

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

CRR No.3159 of 2015 (O&M).

Decided on:-25.07.2016.

Nirmal Singh @ Nimma.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

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

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

By way of instant petition, the petitioner has challenged the judgment dated 27.07.2015 passed by learned Additional Sessions Judge, Jalandhar, vide which the criminal appeal preferred by him against the judgment of conviction and order of sentence dated 17.10.2014 passed by learned Judicial Magistrate 1st Class, Phillaur, was dismissed.

Learned Magistrate vide judgment dated 17.10.2014 convicted the petitioner for offence punishable under Sections 323, 324 and 325 IPC and vide separate order of even date, sentenced him as under:

Under Section

Sentence

325 IPC

Rigorous imprisonment for two years with fine of Rs.300/- and in default thereof, to further undergo rigorous imprisonment for one month.

324 IPC	Rigorous imprisonment for one year with fine of Rs.200/- and in default thereof, to further undergo rigorous imprisonment for fifteen days.
323 IPC	Rigorous imprisonment for six months.

However, all the substantive sentences were ordered to run concurrently.

Briefly stated, prosecution version is that on 18.10.2009, one medico-legal report related to injured-complainant Gurnam Singh was received to Munshi of the Police Post. The same was handed over to HC Des Raj for further action. Thereafter, HC Des Raj along with police party reached Civil Hospital, Jandiala. After obtaining opinion of concerned doctor regarding fitness of injured Gurnam Singh, he recorded the statement of the injured wherein he stated that he is not to take any action and he will give information if he is to get his statement recorded.

Thereafter, on 20.10.2009 a telephonic information was received to record the statement of said Gurnam Singh, who was admitted in Johal hospital, Jalandhar. Then HC Desh Raj along with police party reached the said hospital and recorded the statement of injured Gurnam Singh.

The complainant told the police that when he was on his way to his home in village Samrai on his bicycle after finishing his work in the fields, accused Daljit Singh started raising a Lalkara. On seeing said Daljit Singh, the complainant increased speed of his bicycle. However, accused Daljit Singh again raised a Lalkara by saying that Nirmal Singh is standing

on the way ahead and the complainant will not be spared. When he reached near Puli of the canal near the village, at about 11:30 A.M., accused Nirmal Singh alias Nimma was standing with Datar in his hand. When the complainant started crossing him, accused Nirmal Singh attacked him with his Datar which hit him on his right shoulder. He again made an attack of Datar on the complainant which hit him on his right eye. The complainant fell down from his bicycle. Accused Nirmal Singh threw away the weapon and lifted a brick from the ground and hit the same on various parts of the body of complainant Gurnam Singh. By that time, his wife Surjit Kaur who was already following him, came to the spot. The complainant raised alarm on which many people gathered there and accused Nirmal Singh ran away from the spot with his Datar.

On the basis of statement of the complainant, FIR No.147 dated 20.10.2009 under Sections 323, 324 and 325 read with Section 34 IPC was registered. Investigation proceedings were initiated. Both the accused were arrested. Statements of the witnesses were recorded. After completion of necessary formalities, Challan against both the accused was presented in the Court.

On presentation of Challan, copies of the same were supplied to the accused as required under section 207 Cr.P.C. On finding a prima facie case, both the accused were charge-sheeted on 19.01.2010 for offence under Sections 323, 324 and 325 IPC to which they pleaded not guilty and claimed trial. However, during pendency of the trial, accused Daljit Singh expired

and proceedings against him stood abated vide order dated 06.06.2011 passed by the trial Court.

In order to prove its case, prosecution examined PW-1 Surjit Kaur wife of complainant Gurnam Singh, PW-2 injured-complainant Gurnam Singh, PW-3 HC Des Raj, PW-4 ASI Prithi Raj, PW-5 ASI Raghvir Singh, PW-6 Dr. Amit Jeed and PW-7 Dr. Manpreet Kaur. Thereafter, prosecution evidence was ordered to be closed.

Thereafter, accused Nirmal Singh alias Nimma was examined under section 313 Cr.P.C. and all the incriminating circumstances appearing in the prosecution evidence was put to him to which he pleaded innocence and pleaded that he has been falsely implicated in the present case. However, he did not examine any witness in his defence evidence and closed the same.

Considering the evidence so adduced, the trial Court vide its judgment and order dated 17.10.2014 had convicted and sentenced the petitioner-accused in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session. However, the appeal was dismissed by learned Additional Sessions Judge, Jalandhar vide judgment dated 27.07.2015.

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

Perusal of order dated 7.12.2015 of this Court reveals that the petitioner has not challenged the present revision petition on merits. As such,

his conviction was upheld and notice of motion was issued only quantum of sentence.

Learned counsel for the petitioner has contended that as against the awarded sentence of two years, the petitioner is in custody since 27.07.2015 i.e. the date when his appeal was dismissed. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender and having family to look after. The petitioner has been suffering the agony of criminal proceedings since 20.10.2009 when the FIR in question was registered against him. Thus, he has prayed that sentence of the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has not disputed the custody of petitioner Nirmal Singh, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner.

I have heard learned counsel for the parties.

Admittedly, the petitioner has been convicted and sentenced under Sections 323, 324 and 325 IPC and his co-accused has died during the course of trial. As per the custody certificate, he is in custody since 27.7.2015 and no other case is pending against him. Therefore, taking into account the protracted trial, antecedents of the petitioner-accused and the fact that as against the total sentence of two years, he is in custody for the last about one year, this Court feels that the ends of justice would be met in case the sentence awarded to him is reduced to the period already undergone

by him. Ordered accordingly.

Perusal of the order of sentence dated 17.10.2014 passed by the trial Court shows that the petitioner-accused has already paid the fine. Therefore, he be released from custody forthwith, if not required in any other case.

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

July 25, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No