



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR No.254 of 2014 (O&M)
Date of decision: 07.05.2025

Lakhbir Singh and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. G.K. Mann, Sr. Advocate
with Ms. Mandeep Kaur Sidhu, Advocate
for the petitioners.

Mr. Rishabh Singla, AAG, Punjab.

None for respondent No.2.

HARPREET SINGH BRAR J. (Oral)

1. The petitioners seek to set-aside the judgment of conviction and order of sentence dated 10.07.2009, passed by learned Judicial Magistrate Ist Class, Batala, wherein they were convicted and sentenced under Sections 326, 323,506 read with Section 34 IPC, in a case stemming from a criminal complaint filed under Sections 326, 323, 506, 148, 149 IPC. The petitioners also challenge the judgment dated 15.01.2014, passed by the learned Additional Sessions Judge, Gurdaspur, dismissing their appeal against the judgment of conviction and order of sentence dated 10.07.2009. The petitioners were sentenced as follows:

Offence	Sentence
Convict – Lakhbir Singh	
Under Section 326 IPC	Rigorous imprisonment for a period of 02 years and 06 months with fine of Rs.1,500/- and in default of payment of fine, to further



	undergo rigorous imprisonment for 03 months.
Under Section 323/34 IPC	Rigorous imprisonment for a period of 04 months.
Under Section 506 IPC	Rigorous imprisonment for a period of 01 year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.
Convict – Kashmir Singh	
Under Section 326/34 IPC	Rigorous imprisonment for a period of 02 years with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.
Under Section 323	Rigorous imprisonment for a period of 06 months.
Under Section 506 IPC	Rigorous imprisonment for a period of 01 year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.
Convict – Sukhwinder Singh	
Under Section 326/34 IPC	Rigorous imprisonment for a period of 02 years with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.
Under Section 323/34 IPC	Rigorous imprisonment for a period of 04 months
Under Section 506 IPC	Rigorous imprisonment for a period of 01 year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.
Convict – Joginder Singh	
Under Section 326/34 IPC	Rigorous imprisonment for a period of 02 years with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.
Under Section 323 IPC	Rigorous imprisonment for a period of 06 months.
Under Section 506 IPC	Rigorous imprisonment for a period of 01 year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.

All the sentences are ordered to run concurrently.

2. The brief facts of the case are that on 29.09.1998 at about 06.30/07.00 PM, the complainant and his mother Swaran Kaur were



returning, after milking their buffallows, from a tubewell. On the way, the accused Lakhbir Singh armed with datar, Kashmir Singh armed with dang, Sukhwinder Singh armed with kirpan and Joginder Singh armed with dang came from the front side. Joginder Singh raised exhortation to catch them as they (complainant side) were not abstaining from filing cases against them and also to teach a lesson as the case of the land dispute had been decided in their favour. On that Kashmir Singh gave dang blow to complainant, which hit on his right eye. Accused Joginder Singh gave dang blow to complainant, which hit around his waist and he fell down. Accused Lakhbir Singh gave a datar blow to complainant, while he was lying on the ground, which hit on his right leg. Swaran Kaur, mother of the complainant raised an alarm which attracted Joginder Singh, brother of complainant at the spot. Thereafter, the accused persons ran away from the spot with their respective weapons and while moving, they threatened to kill the complainant. On the next morning, the complainant was taken to Civil Hospital, Dhianpur, but no doctor was available there and thereafter, the complainant was taken to Civil Hospital, Batala. The motive behind the occurrence was that the civil suit filed by accused persons against the father of complainant was dismissed. The matter was reported to police, but of no avail. Hence, the complaint has been filed.

3. Learned Senior counsel for the petitioners submits that the judgment passed by the learned trial Court is based on conjectures and surmises. There is a delay of 03 months in filing the complaint as the alleged occurrence took place on 29.09.1998 and the complaint (supra)



was filed on 22.12.1998. Moreover, no independent witness was examined by the prosecution and the marginal witness i.e. complainant – CW-1 Balwinder Singh and alleged eye-witness – CW-2 Swaran Kaur, examined by the prosecution are son and mother, meaning thereby, they are interested witnesses and in the absence of any independent corroboration, the prosecution case cannot be said to be fully established against the petitioners.

4. Learned Senior counsel for the petitioners further contends that the injury No.3 being declared as grievous injury, is not based on a radiologist's report. The X-ray report was prepared by a doctor using only the skiagram (X-ray image), which is not based on a formal radiology report, therefore, the X-ray report cannot be taken into consideration as a valid evidence. She has referred to the injuries sustained by injured Balwinder Singh in the alleged incident, which reads as under:-

- 1. Diffuse Swelling 2x3 cm around the right eye, with congauctival haemorrhage was present in the right eye, movement were pain full and kept under observation.*
- 2. Complain of pain on right side of chest.*
- 3. An incised wound 5x1 cm on the right front medical part of right leg, 12 cm from the right ankle join clotted blood was present, wound was bone deep and advised X-ray.*

5. Moreover, to support her contention, learned Senior counsel for the petitioners has referred to the judgment passed by the Division Bench of this Court in ***State of Punjab vs Harinder Singh @ Raju, 2008(2) RCR (Criminal) 294***, to contend that in the absence of an



X-ray report or any corroborative medical evidence, a doctor's opinion merely based on visual examination is insufficient to classify an injury as grievous, and without concrete medical proof such as an X-ray or expert analysis, the injury cannot be legally termed as grievous hurt under Section 326 IPC, making the offence one that would instead fall under Section 324 IPC, which deals with simple hurt caused by a dangerous weapon. She submits that in the present case, PW-1, Dr. Gurpal Singh, Medical Officer, Civil Hospital, Batala was examined and in his cross-examination, he clearly stated that he was neither a Radiologist nor an Orthopaedist. He also voluntarily stated that there was no Radiologist posted at that time and the report regarding X-ray was prepared by him from Skiagram. He further stated that he has seen the X-ray report Ex.PB, in which the name of person, who was X-rayed and others particulars of the said person has not been mentioned. Therefore, the offence under Section 326 IPC is not made out against the present petitioners and the sentence awarded to the petitioners is grossly disproportionate and they deserve to be acquitted or in alternative released on probation. She, lastly, contends that the petitioner No.1 – Lakhbir Singh has undergone total sentence of 07 months and 15 days; petitioner No.2 – Kashmir Singh has undergone total sentence of 08 months and 12 days; petitioner No.3 – Sukhwinder Singh has undergone total sentence of 07 months and 15 days and petitioner No.4 – Joginder Singh has undergone total sentence of 08 months and 03 days and they have no criminal antecedents and petitioners No.1 and 3 namely Lakhbir Singh and Sukhwinder Singh

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stands acquitted in FIR No.12 dated 19.03.2008, registered under Sections 307, 323, 149 IPC at Police Station Kotli Surat Malhi.

5.1. *Per contra*, learned State counsel opposes the prayer made by learned Senior counsel for the petitioners and submits that the petitioners have been convicted by the learned trial Court based on correct appreciation of the facts and the law. Moreover, the conviction has been upheld by the learned Lower Appellate Court, as such interference by this Court is not warranted.

6. After considering the facts available on record, this Court finds that the conviction of the petitioners under Section 326 IPC is not legally sustainable. The allegation of grievous hurt hinges primarily on injury No.3, which is an incised wound on the complainant's leg described as bone-deep and advised for X-ray. However, the medical evidence produced, fails to conclusively establish this injury as grievous under the parameters laid down in Section 320 IPC. Notably, the X-ray report relied upon by the prosecution was not prepared or interpreted by a qualified Radiologist or Orthopaedist. PW-1, Dr. Gurpal Singh, in his cross-examination, admitted that he is neither a Radiologist nor an Orthopaedist and the X-ray report was prepared solely on the basis of a skiagram, without any supporting radiological findings. Further, the X-ray report (Ex.PB) lacked basic identifying particulars of the patient, rendering it unreliable. The cross-examination of PW-1 – Dr. Gurpal Singh, reads as follows:-

“XXXXXX By Sh. Kashmir Singh, Adv.

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I am not radiologist and nor Orthopadition. Orthopadition are only bone specialist. I was not mentioned that dimension of the cut except mentioned in the MLR. X-ray was done by the radiologist, technician in my presence. Vol. there was no radiologist posted at that time and report is prepared by me, regarding x-ray. Report was prepared by me from skigram. I have not seen the skiagram today in judicial file nor with me that was sent to the concerned police station. It is not mentioned in my medico legally report or register. Volunteered that was entered into dispatch register. The skiagram was sent to police station Kotli Surat Malhi with report on 30.9.08. There was no marks of injury as concerned to injury no.2. There can be so many reasons of redness of eye as mentioned in injury no.1. The injury no. 3 being self suffered or with friendly hand can not be ruled out. I have not mentioned the depth of the injuries in my MLR report. The clotted blood starts immediate after the injury. I have not mentioned the colour of injury no.3. The injury no.3 could be the result of duration from 6 to 24 hours. I have seen the x-ray report Ex.PB, in which not mentioned the name of the person x-rayed and other particulars of the person not mentioned. It is also not mentioned that injury no.3 on the name of the person/ injured. It is also not mentioned in the back of the MLR, who produced the injury report MLR number of the person/ injured x-rayed is not mentioned. The photo copy of the original is not with me nor it is not on the judicial file today. Radiologist Technician not made any report regarding x-ray only he has to conduct x-ray.

RO&AC

*Sd/- Tejinder Singh
JMIC/13.02.2009”*



7. This Court is persuaded by the precedent cited in ***Harinder Singh @ Raju's case (supra)***, where it was held that in the absence of formal and reliable medical proof, a doctor's visual assessment alone is insufficient to categorize an injury as grievous. Therefore, the offence against the petitioners, if any, falls under Section 324 IPC (causing simple hurt with a dangerous weapon) and not under Section 326 IPC. Accordingly, the conviction and sentence under Section 326 IPC are set-aside and the petitioners are acquitted of the said charge.

8. Further, after hearing the arguments and perusing the records, the Court notes that Sections 3 and 4 of the Probation of Offenders Act empower the Courts to release the offenders/convicts on probation of good conduct if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 and 361 of the Cr.P.C, also empowers the Courts to release the offenders on probation for good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in ***Som Dutt and others Vs. State of Himachal Pradesh, (2022) 6 SCC 722*** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the Court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”



9. A two Judge Bench of the Hon'ble Supreme Court in ***Lakhvir Singh Vs. State of Punjab, (2021) 2 SCC 763*** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

10. Further still, a two Judge Bench of the Hon'ble Supreme Court in ***Lakahnlal @ Lakahn Singh vs. State of Madhya Pradesh (2021) 6 SCC 100*** has opined as follows:

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”



11. The Hon'ble Supreme Court in ***Bishnu Deo Shah vs. State of West Banal AIR 1979 SC 964*** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of the Cr.P.C., if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Section 4 and 6 of the Act and Section 360 and 361 of Cr.P.C. is to provide an opportunity to the first time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.

12. Further considering the facts and circumstances, having regard to the fact that there are no criminal antecedents against the petitioners and petitioner No.1 – Lakhbir Singh has undergone total sentence of 07 months and 15 days (including remissions); petitioner No.2 – Kashmir Singh has undergone total sentence of 08 months and 12 days (including remissions); petitioner No.3 – Sukhwinder Singh has undergone total sentence of 07 months and 15 days (including remissions) and petitioner No.4 – Joginder Singh has undergone total sentence of 08 months and 03 days (including remissions), out of total sentence of 02 years, this Court is inclined to give them the benefit of probation for good conduct.

13. Consequently, the instant revision petition stands disposed of with the following directions:-

- ***The judgment dated 15.01.2014 passed by the learned Additional Sessions Judge, Gurdaspur, confirming the conviction of the petitioners is upheld.***

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- *The order of sentence dated 10.07.2009 passed by the learned Judicial Magistrate Ist Class, Gurdaspur is modified to the extent of granting the concession of probation to the petitioners for good conduct.*
- *The petitioners shall be released on probation for good conduct, subject to furnishing a personal bond of Rs. 10,000/- each, with a surety of the like amount.*
- *The petitioners shall submit an undertaking to maintain peace and good behavior for a period of one year, to the satisfaction of the learned trial court, within a period of 04 weeks from today.*
- *The petitioners shall remain under the supervision of the concerned Probation Officer during this probationary period.*
- *In the event of non-compliance with the directions or any breach of the undertaking, the petitioners shall be liable to undergo the sentence originally imposed.*

14. Needless to say, in view of the Section 12 of Probation of Offenders Act, judgment of conviction and order of sentence dated 10.07.2009 passed by learned trial Court and judgment dated 15.01.2014 passed by learned Additional Sessions Judge, Gurdaspur, shall not be a hurdle to petitioners, in any way, to get retiral benefits and other service benefits to which they are entitled to.

15. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

07.05.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No