

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

**Criminal Revision 2116 of 2008
Date of Decision : May 25, 2016**

Sumer Singh		Petitioner
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. B.S.Saroha, Advocate

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S.MANN, J. (Oral)

The petitioner was tried for offences punishable under Sections 323, 324 and 326 IPC. The trial Court acquitted him of the charge under Section 324 IPC. However, he was convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for three months. He was also convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 100 days.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. After upholding his conviction for

the offences under Sections 323 and 326 IPC and also sentence of three months for the offence under Section 323 IPC, the lower appellate Court reduced the sentence of imprisonment under Section 326 IPC from six years rigorous imprisonment to four years rigorous imprisonment. Both the sentences were ordered to run concurrently. The fine of Rs.10,000/- earlier imposed and already paid by the petitioner in the trial Court was ordered to be paid to PW6 Krishan Kumar, as compensation.

Still not satisfied, the petitioner preferred the present revision, which was admitted on 9.1.2009 and, simultaneously, he was granted the concession of bail.

The case of the prosecution has been noticed by the lower appellate Court in paras 2 and 3 of its judgment, which is reproduced herebelow:-

“The brief facts of the prosecution case are that on 29.4.2004 on receipt of information Ex.PW1/B and MLR Ex.PW1/A from PW1 Dr. Anuj Bishnoi PW5 Head Constable Ashok Kumar visited Government Hospital, Narnaul and moved an application Ex.PW5/A to Dr. Anuj Bishnoi for opinion regarding fitness to make statement of PW6 Krishan Kumar whereupon doctor attending him opined that the injured was unfit to make statement. On 30.4.2004 PW5 Head Constable Ashok Kumar again visited Government Hospital, Narnaul and vide application Ex.PW5/B obtained opinion of fitness for recording

statement of PW6 Krishan Kumar and recorded his statement which interalia runs as under:-

That on 29.4.2004 at about 5.30 p.m. the complainant PW6 Krishan Kumar with PW7 Umed and PW8 Ved Prakash reached at Mehta Chowk Narnaul and their scooter got punctured. They left the scooter at a mechanic shop. They started on foot towards Vegetable Market, Narnaul. The complainant was having a bag containing Rs.40,000/- in his hand. When they covered some distance, a vehicle make Qualis bearing registration No.HR-35/2577 occupied by 3-4 persons came. Accused Sumer Singh alighted from the vehicle. He gave gupti blows on right hand and back of Krishan Kumar. Resultantly, the bag of money fell down. When Ved parkash and Umed tried to rescue the complainant other people sitting in the vehicle alighted and gave beatings to PW6 Umed Singh and PW7 Ved Prakash.

On this statement, case FIR No. 93 dated 30.4.2004 under Sections 323 and 324 of IPC was registered at Police Station City, Narnaul. On receipt of X-ray report offence under Section 326 IPC was added. Investigating Officer visited the spot, prepared rough site plan of the place of occurrence and recorded statements of prosecution witnesses. After completion of investigation, challan was prepared and presented in the Court for putting the accused on trial by PW2 Sub Inspector Nathu Singh, SHO Police Station City, Narnaul.”

Having heard learned counsel for the parties and on

going through the judgments passed by the Courts below, this Court finds that complainant Krishan Kumar, who had appeared before the trial Court as PW6 has testified about the petitioner alighting from the vehicle and giving gupti blows on his right hand and back, as a result of which, the bag, in which, he was carrying Rs.40,000/- in cash fell down. When Ved Prakash and Umed tried to rescue him they were also given beatings by other people, who had come along with the petitioner in a vehicle. The testimony of PW6 Krishan Kumar is duly corroborated by the testimonies of PW7 Umed and PW8 Ved Prakash. Further, PW1 Dr. Anuj Bishnoi has testified about medico-legally examining complainant Krishan Kumar and finding two injuries on his person. One was result of sharp edged weapon while the other with blunt weapon. PW4 Dr. Dinesh Podar has also deposed that he radiologically examined Krishan Kumar and found chip fracture on right ulna bone. No material is available on the file, from which, it could be indicated that the petitioner had been falsely implicated in the present case. Under these circumstances, no case is made out for upsetting the findings recorded by the Courts below in convicting the petitioner under Sections 323 and 326 IPC.

As regards the quantum of sentence, it may be noticed that the petitioner is facing the agony of criminal prosecution for the last more than twelve years. During his

examination by the trial Court on the quantum of sentence, the petitioner had pleaded that he was a first offender, poor person and sole bread winner of his family besides required to look-after his old parents. Further, the grievous injury found on the person of Krishan Kumar was on non vital part and the injury when radiologically examined was found to have only a chip fracture. As per the custody certificate produced by the learned State counsel, the petitioner has undergone an actual sentence of eight months and eleven days besides earning remission of six days. The total sentence undergone by him including remission, thus, comes to eight months and seventeen days out of the sentence of four years imposed upon him. Under these circumstances, no useful purpose will be served by sending the petitioner behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice would be suitably met, if the substantive sentences of the petitioner on both the counts are reduced to the one already undergone by him. However, the fine of Rs.10,000/- imposed upon the petitioner for the offence under Section 326 IPC can be enhanced to Rs.50,000/- so as to disburse the enhanced amount of fine to injured PW6 Krishan Kumar, as compensation.

Resultantly, the conviction of the petitioner for the offences under Sections 323 and 326 IPC is upheld. His

substantive sentences of imprisonment on both the counts shall stand reduced to the one already undergone by him. The fine of Rs.10,000/- for the offence under Section 326 IPC is enhanced to Rs.50,000/-. The enhanced amount of fine, i.e. Rs.40,000/- be deposited by the petitioner with the trial Court within three months from today, failing which, he shall be required to undergo rigorous imprisonment for one year. The enhanced amount of fine, if deposited by him, be disbursed to injured PW6 Krishan Kumar, as compensation.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, the revision fails and is, therefore, dismissed.

May 25, 2016
amit rana

(T.P.S. MANN)
JUDGE