
(2005) 10 P&H CK 0090

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 282 of 1991

Mohan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 5, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 324, 326

Citation: (2006) 1 RCR(Criminal) 872

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Surya Kant, J.

This Criminal Revision petition has been filed against the judgment and order dated 3.10.1988 passed by the Judicial Magistrate, First Class, Amritsar whereby Tara Singh (since deceased) was convicted u/s 326 IPC and Satnam Singh, Mohan Singh, Kishan Singh (since deceased), Bagga Singh, Santokh Singh, Jagga Singh, Amrik Singh and Gurnam Singh were convicted u/s 326 with the aid of Section 149 IPC. In addition Gurnam Singh was also convicted u/s 324 IPC, whereas the remaining Petitioners were convicted u/s 324 IPC read with Section 149 IPC. Similarly, Amrik Singh and Jagga Singh-Petitioners were further convicted u/s 325 IPC whereas remaining accused-Petitioners were found guilty u/s 323 with the aid of Section 149 IPC. All of them were further held guilty u/s 148 IPC and were accordingly sentenced. The Petitioners have also impugned the judgment dated 10.4.1991 passed by learned Additional Sessions Judge, Amritsar whereby their appeal was partly allowed to the extent that their conviction u/s 326 IPC was set aside and while Tara Singh (since deceased) was convicted u/s 325 IPC, his co- accused were convicted u/s 325 read with Section 149 IPC. As a consequence of the aforementioned modification, Tara Singh (since deceased) was sentenced to undergo RI for 2 years and to pay a fine of Rs. 300/-. Likewise, the other Petitioners were also sentenced to undergo RI for a period of one year u/s 325 IPC

in addition to other lesser sentences awarded for the offences under Sections 323, 149 IPC etc. All the sentences were directed to run concurrently.

2. As per the prosecution case, on 7th May, 1985 at about 8.00 p.m. injured- complainant (Karnail Singh) was present in his house along with his brother Jarnail Singh and other family members. The house of Tara Singh-Petitioner (since deceased) adjoins their house. The roof top was lit with the electric light from the street pole when Tara Singh along with his co-accused Santokh Singh armed with datar came to the roof top of the complainant's house and started abusing him. Thereafter, Tara Singh is alleged to have given a lalkara to bring forward Narender Singh so that he could be taught a lesson for committing the murder of Lakhwinder Kaur, daughter-in-law of Tara Singh. Jarnail Singh, brother of the complainant, went to the roof top of his house and told Tara Singh not to abuse them but Tara Singh again shouted and raised lalkara that no one should be allowed to remain unharmed. Meanwhile, the other accused also came to the roof top and they were armed with deadly weapons like kirpan, gandasi, dang and datar except that Kuldip Singh was empty handed. Thereafter, Kuldip Singh is alleged to have held Jarnail Singh in his grip and Mohan Singh attacked Jarnail Singh by giving sword blows including three on the head; Kishan Singh gave four gandasi blows to him out of which three landed on his hand and fourth on the left side of the chest; Tara Singh inflicted two datar blows whereas other accused caused injuries to Jarnail Singh with their respective weapons. Narender Singh-nephew of the complainant and his brother Pritam Singh also reached the roof top but before they could raise an alarm, Gurnam Singh-Petitioner inflicted two datar blows to the complainant on his right eye and forehead and Amrik Singh also gave a dang blow hitting him on the finger of his left hand. Thereafter, the accused escaped with their respective weapons. The injured were brought to Primary Health Centre at Baba Bakala by Narender Singh and Pritam Singh where the complainant and his brother were medico-legally examined. The occurrence is alleged to have been witnessed by Pritam Singh and Narender Singh. It was stated by the complainant that the motive of the Petitioners in attacking the complainant party was that Narender Singh was being suspected to be involved in the murder of Lakhwinder Kaur, daughter-in-law of Tara Singh.

3. In order to establish its charges, the prosecution brought on record the ocular as well as medical evidence and attempted to establish that Petitioners while armed with deadly weapons, attacked the complainant party and caused various grievous injuries. On the other hand, the Petitioners also led their defence evidence which included the deposition made by Tara Singh (since deceased) and Santokh Singh as DW-2 and DW-3 apart from the statement by Dr. Ashok Kumar as DW-1 who deposed that Tara Singh-Petitioner (since deceased) and Santokh Singh were medico-legally examined by him on 8.5.1985 and were found to have suffered 5 and 9 injuries respectively as mentioned in the medico-legal reports exhibits DW-1/1 and DW-1/2.

4. On an appreciation of the entire evidence, the learned trial Court held that the injuries on the person of Tara Singh and Santokh Singh-Petitioners were simple in nature and

possibility of their being self-suffered could not be ruled out. It also observed that if at all these injuries were caused to them by Jarnail Singh, it was in exercise of his right to private defence. Relying upon the prosecution evidence, especially the statement of the injured Karnail Singh, the learned trial Court held the Petitioners guilty and accordingly sentenced them, a brief reference to which has already been made. The Petitioners filed an appeal before the learned Additional Sessions Judge, who though accepted the findings returned by the learned Judicial Magistrate in relation to the occurrence and held the Petitioners guilty of causing injuries to Karnail Singh and his brother Jarnail Singh, however, having regard to the nature of injuries, which according to the learned Additional Sessions Judge, were not grievous in nature, he converted the conviction of Tara Singh-Petitioner (since deceased) from Section 326 to Section 325 whereas rest of the Petitioners were convicted u/s 325 read with Section 149 IPC.

5. It may be mentioned here that this criminal revision petition came up for hearing on 6.4.1991 and while admitting the same, the Petitioners were enlarged on bail. During the interregnum, two Petitioners, namely, Tara Singh and Kishan Singh have died. On instructions, Learned State Counsel has produced the custody certificates pertaining to all the Petitioners which indicate that whereas Petitioner No. 1 (Mohan Singh) has already undergone one month and 18 days of actual sentence, rest of the Petitioners have undergone actual sentence of two months and 3 days out of the total sentence awarded to them, before they were released on bail by this Court vide order dated 26.4.1991.

6. At the outset, Learned Counsel for the Petitioners has taken up a stand that having regard to the concurrent finding of fact returned by the Courts below in relation to the conviction of the Petitioners u/s 325 read with Section 149 IPC and/or for other minor offences he may not be able to persuade this Court to take a contrary view and that too on re-appraisal and re-appreciation of the evidence on record. Consequently, instead of pressing this revision petition on merits, learned Counsel for the Petitioners has vehemently argued that: (i) the alleged occurrence had taken place in the year 1985 and the Petitioners faced a protracted trial of more than three years; (ii) they have already undergone more than two months actual sentence out of the total sentence of one year, except Petitioner No. 1; (iii) the occurrence had taken place in a spur of moment with none of the Petitioners having any criminal bent of mind; (iv) most of the Petitioners are now aged persons; (v) the Petitioners were released on bail by this Court more than 14 years back, i.e. on 26.4.1991, therefore, it will be inequitable to direct them to undergo actual sentence at this stage; (vi) as per the affidavit dated 4.10.2005 of Petitioner No. 1, none of the Petitioners, after their release on bail, have indulged in any unlawful activity and no case has been registered or pending against them, thus, the concession of bail has not been misused by them; (vii) the Petitioners are in fact the first time offenders and thus keeping in view all the attending circumstances, it is a fit case for invoking powers u/s 4 of the Probation of Offenders Act and to release the Petitioners on probation.

7. Learned State Counsel, though does not dispute the aforementioned mitigating circumstances, she, however, contends that in view of the nature of offence proved

against the Petitioners, it might not be a fit case for releasing them on probation.

8. After hearing Learned Counsel for the parties and having regard to the fact that the Petitioners are first time offenders and have already undergone a part of the sentence; have not misused the concession of bail and after permitting them to avail the concession of bail for more than 14 years, it will be too inequitable to subject them to actual sentence, apart from the fact that it is not likely to serve the cause of administration of criminal justice, I find it a fit case for invoking powers u/s 4 of the Probation of Offenders Act to release the Petitioners on probation.

9. Consequently, this petition is partly allowed to the extent that the Petitioners, instead of undergoing the remainder of the actual sentence as awarded to them by the learned Additional Sessions Judge, Amritsar vide the impugned judgment dated 10.4.1991, are directed to be released on probation on furnishing fresh surety bonds in the sum of Rs. 25,000/- each with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Amritsar and subject to further condition that fine imposed upon them shall be paid, if already not paid, within a period of one month, and in default thereof, the order releasing the Petitioners on probation, shall automatically stand vacated and they shall be required to undergo the actual sentence of imprisonment apart from the period of imprisonment already imposed on this count. They are also directed to give an undertaking to keep peace and to be of good behaviour for one year and to appear and undergo sentence as and when called for.

Disposed of.

Petition partly allowed.