

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

CRR No.1830 of 2015 (O&M).
Decided on:-15.03.2016.

Punit Kumar.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Sandeep Arora, Advocate
 for the applicant-petitioner.

HARI PAL VERMA, J.

CRM No.16649 of 2015

There is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 11 days in filing the present criminal revision petition.

For the reasons stated in the application, the same is allowed and delay of 11 days in filing the instant petition is condoned.

CRR No.1830 of 2015

The petitioner has filed present revision petition impugning order of sentence dated 29.1.2015 passed by learned Sessions Judge,

Ambala on the ground that sentence awarded to respondents No.2 to 4-accused needs to be modified and suitably enhanced.

Learned Sessions Judge, Ambala vide judgment dated 27.1.2015 had convicted accused-respondents No.2 to 4 under Section 452 IPC as well as Sections 323, 324, 326 and 506 read with Section 34 IPC and vide impugned order dated 29.1.2015, sentenced them as under:

Name of the convict	Offence/s	Period of sentence (R.I.)	Fine imposed	Period of sentence in default of payment of fine (R.I.)
Sanjeev alias Sanju, Raju alias Rajbir and Gurvinder Singh	452 IPC	One Year each	Rs.1,000/- each	Three Months each
-do-	323/34 IPC	Six Months each	Rs.500/- each	Two Months each
-do-	324/34 IPC	Two Years each	Rs.3,000/- each	Six Months each
-do-	326/34 IPC	Three Years each	Rs.5,000/- each	One Year each
-do-	506/34 IPC	Six Months each	Rs.500/- each	Two Months each

It was, however, ordered that all the substantive sentences shall run concurrently.

Briefly stated, an FIR No.76 dated 10.7.2009 under Sections 148, 323, 324, 326, 452 and 506 read with Section 149 IPC was registered at Police Station, Saha against the private respondents. As per FIR, on 9.7.2009 at about 4.30 p.m. within the area of village Bihta, Police Station, Saha, the accused in furtherance of their common intention voluntarily

caused hurt to petitioner-complainant Punit Kumar, Shalav @ Monga and Prince with blunt weapons. They caused grievous hurt to the complainant with sharp edged weapon and also committed criminal intimidation by threatening the complainant and other injured with dire consequences. The accused also committed trespass by entering into the house of complainant after having made preparation for causing hurt to the complainant and injured.

The matter was investigated and Challan as provided under Section 173 Cr.PC was produced in the Court. As required under Section 207 Cr.PC, copies of Challan were supplied to the accused free of costs and charge under Sections 452, 323, 324, 326 and 506 read with Section 34 IPC was framed against the accused to which they did not plead guilty and claimed trial. Vide judgment dated 16.5.2014, the trial Court acquitted the accused of the charge framed against them by extending them benefit of doubt. As it is the basic principle of criminal law that prosecution is required to prove guilt of the accused beyond reasonable doubt, but the case of prosecution was not free from doubt and, therefore, benefit of doubt was extended to the accused.

Aggrieved against judgment dated 16.5.2014 passed by learned trial Court, the petitioner-complainant filed an appeal before learned Sessions Judge, Ambala. Learned appellate Court while convicting the accused on 27.1.2015 had observed as under:

“42. On the basis of entire evidence produced on record, as has been discussed above, it is held that

prosecution successfully proved that accused-respondents no.2 to 4 committed house trespass on 09.07.2009 at about 4.30 p.m. by entering in the farm house of PW7 Shalav situated on Saha-Shahbad Road, having made preparations for causing hurt and thus, all of them committed offence under Section 452 IPC. It is further proved that on the aforesaid date, time and place and in furtherance of their common intention, they caused simple injuries by blunt weapon to PW7 Shalav & PW8 Prince and thus, committed offence under Section 323 read with Section 34 IPC. They also intentionally caused simple injuries with sharp-edged weapon in furtherance of their common intention to PW6 Punit & PW7 Shalav and thus, committed offence under Section 324 read with Section 34 IPC. It is also proved that they also caused grievous injury with sharp-edged weapon in furtherance of their common intention to PW6 Punit and thus, committed offence under Section 326 read with Section 34 IPC. It is also proved that all of them criminally intimidated PW6 Punit, PW7 Shalav and PW8 Prince and thus, committed offence under Section 506 IPC. As such, holding all the three accused-respondents no.2 to 4 to be guilty under Section 452 IPC besides Sections 323, 324, 326 and 506 read with Section 34 IPC, I convict them thereunder. Let they be heard on quantum of sentence. This appeal is allowed accordingly.”

Accordingly, learned Appellate Court vide impugned order dated 29.1.2015 sentenced respondents No.2 to 4-accused for the period mentioned hereinabove.

Through the instant petition, the petitioner has challenged inadequacy in the sentence. Learned counsel for the petitioner has

submitted that despite the fact that the respondents were held guilty of the offences levelled against them, the sentence awarded to them is on the lower side and needs to be enhanced as the allegations against them are serious in nature. He has referred to injuries caused to the petitioner and Shalav Sharma. The petitioner got as many as 3 injuries whereas two injuries were inflicted upon Shalav Sharma.

Learned counsel for the petitioner has further submitted that though respondents No.2 to 4-accused have rightly been convicted, but the sentence awarded to them is utterly inadequate vis-à-vis seriousness and gravity of the offences committed by them and, therefore, the same needs to be suitably enhanced so that a deterrent message may go to the society.

I have heard learned counsel for the petitioner and perused the judgment of conviction and impugned 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.”

On the basis of available material and evidence adduced by the prosecution, respondents No.2 to 4-accused have been convicted by learned appellate Court. However, while considering case of the respondents-accused on quantum of sentence, learned appellate Court has rightly observed that though the accused do not deserve benefit of probation for the reason that one of the offences falls within the ambit of Section 326 IPC where the offence is punishable upto life imprisonment, but taking into consideration the fact that the respondents have been facing trial since 10.7.2009 as well as the injuries caused by them, the appellate Court has rightly awarded the sentence. The accused are not previous convicts and accused Sanjeev alias Sanju was merely a student of 10+2 surrounded by poverty and he is required to maintain old parents. Whereas

accused Gurvinder Singh is married and has 4 years old son and aged parents. He is only bread earner of the family. Liability of accused Rajbir alias Raju is somewhat similar to accused Gurvinder Singh.

Learned appellate Court has tried to make out a balance vis-à-vis gravity of offence and the family background of respondents No.2 to 4-accused according to their age and economic condition while awarding sentence. Though the framers of law in their wisdom have provided sentence for a term which may extend for higher period for the offence committed by respondents No.2 to 4-accused, but the Courts are required to decide as to how much sentence is to be awarded to the accused more particularly when no minimum sentence has been prescribed.

In view of the above, taking into consideration nature of injuries and dispute between the parties, sentence awarded by learned appellate Court does not warrant any interference. As such, impugned order dated 29.1.2015 passed by learned Sessions Judge, Ambala does not suffer from any material infirmities, illegalities or irregularities. Accordingly, affirming the same, the present petition is dismissed.

It is, however, made clear that observations made hereinabove shall not debar respondents No.2 to 4 in case they intend to file or have already file any revision/appeal against judgment dated 27.1.2015 and impugned order dated 29.1.2015 passed by learned Sessions Judge, Ambala.

March 15, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE