

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

CRR No.2654 of 2015.
Decided on:-21.07.2016.

Gurnam Singh.

.....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. Rajesh Bansal, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner-complainant Gurnam Singh has filed the instant revision petition assailing the judgment dated 4.2.2015 passed by learned Additional Sessions Judge, Ambala and the judgment of conviction dated 26.9.2014 and order of sentence dated 29.9.2014 passed by learned Judicial Magistrate 1st Class, Ambala vide which the respondents-accused No.2 to 6 were acquitted under Sections 325, 326 and 506 IPC and were released on probation for commission of offence under Sections 323 and 324 read with Section 149 IPC.

The case of the prosecution, in brief, is that on 2.11.2006 at about 9.00 a.m. after attending a Prabhat Pheri (morning procession),

complainant Gurdev Kaur (now deceased) along with her husband, Gurnam Singh, the petitioner herein, had been returning home. On seeing the complainant and petitioner Gurnam Singh, accused Ramna, who is complainant's neighbour, had intentionally started coughing. Noticing this, the petitioner had requested him not to do so. However, at around 10.00 a.m., when the complainant and petitioner were going to meet Dr. Priya to complain about the conduct of accused Ramna, then accused Rajinder, who was having a Gandasi in his hand, met them. Thereafter, accused Rajinder started abusing the complainant and told that as they had stopped his wife from coughing, so, he would teach them a lesson. Accused Ramna had caught hold the complainant, whereas accused Rajinder had given a Gandasi blow on her head. The other co-accused, namely, Parveen Kumar, Sanjeev Kumar and Naresh Kumar (respondents No.4 to 6 respectively), who were armed, had alighted from their car bearing registration No.HR-04-2654. After that, accused Parveen Kumar had given a rod blow on the complainant's left arm, accused Rajinder had given a Gandasi blow on the head of the petitioner Gurnam Singh whereas accused Sanjeev Kumar and Naresh Kumar had given Danda blows to the complainant and Gurnam Singh. On raising hue and cry, Dr. Priya had intervened into the matter and saved the complainant and the petitioner Gurnam Singh from the clutches of the accused.

On the basis of aforesaid allegations, FIR No.101 dated 5.11.2006 under Sections 323, 324, 325, 326 and 506 read with Section 34 IPC was registered against the accused-respondents No.2 to 6 at Police

Station Panjokhra, District Ambala. After completion of investigation, report under Section 173 Cr.PC was presented in the Court by the police.

Learned Magistrate vide judgment dated 26.9.2014 acquitted the respondents-accused No.2 to 6 under Sections 325, 326 and 506 IPC and convicted them for commission of offence under Sections 323 and 324 read with Section 149 IPC. However, vide order on sentence dated 29.9.2014, learned Magistrate had released the respondents-accused No.2 to 6 on probation on executing the personal bonds for a period of one year in the sum of Rs.25,000/- with one surety in the like amount. During the said period, the accused were directed to maintain good behaviour. It was further ordered that in case of any breach of any condition of the bond, they shall be called upon to receive the sentence in accordance with law. Besides this, it was ordered that the respondents No.2 to 6-accused shall pay Rs.4,100/- each out of which Rs.10,000/- each shall be paid as compensation to the complainant and Gurnam Singh and the remaining amount of Rs.500/- shall be payable as cost of proceedings.

Aggrieved against the said judgment and order of learned trial Court, the petitioner-complainant preferred an appeal, but the same was dismissed by learned Additional Sessions Judge, Ambala vide judgment dated 4.2.2015.

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

Learned counsel for the petitioner-complainant has contended that both the Courts below have committed a legal error by releasing the

accused persons on the minor punishment of probation. The proper consideration of evidence has not been taken on record by the Courts below while imparting lesser punishment in quantum of sentence. Both the Courts below have arrived at a wrong conclusion that the prosecution has failed to prove the commission of offence under Sections 325, 326 and 506 IPC is contrary to the record. When there is medical evidence on record regarding the sharp edge/head injury and left hand fracture suffered by complainant Gurdev Kaur and the injuries were attributed to respondents-accused Rajinder Kumar and Parveen Kumar, the respondents were not entitled to be released on probation. All the accused persons in furtherance of their common intention had voluntarily inflicted grievous injuries with blunt and sharp edged weapons. The petitioner also sustained dangerous injuries as per radiologist report, but the Courts below simply convicted the accused for commission of offence punishable under Sections 323 and 324 read with Section 149 IPC.

Learned counsel for the petitioner has further contended that when the police has sought opinion regarding injuries sustained by the petitioner and his wife, the doctor had opined that the patient was hit by axe on head as per Ex.PW7/C and Ex.PW7/D. Even the petitioner had moved application under Section 391 Cr.PC for leading additional evidence by taking the x-ray with its report of Smt. Gurdev Kaur on record by summoning the radiologist from Medical Hospital, Ambala Cantt. along with head injury report, but the said application was dismissed by learned Additional Sessions Judge, Ambala. He has prayed that the respondents

No.2 to 6 are liable to be convicted for the offence for which they have been acquitted and even their release on probation is contrary to the injuries suffered by the petitioner and the complainant.

I have heard learned counsel for the petitioner-complainant and perused the paper book.

Learned trial Court has noticed the entire evidence and has observed that the minor discrepancies as to whether PW1 Gurnam Singh had gone to the spot with the police or not, or whether Gandasi was recovered in the presence of PW1 Gurnam Singh and date, on which the police came to the house of the complainant hold no ground as their testimonies were recorded after a gap of 3½ years from the date of occurrence. Such type of discrepancies were rightly found minor in nature as the same are bound to come in the depositions of truthful witnesses. The prosecution witnesses were not tutored and their version is natural.

Similarly, so far as the medical evidence produced on record by the prosecution is concerned, the trial Court has rightly discussed and appreciated the testimonies of Dr. Vikas (PW8) and Dr. Lt. Col. Anuj Bhatnagar (PW11). As per their reports Ex.PW9/A and Ex.PW9/B, it spells out that the complainant sustained a deep lacerated wound 3 inches long and 0.5 inch deep over scalp just above her forehead and there was a deep contused wound over her left forearm. Petitioner Gurnam Singh sustained two to three superficial lacerated wounds on his scalp, one to two wounds on his upper chest left side and a wound mark was present on his left knee.

The prosecution has proved its case for commission of offence punishable under Sections 323 and 324 read with Section 149 IPC, but has failed to prove the offence punishable under Sections 325, 326 and 506 IPC by coherent deposition of testimonies beyond shadow of doubts and, therefore, the accused-respondents No.2 to 6 were rightly acquitted from these charges.

Perusal of order of sentence dated 29.9.2014 passed by learned trial Court reveals that the court has rightly extended benefit of probation by considering the previous history of the accused. The evidence adduced by the prosecution and overall facts and circumstances do not make out any scope of interference by this Court. The accused have suffered a protracted trial for about 8 years and they were first time offenders. Therefore, the trial Court has not committed any illegality while extending the benefit of probation to the accused-respondents No.2 to 6. The trial Court was well within its power to release the respondents No.2 to 6 on probation in view of the judgment of this Court in ***Ram Lal @ Ramu Versus State of Punjab 2003(1) RCR (Criminal) 188.***

It would be pertinent to mention here that 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.”

Perusal of the paper book further reveals that neither before the trial Court nor before the appellate Court, the prosecution has proved that the accused-respondents No.2 to 6 are habitual offenders and, therefore, the Courts below have rightly accepted the request of the respondents-accused for releasing them on probation. Moreover, the quantum of sentence is always fixed by the Court and is sole prerogative of the Court unless a minimum sentence is prescribed for an offence. Therefore, this Court does not find any illegality, irregularity or perversity in the impugned judgment and order passed by learned trial Court as well as the judgment of learned appellate Court, which may warrant interference of this Court by invoking its revisional jurisdiction.

In view of the above, affirming the judgment dated 26.9.2014 and order dated 29.9.2014 passed by learned trial Court as well as the judgment dated 4.2.2015 passed by learned appellate Court, the present revision petition, being devoid of any merit, is dismissed.

July 21, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE