

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

**CRR No.2067 of 2006
Date of Decision: 24.03.2017**

Des Raj and others

..... Petitioners

Versus

State of Haryana

..... Respondents

CORAM: HONBLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Rahul Vats, Advocate,
for the petitioners.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

SUDIP AHLUWALIA J. (ORAL)

This Revision is directed against the judgment passed by the Ld. Sessions Judge, Sirsa in Criminal Appeal No.23 of 2003/2004 dated 21.9.2006. Vide the impugned judgment, the Ld. Court of Session had dismissed the aforesaid appeal, which was directed against the judgment of conviction passed by the Ld. Chief Judicial Magistrate, Sirsa in Criminal Case No.223-1 of 1995 dated 2.4.2003, followed by the order of sentence passed on 3.4.2003.

2. It may be mentioned that the present petitioners were all tried for the offences punishable under Sections 326, 324 and 323 read with Section 34 IPC on the charges that they had attacked and caused grievous injuries with sharp cutting weapons to the victims Sohna Ram and Jagga Ram at around 10 P.M. on 18.3.1995. It may be further mentioned that victim Sohna Ram and Jagga Ram apart from three other persons, namely, Mahender Ram, Bhira Ram and Shingara Singh were simultaneously tried for the offences punishable u/s 148 and 323 read with Section 149 IPC as they were accused of having caused injuries to the present

petitioners in the self same occurrence, on the basis of which, the concerned FIR No.59 dated 19.3.1995 was drawn up in the Sadar Sirsa Police Station against both the groups involved.

3. After recording evidence led in the case, the Ld. Trial Court acquitted the opposing group of accused persons, namely, Sohna Ram, Mahender Ram, Bhira Ram and Jagga Ram, since he found that it was actually the present petitioners, who had tried to take possession of the disputed piece of land from the opposing group and had in the process in furtherance of their common intention caused grievous as well as simple injuries with sharp edged weapons. Consequently, after finding the petitioners guilty of the offences under Sections 326 and 324 read with Section 34 IPC, the Ld. CJM was pleased to award them sentences of Rigorous Imprisonment for four years apart from a fine of ₹5000/- each for the offence u/s 326 IPC and for a period of two years for the offence u/s 324 IPC. The Ld. Appellate Court found no merit in the appeal preferred against the Trial Court's judgment, which was therefore, dismissed on 21.9.2006.

4. It may be observed at the outset that in the revisional jurisdiction under which the petitioners have approached this Court, there is very little scope to revisit the evidence led in the trial, which has already been done by the Ld. Appellate Authority who found the original judgment of conviction to be appropriate. However, an alternative plea on behalf of the petitioners has been raised by their Ld. counsel. It has been contended that the convicts nevertheless deserved remissions of sentence awarded to them on account of the following grounds:-

- (i) That the petitioners are first time offenders, and, therefore, ought to have been granted concession under the provisions of

Probation of Offenders Act;

- (ii) That the occurrence was not intrinsically pre-meditated inasmuch as it basically arose out of a land dispute in which both groups were involved. However, the other group was let off ostensibly because the injuries suffered by the petitioners' side were trivial;
- (iii) That the occurrence took place more than 22 years ago in 1995 and since then the petitioners have had to face the agony of trial followed by the conviction all along;
- (iv) That they have remained on bail for more than 10 years after dismissal of their appeal by Ld. Lower Appellate Court and there is no adverse report regarding their conduct subsequently in the village; and,
- (v) That even otherwise they have undergone actual imprisonment exceeding a period of five months each which is thus sufficient in the over all facts and circumstances.

5. Mr. Manoj Kumar Sangwan, Deputy Advocate General, Haryana appearing for the State, however, submits that the petitioners should not be granted any such favour or remission considering that grievous as well as sharp cutting injuries were inflicted on the victim(s) during the occurrence, and that particularly in case of the petitioner-Des Raj, it cannot be said that he otherwise has an unblemished profile.

6. This Court has scrutinized the custody certificates of all the three petitioners. It transpires that each one of them has undergone imprisonment for a period of exceeding five months. It is also correct that there are no adverse notings

in relation to the petitioners Massu Ram and Bana Ram. However, the same

cannot be said about the petitioner-Des Raj, since his custody certificate shows that he was involved in three other criminal cases, all of which were lodged subsequent to the FIR in the present case. Of course, he is also found to have been acquitted in each of those three cases. One of those cases was for the offence under Section 325 IPC, while the other two pertain to offences under the Excise Act. There is admittedly no record of any conviction against him at any time.

7. Before proceeding any further in this regard, it would be appropriate to first consider the nature of injuries caused to the victims in the present case, which have been referred to in paragraph 5 of the judgment of the Ld. Appellate Court. It transpires that the victim Sohna Ram suffered an incised wound of bone deep distal phalanx of his left little finger caused by a sharp weapon. On X-Ray examination it was found that the said victim had suffered a fracture in the middle phalanx left little finger. On the other hand, the victim Jagga Ram also suffered an incised wound muscle deep anterior to the left wrist, but on the radiological examination, no fracture was found. This would mean that admittedly the injury inflicted upon Jagga Ram was simple in nature but the finger fracture suffered by victim Sohna Ram does amount to a “grievous injury”, though not of a permanent nature.

8. In the given facts and circumstances, and taking into consideration the grounds set out in Para No.4 above, this Court is inclined to consider remission for petitioners Bana Ram and Massu Ram at one level, while the case of the third convict Des Raj is liable to be considered on a different footing. In arriving at this determination, the Court is persuaded by several previous decisions of Coordinate Benches of this Court such as in **“Maya Bai and others Vs. State of Punjab” 2006 (1) RCR (Criminal) 687; “Mohan Singh Vs. State of Punjab” 2006 (1) RCR (Criminal) 872; “Dharambir and another Vs. State of Haryana” 2011 (2)**

Law Herald 1134; “Charan Singh Vs. State of Punjab” 2016 CriLJ 1148; “Jaspal Singh @ Jassa @ Tota and another Vs. State of Punjab” 2015 (7) RCR (Criminal) 652.

9. Consequently in respect of the petitioners Bana Ram and Massu Ram, while upholding their conviction, they are ordered to be henceforth released by reducing the sentences awarded to them to the extent actually undergone by them. The same direction is passed in relation to the petitioner-Des Raj, however, with a rider that the fine amount in his case shall be increased to ₹20,000/- instead of ₹5,000/- as originally awarded by the Ld. Trial Court, and such additional fine shall be disbursed to the victims Sohna Ram and Jagga Ram or their family members in the ratio of 2:1.

10. Ordered accordingly. The revision is, thus, disposed of.

11. Petitioners are on bail. They are released in terms of observations recorded herein above.

(SUDIP AHLUWALIA)
JUDGE

24.03.2017

Bhumika

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |