

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

CRR No.361 of 2017 (O&M)
Decided on:-July 19, 2017.

Baljeet.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Janak Singh Bhinder, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

HARI PAL VERMA, J.

Petitioner Baljeet has filed the present revision petition challenging the judgment dated 10.11.2016 passed by learned Additional Sessions Judge, Hisar, whereby his appeal filed against the judgment of conviction dated 03.05.2013 and order of sentence dated 04.05.2013 passed by learned Judicial Magistrate 1st Class, Hisar, was dismissed.

Learned Magistrate vide judgment dated 03.05.2013 convicted the petitioner for offence punishable under Sections 323, 324 and 326 read with Section 34 IPC and vide separate order dated 04.05.2013, sentenced him as under:

Under Section

Sentence

323 IPC

Simple imprisonment for a period of three months.

324 IPC	Simple imprisonment for a period of one year with fine of Rs.500/- and in default thereof, to undergo further simple imprisonment for one month.
326 IPC	Simple imprisonment for a period of two years with fine of Rs.1,000/- and in default thereof, to undergo further simple imprisonment for one month.

Briefly stated, case of the prosecution is that on 26.09.2002, a telephonic message from General Hospital, Hisar was received regarding admission of Subhash in the hospital after receiving injuries. On this, HC Om Parkash along with other officials had visited the said hospital and recorded the statement of injured Subhash. In his statement, complainant stated that on 25.09.2002, he and Deepa went to Mirjapur road to recover money from Ranga son of Chander Singh. After taking money, when both of them were returning to their house, at about 9.30 PM, and were near salt factory, four boys, who were having Gandasi, Kulhari, iron rod and Lathi in their hands, suddenly appeared. Those four boys attacked the complainant. One of the assailant was Kuldeep and other was his real brother, whose name he does not know. Kuldeep gave a lathi blow at his head whereas his brother gave an axe blow on his right foot. The second boy caused injuries with rod at the ankle of his left foot and third boy gave Gandasi blow on his head. Kuldeep gave another blow with Lathi at his waist and his brother caused him injuries on right shoulder. After receiving the injuries, the complainant fell down and when Deepa tried to rescue him, he was also caused injuries by the assailants. The accused gave him kicks and fist blows while he was lying down on the ground. On hearing his noise, his wife

Pappi, mother Sita, Ranga and Happy reached at the spot and on seeing them, the assailants went away from the spot with their respective weapons.

On the basis of statement of the complainant, the FIR No.557 dated 26.09.2002 under Sections 323, 324 and 326 read with Section 34 IPC was registered at Police Station City Hisar. Statements of witnesses were recorded by the police. Site plan was prepared and the petitioner-accused along with other co-accused, namely, Kuldeep, Lila and Ram Singh 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, 324 and 326 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 28.07.2010 and order dated 31.07.2010 had convicted and sentenced the petitioner-accused. However, accused Kuldeep had died during the proceedings of the case, whereas the other two accused, namely, Lila and Ram Singh were acquitted by the trial Court.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session. The appeal of the petitioner was accepted and the direction was issued to the trial court to decide the case of the petitioner after recording statement of accused under Section 313 Cr.PC afresh and the petitioner was directed to appear before learned trial court on 04.03.2013. Thereafter, the

trial Court had recorded the statement of accused appellant under section 313 Cr.P.C. afresh and vide judgment dated 03.05.2013 and order dated 04.05.2013 had convicted and sentenced him in the aforesaid manner.

The petitioner again filed an appeal against the said judgment and order passed by the trial Court, but the same was also dismissed by the appellate Court vide judgment dated 10.11.2016.

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

At the outset, learned counsel for the petitioner has not challenged the conviction of petitioner and has confined his arguments qua the quantum of sentence only. He has submitted that the petitioner is facing the agony of criminal proceedings since the year 2002. He is a poor person and is the only bread winners of his family. As against the awarded sentence of 2 years for offence under Section 326 IPC, he has already undergone imprisonment for a period of 8 months and 13 days.

He has further contended that, so far as injury suffered by the complainant-injured, which attracted Section 326 IPC is concerned, the same has been found to be on the right foot of the injured and as such, the injury is on the non-vital part of the body of injured. He has, thus, prayed that the sentence awarded to the petitioner may be reduced to the period already undergone by him as there is no other case against the petitioners except the present one.

On the other hand, learned State counsel, though has not disputed the custody of the petitioner, but has argued that learned trial Court

has already taken a lenient view regarding the sentence of petitioner. 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 petitioner guilty for commission of offence under Sections 323, 324 and 326 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 petitioner is not assailing 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, considering the fact that the petitioner has been facing the criminal proceedings since the year 2002 coupled with the fact that against the awarded sentence of 2 years, he has already undergone more than 8 months and 13 days, this Court feels that the ends of justice would be met, if the sentence awarded to him is reduced to the period already undergone by him. But at the same time, the complainant-injured deserves to be compensated for the injury caused upon him.

Accordingly, the present revision petition is dismissed, however, with modification in the order of sentence to the effect that the sentence awarded to the petitioner is reduced to the period already undergone by him subject to payment of Rs.10,000/- as compensation. The petitioner shall deposit the amount of compensation with the trial Court within one month from today. On doing so, the petitioner shall be released from custody forthwith, if not required in any other case.

However, it is made clear that the sentence qua fine imposed upon the petitioner shall remain intact. Perusal of the order of sentence dated 04.05.2013 passed by the trial Court shows that the fine has already been paid by the petitioner.

The trial Court shall disburse the aforesaid amount of compensation of Rs.10,000/- to the injured-complainant Subhash or his legal heirs, as the case may be.

July 19, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No