

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

CRR No.3753 of 2016.
Decided on:-08.12.2016.

Hakam Singh and another

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. L.S. Sidhu, Advocate for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

The petitioners have filed the present revision petition against the judgment dated 03.09.2016 passed by learned Additional Sessions Judge, Moga whereby their appeal against the judgment of conviction and order of sentence dated 06.07.2015 passed by learned Sub-Divisional Judicial Magistrate, Baghapurana, was dismissed.

Learned Magistrate, vide judgment dated 06.07.2015, has held both the petitioners guilty for committing offence under Sections 326, 324 and 323 read with Section 34 IPC. Vide separate order of sentence dated 06.07.2015, learned Magistrate has sentenced the petitioners as under:

Hakam Singh

Offence

Sentence

326 IPC

Rigorous imprisonment for one year with fine of Rs.500/- and in default thereof, to further undergo simple imprisonment for 15 days.

324 IPC	Rigorous imprisonment for six months.
323 read with Section 34 IPC	Rigorous imprisonment for three months. <u>Sarabjit Singh</u>
<u>Offence</u>	<u>Sentence</u>
326 read with Section 34 IPC	Rigorous imprisonment for one year with fine of Rs.500/- and in default thereof, to further undergo simple imprisonment for 15 days.
324 read with Section 34 IPC	Rigorous imprisonment for six months.
323 IPC	Rigorous imprisonment for three months.

However, it was ordered that all the substantive sentences awarded to the petitioners shall run concurrently.

Briefly stated, case of the prosecution is that on 29.08.2004 at about 12.10 A.M., complainant Surjit Singh was admitted in Civil Hospital, Baghapurana with injuries on his person. On getting the said information, SI Jugraj Singh visited the said hospital for recording the statement of injured, but the injured was declared unfit to make the statement by the medical officer. On the next day i.e. 30.08.2014, injured Surjit Singh was declared fit to make statement. His statement was recorded by the police wherein he stated that he had taken the land belonging to Darshan Singh son of Nazar Singh, resident of village Alamwala on lease. There is a tubewell connection in the said land. Since the electricity for running the tubewell was released by the Electricity Department at 10.00 P.M, he had gone to his field for irrigating the same after telling his son Jagroop Singh to bring the tea for

him. After reaching of the tubewell, he was sitting on the cot in his field. At about 10.30 P.M., his neighbour Hakam Singh armed with Barchha (spear) and his son Sarabjit Singh armed with Dang came there. Accused Hakam Singh exhorted his son that the complainant should not be spared and he should be taught a lesson for digging the earth from his field. Accused Sarabjit Singh gave two blows with his Dang, which hit on his head above the left ear and on the left shoulder. Thereafter, he gave another Dang blow on his right arm. Accused Hakm Singh also gave two blows with his spade on the fingers of his left hand and left shoulder. The complainant had fallen down. Accused Sarabjit Singh gave two successive Dang blows on his left leg and right leg.

On hearing the noise, complainant's son Jagroop Singh, who had brought the tea for him came to the spot. On seeing him, both the accused went away with their respective weapons. Jagroop Singh arranged a vehicle and got the complainant admitted in Civil Hospital, Baghapurana.

On the basis of aforesaid statement made by the complainant-injured, FIR No.179 dated 30.08.2004 under Sections 324 and 323 read with Section 34 IPC was registered at Police Station, Baghapurana. On receipt of the report of radiologist, offences under Sections 325 and 326 IPC were added. During investigation, the investigating officer found the petitioner-accused Sarabjit Singh to be innocent. On completion of investigation, the Challan under Sections 326, 325, 324 and 323 IPC was presented against accused Hakam Singh only.

Learned Magistrate in compliance with the provisions of Section 207 Cr.PC supplied the copies of report under Section 173 Cr.PC and other relevant documents to the accused. On finding a prima facie case, the trial Court framed charge under Sections 326 and 324 IPC against accused Hakam Singh on 12.03.2005. However, after recording some evidence by the trial Court, an application under Section 319 Cr.PC was moved by the prosecution for summoning Sarabjit Singh as additional accused. The said application was allowed by the trial Court vide order dated 6.09.2006 and accused Sarabjit Singh was also summoned to face trial. He was also supplied with the copies of documents as envisaged under Section 207 Cr.PC.

On finding a prima facie case, the trial Court framed the charge under Section 326 read with Section 34 and Section 324 read with Section 34 IPC against both the accused on 23.12.2006. Thereafter, the charge sheet was amended on 16.03.2015 and the accused were charge sheeted under Sections 326, 326 read with Section 34, 324, 324 read with section 34, 323, 323 read with Section 34 IPC. Both the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution has examined as many as 5 witnesses. Thereafter, the statements of accused under Section 313 Cr.PC were recorded wherein they denied all the allegations levelled against them and pleaded their false implication. However, the accused did not produce any evidence in their defence.

The trial Court vide judgment and order dated 06.07.2015 convicted and sentenced the petitioners-accused in the manner as referred above.

Feeling aggrieved, the petitioners-accused preferred appeal against the aforesaid judgment of conviction and order of sentence before the Court of Session. However, the same was dismissed by learned Additional Sessions Judge, Moga vide judgment dated 03.09.2016.

It is in the aforesaid circumstances, the present revision petition has been filed by the petitioners.

At the outset, learned counsel for the petitioners has not challenged the conviction of petitioners and confined his arguments qua the quantum of sentence only. He has submitted that the petitioners are facing the agony of criminal proceedings since the year 2004. They are the only bread winners of their family. As against the awarded sentence of one year, they are in custody since 03.09.2016 i.e. the date when their appeal was dismissed. As such, they are in custody for the last more than 3 months. Learned counsel for the petitioners has, thus, prayed that the sentence awarded to the petitioners may be reduced to the period already undergone by them.

On the other hand, learned State counsel has argued that learned trial Court has sentenced the petitioners to undergo rigorous imprisonment for one year under Section 326 IPC and has already taken a lenient view regarding the sentence of petitioners. Thus, no interference is

warranted in the quantum of sentence.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 326, 324 and 323 read with Section 34 IPC. The appellate Court has also rightly dismissed the appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioners has not assailed the judgments of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioners is, therefore, affirmed.

On the issue of quantum of sentence, this Court in the case of ***Shiv Kumar v. State of Haryana 2014(3) RCR (Criminal) 577*** has observed as under:

“5. *Considering the facts that the petitioner has been quite young when the occurrence took place, there is no previous conviction to this discredit and he has already suffered imprisonment for a period of one month and 24 days, I find him to have not crossed the age where his behaviour could not be corrected. Therefore, he appears to be entitled to be released on probation of good conduct. However, compensation in a sum of Rs.20,000/- would be just and proper to be paid by the petitioner to the victim, Sarla Devi.*”

In the case of ***Sohan Lal v. State of Punjab 1979 CLJ***

(Criminal) 113 where the accused was first time offender and had undergone the sentence of 3½ months, his sentence was reduced to the period already undergone by him. Similarly, in the case of **Balwinder Singh v. State of Punjab CRR No.2574 of 2012 decided on 31.10.2012** this Court had reduced the sentence of accused therein under Sections 323, 325 and 326 IPC to the period already undergone by him.

Therefore, considering the fact that the petitioners have been suffering the criminal proceedings since the year 2004 coupled with the fact that against the awarded sentence of 1 year, they are in custody for the last more than 3 months, this Court feels that the ends of justice would be met if the sentence awarded to them is reduced to the period already undergone by them.

Accordingly, the present revision petition is dismissed with modification in the order of sentence to the effect that the sentence awarded to the petitioners is reduced to the period already undergone by them subject to payment of Rs.25,000/- each (total Rs.50,000/-) as compensation. The petitioners shall deposit the amount of compensation with the trial Court. On doing so, the petitioners shall be released from custody forthwith, if not required in any other case.

However, it is made clear that the sentence qua fine imposed upon the petitioner shall remain intact. Perusal of the order of sentence dated 06.07.2015 passed by the trial Court shows that the fine has already been paid by the petitioners.

The trial Court shall disburse the aforesaid amount of compensation of Rs.50,000/- to the injured-complainant Surjit Singh or his legal heirs, as the case may be.

December 08, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No