

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

CRR No.1040 of 2015.

Decided on:-August 03, 2017.

Dharampal and others

.....Petitioners.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Akashdeep Singh, Advocate
for the petitioners.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

Petitioners, namely, Dharampal, Pardeep and Sesan have filed the present revision petition challenging the judgment dated 20.01.2015 passed by learned Sessions Judge, Jhajjar, whereby their appeal filed against the judgment of conviction dated 05.01.2013 and order of sentence dated 07.01.2013 passed by learned Additional Chief Judicial Magistrate, Jhajjar, was dismissed.

Learned Magistrate vide judgment dated 05.01.2013 convicted the petitioners for offence punishable under Sections 323 and 325 read with Section 34 IPC and vide separate order dated 07.01.2013, sentenced them as under:

Under Section

Sentence

323 read with Section
34 IPC

Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each.

325 read with Section
34 IPC

Rigorous imprisonment for a period of two
years and to pay a fine of Rs.1,000/- each.

In default of payment of fine, the petitioners-accused were further sentenced to undergo imprisonment for one month. However, both the substantive sentences were ordered to run concurrently.

Briefly stated, case of the prosecution is that on 29.08.2007 a telephonic information was received from Police Station Jhajjar to the Police Post Dujana that Dharambir, resident of village Girawar, who had been admitted in General Hospital, Jhajjar on account of the injuries suffered by him in an altercation, had been referred to PGIMS, Rohtak. On this, HC Mange Lal collected the Ruqqa and MLR of said injured from Police Station Jhajjar. As per the MLR, Dharambir had received ten injuries with blunt weapons on his person. HC Mange Lal reached emergency ward of PGIMS, Rohtak. However, the concerned doctor opined that the injured was not fit to make the statement. On 31.8.2007, HC Mange Lal and Constable Rakesh again reached PGIMS, Rohtak and after obtaining the opinion of the doctor, recorded the statement of Dharambir.

Injured-complainant Dharambir, in his statement had reported that he is an agriculturist, aged about 55 years and a resident of village Girawar. Accused Dharampal is his elder brother. Both of them are residing separately and have got separate Khewats. On 27.08.2007, his brother Dharampal was present in his plot. When the complainant had gone to his plot to bring his cattle, he had a scuffle with his brother Dharampal. His brother Dharampal nursed a grudge against him on account of this incident.

On 29.08.2007 at about 07.00 AM, he had gone to his plot to tie his cattle

there. When he reached his plot, Dharampal and his sons i.e. accused Pardeep and Sesan were already present there armed with Kulhari (axe) and Jellies. On seeing the complainant, accused started abusing him and stated that they would teach him a lesson for causing injuries to Dharambir. Saying this, accused Sesan gave an axe blow on his head due to which he fell down. Accused Pardeep gave him a Jelly blow on his left foot. Accused Dharampal also gave him a number of Jelly blows. When he tried to rescue himself, he suffered injuries on his body and hands. In the meanwhile, the wife of complainant, namely, Ramo Devi also reached the spot of occurrence and raised cries. On seeing her, the accused fled away from the scene of occurrence along with their respective weapons.

On the basis of statement of the complainant, the FIR No.430 dated 19.09.2007 under Sections 323 and 325 read with Section 34 IPC was registered at Police Station Jhajjar. Statements of witnesses were recorded by the police. Site plan was prepared and the petitioners-accused were arrested. After completion of investigation, Challan was presented in the Court. Copy of challan was supplied to the accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused were charge-sheeted by the trial Court for the commission of offence under Sections 323 and 325 read with Section 34 IPC to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, the trial Court vide its judgment dated 05.01.2013 and order dated 07.01.2013 had convicted and sentenced the petitioners-accused in the manner stated above.

Feeling aggrieved, the petitioners preferred an appeal against

the said judgment of conviction and order of sentence before the Court of Session. However, the appeal was also dismissed vide judgment dated 20.01.2015 passed by learned Sessions Judge, Jhajjar.

It is in these circumstances, the petitioners have filed the present revision petition challenging the verdicts of the Courts below.

At the outset, learned counsel for the petitioners has stated that during pendency of the present revision petition, petitioner Dharampal has died on 29.12.2016. He has also produced a copy of death certificate of petitioner Dharampal issued by the Registrar (Birth & Death), Primary Health Centre, Dujana. The same is taken on record.

The factum of death of petitioner Dharampal has not been denied by learned State counsel. Accordingly, the proceedings against petitioner Dharampal are ordered to be dropped.

So far as the remaining two petitioners, namely, Pardeep and Sesan are concerned, learned counsel for the petitioners has not challenged the conviction of the petitioners and has confined his arguments qua the quantum of sentence only. He has submitted that both the petitioners are facing the agony of criminal proceedings since 19.09.2007 i.e. the date when the FIR in question was registered against them. No other case is pending against them and they are the first time offenders. As against the awarded sentence of 2 years for offence under Section 325 IPC, they remained in custody since 20.01.2015 and their sentence was suspended by this Court vide order dated 30.07.2015. Thus, the petitioners have already undergone imprisonment for a period of more than 6½ months.

He has further contended that, so far as injury suffered by the complainant-injured, which attracted Section 325 IPC is concerned, the same have been found to be on the left hand and leg of the injured and as such, the injuries are on the non-vital part of the body of injured. He has also referred copy of statement dated 21.01.2015 made by the counsel for the complainant-decree holder in execution proceedings of a civil suit, vide which the petitioners-J.D. have paid the decree amount of Rs.1,56,500/- and the land of petitioners-J.D., which was attached, has been released. He 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, though has not disputed the custody of the petitioners, but has argued that learned trial Court 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 petitioners guilty for commission of offence under Sections 323 and 325 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 is not assailing the judgments of conviction and has rather restricted his arguments qua the quantum of

sentence only. The conviction of both 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 facing the criminal proceedings since 19.09.2007 coupled with the fact that against the awarded sentence of 2 years, they have already undergone more than 6½ months, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioners 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 both the petitioners, namely, Pardeep and Sesan is reduced to the period already undergone by them. However, there shall be no change in the sentence of fine.

August 03, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No