

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

CRR No.1433 of 2016 (O&M)

Decided on:-May 28, 2016.

Kendi.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

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

Present:- Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

By way of the present revision petition, the petitioner has challenged the judgment of conviction and order of sentence dated 6.11.2015 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur in case FIR No.117 dated 1.9.2014 under Sections 302 and 341 read with Section 34 IPC registered at Police Station Dirba, District Sangrur, as well as judgment dated 10.3.2016 passed by learned Additional Sessions Judge, Sangrur in appeal.

Briefly stated, case of the prosecution is that on 1.9.2014 SI Ranjit Singh along with SI Sukhdev Singh, HC Harinder Singh, Constable Sukhpal Singh and PHG Nirmal Singh were present at Bus Stand,

Dirba in connection with patrolling and checking of suspected persons in a Government vehicle being driven by PHG Amrik Singh. In the meantime, complainant Amrik Singh came there and got recorded his statement to the effect that he is resident of village Dhamgarh Chhanna and is a labourer by profession. They are two brothers. On that day i.e. 1.9.2014, he was going from his house towards the fields in the morning. Kendi and Harpreet were sitting to answer the call of nature at the place meant for making cow-dung cakes by the complainant. After answering the call of nature, both of them stood up and came. Then the complainant told them that he has cleaned this place and asked them not to answer the call of nature there. On this, both of them stated that he cannot stop them from answering the call of nature and the land belonged to the Government. While hurling abuses, both of them went to their houses stating that they would teach him a lesson on that day itself for restraining them from answering the call of nature. The complainant also came back to his house.

The complainant further stated that at about 10.00 AM, when he reached near the street of Dharamshala of their caste in the village, Kendi armed with baseball bat and Harpreet Singh, Darshan Singh and Jaggi came there and encircled him. Darshan Singh and Jaggi raised Lalkara that the complainant be taught a lesson for stopping them from answering the call of nature. On hearing the Lalkara of the above said persons, father of complainant, namely, Mamu Singh also came there. Harpreet Singh caught hold the complainant from his neck and threw him on the ground. When his

father Mamu Singh came forward to rescue him, Kendi gave a blow of baseball bat on the head of his father. Due to that blow, his father fell down and died at the spot. In the meantime, his brother Balbir Singh also came there. However, all the accused ran away from the spot. The motive behind the occurrence was that he had stopped these persons from answering the call of nature and all the accused in furtherance of their common intention have committed the murder of his father.

On the basis of aforesaid statement, the present FIR was registered. Inquest report was prepared and dead body was sent for post-mortem examination. Statements of witnesses under Section 161 Cr.PC were recorded. The accused were arrested and the baseball bat was also recovered from accused Kendi and taken into possession. After completion of investigation, Challan against accused Kendi and Harpreet Singh was presented before Principal Magistrate, Juvenile Justice Board, Sangrur as both of them were found to be juvenile in conflict with law. It was further submitted in the report under Section 173 Cr.PC that a separate Challan against accused Darshan Singh and Dalvir Singh alias Jaggi, who were major, would be submitted before learned Area Magistrate.

On appearance of the juveniles, copies of documents relied upon by the prosecution were supplied to them free of cost as envisaged under Section 207 Cr.PC. Finding a prima-facie case against the juveniles, notice of accusation for having committing offence under Sections 302 and 341 IPC was served upon them to which they did not plead guilty and

claimed trial.

In order to prove its case, the prosecution has examined complainant Amrik Singh as PW1, Balbir Singh as PW2, Dr. Sandeep Kaur Sidhu, Medical Officer as PW3, Inspector Jaswant Singh, investigating Officer as PW4, HC Harinder Singh as PW5 and HC Karnail Singh as PW6. Thereafter, learned APP for the State closed the evidence on behalf of the prosecution.

After closure of the prosecution evidence, statements of both the juveniles under Section 313 Cr.PC putting them the entire incriminating evidence were recorded. Though both the juveniles denied all the allegations levelled against them and pleaded innocence as also false implication, but did not lead any evidence in their defence.

Vide judgment dated 6.11.2015, juvenile Kendi, the petitioner herein, as well as co-accused i.e. juvenile Harpreet Singh were held guilty and convicted by learned Principal Magistrate, Juvenile Justice Board, Sangrur. Though both of them were also sentenced vide order of even date, but since the present petition has been filed by petitioner Kendi only, the sentence awarded to him only is reproduced as under:

“Under Section

Sentence

341 IPC

Rigorous imprisonment for six months and to pay fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for ten days.

302 IPC

Rigorous imprisonment for three years and to pay fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for three months.”

However, the juvenile in conflict with law was ordered to be kept in Special Home for the period of sentence awarded to him.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session. Learned Additional Sessions Judge, Sangrur vide judgment dated 10.3.2016 held the petitioner guilty for commission of offence under Section 304 Part II as well as 341 IPC and sentenced him as under:

“Under Section

Sentence

304 Part II IPC

Rigorous imprisonment for three years and to pay fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for three months.

341 IPC

Simple imprisonment for one month and to pay fine of Rs.500/- and in default thereof, to further undergo simple imprisonment for ten days.”

It was further ordered that both the sentences awarded to the appellant shall run concurrently. The appellant was ordered to be kept in Special Home for the period of sentence awarded to him.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

At the time, when the case was listed for motion hearing on

12.04.2016, this Court has passed the following order:

“Learned counsel for the petitioner contends that sentence of three years for the offence under Section 304 Part-II IPC when the petitioner is juvenile, is on higher side. Notice of motion for 19.5.2016.”

Thus, learned counsel for the petitioner has confined his arguments regarding the quantum of sentence. He has contended that the alleged occurrence had not taken place with a pre-determined mind of the accused-petitioner. However, the sentence imposed upon him by the Courts below is excessive and harsh. The petitioner is a young person having no past criminal record. He is facing the criminal proceedings since the year 2014 and as against the awarded sentence of 3 years, he is in custody for the last about 1 year and 9 months. Learned counsel for the petitioner has prayed that the punishment awarded to the petitioner may be converted into the one already undergone by him.

On the other hand, learned State counsel has filed custody certificate of the petitioner, which is taken on record. Though he has not disputed the custody, but stated that considering the gravity of offence committed by the petitioner, there is no reason for reduction of sentence. He has urged for dismissal of the revision petition.

I have heard learned counsel for the parties.

Admittedly, learned counsel for the petitioner has not challenged conviction of the petitioner and has rather confined his arguments to the quantum of sentence only. Moreover, perusal of the paper

book reveals that there is no illegality or perversity in the impugned judgment dated 6.11.2015 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur as well as judgment dated 10.3.2016 passed by learned Additional Sessions Judge, Sangrur. As such, conviction of the petitioner deserves to be maintained.

In order to determine the question of quantum of sentence, the Courts of law ought to weigh the degree of the culpability of the accused, its effect on others and the impact on the society. It is also of utmost importance that unnecessary leniency may not be shown while sentencing an accused as it might have a cascading effect on the society as a whole. While sentencing, both sides of the fulcrum have to be maintained at straight line and a balance has to be struck between the interest of the individual and the well being of the society.

No doubt, a harsh punishment may serve as a deterrent, but at the same time, it would not benefit the convict in reforming himself, and thereby divesting the society of one of its constituents. The accused can learn more in society than in the company of criminals who are convicts.

In the case in hand, the petitioner is a young person and the custody certificate received from the jail reveals that he is in custody for about 1 year, 8 months and 25 days. No other case has been reported against him. Considering the fact that the incident was of 1.9.2014 and he is a first time offender, this Court is inclined to modify the sentence awarded to the petitioner.

Therefore, considering the peculiar facts and circumstances of the case and reformative trend of modern penology coupled with the fact that the petitioner is not a previous convict; has not misused the concession of bail and the altercation had taken place for the reason that the petitioner had gone to answer the call of nature on the roadside, this Court is of the opinion that ends of justice would be met in case the conviction of the petitioner is maintained, but his sentence be reduced to some extent.

Accordingly, the sentence of three years awarded to the petitioner for committing offence under Section 304 Part-II IPC is reduced to a period of two years subject to payment of compensation of Rs.25,000/- to the complainant as provided under Section 357(3) Cr.P.C. The petitioner would be released on completion of two years of sentence provided he would deposit the compensation amount of Rs.25,000/- with the trial Court. The trial Court shall disburse the said amount to the complainant.

With the aforesaid modification in order of sentence, the present revision petition stands dismissed.

May 28, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE