

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

Crl. Revision No. 3045 of 2014(O&M)

Date of Decision: March 23 , 2015.

Ramesh Kumar and another PETITIONER (s)

Versus

State of Haryana and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vimal Kumar Gupta, Advocate
for the petitioner.

Mr. Pawan Girdhar, Addl.A.G., Haryana.

Mr. Amit Jaiswal, Advocate
for respondent No.2.

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?

LISA GILL, J.

Petitioners Ramesh Kumar and Suman wife of Ramesh Kumar, have preferred this revision petition challenging impugned judgment of conviction dated 06.03.2012 and order of sentence dated 07.03.2012 passed by the learned Chief Judicial Magistrate, Ambala as well as impugned judgment dated 09.09.2014 rendered by learned Additional Sessions Judge, Ambala.

Briefly stated, a complaint No.166/1 of 2005 under Sections 323/324/427/452/504/506/34 IPC was filed by respondent No.2 – Rekha Rani. It is

averred that the petitioners and the complainant are permanent residents of village Dhaaneora, Tehsil and District Ambala. Complainant Rekha Rani woke up at 5.00 a.m. on 14.03.2005 when she heard sounds of fighting and quarrelling. She got up and saw that the petitioners as well as accused – Premi Devi, mother of petitioner No.1, were quarrelling with her mother. When she tried to intervene and save her mother, petitioner No.2 – Suman and Premi Devi (not a party to this petition) gave fist blows to her. Petitioner No.1 – Ramesh Kumar attacked with an axe, which hit on the finger of her right hand. All the accused dismantled a wall of their house, snatched a cycle from them and further inflicted injuries with brick-bats on her younger brother and gave fist blows to her mother. All the accused used filthy language to insult and threaten her with dire consequences. In the meanwhile, when the neighbours collected there, the accused ran away while threatening them with dire consequences. The cause of the incident is alleged to be a previous enmity between her father and accused. Civil litigation was pending between them. DDR (Ex.C3) was lodged but no action was taken by the police. Therefore, the present complaint was filed on 04.08.2005.

Finding a *prima facie* case against the accused, they were summoned by the learned trial court to face trial for the commission of offences punishable under Sections 323/452/504/506 read with Section 34 IPC on 24.02.2007. Four witnesses including the complainant were examined. Accused were charge-sheeted on 07.11.2011 to which they pleaded innocence and claimed trial. No further evidence was led by the complainant.

The learned trial court on going through the facts and circumstances of the case convicted the petitioners as well as Premi Devi for the commission of

offences punishable under Sections 323/452/504/506 read with Section 34 IPC and sentenced them as under:-

Name of convict	Offence U/s	Imprisonment	Fine	Sentence in default of payment of fine
Ramesh Kumar	323 IPC	Simple imprisonment for six months	₹500/-	Fifteen days S.I.
Ramesh Kumar	452 IPC	Simple imprisonment for one year	₹500/-	One month S.I.
Ramesh Kumar	504 IPC	Simple imprisonment for six months	---	
Ramesh Kumar	506 IPC	Simple imprisonment for one year	---	---
Suman	323 IPC	Simple imprisonment for six months	₹500/-	Fifteen days S.I.
Suman	452 IPC	Simple imprisonment for one year	₹500/-	One month S.I.
Suman	504 IPC	Simple imprisonment for six months	---	---
Suman	506 IPC	Simple imprisonment for one year	---	---

Co-accused Premi Devi was extended the benefit of probation under Section 360 of the Code of Criminal Procedure as she was aged 85 years at that time and admittedly, a paralytic patient.

Petitioners preferred appeal challenging the judgment of conviction and order of sentence passed by the learned trial court. Learned Additional Sessions Judge, Ambala while setting aside their conviction under Section 504 IPC upheld their conviction and sentence under Sections 323/452/506/34 IPC.

Hence aggrieved, petitioners have preferred the instant revision petition.

Learned counsel for the petitioners at the very outset points out that he does not address arguments on the merits of controversy. Notice of motion in

this case had been issued on 24.09.2014 only with regard to the quantum of sentence imposed upon the petitioners.

Learned counsel for the petitioner submits that the benefit of probation should be extended to the present petitioners as well. It has wrongly been denied to them while being afforded to co-accused Premi Devi. In the alternate learned counsel prays that reduction in the sentence imposed upon the petitioners be considered keeping in view the facts and circumstances of the case.

The extension of benefit of probation or reduction in the sentence imposed upon the petitioners has been opposed by the learned counsel for the State. It is submitted that the petitioners were subsequently convicted for the offences punishable under Sections 323/506/34 IPC in FIR No.171 dated 27.12.2005. They had yet again inflicted injuries on the person of present complainant, Rekha Rani on 05.11.2005. They were convicted by the trial court on 05.10.2011. In this view of the matter, it is submitted that they are not entitled to the concession of probation or reduction in the sentence imposed.

The petitioners have been found guilty of trespassing into the complainant's house and inflicting injury upon her. Injury found on the person of complainant, Rekha Rani as noted by Dr. V.K.Sharma (CW1) is as under:-

“1. A small lacerated wound on the dorsal surface of distal phalanx of the right little finger. The wound was skin deep and slight clotted blood was present.

Nature of injury – The injury was simple in nature and was caused with blunt weapon and probable duration was within 24 to 26 hours.”

In the cross-examination, Dr. V.K.Sharma (CW1) opined that

possibility of this injury being self inflicted or having been caused by fall on hard surface cannot be ruled out.

I have heard learned counsel for the parties and gone through the file.

It is a matter of record that civil litigation was undoubtedly pending between the parties. Details of civil litigation is mentioned in Para 2(v) of the Grounds of Revision. Matter had been adjudicated upto this Court. It is also admitted that after December, 2005, there has been no untoward incident between the parties. Petitioners undoubtedly are facing trial since the year 2005. The present complaint as well as FIR No.171 dated 27.12.2005 have arisen on account of the pending civil litigation.

Taking into consideration all the aforementioned facts and circumstances of the case, I am of the view that petitioners deserve some leniency in the quantum of sentence.

Consequently, sentence of imprisonment of one year for the offence punishable under Section 452 IPC is reduced to seven months, sentence of imprisonment of one year for the offence punishable under Section 506 IPC is reduced to seven months and sentence of imprisonment of six months for the offence punishable under Section 323 IPC is reduced to three months. All sentences shall run concurrently. Fine imposed shall remain the same.

With the aforementioned modification in the sentence imposed upon the petitioners, this revision petition is dismissed.

March 23 , 2015.
'om'

(LISA GILL)
JUDGE