

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.2375 of 2013 (O&M)

Date of Decision: 14.01.2016

Dharam Pal

...Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. Ravi K. Mattoo, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J,

The petitioner-complainant has filed the present revision petition challenging the judgment of conviction and sentence dated 5.1.2013 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court-II, Hoshiarpur with a prayer for enhancement of sentence of respondents no.2 to 8 for offence under Section 460 IPC.

The private respondents have been convicted for offence under Sections 148, 460, 326, 325, 324, 323 read with Section 149 IPC. Under Section 460 IPC, they have been sentenced to undergo rigorous imprisonment for three years, whereas, for other offences, they have been awarded maximum sentence of rigorous imprisonment for a period of three years apart for sentence of fine etc. However, all the sentences have been ordered to run concurrently.

Briefly stated, FIR No.107 dated 14.7.2010 under Sections 460, 326, 325, 324, 323, 148/149 IPC, Police Station Sadar, Hoshiarpur was registered against the respondents-accused on the basis of complaint made by the petitioner.

It is the case of the prosecution that on 9.7.2010 at about 8-30 P.M., Jarnail Singh came to the shop of the Dharm Pal complainant, to fix puncture on his cycle tube, but on his refusal, he returned back in anger. At about 9-15/9-30 P.M., Jarnail Singh along with accused Baljit Kaur, Gurvinder Singh, Satwant Singh, Sarabjit Singh, Sandeep Singh and Kuldeep Singh again came to their house. Satwant Singh and Gurvinder Singh scaled over the outer wall of his residential house and opened the main gate after entering into the house. All the accused entered into the house of the complainant. Satwant Singh, who was armed with *kirpan*, gave its blow to the complainant which hit on his shoulder. Sarabjit Singh @ Sahbi gave stick blow on both of his legs and Baljit Kaur caught hold of his wife Kamlesh Kaur from her hair and dragged

her. Gurvinder Singh gave *dater* blow on Kamlesh Kaur, which hit on her right hand. Deepa gave knife blow on Kamlesh Kaur which hit near her right elbow. The aforesaid incident had taken place because Jarnail Singh was annoyed with the complainant due to his refusal for fixing puncture on his cycle tube. On the statement of complainant Dharm Pal, FIR under Sections 460, 324, 323, 148/149 IPC was registered against the accused. After recording the statements of prosecution witnesses under Section 161 CrPC, the accused were arrested and later, they were released on bail. On receipt of report from the Medical Officer, when the injury was declared as grievous, offence under Section 326/325 IPC was added later on. In this manner, after completion of investigation, challan under Section 460, 326, 325, 324, 323, 148/149 IPC was presented in Court. Copies of the challan were supplied to the respondents-accused free of cost as required under Section 207 CrPC by the Illaqa Magistrate. Since offence under Section 460 IPC was exclusively triable by the Court of Sessions, therefore, learned Illaqa Magistrate committed the case to the Court of Sessions Court vide order dated 14.2.2011.

Learned Additional Sessions Judge (Ad hoc), Fast Track Court-II, Hoshiarpur vide judgment dated 5.1.2013, after appreciating the evidence on record, convicted the respondents-accused under Sections 148, 460, 326, 325, 324, 323 read with Section 149 IPC and vide separate order of even date, sentenced the accused respondents no.2 to 8, as aforesaid.

Learned counsel for the petitioner contended that taking into consideration the injuries caused by the respondents-accused to the complainant side, the sentences awarded to the respondents-accused are inadequate vis-à-vis the offences committed by them and therefore, they are required to be awarded with higher sentences. He submitted that all the accused who were armed with deadly weapons committed lurking house trespass at night at about 9-20 P.M. and entered into the house being used as human dwelling, caused grievous hurts to injured which were likely to cause death. Therefore, all the ingredients of Section 460 IPC have duly been established against the respondents-accused. Learned counsel further argued that the case of the prosecution is fully supported by the injured eyewitness who has suffered as many as six injuries at the hands of the accused persons, which included the injuries which are grievous in nature. The very purpose of awarding punishment is to make the accused realize about the suffering which the victim has to undergo because of the act of the accused. 'Serious wrong – higher punishment' should be the principle while awarding the sentence. The accused have entered the house of the petitioner with deadly weapons during night time and have attacked the complainant and his wife who were given beatings mercilessly, for which, they deserve no leniency. Learned counsel further argued that though the respondents-accused were awarded sentence of three years but they have already been released on

bail and therefore, there is no justification for such a lower quantum of sentence by the trial Court.

I have heard learned counsel for the petitioner and perused the impugned judgment and order on quantum of sentence.

The scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

In order to deal with the contention raised on behalf of the petitioner for higher sentence under Section 460 IPC, a reference may also be made to Section 460 IPC, which reads as under:-

“460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.
- If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person,

every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

There is no dispute that the respondents-accused have committed the offence of lurking house-breaking during night time, for which, the accused may be awarded the sentence of imprisonment for life or with imprisonment of either description for a term which may extend to ten years. However, while considering the case of the respondents-accused, on quantum of sentence, learned trial Court has rationally observed that Jarnail Singh is an old man of 65 years of age and is dependent upon his children whereas Baljit Kaur is also an old lady who usually remains sick and there is nobody in the house to look after her family. The other respondents namely Sarabjit Singh, Sandip Singh, Gurvinder Singh, Satwant Singh and Kuldip Singh are poor persons and are required to look after their old parents and therefore, lenient view was prayed for. Learned trial Court has tried to make out a balance vis-à-vis the gravity of offence and the family set up of the accused including their age and economic conditions while awarding the sentence. Though the framers of law in their wisdom have provided sentence of imprisonment for life or with imprisonment of either description for a term which may extend to ten years, for the offences committed by the

respondents-accused, but it is for the Court to decide as to how much sentence is required to be awarded to the accused, more particularly when no minimum sentence is prescribed. Taking into consideration the nature of injuries and the dispute between the parties, learned trial Court has rightly awarded the sentence.

Therefore, this Court does not find any ground to interfere into to quantum of sentence of the respondents-accused awarded by the Court below.

The revision petition is dismissed.

January 14, 2016
AK

(HARI PAL VERMA)
JUDGE