

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

Criminal Revision No. 477 of 2017 (O&M)

Date of decision : March 16, 2017

Sahender and others

.....Petitioners

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Hardeep Singh Dhillon, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

LISA GILL, J.

Petitioner No. 1 was convicted for the offences punishable under Sections 354, 452, 323, 34 IPC and petitioners No. 2 , 3 and 4 were convicted for the offences punishable under Sections 323, 452, 34 IPC vide judgment dated 24.12.2014 passed by the learned Chief Judicial Magistrate, Karnal. They were sentenced to undergo varying terms of imprisonment as under:-

Convict Sahender	
Under Section 354 IPC	Convict is sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of two months.
Under Section 323 read with Section 34 IPC	Convict is sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of fifteen days.
Under Section 452 read with Section 34 IPC	Convict is sentenced to undergo simple imprisonment for a period of two years and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of two months.

Appellants-convict Sulkeh Chand, Sanjeev and Amit Kumar:-

Under Section 323 read with Section 34 IPC	Convicts are sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of fifteen days.
Under Section 452 read with Section 34 IPC	Convicts are sentenced to undergo simple imprisonment for a period of two years and to pay fine of ₹100/- each. In default of payment of fine, convict shall undergo simple imprisonment for a period of two months.

All sentences are ordered to run concurrently.

Aggrieved therefrom, the petitioners preferred an appeal.

Learned Additional Sessions Judge, Karnal vide judgment and order dated 19.01.2017 while upholding their conviction under the aforementioned sections reduced the sentence imposed upon them as under :-

Appellant-convict Sahender	
Under Section 354 IPC	Convict is sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of 15 days.
Under Section 323 read with Section 34 IPC	Convict is sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of 15 days.
Under Section 452 read with Section 34 IPC	Convict is sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of 15 days.

Convict Sulkeh Chand, Sanjeev and Amit Kumar:-

Under Section 323 read with Section 34 IPC	Convicts are sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹100/-. In default of payment of fine, convict shall undergo simple imprisonment for a period of 15 days.
Under Section 452 read with Section 34 IPC	Convicts are sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹100/- each. In default of payment of fine, convict shall undergo simple imprisonment for a period of two months. 15 days.

All sentences are ordered to run concurrently.

Still aggrieved therefrom, the petitioners have preferred the present revision petition.

Brief facts of the case are that FIR No. 33 dated 05.03.2007 under Sections 323, 354, 452, 34 IPC at Police Station Kunjpura, Karnal was registered against the petitioners on the basis of complaint (Ex. PW1/A) submitted by (PW1) Tejpal. It is stated in the complaint that petitioner No. 1

– Sahender outraged the modesty of the complainant's sister-in-law (Bhabi) on 04.03.2007 at 2.00 p.m. in the garb of playing Holi. Everyone was playing Holi in the complainant's house. When the complainant's sister-in-law asked Sahender to refrain from his actions and raised alarm, petitioner No. 1 was asked to leave their house by other villagers. At that time, the complainant Tejpal alongwith Peeru Ram, Dharam Singh, Jogender, Mohindri Devi were present in the Baithak of the complainant's house. After some time, petitioner No. 1 - Sahender armed with an iron pipe along with petitioner No. 2 – Sulekh Chand armed with a stick (danda), petitioner No. 3 - Sanjeev Kumar armed with a sword and accused Bittu armed with a stick (danda) trespassed into the complainant's house. They attacked the complainant and his family member with their respective weapons. Sanjeev Kumar inflicted injuries on the nose, face, chest and legs of the complainant. Injuries were inflicted upon other members of the complainant's family as well. Medico legal examination of the complainant and his family members was conducted. FIR No. 33 dated 05.03.2007 under Sections 323, 354, 452, 34 IPC was registered on the basis of the above said complaint. All the accused persons were proceeded against. Petitioner No. 1 – Sahender was charge sheeted for the offences punishable under Sections 354, 452, 323, 34 IPC. The other petitioners were charge sheeted for the offences punishable under Sections 323, 452, 34 IPC.

Prosecution examined as many as nine (9) witnesses to prove its case. The accused in their statements under Section 313 Cr.P.C. while denying the incriminating evidence/material put to them pleaded innocence, false implication and claimed trial.

Learned trial Court on appreciation of the evidence on record

found the accused guilty of the offences as mentioned above vide judgment dated 24.12.2014. They were, accordingly, sentenced by the learned Chief Judicial Magistrate, Karnal vide order of even date. Learned Additional Sessions Judge, Karnal in the appeal preferred by the petitioners upheld the conviction of the accused petitioners but reduced the sentence imposed upon them as mentioned above.

Learned counsel for the petitioners has vehemently argued that the witnesses are closely related to each other, therefore, much reliance cannot be placed upon their testimony. The allegations levelled by them, in any case, are vague and general in nature. Injuries received by petitioner No. 1 have not been explained by the prosecution. This fact in itself renders the prosecution version doubtful. The prosecution has, thus, failed to prove its case beyond reasonable doubt. In the alternate, it is submitted that the accused petitioners are facing this litigation since 2007. They have undergone much agony on this account. Therefore, the sentence imposed upon the petitioners be further reduced or they be afforded the benefit of probation.

I have heard learned counsel for the petitioners and have gone through the record with his assistance.

The complainant, PW1 Tejpal narrated the facts as mentioned in the complaint. The victim i.e. the complainant's sister-in-law deposed as PW5. She duly identified all the accused persons present in Court and categorically stated that petitioner No. 1 outraged her modesty. She supported the prosecution version completely. PW2 Jogender, an injured eye witness and PW6 Dharam Singh, who was also present at the spot, corroborated the contents of the complaint (Ex. PW1/A). All the accused

were identified by him. Medico legal reports (Exs. PW3/B to PW3/F) qua the injured Peeru Ram, Mohindri Devi, Dharam Singh, Jogender Singh and Tejpal respectively were proved by PW3 Dr. Rajinder Kumar. PW7, Dr. Piyush Sharma has proved the x-ray report (Ex. PW7/A) and the x-ray films in respect to the radiological examination of the injured Peeru Ram. PW4, SI Sukhwinder Singh, the Investigating Officer has proved the investigation conducted in this case.

There is clear and cogent evidence on record to show the commission of the offences punishable under the aforementioned sections by the accused petitioners. The oral testimony of the witnesses giving the details of the incident is duly corroborated by the medical evidence on record. The fact that the witnesses are closely related does not impinge or detract from their credibility in any manner. Their presence on the spot was natural as the whole family was admittedly celebrating the festival of Holi. Learned counsel for the petitioners is unable to point out any illegality or perversity in the impugned judgments which warrants interference by this Court in exercise of its revisional jurisdiction.

Similarly, there is no merit in the plea raised on behalf of the petitioners for reduction of the sentence to that of the one already undergone by them or for affording the benefit of probation to the petitioners. It is to be noted that the learned Additional Sessions Judge, Karnal has already dealt with the petitioners in an extremely lenient manner. The sentence imposed upon petitioner No. 1 – Sahender has been reduced from a period of two years for the offence punishable under Section 354 IPC to rigorous imprisonment for a period of six months. Similarly, the sentence of rigorous imprisonment of two years imposed upon all the petitioners for the offence punishable under Section 452 IPC read with Section 34 IPC has been

reduced to that of six months. The amount of fine of ₹100/- under Section 354 IPC imposed upon petitioner No. 1 and fine of ₹100/- under Section 452 IPC read with Section 34 IPC upon all the petitioners has been maintained.

The Hon'ble Supreme Court in **State of Madhya Pradesh versus Saleem @ Chamaru and another 2005 (5) SCC 554** has specifically observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not endure under such threats.

Similarly, Hon'ble Supreme Court in **State of Madhya Pradesh versus Sheikh Shahid 2009 (12) SCC 715** has observed that any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect to such offences will be counter productive in the long run and against societal interest, which needs to be taken care of and strengthened by string of deterrence inbuilt in the sentencing system.

Learned counsel for the petitioners is unable to point out any such mitigating circumstances, which would justify further reduction of the sentence imposed upon the petitioners or for grant of concession of probation to the petitioners.

Accordingly, this petition is dismissed.

(Lisa Gill)
Judge

March 16, 2017
rts

Whether speaking/reasoned : Yes

Whether reportable : Yes/No