

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Revn.No. 214 of 1992

Date of decision: October 31, 2007

Gurmel Singh and another

...Petitioners

versus

State of Punjab

...Respondent

Coram: Hon'ble Mr. Justice Harbans Lal

Present: Mr. APS Deol, Sr.Advocate with
Mr. Daldeep Singh, Advocate for the petitioners.

Mr. Antar Singh Brar, Deputy Advocate General, Punjab

Harbans Lal, J.

The Court of Sub Divisional Judicial Magistrate, Fazilka vide his judgment/order dated 5.5.1990 convicted and sentenced Kapoor Singh, non-revisionist, Gurmel Singh and Karnail Singh petitioners as under;-

1. Gurmel Singh accused is sentenced to 9 months R.I. and a fine of Rs. 500/- or in default of payment of fine he shall further undergo R.I. for 3 months under Section 325 of the Penal Code.
2. Kapoor Singh accused is sentenced to 6 months R.I. and a fine of Rs. 100/- or in default of payment of fine he shall further undergo R.I. for one month under Section 325/34 of the Penal Code.
3. Karnail Singh accused is sentenced to 6 months R.I. and fine Rs. 100/- or in default one month R.I. under Section 325/34 of the Penal Code.

4. Karnail Singh accused is sentenced to 9 months R.I. and a fine of Rs.500/- or in default of payment of fine he shall further undergo R.I. for 3 months under Section 325 of the Penal Code.
5. Kapoor Singh accused is sentenced to 6 months R.I. and a fine of Rs. 100/- or in default of payment of fine he shall further undergo R.I. for one month under Section 325/34 of the Penal Code.

Feeling aggrieved with the abovementioned judgment/order, Kapoor Singh, Gurmel Singh and Karnail Singh preferred an appeal. The Court of Additional Sessions Judge, Ferozepur vide his judgment dated 6.3.1992 altered the judgment/order of the learned trial Court holding Karnail Singh and Gurmel Singh guilty under Section 325 of I.P.C. setting aside their conviction under Section 325 read with Section 34 of IPC and acquitted the accused Kapoor Singh of all the charges and confirmed the sentence awarded to Karnail Singh accused though reduced the sentence of Gurmel Singh accused from 9 months rigorous imprisonment to 6 months rigorous imprisonment with further direction to pay a fine of Rs. 200/- and in default thereof to further undergo rigorous imprisonment for a period of one month.

The factual matrix is that on 11.2.1987 at about 5.30 PM Ghichar Singh PW and Kapoor Singh accused were present at flour mill of their village. They exchanged hot words over the dispute pending regarding the land owned by Gurnam Kaur. Ghichar Singh and Kapoor Singh left the flour mill after having exchanged hot words, to their houses. When Ghichar Singh PW had covered a distance of about 2-1/2 killas from flour mill,

accused Gurmel Singh armed with Soti and accused Karnail Singh armed with Gandasa appeared and met Ghichar Singh PW. In the meanwhile, Gurmel Singh son of Ghichar Singh PW also arrived on a tractor which he had taken to Abohar for repairs. Kapoor Singh accused raised a lalkara that Ghichar Singh be not left alive today. On his exhortation, Karnail Singh accused opened the attack and gave a gandasa blow hitting Ghichar Singh PW on his right leg. Gurmel Singh dealt a soti blow, which rested on the top of right shoulder of Ghichar Singh PW. After causing injuries the accused left the spot. The injured was removed to Civil Hospital Abohar for his treatment by Gurmel Singh PW in the tractor trolley. On receipt of Medico Legal Report of Ghichar Singh, H.C. Jagir Singh reached the aforesaid Civil Hospital and recorded the statement Ex.PA of Ghichar Singh PW. He made his endorsement Ex.PG and sent such statement to the police station, where on its basis formal FIR Ex.PG/1 was recorded. The accused were arrested. After completion of investigation, the accused were sent up for trial under Section 325 of IPC and as also under Section 325 /34 of IPC.

The prosecution examined five witnesses and closed its evidence whereafter the accused were examined under Section 313 of the Code of Criminal Procedure. The accused examined Jugraj Singh DW1 and Shamsher Singh DW2 in their defence evidence. After hearing the learned A.P.P. for the State and the learned defence counsel, the accused were convicted and sentenced by the learned trial Court as noticed at the outset.

I have heard the counsel for the parties and perused the record.

Mr. APS Deol, Senior counsel appearing for the petitioners

maintained with full force that the prosecution has failed to prove that the injuries attributed to Gurmel Singh-petitioner fall under the definition of grievous hurt for the reasons that no fracture was found under seat of injury no.2 on X-ray examination and only dislocation of joint was found which does not fall under Clause Seventhly of Section 320 of I.P.C. As against this Mr. A.S.Brar, Deputy Advocate General, Punjab contended that dislocation of joint falls under the said Clause and thus, injury No.2 has rightly been designated as grievous hurt. There is force in this argument. Section 320 of IPC envisages that the following kind of hurt are only designated as grievous:

“First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

Obviously dislocation of a bone has been designated as grievous hurt. Thus, it has rightly been observed by the courts below that

injury no.2 falls within the definition of grievous injury. Sequelley, the contention raised by Mr. Deol is turned down. He further pressed into service that injury no.1 which is attributed to Karnail Singh-petitioner has been declared grievous without conducting any X-ray examination and it is nowhere elicited from the doctor as to the seat of injury and the bone which suffered fracture and thus the prosecution has failed to prove that the injury attributed to Karnail Singh is grievous.

On the other hand Mr. Brar has countered this argument by urging with great vehemence that mere absence of X-ray film will not be sufficient to hold that injury no.1 is not a grievous in nature.

On giving a thoughtful consideration to the rival submissions, I am of the view that mere absence of X-ray film will not convert the offence from Section 325 to Section 323 of IPC as all the ingredients of the offence under Section 325 of IPC are fully proved. For this view, I derive support from the observations made by a Division Bench of this Court in re: **State of Punjab vs. Nasib Singh** 2003 (3) Recent Criminal Reports (Criminal) 304, wherein the medical evidence showed that injury caused fracture of bone but the X-ray was not done. It was held that mere absence of X-ray film will not convert the offence from Section 326 to Section 324 of IPC when all the ingredients of offence under Section 326 of IPC were proved. Thus, this contention is overruled. The conviction is maintained.

Last of all, Mr. Deol, realising that he is unable to persuade this Court to take a view contrary to the observations made by the learned Additional Sessions Judge submitted that in view of **Om Prakash and**

Others vs. State of Haryana 2003 Supreme Court Cases (Criminal), 799, the petitioners deserve to be released on probation under Section 360 of Cr.P.C. The observations of the learned First Appellate Court could not be successfully assailed, so the conviction qua the petitioners is maintained.

The occurrence took place as far back as on 11.2.1987 which is obviously about more than 20 years ago. There is nothing on the record to show that during this period the petitioners indulged in misbehaviour or mischief. The injuries are on the non-vital part of the body.

In re: **Om Prakash and others' case** (supra) the incident was 11 years old, the accused were convicted and sentenced under Sections 325 and 323 read with Sections 148/149 of IPC. Their Lordships of the Apex Court were pleased to observe that in view of the peremptory nature of the language of provisions of Section 361, the Magistrate as well as the court in appeal and revision not having indicated as to why the provisions of Section 360 Cr.P.C. have not been applied, there has been a gross miscarriage of justice and the legislative mandate engrafted in the aforesaid two sections of the Code have not been complied with. Their Lordships were further pleased to observe that we are of the considered opinion that this is a fit case where the Court should have invoked the provisions of Section 360 of Cr.P.C. In **Nasib Singh's case** (supra) also the accused were ordered to be released on probation, though, the conviction was recorded under Section 326 of IPC. Here in this case, the learned trial Court or the learned first appellate Court have not assigned any special reason for not releasing the petitioners on probation of good conduct. There is nothing on the record to

withhold the benefit of probation of good conduct from the petitioners. As regards the injured, he can still be compensated. Bearing in mind the facts and circumstances of the present case, I am of the considered opinion that this is a fit case where the provisions of Section 360 of Cr.P.C. should be invoked. Consequently, the petitioners are ordered to be released on probation of good conduct under Section 360 of Cr.P.C. They will furnish their probation bonds in the sum of Rs. 20,000/- with one surety each in the like amount to the satisfaction of the learned trial Court for a period of one year within which they shall keep the peace and be of good behaviour. They will come and receive the sentence as and when called upon by the Court. The probation bonds shall be furnished within three weeks from today. Each of the petitioners is directed to deposit a sum of Rs. 3,000/- as compensation for being paid to the injured Ghichar Singh. This revision is accordingly disposed of.

October 31, 2007
gsv

(HARBANS LAL)
JUDGE