



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1291-2008
Date of decision: 24.10.2024

Malkiat Singh and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Seema Pasricha, Advocate for the petitioners.
Mr. Inderjeet Singh Ladher, DAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioners/accused against the judgment dated 09.07.2008 passed by the Court of Additional Sessions Judge (Fast Track Court), Kapurthala vide which the appeal filed by the petitioners against the judgment and order dated 21.12.2004 passed by the Court of Sub Divisional Judicial Magistrate, Phagwara whereby the petitioners were convicted and sentenced as follows, was dismissed.

Accused	Under Section	Sentence
Balwant Singh	325 IPC	RI for a period of one year and to pay fine of Rs.500/- and in default of payment of fine to further undergo SI for a period of two months
Balwant Singh	323 IPC	RI for four months
Malkiat Singh	325 IPC read with Section 34 IPC	RI for a period of one year and to pay fine of Rs.500/- and in default of payment of fine to further undergo SI for a period of two months
Malkiat Singh	323 IPC read with Section 34 IPC	RI for four months

All the sentences were ordered to run concurrently.



2. The brief facts of the case are that police received information regarding admission of complainant/injured Mukesh Kumar in a Civil Hospital, Phagwara. The police officials went to said hospital and recorded statement of complainant Mukesh Kumar wherein he stated that on 23.09.2001 at about 7:30 PM, he was standing outside his shop in the area of Khera Road. Some persons who were present there were making lot of noise. In the meantime, both the petitioners also reached there and immediately Malkiat Singh caught his hair and threatened to teach him a lesson. Upon this, co-accused Balwant Singh lifted one empty bottle which was lying there and gave its blow on nose of the complainant. Balwant Singh further caused injuries on face, stomach and back of the complainant with the help of his sharp uncut nails. On hearing the alarm raised by the complainant, his father who was inside the shop reached there and tried to intervene. However, Malkiat Singh and Balwant Singh kept on beating the complainant. On the basis of the said statement, FIR was registered. During investigation, both the accused were formally arrested. On completion of investigation, challan was presented.

3. Finding a *prima facie* case, the learned trial Court framed charges under Sections 325/323 read with Section 34 IPC against both the petitioners, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined five witnesses in all. PW-1 Dr. Rajesh Sood, Medical Officer, Civil Hospital, Phagwara proved the medico legal report Ex.P-A of the complainant and further stated that injury no.1 over nose of complainant was found grievous in nature on the basis of x-ray report Ex.P-B submitted by PW-4 Dr. Inderjeet Singh. The other injuries were found to be simple in nature. PW-2 Mukesh Kumar reiterated his previous statement, on the basis of which FIR was registered in the present case. PW-3 Gobind Parkash also deposed in favour of the complainant. However, it is apparent that he was not present at the time of alleged occurrence. PW-4 Dr. Inderjeet Singh, Radiologist proved his x-ray report Ex.P-B, as per which fracture was detected on the nose of the complainant corresponding to injury No.1. PW-5 ASI Amarnath, the Investigating Officer proved the investigation which was carried out by the



police in the present case. Finally, prosecution closed its evidence.

5. Both the petitioner were examined under Section 313 Cr.P.C. The entire incriminating evidence was put to them but they denied the same.

6. Accused examined DW-1 Kuldeep Kumar who stated that there was no such Kiryana Shop run by Mukesh Kumar or his father, as per the record. DW-2 Avtar Singh resident of the locality stated that he never saw Malkiat Singh and Balwant Singh fighting with any person.

7. The learned trial Court after going through the entire evidence convicted and sentenced both the petitioners as detailed in the opening paragraph of this judgment.

8. Being aggrieved, the petitioners filed appeal which was also dismissed by the Court of Additional Sessions Judge (Fast Track Court) vide judgment dated 09.07.2008.

9. The present revision petition has been filed by the petitioners being aggrieved by the judgments dated 21.12.2004 passed by the trial Court and 09.07.2008 passed by the Court of Additional Sessions Judge.

10. The counsel for the petitioners while assailing the aforesaid judgments, has submitted that the alleged occurrence took place on 23.09.2001 whereas, the FIR was registered on 28.09.2001 and this unexplained delay in lodging of FIR puts dent in the case of prosecution. It is further submitted that otherwise also it appears that some altercation took place in a spur of moment and one of the accused namely Balwant Singh lifted empty bottle and attacked the complainant. The other accused was empty handed. It is further submitted that the occurrence in question took place in year 2001 and already 23 years have lapsed and the petitioners are having no criminal history. The counsel for the petitioners has further submitted that in case, the Court comes to the conclusion that no ground is made out to interfere in the order of conviction, the petitioners deserve to be released on probation by giving them benefit under Section 360 Cr.P.C.

11. On the other hand, the State counsel has supported the judgments passed by both the Courts below. It is further submitted that no ground is made out to give concession of probation to the petitioners.

12. I have considered the submissions made by counsel for the



parties.

13. The ocular version given by PW-2 complainant Mukesh Kumar stands fully corroborated by the medical evidence which is proved by PW-1 Dr. Rajesh Sood and PW-4 Dr. Inderjeet Singh. At the time of incident, PW-1 was posted as a Medical Officer in Civil Hospital, Phagwara and he medico legally examined the complainant and proved MLR Ex.P-A as per which, the injured sustained 7 injuries. PW-4 who conducted x-ray examination, proved the x-ray report Ex.P-B. As per said x-ray report, Ex. P-B, fracture of nasal bone was detected. The said injury being caused by blunt weapon is covered under Section 325 IPC and is attributed to Balwant Singh. All the other injuries which were simple in nature and caused with blunt weapon are covered under Section 323 IPC. Undoubtedly, the complainant was medico legally examined on the same day, on which the occurrence had taken place. The delay in lodging of FIR may be on account of certain lapses on behalf of the police officials only. It being so, the petitioners cannot take any benefit of the fact that there was certain delay in lodging of the FIR, as the said delay is fully explained by the prosecution. Thus, the trial Court rightly convicted the petitioners as is detailed above. There is also no illegality in the judgment passed by the Court of Additional Sessions Judge (Fast Track Court) dated 09.07.2008, whereby conviction of the petitioners was upheld.

14. Admittedly, petitioners have suffered the agony of protracted trial spanning over a period of 23 years. The State counsel has not disputed the fact that the petitioners are having no criminal antecedents. The maximum sentence provided under Section 325 IPC is of 7 years and that under Section 323 IPC is one year. Both the petitioners are more than 21 years of age and are having no criminal history. Thus, they are having statutory right to claim the benefit of provision of Section 360 Cr.P.C, they being not a previous convicts. The Courts below were under a duty to consider the applicability of Section 360 Cr.P.C, as mandated under Section 361 Cr.P.C. In view of express provision of Section 360 Cr.P.C and considering the facts and circumstances of the case, nature of the offences, the character of the accused and the time period which had lapsed since the



date of incident, this Court is of the view that it is a fit case where concession of probation could be given to the petitioners. In totality of the facts and circumstances of this case, the Court is of the view that ends of justice would also be met if the petitioners are granted concession of probation.

15. In the light of the above, as far as it relates to conviction of both of the petitioners, the same is maintained but the sentence is modified. Instead of sending the petitioners to jail, they are given benefit of the probation under Section 360 Cr.P.C and therefore, both the petitioners are ordered to be released on probation and are directed to furnish probation bonds to the tune of Rs.20,000/- each along with one surety each in like amount and also to give an undertaking to the effect that they shall maintain peace and good behavior during the period of one year from today. The said bonds are to be furnished within a period of eight weeks from the date of this judgment, in the trial Court. The petitioners within the aforesaid period shall also deposit in total Rs.10,000/- as compensation, before the trial Court and the same shall be released in favour of complainant/injured Mukesh Kumar.

16. In case of breach of any of the above conditions, the petitioners shall be taken into custody and have to undergo sentence awarded to them by the trial Court.

17. With the above modification, the present revision petition is partly allowed.

18. A certified copy of the order be also sent to the trial Court concerned for compliance.

24.10.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**