

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 225

Criminal Revision No.4307 of 2015 (O & M)

Date of Decision: *February 09, 2016*

Surender

..... PETITIONER

VERSUS

State of Haryana

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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

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PRESENT: - Mr. S.S. Yadav, Advocate, for the petitioner.

Mr. S.S. Pannu, Deputy Advocate General,
Haryana, assisted by Mr. Satish Ahlawat,
Advocate, for the complainant.

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Jaspal Singh, J

1. The instant revision petition has been preferred by
Surender against judgment dated October 17, 2015 passed by the
Additional Sessions Judge, Narnaul, whereby judgment of
conviction dated December 8, 2011 and order of sentence dated
December 9, 2011 passed in case FIR No.128 dated October 22,
2005, under Sections 323, 324, 325, 506, 34 IPC, registered at

Police Station, Nangal Chowdhary, District Narnaul, has been upheld. The petitioner was convicted and sentenced by the trial court to undergo simple imprisonment for a period of six months alongwith fine to the tune of ₹ 250/- under Section 323 IPC read with Section 34 IPC; to undergo rigorous imprisonment for a period of one year alongwith fine of ₹ 250/- under Section 324 IPC read with Section 34 IPC; and to undergo rigorous imprisonment for a period of two years alongwith fine to the tune of ₹ 500/- under Section 325 IPC read with Section 34 IPC.

2. Briefly stated, on October 20, 2005, while ASI Shiv Kumar alongwith other police officials was present in General Hospital, Narnaul, regarding preparation of report under Section 174 Cr.P.C., a medical ruqa alongwith MLR in respect of Sushma wife of Rajesh, resident of village Bhungarka was received. Thereafter, doctor's opinion was obtained regarding fitness of Sushma, who was declared fit to make statement. Sushma suffered statement that she is a housewife and has a baby of two months. At about 6:00 a.m., while she alongwith her mother-in-law was coming back after giving answer to the call of nature in the fields and reached near the house of Shankar Ram, then, Surender son of Indraj Singh came there having a Jelly in his hand and inflicted its blow on her head. In the meanwhile, mother of Surender, Imarti also came there having a Kush in her hand and gave its blow on

her hands and when her mother-in-law Suman tried to rescue her then Surender and his mother gave Jelly and Kush blow to her. She stated that both of them smeared in blood, raised alarm, then, Mahipal and Satish came and rescued them from their clutches, however, both the accused gave threat to kill them in future. She also stated that partition of the land is pending in between them and in the morning at about 5:30 a.m., accused Surender manhandled with her father-in-law namely Desh Raj. On the basis of her statement, Tehrir was sent and FIR was registered against Surender, his wife Rajesh and mother Imarti. After investigation of the case and obtaining opinion regarding fitness of Suman Devi, who was also declared fit, her statement was also recorded and after X-ray report, Section 325 IPC was added on October 28, 2005.

3. After completion of investigation, challan against the accused was presented in the court of jurisdictional Magistrate. He was supplied the copies of police report and other documents appended therewith as required under Section 207 Cr.P.C., free of costs.

4. Finding a prima facie case against the accused, he was charge-sheeted for offences under Sections 323, 324, 325, 506 IPC read with Section 34 IPC, to which, he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined as many as eleven witnesses.

6. Incriminating circumstances appearing in the prosecution evidence were put to accused in his statement under Section 313 Cr.P.C. who denied the same, pleaded innocence and complained of false implication. One DW was examined in defence.

7. After hearing learned counsel for the parties and having gone through the material available on record, accused Surender was held guilty under Sections 323, 324, 325 IPC read with Section 34 IPC, however, acquitted under Section 506 IPC. Accordingly, convicted & sentenced, as detailed above.

8. Appeal preferred by Shiv Kumar also failed before the lower appellate court. In this backdrop of facts, the instant revision petition has been preferred by the accused – petitioner.

9. At the very outset of arguments, learned counsel for the petitioner submits that he does not press the petition qua conviction, however, the petitioner be heard only qua quantum of sentence. This Court has also scrutinized the impugned judgments as well as the relevant documents/ evidence and is of the considered view that there is no scope for any interference in impugned judgment(s) as far as the conviction of the petitioner

under the aforesaid provisions of IPC is concerned. As such, the conviction of the petitioner is upheld.

10. As far as quantum of sentence is concerned, learned counsel for the petitioner has submitted that the petitioner is 43 years of age. He has asserted himself to be first offender. No other case of similar nature is either pending or disposed of against the petitioner. He is the only bread winner in the family. He never misused the concession of bail during trial. He has already undergone a period of more than 5 months, out of the substantive sentence of two years. Accordingly, learned counsel for the petitioner prays that sentence imposed upon the petitioner be reduced to the period already undergone.

11. This Court has given an anxious thought to the submissions made by learned counsel and have gone through the record available on file.

12. As per the custody certificate dated February 7, 2016, by now, the petitioner has already undergone approximately 6 months out of total sentence of two years.

13. In similar circumstances, the Hon'ble Apex Court in case Harjit Singh v. State of Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Arms act as already undergone (more than 5 years). To the same effect is the judgment in case Kirpal Singh v. State of Punjab, 2009(1) AICLR

243, whereby this Court had reduced the sentence of petitioner to already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one year. In cases Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) *Law Herald* 1849; Surjit Singh v. State of Punjab, 2003(2) *RCR (Criminal)* 429, Sudhir v. State of Haryana, 2001(2) *RCR (Criminal)* 336; and Chhotu Ram v. State of Haryana, 2013(4) *RCR (Criminal)* 630, similar view has been adopted.

14. Taking into consideration the totality of facts and circumstances, though, conviction of the petitioner is upheld but the sentence imposed upon him under Sections 323, 324, 325 IPC read with Section 34 IPC is reduced to the period already undergone by him with no change in fine clause which is stated to be already deposited with the trial court. The petitioner is ordered to be released forthwith.

15. With the above modification in the sentence, the revision petition is dismissed.

Crl. Misc. No.36855 of 2015

In view of the aforesaid judgment rendered in the main case itself, application under Section 397 Cr.P.C. for

suspension of sentence has rendered infructuous and is disposed of
as such.

February 09, 2016

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(Jaspal Singh)
Judge