

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2569-2006

Date of decision : 26.08.2015

Virender & anr.

..... Petitioners

Vs

State of Haryana

..... Respondent

Coram : Hon'ble Mr. Justice Naresh Kumar Sanghi

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present : Mr. Pankaj Middha, Advocate
for the petitioners.

Mr. Kuldeep Tiwari, Addl. A.G., Punjab.

NARESH KUMAR SANGHI, J. (oral)

Challenge in the present criminal revision is to the judgment dated 16.11.2006 passed by learned Addl. Sessions Judge, Jind whereby the appeal filed by the petitioners challenging their conviction and sentence for the offences punishable under Sections 323 and 324 IPC recorded by Judicial Magistrate First Class, Jind, was dismissed after modification of the order of sentence.

At the very outset, learned counsel for the petitioners submits that in view of the concurrent findings of both the Courts below he does not propose to challenge the conviction of the petitioners. However, he submits that a family feud had taken place at the spur of moment in which Phulpati (PW-1) had sustained injuries at the hands of the petitioners; the occurrence had taken place on 20.07.1996 and thereafter the petitioners are

continuously facing the agony of trial, appeal and the present revision; during pendency of present criminal case the petitioners were released on bail by all the three courts where the case remained pending and during the said period they did not misuse the said concession; the petitioners are first offenders and they are not involved in any other case; each petitioner has suffered the jail imprisonment for one month and 28 days; fine imposed was deposited before the learned trial Court; after 19 years of the occurrence it would not be appropriate to send the petitioners to jail, particularly when they have already suffered the 2/3rd of the substantive sentence. He further points out that within four days of the occurrence the injuries on the person of Phulpati had healed and she started performing the daily pursuits.

On the other hand, the learned counsel for the State submits that the petitioners by means of sharp edged weapon had caused injuries on the person of Phulpati who was their sister-in-law (elder brother's wife). He further submits that the appellate Court has already taken a lenient view and the sentence for the offence punishable under Section 323 IPC was reduced to one and a half months while the sentence for the offence punishable under Section 324 IPC was reduced to three months from the awarded sentence of six months and as such,

there is no much scope for further reduction of sentence.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

In nutshell, the facts of the prosecution case are that on 20.07.1996, Phulpati while admitted in the hospital suffered the statement before the police alleging that her sister was married to the younger brother of her husband but she was not being kept properly by her husband and as such there was a dispute in the family. On that day at about 2.30 p.m., when she was present in the fields, then petitioner Virender armed with 'Jelly', petitioner Samunder Singh carrying 'Gandasi' while their co-accused Hitler (since acquitted) carrying a 'Lathi' arrived there and on the exhortation of Virender, petitioner Samunder Singh inflicted multiple injuries by means of 'Gandasi' on the head of Phulpati. As a result thereof, she fell down on the ground. Petitioner Virender inflicted 'Jelly' blows on her left leg and right arm. Hitler (since acquitted) inflicted 'Lathi' blow behind the right shoulder of Phulpati. Rajinder PW, husband of Phulpati arrived at the spot and tried to rescue his wife Phulpati. The petitioners and their co-accused also gave beating to Rajinder as well. After beating Phulpati and Rajinder, the petitioners and their co-accused took to their heels along with

their respective weapons. Phulpati was carried to hospital where her medicolegal examination was conducted. Police was informed, which came to the hospital, recorded the statement of Phulpati after obtaining necessary opinion from the Doctor and thereafter the case for the offences punishable under Sections 323, 324 and 506 read with Section 34 IPC was registered at Police Station Julana, District Jind. After completion of the investigation, the charge-sheet (report under Section 173 Cr.P.C.) was presented before the learned Area Judicial Magistrate. The charges for offences punishable under Sections 323, 324, 326 and 506 read with Section 34 IPC were framed against the petitioners and their co-accused, to which they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined Smt. Phulpati PW-1, Rajinder PW-2 and Dr. Raj Kumar PW-3 and also placed on record the original police memo Ex. PA, medicolegal report Ex. PW3/A, diagram Ex. PW3/B, medical memo Ex. PW3/C and opinion of the Doctor dated 20.07.1996 Ex. PW3/D. Despite several opportunities afforded to the prosecution, it could not examine all the prosecution witnesses and as such learned trial Court was constrained to close the prosecution evidence vide order dated 20.10.2004.

The statements of the petitioners and their co-accused

were recorded in terms of Section 313 Cr.P.C. in which they denied their involvement in the occurrence and pleaded their false implication.

After hearing learned counsel for the parties and scanning the material available on record, the learned trial Court held the petitioners and co-accused Hitler guilty for the offences punishable under Sections 323 & 324 IPC and awarded the sentence of three months and imposed a fine of ₹ 250/- on each petitioner for the commission of offence punishable under Section 323 read with Section 34 IPC and in default for payment of fine each defaulter had to undergo simple imprisonment for a period of ten days. The convicts were further sentenced to undergo RI for a period of six months and to pay a fine of ₹ 250/- each for the offence punishable under Section 324 read with Section 34 IPC. Each defaulter was ordered to undergo further simple imprisonment for a period of one month. Both the substantive sentences were ordered to run concurrently.

Dissatisfied with the judgment of conviction and order of sentence, the convicts filed appeal before the learned Addl. Sessions Judge, Jind, who while maintaining the conviction of the petitioners, acquitted their co-accused Hitler and sentence of the petitioners was modified to the extent that for the offence punishable under Section 323 IPC, the petitioners would

undergo RI for 1½ months while for the offence under Section 324 IPC, they would undergo RI for three months. The sentence of fine imposed by learned trial Court was maintained.

With the assistance of the learned counsel for the parties, the record received from the learned trial Court has been perused. In view of the depositions of the prosecution witnesses, particularly, that of Phulpati PW-1 and Dr. Raj Kumar PW-3, this Court finds that the judgments holding the petitioners' guilty for the offences punishable under Sections 323 & 324 IPC are well based and no interference is called for by this Court.

However, there appears to be substance in the submissions of the learned counsel for the petitioners when he submitted that it was a family feud; occurrence had taken place on 20.07.1996 and thereafter 19 years have passed and no untoward incident had taken place between aggrieved persons and the petitioners; during the pendency of the present case before learned trial Court, appellate Court and this Court, the petitioners were enlarged on bail but the said concession was never misused; petitioners are first offenders and they are not involved in any other case; both the petitioners had suffered incarceration for one month and 28 days out of the maximum sentence of three months and that after few days of the occurrence, Phulpati injured had recovered from the injuries

and started performing her daily pursuits. It was also pointed out that the fine imposed by the learned trial Court and maintained by the appellate Court was deposited before the Courts below.

Keeping in view the totality of the facts and circumstances of the case, jail imprisonment of the petitioners is reduced to the period already undergone (1 month and 28 days each). The fine imposed by the Courts below is maintained. Each petitioner is further directed to pay a sum of ₹ 10,000/- (Rupees ten thousand only) i.e. total twenty thousands to Phulpati injured as compensation. The amount of compensation shall be deposited by each petitioner within two months of passing of this order with learned trial Court failing which the sentence awarded by appellate Court would revive qua the defaulter. On receipt of the amount from the petitioners, the learned trial Court shall issue notice to the aggrieved woman Phulpati to withdraw the amount as per norms.

With the above modification in the order of sentence and the amount of compensation awarded to Phulpati, the present revision petition is disposed of.

(NARESH KUMAR SANGHI)
JUDGE

26.08.2015
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