

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

**Criminal Revision 2212 of 2010
Date of Decision : June 1, 2016**

Jitender and others	Versus	Petitioners
State of Haryana		 Respondent

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

Present : Mr. S.K.Verma, Advocate
for the petitioners.

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

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

The petitioners were tried for committing offences punishable under Sections 326/324/323/34 IPC. Vide judgment and order dated 6/12.8.2008, learned Chief Judicial Magistrate, Bhiwani, convicted them for the aforementioned offences and sentenced him as below:-

Offence Under Section	Sentence
323/34 IPC	Rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default of payment of fine, simple imprisonment for one month.

324/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each and in default of payment of fine, simple imprisonment for two months.
326/34 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each and in default of payment of fine, simple imprisonment for three months.

All the substantive sentences of imprisonment were ordered to run concurrently. The period spent by them behind the bars during the trial was ordered to be set off against the sentences awarded. The fine imposed was deposited by them there and then. Half of the amount of fine was ordered to be paid to injured Mahipal Singh.

Aggrieved of their conviction and sentence, the petitioners preferred an appeal. Vide judgment dated 14.7.2010, learned Additional Sessions Judge (I) Bhiwani found no merit in the appeal and dismissed the same. Still not satisfied, the petitioners preferred the present revision, in which, they are currently on bail pursuant to order dated 7.12.2010.

The case of the prosecution, in brief, is that on 30.12.2001, complainant Mahipal Singh had dug a well in front of his house in the public street for connecting it with the toilet

already constructed by him. Some loose earth fell in the dirty water drain of Jitender petitioner. On 1.1.2002 at about 9.00 p.m., when the complainant was standing in the street in front of his house, Jitender questioned him for throwing loose earth into the drain and, simultaneously, gave an axe blow on his right eye. In the meantime, Rajesh Kumar came there armed with a lathi and gave a blow with the same on the right knee of the complainant. Davender also came there holding a lathi and gave two blows with the same on the left knee and feet of the complainant. The alarm raised by the complainant attracted his brother Bijender. However, Davender gave a lathi blow to Bijender on his right hand whereas Rajesh Kumar gave a lathi blow on his forehead and Davender gave a fist blow on his face. The complainant and his brother Bijender also caused injuries to the accused in their defence.

The FIR was initially registered for offences under Sections 323/324/34 IPC. Subsequently, in view of the medical evidence which showed that right eye of complainant Mahipal Singh, on which he had suffered injury with sharp edged weapon, was removed, Section 326 IPC was added to the case.

Learned counsel for the petitioners has submitted that the complainant did not explain the injuries, which had been

received by the three petitioners during the occurrence. It is also submitted that it was a case of version and cross-version and as it was the complainant party which had opened aggression, the petitioners had exercised their right of self-defence in causing injuries to the complainant Mahipal Singh and his brother Bijender.

Having heard learned counsel for the parties and on going through the judgments passed by the Courts below, this Court finds that the accused did not bring any material on the record, from which, it could be indicated that they had received injuries during the occurrence. If the accused had failed to establish the fact that they had received injuries, the complainant party was not under a duty to explain those so called injuries. Even otherwise, while moving the machinery of law into motion by making statement before PW5 Head Constable Jagdish Chander, complainant Mahipal Singh had testified that in their self-defence they too had inflicted injuries on the assailants.

Complainant Mahipal Singh while appearing as PW4 and injured Bijender as PW6, have unequivocally testified that it were the petitioners, who had caused injuries to them. Their testimonies are corroborated by the medical evidence brought on record by the prosecution by examining PW2 Dr. Sumit

Sachdeva, PW3 Dr. Ramesh Kumar and PW11 Dr. Urmila Chawla. One of the injury received by complainant Mahipal Singh was on his right eye and during his treatment, his right eye had to be removed. For that reason, the petitioners have rightly been convicted for committing offences under Sections 323/324/326/34 IPC.

As regards the quantum of sentence, it may be noticed that the petitioners are facing the agony of criminal prosecution for the last more than fourteen years. Even according to the prosecution, there was no serious enmity between the parties and the occurrence developed when the complainant party dug a well in front of their house and some loose earth fell in the water drain of the petitioners. The petitioners claim to be poor persons and sole bread winner of their respective families. It is further submitted on their behalf that they are first offenders and have already undergone about 6/7 months out of the sentence of two years imposed upon them. Prayer has, accordingly, been made for setting aside their remaining sentences of imprisonment.

Learned State counsel has opposed the prayer by submitting that all the three petitioners had taken active part in the commission of the crime and on account of injuries received

by complainant Mahipal Singh, his right eye had to be removed. Learned State counsel has, however, produced the custody certificates, as per which, Jitender petitioner has undergone an actual sentence of seven months and thirteen days whereas Rajesh and Davender petitioners have undergone five months and seventeen days each. Besides, all of them have earned remission of twenty days.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the petitioners behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice would be suitably met, if their substantive sentences of imprisonment on all the counts are reduced to the one already undergone by them. At the same time, the fine of Rs.2,000/- imposed upon each of the petitioners for the offence under Sections 326/34 IPC can be enhanced to Rs.20,000/-.

Resultantly, the conviction of the petitioners for the offences under Sections 323/34, 324/34 and 326/34 IPC is maintained. Their substantive sentences of imprisonment on all the counts shall stand reduced to the one already undergone by them. The sentence of fine of Rs.500/- under Section 323/34 IPC and Rs.1,000/- under Section 324/34 IPC along with their default

clauses are maintained. However, the fine of Rs.2,000/- imposed upon them under Section 326/34 IPC is enhanced to Rs.20,000/- each. The enhanced amount of Rs.18,000/- shall be deposited by each of the petitioners with the trial Court within three months from today, failing which, they shall be required to undergo simple imprisonment for six months each. The additional amount of fine, when deposited by the petitioners be disbursed to complainant Mahipal Singh, 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.

June 1, 2016
amit rana

(T.P.S. MANN)
JUDGE