

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

CRR No.2749 of 2017 (O&M).

Decided on:-14.09.2017.

Billa Masih.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. A.S. Dhaliwal, DAG, Punjab.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed the present revision petition against the judgment dated 18.07.2017 passed by learned Additional Sessions Judge, Gurdaspur whereby his appeal against the judgment of conviction and order of sentence dated 12.02.2014 passed by learned Additional Chief Judicial Magistrate, Gurdaspur, was dismissed.

Briefly stated, FIR No.10 dated 14.01.2008 under Sections 326, 452, 324 and 323 read with Section 34 IPC was registered against the petitioner along with two other co-accused, namely Raju and Manga Masih at Police Station Sadar Gurdaspur on the allegations that on 11.01.2008 at about 09.00 P.M., all the three accused, in furtherance of their common intention, committed house trespass by entering into the house of complainant Romi Masih and had voluntarily caused simple as well as grievous hurt to the complainant with sharp edged weapons i.e. Datar and Kirpan.

On the basis of statement of the complainant, the petitioner as well as two other co-accused were arrested and produced in the Court. Statements of witnesses were recorded and after completion of investigation, Challan against the petitioner and co-accused Manga Masih was filed in the Court. Since the other co-accused, namely, Raju was found to be a juvenile in conflict with law, separate Challan was presented against him before the Juvenile Justice Board.

The copies of Challan, as envisaged under Section 207 Cr.PC, were supplied to the accused. Finding a prima facie case against the petitioner and co-accused Manga Masih, they were charge-sheeted under Sections 452, 326, 324 and 323 read with Section 34 IPC, to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 12.02.2014 had convicted the petitioner and co-accused Manga Masih for the commission of offence punishable under Sections 452 and 324 IPC. They were also convicted for offence under Section 326 read with Section 34 IPC. Besides this, co-accused Manga Masih was also convicted under Section 323 IPC, whereas the petitioner was also convicted under Section 323 read with Section 34 IPC.

Vide separate order dated 12.02.2014, learned trial Court sentenced the petitioner-accused as under:

<u>Offence</u>	<u>Sentence</u>
Under Section 326/34 IPC	Rigorous imprisonment for three years and fine of Rs.2,000/- and in default thereof, to further undergo RI for three months.

Under Section 324 IPC	Rigorous imprisonment for two years and fine of Rs.1,000/- and in default thereof, to further undergo RI for two months.
Under Section 452 IPC	Rigorous imprisonment for two years and fine of Rs.1,000/- and in default thereof, to further undergo RI for two months
Under Section 323/34 IPC	Rigorous imprisonment for six months and fine of Rs.500/- and in default thereof, to further undergo RI for one month.

It was, however, ordered that all the substantive sentences of imprisonment shall run concurrently.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 18.07.2017 passed by learned Additional Sessions Judge, Gurdaspur, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

It would be pertinent to mention here that though the co-accused, namely, Manga Masih had also preferred appeal along with the petitioner, but he had expired during the pendency of appeal and proceedings against him were abated vide order dated 11.09.2015 passed by learned appellate Court.

On August 11, 2017, when the present revision petition came up for hearing before this Court, learned counsel for the petitioner restricted his arguments qua the quantum of sentence only. Therefore, the notice of motion was issued for today i.e. 14.09.2017 to the aforesaid extent only.

Learned counsel for the petitioner has contended that so far as injury attracting the offence under Section 326 IPC is concerned, the same

was attributed to co-accused Raju, who was found to be a juvenile in conflict with law and a separate Challan was presented against him before the Juvenile Justice Board. The other co-accused Manga Masih has died during pendency of the appeal. As against the awarded sentence of three years, the petitioner is in custody since 18.07.2017 i.e. the date when his appeal was dismissed by learned Additional Sessions Judge, Gurdapur.

He has further contended that the petitioner is a first time offender and there is no other criminal case pending against him. He is a poor person and labourer by profession. He has been suffering the agony of criminal proceedings since 14.01.2008 i.e. the date when the FIR in question was registered against him. Thus, he has prayed for reduction of sentence of the petitioner.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 452 and 324 IPC as well as the offence under Sections 326 and 323 read with Section 34 IPC. The appellate Court has also rightly dismissed his 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 petitioner has not

assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner 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, taking into account the protracted trial, antecedents of the petitioner coupled with the fact that he has been suffering the agony of criminal proceedings since 14.01.2008 as well as in the light of the aforesaid judgments, this Court feels that the ends of justice would be met, if the

sentence awarded to the petitioner is reduced to the period of three months subject to payment of compensation to the complainant-injured, namely, Romi, as envisaged under Section 357 Cr.P.C.

Accordingly, the sentence of petitioner Billa Masih is reduced to the period of three months subject to deposit of Rs.25,000/-, with the trial Court within a period of one month from the date of receipt of certified copy of this order. The amount of compensation shall be disbursed by the trial Court to the complainant-injured, namely, Romi Masih or his legal heirs, as the case may be.

It is made clear that in case the amount of compensation is not deposited by the petitioner within a period of one month as indicated above, he shall be liable to undergo the remaining part of his sentence, as awarded by the trial Court.

However, there will be no change in the sentence of fine.

With aforesaid modification in the order of sentence, the present revision petition stands dismissed.

September 14, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No