

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

Crl. Revision No. 2112 of 2011 (O&M)
Date of decision: August 31, 2017

Devender Sagar
State of Haryana

Versus

...Petitioner
...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashit Malik, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

JAISHREE THAKUR, J.

1. Petitioner—Devender Sagar had been convicted by the Judicial Magistrate 1st Class, Kurukshetra, on 18.12.2009 in FIR No. 193 dated 20.5.2001 under Sections 354, 452 and 506 IPC and sentenced as under:-

Sr. No.	Under Section	Sentence Imposed	Fine (in ₹)
1.	452 IPC	To undergo rigorous imprisonment for a period of one year.	1500/-
2.	354 IPC	To undergo rigorous imprisonment for a period of one year.	1000/-
3.	506 IPC	To undergo rigorous imprisonment for a period of one year.	1500/-

In default of payment of fine, the petitioner was further to undergo simple imprisonment for a period of two months. The petitioner herein preferred an appeal against the judgment of his conviction, which was partly allowed by learned Sessions Judge, Kurukshetra, by his judgment dated 29.8.2011. The

petitioner was sentenced to undergo rigorous imprisonment for a period of 9 months and to pay an amount of ₹1500/- under sections 452 IPC, to undergo rigorous imprisonment for a period of 9 months and to pay of an amount of ₹1000/- under section 354 IPC and rigorous imprisonment for a period of 6 months and to pay an amount of ₹1500/- under section 506 IPC and in case of default in payment the petitioner was to undergo simple imprisonment for a period of two months. Feeling aggrieved against the judgments of both the courts below, the petitioner has approached this court through the instant revision petition.

2. Learned counsel for the petitioner at the outset states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. He further states that he is conscious that scope in revision is very limited, as evidence of the witnesses cannot be re-appreciated or re-evaluated.

3. In brief, the facts are that the complainant Shashi Bala is the widow of Chander Mohan, real brother of the petitioner—Devinder Sagar. The complainant, her husband and their son were joint in mess with the petitioner and his family and later on the joint house was partitioned. After the death of the husband of the complainant, the petitioner entered the house of the complainant on 12.05.2001 at about 9.00 a.m., while she was alone since her minor child had gone to school, and molested her. A complaint was lodged on 16.05.2001 before the JMIC Kurukshetra and thereafter a criminal case under sections 354/452/506 IPC was registered on 25.5.2001. Jagadish Chand, Head Constable was examined as PW1 and Shashi Bala complainant was examined as PW2 . Thereafter, the evidence of the

prosecution was closed by court order on 11.5.2009 after availing 19 opportunities to conclude its evidence. In his defence, the petitioner examined Ashok Kumar, ASI as DW1 and also tendered in evidence certified copies of documents, mortgage deeds exhibit DB and exhibit DC, plaint of Civil Suit No. 105 of 2001 exhibit DD, order in Civil Suit No. 105 of 2001 exhibit DE, plaint of Civil Suit No. 106 of 2001 exhibit DF, order dated 09.05.2001 in Civil Suit No. 106 of 2001 exhibit DG, plaint of Civil Suit titled as Shashi Bala versus Devendra Kumar exhibit DH, judgment in Criminal Appeal No. 9 of 2008 dated 24.08.2009 exhibit D1, Criminal Complaint No. 337 of 1998 exhibit DJ and plaint exhibit DK of Civil Suit No. 25 of 1999 and thereafter closed his evidence. After hearing arguments, the petitioner was held guilty and convicted under Sections 354/452/506 IPC by the JMFC and sentenced, as aforesaid. The sentences were subsequently reduced in appeal, while upholding the judgment of conviction.

4. Learned counsel for the petitioner has submitted that there was animosity between the complainant and the petitioner over the property which led to multifarious litigation between the parties. It is also contended that in the instant case there is no direct evidence available on the record other than the testimony of the complainant. It is also argued that other than the investigating officer no independent witnesses have been examined despite availing of 19 opportunities to lead evidence. Counsel also argues that the incident was of the year 2001 and since then 16 years have passed.

5. In response, learned counsel for the State has submitted that keeping in view the nature of allegations and the facts and circumstances of

the case, which have been held to be duly proved by both the Courts below, the petitioner is not entitled to the benefit of probation.

6. On a perusal of the judgments of both the courts below, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the petitioner guilty of the charge framed against him. The appellate court has also rightly dismissed the appeal while reducing the sentence awarded. There is no infirmity or illegality in the findings given by both the courts below and the scope in revision is very limited as evidence of the witnesses cannot be re-appreciated and re-evaluated. The conviction of the petitioner is, thus, affirmed.

7. At this stage counsel for the petitioner (who is out on bail), pleads for reduction of sentence to already undergone and release on probation. As per Section 360 the Code of Criminal Procedure, when any person not under 21 years of age, is convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less or a person under 21 years of age or any woman convicted for offence not punishable with death or imprisonment for life and not a previous convict, can be released on probation, in case, it appears to the Court that his or her conduct is such and it is expedient that the offender should be released on probation instead of sentencing him at once to any punishment provided after considering age, character, antecedents or physical and mental condition of the offender.

8. In the present case, the ground made out is that petitioner who is now almost 59 years of age has faced criminal proceedings for the last about sixteen years. It is also submitted that he has the responsibility of

looking after his young grandchildren.

9. After hearing the argument of the learned counsel and perusing the case law, it is noted that there is a dispute between the families over properties and other than litigation between themselves the petitioner herein does not have any criminal antecedents. Moreover the petitioner now aged 59 years has already suffered a protracted trial, therefore, I am of the considered opinion that ends of justice would be met completely if the sentence of the petitioner is reduced to the period already undergone. However, the fine imposed by the appellate court shall be enhanced to ₹5,000/- over the amount already assessed, to be deposited within one month with the trial court. Except for the modification in the quantum of sentence, as indicated herein above, the revision stands dismissed.

August 31, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No