

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.4973 of 2015 (O&M)
Date of Decision: 28.05.2016

Sombir & others
...Petitioner(s)

Versus

State of Haryana & others
...Respondent(s)

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

- 1. *Whether reporters of local newspapers may be allowed to see judgment?*
- 2. *To be referred to reporters or not?*
- 3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Manoj Sharma, Advocate for
Mr. B.R. Vohra, Advocate for the petitioners.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

Petitioners have filed the present revision petition against the judgment dated 12.12.2015 passed by learned Additional Sessions Judge, Bhiwani, whereby the appeals preferred by them against the judgment of conviction and order of sentence dated 3.11.2014/4.11.2014 passed by Judicial Magistrate Ist Class, Bhiwani have been dismissed.

Learned Magistrate vide judgment dated 3.11.2014 while convicting the petitioners for offence under Sections 323, 324, 452, 506 read with Section 34 IPC sentenced them as under:-

Section 323 of IPC	Simple imprisonment for a period of six months and to pay fine of Rs.500/-
Section 324 of IPC	Simple imprisonment for a period of

	one year and to pay fine of Rs.500/-
Section 452 of IPC	Simple imprisonment for a period of two years and to pay fine of Rs.500/-
Section 506 of IPC	Simple imprisonment for a period of one year and to pay fine of Rs.500/-

All the substantive sentences have been ordered to run concurrently.

Briefly stated, the case of the prosecution is that FIR No.87 dated 18.2.2010 under Sections 147, 148, 149, 323, 324, 325, 452, 506 and 34 IPC Police Station Tosham was registered against the petitioners-accused on the basis of complaint moved on behalf of the complainant - Rajmal. On 17.1.2010 at about 9.00/9.30 P.M., the nephews of the complainant were present at his home for preparation of *Bhaat*. In the meanwhile, Jinder @ Joginder, Manoj, Sonu, Mahender, Sombir, Bharat Singh and Phoola Devi armed with iron rod, *jelli* and axe entered in his house through *baithak*. Jinder @ Joginder hit the iron rod on his head and all the other accused hit his nephew Rajesh, Ramesh, Bajrang, his and Roshni wife of Chaju Ram. For 1-2 minutes, light was not there and therefore, it could not be ascertained as to who hit whom with their respective weapons. But when light came, Manoj hit Ramesh as well as Bajrang on their heads with iron rod and Bharat Singh hit Rajesh on his head with *jelli*. Bajrang and Sombir also hit on the head of Rajesh with iron rod. Bharat Singh hit Roshni on her head with *jelli*. He also inflicted injuries to the complainant and his accomplice. During this fight, 5-7 boys, who were sitting outside, also inflicted fist blows upon them. On hearing this noise, many persons came forward and rescued the complainant and his family members from the hands of the accused. The

motive behind the occurrence was that about 6 months ago, a quarrel took place between them, which was settled.

On the aforesaid facts, case was registered and investigations conducted. The medico-legal reports of the injured were obtained and the weapons/iron rods used in the fight were also recovered. However, no *jelly* was recovered.

After completion of investigation, challan under Section 173 CrPC, was presented in Court and copies of the documents were provided to the accused, as provided under Section 207 CrPC. Accordingly, charge under Sections 147, 148, 149, 323, 324, 452, 506 read with Section 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

The prosecution examined PW-1 Ramesh, who corroborated the version of the prosecution and stated that he along with other injured was admitted in hospital, where his statement was recorded. PW-2 Roshni also supported the prosecution version and identified the petitioners-accused. She stated that the accused have caused injuries upon them. PW-3 Rajesh, who is one of the injured witness, named all the accused and also explained the injuries suffered by him. PW-4 Bajrang, PW-5 Gayneshwar, PW-6 Rajmal, PW-7 Ugersain, PW-8 Dr. Vipul Gupta, who had medico-legally as well as radio-logically examined the witnesses and PW-9 Raj Kumar were also examined.

In their statements under Section 313 CrPC, the petitioners-accused denied all the allegations and pleaded innocence. However, no defence evidence was led by the petitioners-accused.

PW-1 Ramesh, injured, deposed on same lines of the complainant Ex.PW-1/A and proved the same. In his cross-examination,

nothing substantial favouring the defence or accused could be extracted. PW-2 Roshni proved the factum of occurrence and the injuries caused by the accused upon the complainant and other injured persons. She elaborated her presence. PW-3 Rajesh and PW-4 Bajrang also deposed on the lines of the complainant and proved the injuries inflicted upon them as well as other injured persons. PW-5 Gyaneshwar deposed that after the arrest of the accused, he recovered the iron rod vide seizure memo.Ex.PW5/A. PW-6 Rajmal, who is complainant, proved the complaint Ex.PW6/A and identified his signatures over the same. In his cross-examination, he denied the suggestion that due to the marriage ceremony, his children and others were fighting with each other under the influence of liquor and received injuries. He further denied the suggestion that due to his good relation with police, he has falsely implicated the accused. PW-7 Ugersain deposed that he registered the formal FIR PW-7/A and endorsement thereon Ex.PW7/B. PW-8 Dr. Vipul Gupta deposed through his affidavit Ex.PW-8/A, wherein he specifically stated that he medico-legally examined Roshni and found the injuries, as mentioned therein. Injuries of Ramesh son of Chajju Ram, Rajesh son of Chajju Ram, Bajrang son of Rajmal, Rajmal son of Chandgi Ram and Rajmal son of Chandgi Ram were elaborated.

On the basis of evidence so adduced, learned trial Court convicted the petitioners-accused and sentenced them, as indicated above.

Aggrieved from the aforesaid judgment of conviction and order of sentence, the petitioners as well as complainant filed appeals before learned Additional Sessions Judge, Bhiwani and learned Appellate Court, dismissed the appeals preferred by the petitioners-accused, however, the appeal preferred by the complainant was partly accepted, by common

the offences committed under Sections 148 and 149 IPC. Accordingly, the Appellate Court held them guilty for offence punishable under Sections 148, 452 read with Section 149 IPC, 323 read with Section 149 IPC, 324 read with Section 149 IPC, 325 read with Section 149 IPC and 506 read with Section 149 IPC and sentenced them as under:-

<i>“U/s 148 IPC</i>	<i>To undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for one month.</i>
<i>U/s 323 read with 149 IPC</i>	<i>To undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for one month</i>
<i>U/s 324 read with 149 IPC</i>	<i>To undergo simple imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for one month.</i>
<i>U/s 452 read 149 IPC</i>	<i>To undergo simple imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for one month.</i>
<i>U/s 506 read 149 IPC</i>	<i>To undergo simple imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for one month.</i>
<i>All the substantive sentences shall run concurrently. ”</i>	

It is in the aforesaid circumstances, the petitioners have filed the present revision petition.

On 22.12.2015, this Court while recording the contention of learned counsel for the petitioners, passed the following order:-

“Challenge in this criminal revision petition is to the judgment dated 12.12.2015 passed by learned Additional

Sessions Judge, Bhiwani, whereby the appeal filed by the petitioners challenging their conviction and sentence for the offences punishable under Sections 323, 324, 452 and 506 read with Section 34, IPC, recorded by learned Judicial Magistrate First Class, Bhiwani, was dismissed.

At the very outset, learned counsel for the petitioners contends that in view of the concurrent findings of both the Courts below, he does not want to challenge the conviction of the petitioners. However, he submits that in view of the circumstances of the case, the sentence awarded by the Courts below is on higher side.

Notice of motion for 23.02.2016 with regard to quantum of sentence only.”

In view of the aforesaid order, learned counsel for the petitioners has fairly stated that he does not wish to challenge the impugned judgments on merits, rather prays that the sentence awarded to the petitioners be reduced to the period already undergone by them. Thus, learned counsel for the petitioners has confined his arguments with regard to quantum of sentence only.

Learned counsel for the petitioners submitted that so far as petitioner no.1 - Sombir is concerned, he is a poor person and has a small child. He has also to take care of his old parents and there is nobody in the family to look after them. Similarly, petitioner no.2 Joginder has two children and old mother and there is no other person to look after them. Petitioner no.3 - Sonu is also stated to be a poor person having old persons to look after and petitioner no.4 Manoj is also stated to be a poor person, having an old widow mother and there is nobody to look after them.

Learned counsel for the petitioners stated that as against the awarded maximum sentence of 2 years, the petitioners are in custody for

more than 6 months and 20 days, including remissions and there is no other case pending against them. He further submitted that the injuries inflicted upon the petitioners are on the non-vital parts of the complainant side and therefore, considering the fact that the petitioners have suffered the agony of a protracted trial since 18.2.2010, when the alleged incident had occurred, the sentence awarded to the petitioners be reduced to the period already undergone by them.

I have heard learned counsel for the parties and gone through the impugned judgments.

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.2874 fo 2012 decided on 31.10.2012** this Court had reduced the sentence of the accused therein under Sections 323, 328 and 326 IPC.

The custody certificates of the petitioners show that they have never been involved in any other case except the present one and as against the awarded maximum sentence of two years, they remained in custody for more than six months, including remissions.

Considering the fact that the petitioners have suffered a protracted trial since the year 2010 and there is no previous conviction to their discredit, coupled with the fact that they remained in custody for last about six months, including remissions, I find that the petitioners have not crossed the age where their behaviour cannot be corrected. Therefore, this Court feels that ends of justice would be met if the conviction of the petitioners is maintained and the sentence awarded to them is reduced to the period already undergone by them.

Accordingly, while taking into account the poor background of the petitioners, the judgments of conviction passed by the Courts below are upheld. The present revision petition is dismissed and the sentence awarded to the petitioners is reduced to the period already undergone by them. However, the petitioners are directed to pay a sum of Rs.10,000/- each, as compensation, to the injured-complainant over and above the fine imposed by the Courts below. The petitioners be released forthwith subject to deposit of observed amount. On redemption of amount i.e. Rs.40,000/- in total, the same shall be paid to the injured-complainant.

May 28, 2016
AK

(HARI PAL VERMA)
JUDGE