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

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Date of Decision: 03.08.2015

Gurjit Kaur

... Petitioner(s)

Versus

Kulbir Kaur

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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. B.D.Sharma, Advocate,
for the petitioner.

Mr. R.S.Sidhu, Advocate,
for the respondents.

Paramjeet Singh, J.

Instant revision has been filed challenging the impugned judgment dated 13.08.2014 passed by the Additional Sessions Judge, Tarn Taran whereby appeal filed the petitioner against the judgment of conviction and order of sentence dated 24.01.2013 passed by the Additional Chief Judicial Magistrate, Tarn Taran, has been dismissed on the ground of limitation.

Brief facts of the case are to the effect that the petitioner-complainant filed complaint under Sections 307/382/323/148/149 of the Indian Penal Code (in short, 'IPC') against the respondents with the averments that on 20.11.2006, when the complainant and her husband

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approached the house of accused No.1 for taking money, she started hurling abuses and called upon the other accused to kill both of them, on which accused Jagdish Singh gave a stick blow to Satnam Singh which hit on his shoulder and then the accused Jagdish Singh held him from his hairs. Nirvail Singh gave a hockey blow on the neck of husband of the complainant. Accused Daljit Singh gave a blow with the handle of a spade which hit on the right leg of husband of the complainant. Accused Captain Singh gave a hockey blow but the same hit the ground. The complainant raised an alarm and the accused tried to catch her with an intention to kill but she managed to escape and went to the house of her sister-in-law at Moradpur. The accused also snatched a sum of ₹1,000/- and scooter from the husband of the complainant. The complainant approached the police, but no action was taken, therefore, the complaint was filed.

On the basis of preliminary evidence, the accused-respondents were ordered to be summoned to face trial for the commission of offences punishable under Sections 323/148/149 IPC. Thereafter, the complainant led pre-charge evidence and on the basis of the same, the accused were charge-sheeted under Sections 148 and 323 read with Section 149 IPC, to which they pleaded 'not guilty' and claimed trial.

Statement of accused under Section 313 of the Code of Criminal Procedure were recorded wherein they denied all the allegations and pleaded false implication.

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After analyzing the evidence on record, the trial Court, vide impugned judgment of conviction dated 24.01.2013, held the accused guilty under Sections 323 read with Section 149 IPC, however, acquitted the accused under Section 148 IPC and sentenced them to pay a fine of ₹1,000/- each, vide order of conviction dated 24.01.2013.

The petitioner preferred an appeal along with application for condonation of delay before the Additional Sessions Judge, Tarn Taran against the acquittal of the accused under Section 148 IPC and enhancement of sentence as awarded by the trial Court under Section 323 read with Section 149 IPC. The application for condonation of delay has been dismissed and resultantly the appeal has also been dismissed on the ground of limitation, vide impugned judgment dated 13.08.2014 passed by the Additional Sessions Judge, Tarn Taran. Hence, this revision.

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

Learned counsel for the the petitioner contended that the lower Appellate Court has wrongly dismissed the appeal being time barred. It has failed to appreciate the *bona fide* of the petitioner for not filing the appeal within time. The husband of petitioner had fallen ill and the petitioner remained busy in his treatment and could not file the appeal well in time. Learned counsel further contended that criminal cases are to be decided on merit, not on the mere technicalities. Learned counsel further contended that the trial Court has failed to appreciate the

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evidence while acquitting the accused under Section 148 IPC. Learned counsel further contended that sentence awarded by the trial Court for the commission of offence punishable under Section 323 read with Section 149 IPC is on the lesser side.

Per contra, learned counsel for the respondents vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned judgments/orders.

I have considered the rival contentions of learned counsel for the parties.

The lower Appellate Court has rightly held that the petitioner has failed to disclose nature of disease suffered by her husband and from where she got treatment and mere oral version made by the petitioner cannot be believed and has ultimately dismissed the appeal of the petitioner being time barred, vide impugned judgment dated 13.08.2014.

The trial Court has rightly acquitted the accused by holding that recovery of deadly weapons has not been effected in the present case and even the injuries suffered by injured-Satnam Singh are simple in nature.

It is a settled legal position that in revision against acquittal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings when the appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings

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recorded by the trial court while acquitting the respondent- accused under Section 148 IPC and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment acquitting the accused under Section 148 IPC is just, legal and proper and requires no interference by this Court at this stage.

The powers of the High Court for enhancement of sentence are exhaustive under Section 401 of the Code of Criminal Procedure (in short, 'the Code'), relevant portion of which reads thus :

"401. High Court is powers of revision :

(1) In the case of any proceeding the record of which has been called for itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by S. 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by S. 392."

It is quite clear from the wording of Section 401 of the Code has conferred extensive powers on the High Court as that of Section 386 and other provisions of the Code. It appears from the wording of Section 401 that the High Court in a given case can even send for the record and examine and pass such orders as may be necessary in the interest of justice. Learned counsel for the petitioner failed to show any cogent and convincing evidence and special grounds on the basis of which punishment should be enhanced.

Moreover, I am afraid, while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence. The basic object behind Section 401 of the Code is to empower the high court to

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exercise the powers of an appellate court to prevent failure of justice in cases where the Code does not provide for appeal. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision is being heard. In exercising the power of revision, which is discretionary, the court should always bear in mind the limitation that under the garb of exercising its powers of revision; it cannot exercise the power of appeal in the face of statutory prohibitions. This is not a case where an important piece of evidence has been left out from consideration by the courts below while deciding the case.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

03.08.2015
parveen kumar

(Paramjeet Singh)
Judge