

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-1640-SB-2005
Date of decision:7.10.2015

Kamla

...Petitioner

Versus

State of Punjab

...Respondent

CRR-1642-2005

Khushi Ram and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.S.S.Hira, Advocate for the petitioner in
CRR-1640-2005.
Ms.Amandeep Kaur, Advocate for
Mr.J.B.S.Gill, Advocate for the petitioners in
CRR-1642-2005.

Ms.Manpreet Dhaliwal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

These two criminal revision petitions are being decided together by this common order, having been filed by the similarly placed two sets of convicts who were convicted in the same FIR. However, for the facility of reference, facts are being culled out from CRR-1640-2015.

Brief facts of the, as recorded by the learned Additional Sessions Judge in para 2 of his impugned judgment, are that on 24.4.2000 ASI Kulwinder Singh received three MLRs regarding the injured and he went to Civil Hospital, Hoshiarpur and recorded the statement of Devo-

complainant, resident of village Manan that her husband was doing shop of readymade clothes and chappals in Bus Stop Manan. On 23.4.2000 at about 8.00 p.m. she and her husband Mahan Chand were present on the shop and then Khushi Ram, Satya, Raju, Kamla, Simru and Sokhi came armed with respective weapons. Khushi Ram raised lalkara to teach them a lesson for taking away Girdar. Kamla Sarpanch gave a dang blow on her husband and Sokhi gave dang blow on left hand of Mahan Chand. Then Satya gave dang blow on left wrist of complainant. Khushi Ram gave dang blow on her head and Simru gave dang blow on her back. Sokhi gave dang blow on her right arm and Kamla gave fist blow on her left cheek. Debo raised alarm and Amarjit Singh came at the spot. The accused persons ran away with their respective weapons. Amarjit Singh got them admitted in the hospital. On this statement, a case was registered against the accused and after the completion of all the formalities, challan was presented against the accused in the court.

Finding a prima facie case, learned trial Court framed the charges against the accused for commission of offences under Sections 148/325/324/323/149 IPC, to which they pleaded not guilty and claimed trial. The prosecution, with a view to prove its case, produced as many as six prosecution witnesses, besides placing on record other documentary evidence.

On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations, alleged false implication and claimed complete innocence. However, the accused did not lead any evidence in their defence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against the accused. Accordingly, the accused were held guilty and they were convicted vide impugned judgment of conviction dated 12.7.2002.

Thereafter, convicts were awarded respective sentences, vide order of sentence dated 12.7.2002 and the relevant part thereof reads as under:-

<i>Accused</i>	<i>Section</i>	<i>Sentence (RI)</i>	<i>Fine (RS)</i>	<i>Rigorous imprisonment sentence in default</i>
Khushi Ram	325 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	324/149 IPC	6 months	Nil	Nil
	323 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil
Satya	325 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	324/149 IPC	6 months	Nil	Nil
	323/149 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil
Rajinder @ Sokhi	325 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	324/149 IPC	6 months	Nil	Nil
	323 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil
Kamla	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	324/149 IPC	6 months	Nil	Nil
	323 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil
Simru	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days

<i>Accused</i>	<i>Section</i>	<i>Sentence (RI)</i>	<i>Fine (RS)</i>	<i>Rigorous imprisonment sentence in default</i>
	325/149 IPC	1 year	100/-	7 days
	324/149 IPC	6 months	Nil	Nil
	323 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil
Raj Kumar @ Raju	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	325/149 IPC	1 year	100/-	7 days
	324 IPC	6 months	Nil	Nil
	323/149 IPC	6 months	Nil	Nil
	148 IPC	6 months	Nil	Nil

All the above-said substantive sentences were ordered to run concurrently.

Feeling aggrieved, the convicts filed their different appeals, whereas the complainant filed revision petition. Appeals as well as revision were dismissed by the learned Additional Sessions Judge vide impugned judgment dated 21.7.2005. Hence these two criminal revisions, at the hands of convicts.

Notice of motion was issued and sentence of the petitioners was suspended. Both the petitions were admitted for regular hearing. During the pendency of these petitions, parties arrived at an amicable settlement by way of compromise dated 8.1.2011. Accordingly, parties were directed to appear before the learned Chief Judicial Magistrate, Hoshiarpur for getting their statements recorded so as to enable the learned Magistrate to record his satisfaction on the genuineness of compromise. In compliance of the order dated 19.8.2015 passed by this Court, report of learned Chief Judicial Magistrate through the learned District & Sessions Judge, Hoshiarpur has been received, whereby compromise arrived at between the parties has been found to be a genuine one.

Learned counsel for the petitioners in both the revision petitions submit that in view of different custody certificates, petitioners have undergone the custody for about two months, out of total sentence awarded to them for a period of one year. They further submit that in view of compromise arrived at between the parties and the same having been found to be a genuine one, let the conviction of the petitioners be upheld and their sentences may be reduced to the period already undergone by them.

Highlighting other mitigating circumstances in favour of the petitioners, learned counsel for the petitioners contended that petitioners have not been found involved in any other case nor they were previous convicts. Petitioners were the only bread winners of their respective families. They have been facing agony of criminal trial for the last 15 long years. They pray for allowing both these petitions.

On the other hand, learned counsel for the State submits that since the learned courts below have already shown sufficient leniency in favour of the petitioners, while awarding the sentence to them, they are not entitled for any further reduction of sentence to the period already undergone by them. He prays for dismissal of both these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, coupled with the genuine compromise arrived at between the parties, it is just and expedient to uphold the conviction of the petitioners, while reducing their sentence to the period already undergone by them.

Report received from the learned Chief Judicial Magistrate, Hoshiarpur, through the learned District & Sessions Judge, is available on record. It has been reported that the compromise arrived at between the parties was a genuine one. Further, the above-said mitigating circumstances in favour of the petitioners have gone unrebutted. Petitioners have been found facing the agony of criminal trial for the last more than 15 long years. Having said that, this Court feels no hesitation to conclude that sentence of the petitioners deserves to be reduced to the period already undergone by them.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass v/s State of Himachal Pradesh** 1988 (2) RCR (Criminal). The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as “**Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723**,” the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this

is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.”

An identical question had arisen before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (Crl.) 689**. The relevant observations made in para 9 of the judgment, aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal,

revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.”

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the judgments referred to hereinabove, coupled with the reasons aforementioned, conviction of the petitioners is upheld. However, their sentences are ordered to be reduced to the period already undergone by them.

Resultantly with the above-said modification in the impugned judgments, both these criminal revision petitions stand partly allowed. The petitioners are already on bail and their bail/surety bonds shall stand discharged.

Disposed of, accordingly.

7.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE