

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 220

Criminal Revision No.820 of 2014 (O & M)
Date of Decision: May 03, 2016

Rakesh Kumar & another

..... PETITIONERS

VERSUS

State of Punjab

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

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?

...

PRESENT: - Mr. Satbir Rathore, Advocate, for the petitioners.

Mr. J.S. Sekhon, Assistant Advocate General,
Punjab.

. . .

Jaspal Singh, J

1. The instant revision petition has been preferred by Rakesh Kumar and Harmesh Kumar @ Harmesh Singh, challenging judgment dated February 24, 2014 passed by the Sessions Judge, Hoshiarpur, whereby judgment of conviction and order of sentence dated September 7, 2012, passed by the Sub Divisional Judicial Magistrate, Dasuya, in case bearing FIR No.107 dated September 13, 2009 under Sections 452, 323, 324, 34 IPC, Police Station, Dasuya, has

been upheld, vide which, the accused – petitioners have been sentenced as under:-

Name of Accused	Offence under Section	Sentence Awarded
Rakesh Kumar	452 IPC	To undergo RI for a period of one year and to pay a fine of Rs.200/- and in default of fine, to further undergo RI for a period of 15 days.
	324 IPC	To undergo RI for a period of nine months and to pay a fine of Rs.200/- and in default of fine, to further undergo RI for a period of 15 days.
	323 IPC	To undergo RI for a period of three months
	323/34 IPC	To undergo RI for a period of three months
Harmesh Singh	452 IPC	To undergo RI for a period of one year and to pay a fine of Rs.200/- and in default of payment of fine to further undergo RI for a period of 15 days.
	323 IPC	To undergo RI for a period of three months.
	324/34 IPC	To undergo RI for a period of nine months and to pay a fine of Rs.200/- and in default of payment of fine to further undergo RI for a period of 15 days.
	323/34 IPC	To undergo RI for a period of three months.

2. Brief facts of the case are that complainant - Raj Kumar son of Karam Chand made a statement before ASI Sudesh Raj to the effect that on September 12, 2009 at about 7.30 PM, he alongwith his wife was present in his house when Rakesh Kumar and Harmesh Kumar, armed with Kirpan and Danda, respectively, entered his house. Harmesh Kumar raised a Lalkara to the effect that Raj Kumar got falsely implicated him in Excise case, thus, he be taught a lesson and he would see his brother Vijay Kumar later on. Rakesh Kumar dealt a Kirpan blow hitting on the joint of his right elbow. Harmesh Kumar inflicted Danda blows hitting on his back and upper part of right thigh. He and his wife raised hue and cry, which attracted his elder brother Vijay Kumar and one Balwinder Singh to the spot. When his wife tried to rescue him, Rakesh Kumar gave two Kirpan blows from its reverse

side which hit her on the head and right side of chest. Harmesh Kumar also gave Danda blows on the person of his wife which hit on her back and on back side of thighs. On the basis of the aforesaid statement, FIR was lodged.

3. After completion of investigation, challan against accused – petitioners, was presented in the court of jurisdictional Magistrate. They were 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 offence under Sections 452, 324, 323, 34 IPC, to which, they pleaded not guilty and claimed trial.

5. In order to prove the charge, prosecution examined as many as eight witnesses.

6. Incriminating circumstances appearing in the prosecution evidence were put to accused in their 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, the Trial Court vide judgment dated September 9, 2012, held the accused guilty, convicted under Sections 452, 323, 324, 34 IPC and sentenced them, as detailed above.

8. Disheartened with their conviction & sentence, petitioners preferred an appeal before the lower appellate court but it was dismissed vide judgment dated February 24, 2014.

9. Now, accused – petitioners have approached this Court by way of instant revision petition challenging their conviction and sentence imposed by the trial court and upheld by the appellate court vide judgment(s)/order(s), referred to above.

10. While issuing notice of motion on March 13, 2014, this Court passed the following order:-

“Learned counsel for the petitioners has not pressed the revision petition on merits but has submitted that the same be heard on quantum of sentence.

Notice of motion regarding quantum of sentence only for 05.05.2014.”

9. This Court has also scrutinized the impugned judgments as well as the relevant document(s)/ 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 petitioners under the aforesaid provisions of IPC is concerned. As such, the conviction of the petitioners is upheld.

12. As far as quantum of sentence is concerned, there are mitigating circumstances to take a lenient view in the matter of sentence awarded by the trial court and upheld by the lower appellate court. Apart from the fact that the petitioners are facing the agony of protracted trial for the last more than 6 years after registration of the instant case, they are the only bread winners in the family and a source of livelihood for their old aged parents (more than 55 years old).

Accused – petitioners are first offenders. There is no other case of criminal nature against either of the petitioners. Moreover, petitioners have already suffered incarceration for a period more than two months, respectively, as is evident from custody certificate dated October 10, 2015. Thus, this Court is of the considered view that a chance be given to the petitioners to reform & improve themselves; to become good citizens; and to lead a peaceful & harmonious life.

13. Taking into consideration the totality of facts and circumstances, though, conviction of the petitioners is upheld but the sentence imposed upon them by the courts below is reduced to six months each, with no change in fine clause.

14. With the above modification in the sentence, revision petition stands dismissed.

May 03, 2016
avin

(Jaspal Singh)
Judge