

(2010) 05 P&H CK 0051

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 2105 of 2002

Chanwar Lal and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 4, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 148, 149, 323, 325

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.

The present revision petition has been filed by Chanwar Lal son of Chandgi Ram, Satyawar son of Chanwar Lal, Nafe Singh son of Molu Ram, Hoshiar Singh son of Ramji Lal and Sadra Ram son of Sobha Chand, who were named as accused in case FIR No. 176 dated 13.4.1989, registered at Police Station Sadar, Hisar, under Sections 148, 323, 325 read with Section 149 IPC.

2. The above said Petitioners were tried by the Court of Judicial Magistrate Ist Class, Hisar, and vide its impugned judgment dated 2.5.1997, it held them guilty for the offence punishable under Sections 148, 323 read with Section 149 IPC and 325 read with Section 149 IPC. Vide a separate order dated 3.5.1997, they were sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 500/-each, in default whereof, to further undergo simple imprisonment for a period of 20 days each, for the offence u/s 148 IPC. They were also sentenced to undergo rigorous imprisonment for a period of three months each, for the offence u/s 323 read with Section 149 IPC. They were further sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 2,000/-each, in default whereof, to further undergo simple imprisonment for a period of three months each, for the offence u/s 325 read with Section 149 IPC.

3. Hence, the present petition.

4. Aggrieved against the impugned judgment of conviction and order of sentence, the Petitioners have preferred an appeal. The Appellate Court, finding no merit in the appeal, had dismissed the same. However, the sentence of simple imprisonment for a period of two years, awarded to the Petitioners for the offence u/s 325 read with Section 149 IPC, was reduced to that of one year.

5. The occurrence, in the present case, had taken place in the year 1989. The statement of complainant Diwan Singh Ex.PA was recorded by Sher Singh, Assistant Sub Inspector, at Government Hospital, Hisar. The brief gist of Ex.PA has been noticed by the trial Court in its judgment. For facility of reference, the relevant portion of the trial Court judgment reads as under:

... In his statement Ex.PA, complainant alleged that adjacent of his house, there was a vacant plot of which accused wanted to take possession and civil suit was pending. The complainant further alleged that as a result of civil suit Chanwar Singh accused and his relatives were inimically disposed of towards the complainant. Complainant further alleged that on 12.4.89 at about 7 p.m. when complainant was sitting in front of his house, he was informed by his son Telu Ram and wife Shanti Devi about the fight. Complainant further alleged that accused Satyawar etc. hit Ram Phal and Ram Kumar with lathis. In the meanwhile, accused came armed with lathis along with few of their relatives. Accused Chanwar gave two lathi blows on the left arm of the complainant and accused Hoshiar Singh gave one lathi blow on the right arm of the complainant. Accused Satyawar gave a lathi blow in the back of the complainant and thereafter accused Nafe Singh gave a lathi blow towards left of the collar bone of the complainant. Complainant further alleged that one of the relatives of the accused hit complainant in his head with a lathi. Complainant further alleged that when complainant fell down still he received two lathi blows on the left leg. He further alleged that Shanti and Savitri fell on the complainant in order to save complainant. Elder son of the complainant, took the complainant to Govt. Hospital, Hisar and got admitted him there.

6. Complainant Diwan Singh was medicolegally examined by PW.5 Dr. N.M. Sharma and seven injuries were found on his person. Injuries No. 2 and 4 were found grievous. The said injuries have been noticed in paragraph 8 of the trial Court judgment.

7. Ram Kumar had suffered 13 injuries. Injuries No. 3 to 13 were bruises and abrasions. Injuries No. 1 and 2 were on the parietal region. All the injuries were simple in nature.

8. Ram Phal had suffered ten injuries. Except injuries No. 1, 2 and 7, which were on his head, all the injuries were abrasions and bruises.

9. PW.5 Dr. N.M. Sharma had also examined Petitioners Hoshiar Singh, Satyawar and Nafe Singh. Their medicolegal reports were exhibited as Ex.DC to Ex.DD. A perusal of the injuries on the accused shows that they were not only declared as simple but were superficial in nature. Therefore, both the Courts below held that the complainant party was not bound to explain the same.

10. FIR, in the present case, was recorded on the statement made by PW.1 Diwan Singh on the next day of occurrence. Both the Courts below considered the arguments regarding delay in lodging of the FIR and came to the conclusion that three members of the family of complainant were injured, therefore, delay per se would not be fatal to the prosecution.

11. Mr. R.N. Kush, Advocate, appearing for the Petitioners, has urged before this Court that non explanation of the injuries of accused-Petitioners Satyawar, Hoshiar Singh and Nafe Singh and delay in lodging of the FIR should be taken into consideration, to reject the case of prosecution. However, during the course of arguments, Mr. Kush has confined his arguments to release the Petitioners on probation on the ground that the occurrence, in the present case, had taken place in the year 1989 and they have already suffered a lot of mental pain and agony of protracted trial for the last about 21 years. It is submitted that the Petitioners have already undergone about one month of their actual sentence out of the one year's simple imprisonment, awarded to them. Therefore, it is submitted that after two decades, the ends of justice will not be met in case the Petitioners are sent behind the bars. Mr. Kush has referred to the statements of accused-Petitioners, recorded u/s 313 Cr.P.C., on 24.4.1997 and stated that at that time, Petitioner Satyawar was aged about 31 years, Nafe Singh about 40 years, Hoshiar Singh about 45 years, Sadra Ram about 65 years, and Chanwar Lal about 55 years. It is further submitted that by now Petitioners Chanwar Lal and Satyawar are aged about 78 and 68 years, respectively. Learned Counsel has further submitted that complainant Diwan Singh has also expired. He further submitted that the Petitioners have already deposited the amounts of fine, total of which comes to Rs. 12,500/-.

12. Taking into consideration the fact that in the last two decades, the Petitioners have not committed any such offence, this Court is of the view that an opportunity can be granted to the Petitioners to reform themselves and lead a path of rectitude.

13. Accordingly, the Petitioners are ordered to be released on probation of good conduct for a period of one year, subject to their furnishing probation bonds to the satisfaction of the trial Court. The Petitioners shall undertake to appear and receive the sentence before the Court as and when called upon to do so and be of good behaviour. However, the cost of litigation is assessed at Rs. 15,000/- each. The trial Court shall call upon them to furnish probation bonds and deposit the cost of litigation. In case, the cost is not deposited, benefit of probation shall not accrue to them. The amount of Rs. 75,000/- shall be disbursed to the legal heirs of complainant Diwan Singh, since died, as compensation. The amount of fine, already deposited by

the Petitioners, shall be adjusted towards the amount of Rs. 75,000/-.

14. With the observations made above, the revision petition is disposed of.