

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

Crl. Revision 1489 of 2013
Date of Decision : May 26, 2016

Jitender @ Joginder

.....Petitioner

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Sanjay Gupta, Advocate

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

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

The petitioner, alongwith his brothers Fateh Singh, Virender Kumar, Bahadur Singh and Vijay Kumar and one Shish Pal, was tried for committing the offences punishable under Sections 148, 323, 324, 326 read with Section 149 IPC. Vide judgment and order dated 6/8.2.2012, learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri convicted them under Section 148 IPC and sentenced to undergo imprisonment for six months each. They were further convicted under Sections 323/149 IPC and sentenced to undergo imprisonment for six months each. They were also convicted under Sections 326/149 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to undergo imprisonment for one month. The sentences were ordered to run concurrently. The period of their detention during investigation/trial, was allowed to be set off against the sentence of imprisonment awarded to them. The fine imposed was paid by the petitioner and his co-convicts there and then.

Aggrieved of the judgment of conviction and order of sentence passed by the trial Court, the petitioner and his co-convicts filed an appeal. Vide judgment dated 11.4.2013, learned Additional Sessions Judge, Yamuna Nagar at Jagadhri acquitted the co-convicts of the petitioner of all the charges against them including the offences under Sections 148 and 149 IPC. The petitioner was, however, held guilty under Sections 323 and 326 IPC and the sentences awarded to him by the trial Court on the said counts were maintained.

Still not satisfied, the petitioner preferred the present revision which was admitted on 3.5.2013. Subsequently, on 2.7.2013, this Court suspended the sentence of the petitioner and ordered for releasing him on bail.

The case of the prosecution, in nutshell, is that on 25.9.2005 at about 8.15 p.m., complainant Naushad alongwith one Wazid had gone to Atma Puri Colony, Old Hamida, Yamuna Nagar on a motor cycle. When they reached near the temple, they had to reverse their motor cycle. While Wazid was reversing the motor cycle it struck against the cycle of the brother of the petitioner, who became annoyed and started hurling abuses. When the complainant intervened, a quarrel ensued. In the meantime, the petitioner and his brothers armed with sharp edged weapons and *lathis* came there. Father of Jitender and one Shree Pal, a shop keeper also reached there. Attack was opened upon the complainant and Wazid. Wazid managed to escape from the spot. However, the complainant was given beatings by the accused with their respective weapons. On an alarm raised by the complainant, his brother Shamshad was attracted but he was also beaten by the accused persons. Subsequently, the accused decamped from the spot with their respective weapons.

Having heard learned counsel for the petitioner, this Court finds that the conviction of the petitioner for the offences under Sections 323 and 326 IPC is well merited. The complainant while appearing as PW2 had deposed about the manner in which the occurrence had taken place and his receiving injuries at the hands of the accused. His testimony is duly corroborated by his brother Shamshad, who had appeared as PW7. The medical evidence by way of the testimony of PW5 Dr. Sunil Kumar lends independent corroboration to the prosecution version. During the investigation of the case, the police had collected sufficient evidence to fix the liability of the accused. Under these circumstances, no case is made out for any interference in the conviction of the petitioner for the offences 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 about eleven years. He is not shown to be a previous convict. He claims himself to be the sole bread winner of his family. As per the custody certificate already brought on record by the learned State counsel, the petitioner has undergone an actual sentence of three months out of the sentence of two years imposed upon him. There is no material on the record which could indicate that while being on bail during the pendency of the present revision, the petitioner has misused the concession.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that 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 his substantive sentences of

imprisonment on both the counts are reduced to the one already undergone by him.

Resultantly, the conviction of the petitioner under Sections 323 and 326 IPC is maintained. His substantive sentences of imprisonment on both the counts shall stand reduced to the one already undergone by him. The fine of Rs.1,000/- imposed under Section 326 IPC is, however, enhanced to Rs. 5,000/- which shall be deposited by him with the trial Court within three months from today, failing which he shall be required to undergo simple imprisonment for three months. The enhanced amount of fine, if deposited, be disbursed in favour of complainant Naushad, 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 26, 2016
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(T.P.S. MANN)
JUDGE