

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.2501 of 2015 (O&M)

Date of Decision: 05.01.2016

Subhash Chander & others

...Petitioner(s)

Versus

State of Punjab

...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. J.S. Thind, Advocate
for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J,

Petitioners namely Subhash Chander, Sushil Kumar and Vinod Kumar have filed the present revision petition against judgment dated 4.7.2015 passed by learned Additional Sessions Judge, Fazilka, whereby their appeal against the judgment of conviction dated 11.4.2014 passed by learned Sub Divisional Judicial Magistrate, Abohar was dismissed.

Briefly stated, FIR No.37 dated 12.2.2009 under

Sections 325/323/34 IPC was registered at Police Station Abohar

on the statement of complainant Sanjay Kumar to the effect that on 5.2.2009 at 7.30 P.M., he had come to deliver milk to Rajiv Kumar, owner of tea stall situated near Sidharth Filling Station, Defence Road, Malout, Ganganagar. Accused Subhash Chander, Sushil Kumar and Vinod Kumar and one unidentified person armed with *dangs* and iron pipes, were sitting on the cot near the tea stall. When the complainant was proceeding towards his *dhani* after delivering milk to Rajiv Kumar, the accused Subhash Chander asked the complainant about his well being and moved ahead for hand shake. Complainant replied that he is alright and shook hand with Subhash Chander, but Subhash Chander pulled the complainant on earth and the unidentified person caught hold of the complainant from his hair. The complainant was beaten by all the accused jointly with iron pipes and *dangs*. On raising alarm, Rajiv Kumar and the boys working at petrol pump rescued the complainant from the clutches of the accused. In the meanwhile, all the accused fled away from the spot along with their respective weapons on motorcycle. The complainant was admitted in Civil Hospital, Abohar, where he was medicolegally examined. The cause of occurrence was that about 15-20 days back, Leelu Ram father of Vinod Kumar and Ram Saroop father of Sushil were sending stray animals whereas the complainant was restraining them from doing so. At that time, an altercation took place between the Leelu Ram and Ram Saroop. On the basis of the above statement of the complainant offence under Sections

323/325/34 IPC was found to have been committed by the accused. However, on receipt of x-ray report, injuries no.1 and 5 on the person of the complainant were declared grievous and accordingly, the instant FIR was registered against the accused-petitioners. The accused were arrested and after completion of investigation, report under Section 173 CrPC was filed against the accused-petitioners in Court. Finding *prima facie* case against the petitioners, they were chargesheeted for offence under Sections 325/323 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

The trial Court vide judgment dated 11.4.2014 held the petitioners guilty and convicted them for offence under Sections 325/323/34 IPC and sentenced them as under:-

Offence	Sentence
<i>S.325/34 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year each alongwith fine of Rs.1000/- each and in default of payment of fine, the defaulter shall further undergo rigorous imprisonment for two months.</i>
<i>S.323/34 IPC</i>	<i>To undergo simple imprisonment for a period of six months each alongwith fine of Rs.500/- each and in default of payment of fine, the defaulter shall further undergo simple imprisonment for one month.</i>

Both the sentences were ordered to run concurrently.

The petitioners preferred an appeal against the aforesaid judgment dated 11.4.2014 passed by Sub Divisional Judicial Magistrate, Abohar. However, learned Additional Sessions Judge, Fazilka finding no infirmity in the impugned judgment dated 11.4.2014 passed by Sub Divisional Judicial Magistrate, dismissed the appeal vide judgment dated 4.7.2015 and the petitioners were taken into custody.

Aggrieved against the judgments dated 11.4.2014 and 4.7.2015 passed by the Courts below, the petitioners have filed the present revision petition.

Learned counsel for the petitioners has argued that the occurrence has taken place on 5.2.2009, whereas the FIR was registered on 12.2.2009 and there is no explanation for such delay. He further submitted that only Bhupinder Kumar came into the witness box to prove the case but there are glaring discrepancies in his statement, especially when the MLR of Sanjay Kumar was prepared by the concerned doctor at 8.30 p.m. but Bhupinder Kumar stated that they reached at the hospital at 11.10 p.m. for the purpose of MLR. The complainant has not come forward to support the case and no eyewitness has supported the case of the prosecution. Furthermore, even the person who conducted the x-ray has not been examined in the case.

On the other hand, learned State counsel has argued that there is no infirmity in the impugned judgments passed by the Courts below.

At this stage, learned counsel for the petitioners, instead of arguing the case on merits, has confined his arguments only *qua* the quantum of sentence. He has submitted that as against the maximum awarded sentence of one year, the petitioners are in custody since 4.7.2015 and are facing trial since 12.2.2009 and in this manner, they are suffering the agony of protracted trial for the last about seven years. There is no other case against them. Therefore, the sentence awarded to the petitioners be reduced to the period already undergone by them.

I have heard learned counsel for the parties and perused the impugned judgments.

Although the scope of interference by this Court in revisional jurisdiction is very limited, however, taking into consideration the fact that the petitioners are young persons and there is possibility for the reformation, coupled with the fact they are in custody for the last about six months excluding remission, the sentence awarded to the petitioners is reduced to the period already undergone by them. However, the total amount of fine is increased to Rs.30,000/- to be paid by the petitioners to the legal heirs of the complainant.

The petitioners shall deposit the amount of fine in the trial Court and the trial Court shall disburse the same to the legal heirs of the complainant. The petitioners shall be released forthwith, if not required in any other cases, subject to deposit of the amount of fine, as mentioned above.

With the aforesaid modification, the present revision
petition is dismissed.

January 05, 2016
AK

(HARI PAL VERMA)
JUDGE