar, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The instant revision petition has preferred by the petitioners-accused against the judgment dated 24.10.2017 passed by Additional Sessions Judge, Moga whereby the judgment of conviction and order of sentence both dated 01.03.2017 passed by Judicial Magistrate Ist Class, Nihal Singh Wala has been upheld.

2. The brief facts of the case are that on 22.06.2014 information was received from MHC Police Station Badhni Kalan that Dalip Singh son of Joginder Singh, resident of village Rauke Kalan was admitted in civil hospital Nihal Singh Wala, having received injuries upon his person and accordingly the police party reached the said hospital, from where they came to know that the patient had already been referred to civil hospital Moga. Thereafter on 23.06.2014, HC Iqbal Singh along with H.C. Shokin Singh went to civil hospital Moga and sought an opinion from the doctor as to the condition of the patient to give a statement. The doctor declared the patient fit to give a statement. The injured/complainant Dalip Singh got recorded his statement to the effect that on 21.06.2014 at about 7.00 PM, he was returning after planting paddy in the field of Tara Singh and when he was about 02 acres behind from the gate of their village, 08/09 persons came on

four motor cycles including accused Jassi son of Makhan Singh armed with a hockey, Soni son of Darshan Singh armed with a *Khanda*, Gurja son of Chamkaur Singh armed with a baseball, Kulwinder Singh son of Pappu Singh armed with a *dang*, Kaka Singh son of Teetu Singh empty handed, all residents of village Rauke Kalan. Kaka Singh raised a *lalkara* to teach him (complainant) a lesson as his friend had enticed the sister of accused Soni. On his initiation, accused Jassi Singh gave two hockey blows on his legs, which hit on his right leg and above the right knee. Accused Soni gave two *Khanda* blows on his legs, which hit on his left leg inside the knee and the second blow struck above the knee on the upper thigh. Accused Gurja Singh gave a baseball bat blow, which hit on his right elbow. He fell down on the ground. Then accused Kulwinder Singh gave two *dang* blows on his him, which hit on his left arm below the elbow. The other unidentified persons were standing there all the while to help these accused. He raised a hue and cry for help, hearing which his brother Roop Singh and Veer Singh came at the spot and all the accused persons fled away from the spot on the motor cycles along with their respective weapons. He was got admitted in civil hospital, Nihal Singh Wala by his brother Roop Singh and Veer Singh, from where he was referred to Civil Hospital, Moga.

3. The statement after recording was read over and explained to the complainant, who after admitting the same to be correct, appended his signature in Punjabi, which was attested by HC Iqbal Singh. From the statement and the MLR of complainant, offences punishable under Section 323 read with Section 149 of Indian Penal Code were found to be made out against the accused and after receiving the X-Ray report, FIR NO.84 dated 09.07.2016, under Section 325, 323, 148, 149 of Indian Penal Code was registered against the accused. HC Iqbal Singh visited the spot, inspected the same and prepared a visual site plan of the place of occurrence. The accused were arrested. After completion of investigation, the challan under Section 173 Cr.PC was presented in Court against them.

4. On appearance of the accused in the Court, copies of the challan and all the other documents upon which the prosecution relied, were supplied to the accused as envisaged under Section 207 Cr.PC free of cost and finding a *prima facie* case, charge for offences punishable under Sections 148, 325, 323, 506 and 149 IPC were framed against the accused to which they pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined Dalip Singh (complainant of the present case) as PW-1 who in his statement has reiterated the prosecution case and proved his statement as Ex.P-1.

The prosecution further examined Roop Singh (eye witness of the present case) as PW-2, who in his statement reiterated the prosecution version.

The prosecution examined HC Iqbal Singh No.341/Moga (Investigating Officer of the present case) as PW-3, who in his statement reiterated the version of the prosecution story and proved the statement of the complainant as Ex.P-1, police endorsement as Ex.P-2, FIR as Ex.P-3, site plan as Ex.P-4, grounds of arrest memo of accused Nirbhai Singh @ Kaka, Kulwinder Singh, Partap Singh, Gurjpal Singh and Harwinder Singh @ Jassi as Ex.P-5 to Ex.P-9, recovery memo of dang from accused Kulwinder Singh as Ex.P-10, copy of the recovery memo of motor cycles in case bearing FIR No.103 dated 17.07.2014, P.S. Nihal Singh Wala as Mark-A.

The prosecution further examined Dr. Swati Saini, Medical Officer as PW-4, who deposed that on 21.06.2014 she was working as Medical Officer at CHC Nihal Singh Wala. On that day she had examined Dalip Singh son of Joginder Singh aged 26 years male r/o Rauke Kalan and had found the following injuries:-

- (i) Abrasion 3 cm x 0.1 cm bleeding present on the posterior aspect of left fore-arm 5 cm below elbow joint.
- (ii) Diffuse swelling red in colour present on left fore-arm
- (iii) Abrasion 4cm x 2cm present on lateral side of right fore-arm 15cm from elbow joint associated with diffuse swelling.
- (iv) Multiple lacerated wounds 4 in number ranging from 1 cm x .2 cm to 2 cm x 1cm skin deep on left leg active bleeding present.
- (v) Lacerated wound 1.5 cm x 1cm present on right leg 20 cm from medial malleolus on anterior side bleeding present.
- (vi) Lacerated wound 1cm x 1cm on anterolateral thigh active bleeding present, wound 6 cm from upper margin of patella.
- (vii) Lacerated wound 1.5 cm x 1 cm, muscle deep on anterior aspect of left leg 8 cm from later malleolus active bleeding present.

X-Rays were advised for all injuries. Weapon used for all the injuries were blunt. Probable duration of all the injuries were within 06 hours. Thereafter, she received X-Ray report Ex.P-13 of Yashpal Aggarwal

on the basis of which she declared injuries No.3,4,5 & 7 as grievous and remaining injuries were declared as simple.

She proved the carbon copy of MLR as Ex.P-11, pictorial diagram showing the seats of the injuries as Ex.P-12, report of Dr. Yashpal Aggarwal as Ex.P-13 and her supplementary report as Ex.P-14.

The prosecution further examined Dr. Yashpal Aggarwal, Senior Medical Officer, CHC Nihal Singh Wala, District Moga as PW-5 who deposed that on 07.07.2014, he reported on the X-ray films, which were done at Civil Hospital Moga by the radiographer Kulwant Singh and were identified by Dr. Sanjay Dogra. The report was as under:-

- (i) X-ray right forearm with elbow joint and wrist joint AP and lateral view- fracture of right ulna in its upper half was seen
- (ii) X-ray left forearm with elbow and wrist joint AP and lateral view- no bony injury was seen.
- (iii) X-ray right leg with knee and with ankle joint AP and lateral view- fracture right tibia and fibula in its upper 1/3rd and fracture right fibula in its lower 1/3rd with fracture lateral malleolus was seen.
- (iv) X-ray left leg with knee and ankle joint AP and lateral view- multiple fractures in the left tibia and fibula was seen.
- (v) X-ray right knee with thigh AP and lateral view- no bony injury was seen.

He proved his report as Ex.P13 and relevant skiagrams as Ex.P-15 to Ex.P-23.

No other witness was examined by the prosecution and the A.P.P for the State closed the prosecution evidence by making a separate statement.

The statements of the accused were recorded under Section 313 Criminal Procedure Code and all the incriminating evidence brought on record by the prosecution was put to the accused. They denied the prosecution version and submitted that they were innocent and had been falsely implicated in the present case.

No witness was examined by the accused in their defence they and they closed their defence evidence by making separate statement.

6. Based on the evidence lead all the accused came to be convicted and sentenced as under:-

Name of Convict	Offence	Imprisonment	Fine	In default of payment of fine
Kulwinder	U/S 325 read	Three Years RI	Rs.7,000/-	Two Months RI

Singh @ Laddu	with Section 149			
	IPC			
	U/S 506 read with Section 149	One Year RI	Rs.1,000/-	Two Months RI
	IPC			
	U/S 148 IPC	Three Years RI	Rs.1,000/-	Two Months RI
	U/s 323 read with Section 149 IPC	One Year RI	Rs.1,000/-	Two Months RI
	U/S 325 IPC	Three Years RI	Rs.7,000/-	Two Months RI
	U/S 506 read with Section 149	One Year RI	Rs.1,000/-	Two Months RI
	IPC			
	U/S 148 IPC	Three Years RI	Rs.1,000/-	Two Months RI
Harwinder Singh @ Soni	U/s 323 read with Section 149 IPC	One Year RI	Rs.1,000/-	Two Months RI
	U/S 325	Three Years RI	Rs.7,000/-	Two Months RI
	IPC			
	U/S 506 IPC	One Year RI	Rs.1,000/-	Two Months RI
Nirbhai Singh @ Kaka	U/S 148 IPC	Three Years RI	Rs.1,000/-	Two Months RI
	U/s 323 read with Section 149 IPC	One Year RI	Rs.1,000/-	Two Months RI
	U/S 506 IPC	One Year RI	Rs.1,000/-	Two Months RI
	U/S 148 IPC	Three Years RI	Rs.1,000/-	Two Months RI

All the aforesaid sentences were ordered to run concurrently.

7. The accused filed three separate appeals. The judgment of the Trial Court was affirmed and accused Kulwinder Singh @ Kala, Harwinder Singh @ Soni and Nirbhai Singh @ Kaka were ordered to be taken into custody to undergo the remaining period of sentence awarded to them. Partap Singh @ Jassi had failed to appear in the Court during the appellate proceedings. He was ordered to be proceeded against as per law.

8. The present petition has been filed on behalf of the convicted accused against the aforementioned judgments of conviction.

9. The Counsel for the petitioners contends that there is a delay of 18 days in registration of FIR. The medical evidence was not in consonance with ocular account. The prosecution witnesses were discrepant in material particulars and since the case had not been established beyond reasonable doubt, the petitioners ought to be acquitted for having committed the offences in question.

10. The Counsel for the State on the other hand contends that the offences are well established against the petitioners. Therefore, no case for their acquittal was made out and the present petition ought to be dismissed.

11. I have heard counsel for the parties.

12. In the instant case, there is absolutely no delay in the registration of the FIR. In fact the medical ruqa was sent for registration of

the case immediately. However, as the X-ray report was made available after 17 days, the FIR came to be registered only then. A perusal of the record would reveal that the medical evidence is totally in consonance with the ocular account. The version of the complainant-injured PW-Dalip Singh has been corroborated by PW-2 Roop Singh. Therefore, there is independent corroboration of the statement of the complainant. The medical discrepancies referred to by the petitioners would not affect the substantrum of the case which otherwise stands established beyond reasonable doubt.

13. In view of the aforementioned discussion I find no reason to interfere in the well reasoned orders of the Trial Court and the lower Appellate Court and therefore, the present petition is hereby **dismissed**.

14. As regards imposition of sentence it may be pointed out that convicts Kulwinder Singh @ Laddu and Harwinder Singh @ Soni have already undergone the entire sentence of three years imposed upon them. So far as Nirbhai Singh @ Kaka is concerned he has undergone a total custody period of 02 years 03 months and 05 days as per the custody certificate dated 27.04.2023. Since the occurrence pertains to the year 2014 and the petitioner convict Nirbhai Singh @ Kaka has undergone substantial period of sentence imposed upon him I deem it appropriate to reduce his substantive sentence to the period already undergone by him. However, the sentence of fine and sentence in default shall remain intact qua all the convicts.

15. Disposed of with the aforesaid observations.

(JASJIT SINGH BEDI)
JUDGE

May 01, 2023
Vinay

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