

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218(1)

CRR-2276-2011 (O&M)

Gurtej Singh alias Teji and another

.....Petitioners

Versus

State of Punjab

.....Respondent

218(2)

CRR-763-2012

Binder Singh

.....Petitioner

Versus

The State of Punjab

.....Respondent

Date of Decision:09.10.2018

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

Present: Ms. Harpreet Kaur, Advocate for
Mr. RVS Chugh, Advocate for the petitioners,
(in CRR-2276-2011).

Mr. A.K. Walia, Advocate for the petitioner,
(in CRR-763-2012).

Ms. Sakshi Saini, Advocate for
Mr. HPS Ishar, Advocate.

Mr. Tanvir Joshi, A.A.G., Punjab.

HARI PAL VERMA, J.(Oral)

With the consent of learned counsel for the parties, these two criminal revision petitions bearing CRR-2276-2011 and CRR-763-2012, are being decided by this common order as facts are common in the case. However, for facility of reference, facts are being culled out from CRR-2276-2011 (Gurtej Singh alias Teji and another Versus State of Punjab).

Petitioners—Gurtej Singh alias Teji, Jagtar Singh (petitioners in CRR-2276-2011) and Binder Singh (petitioner in CRR-763-2012) have filed the present criminal revision petitions against judgment dated 05.09.2011 passed by learned Sessions Judge, Mansa, whereby the appeal filed by the petitioners against the judgment dated 05.02.2011 passed by learned Judicial Magistrate, 1st Class, Mansa, convicting and sentencing the petitioners was dismissed.

Briefly stated on 09.02.2007 and at about 9.00 PM, the complainant was going from Bhikhi towards village Samaon and when he reached at bridge of Bhikhi-Barnala road his brother Raghvir Singh was also going from Samaon to Bhikhi. At that time, Teji Singh and his elder brother who was armed with 'gandasa' caught hold the complainant. Binder Singh took 'gandasa' from the elder brother of Teji Singh and gave a blow on the head of the complainant. Then Teji Singh gave a blow of 'dang' near the right eye of the complainant and two blows of 'dang' on his right biceps and left leg. The complainant and his brother raised hue and cry by saying 'na maro na maro', upon which all the assailants fled away from the spot with their respective weapons. Brother of the complainant took the complainant to his house and Krishan Singh neighbour of the complainant arranged a conveyance and shifted the complainant to Civil Hospital, Bhikhi from where he was referred to Civil Hospital, Mansa on 10.2.2007. The complainant got recorded his statement to ASI Kulwinder Singh on 11.2.2007 and his brother Raghvir Singh also thumb marked the same as a token of its correctness. On the basis of the statement of the complainant, FIR No.118 dated 1.2.2007, under Sections 324, 325, 323, 34 IPC was registered against the petitioners/accused at Police Station Bhikhi, Mansa

and the investigation was carried out. After completion of investigation, challan was presented in the Court. The trial Court supplied copy of the challan to the petitioners free of cost as provided under Section 207 Cr.P.C. Finding a prima-facie case against the petitioners, the trial Court framed charges against the accused under Sections 323, 325, 326, 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as seven witnesses and then closed its evidence. Thereafter, the statements of the petitioners-accused were recorded under Section 313 Cr.P.C. Wherein the accused denied all the allegations levelled against them and pleaded their false implication. However, one witness DW-1 Lakhvir Singh was examined in defence evidence.

The trial Court vide judgment dated 5.2.2011 had convicted the petitioners for the offences punishable under Sections 326, 325, 323, 34 IPC and vide order of even date, sentenced them as under:-

Gurtej Singh @ Teji

326/34 IPC	Two year rigorous imprisonment and to pay fine of ₹ 3000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.
325 IPC	One year and six months rigorous imprisonment and to pay fine of ₹ 1500/- and in default of payment of fine to further undergo R.I. for three months.
323 IPC	Six months rigorous imprisonment.

Jagtar Singh

326/34 IPC	Two year rigorous imprisonment and to pay fine of ₹ 3000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.
325/34 IPC	One year and six months rigorous imprisonment and to pay fine of ₹ 1500/- and in default of payment of fine to further undergo R.I. for three months.

323/34 IPC Six months rigorous imprisonment.

Binder Singh

326 IPC Two year rigorous imprisonment and to pay fine of ₹ 3000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

325/34 IPC One year and six months rigorous imprisonment and to pay fine of ₹ 1500/- and in default of payment of fine to further undergo R.I. for three months.

323/34 IPC Six months rigorous imprisonment.

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

Feeling aggrieved, the petitioners filed an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 5.9.2011, learned Sessions Judge, Mansa, dismissed their appeal maintaining the conviction passed by learned Magistrate vide judgment dated 5.2.2011.

It is in the aforesaid circumstances, the petitioners have filed the present criminal revision petitions.

Learned counsel for the petitioners submit that the petitioners are facing the agony of criminal proceedings since the year 2007 and as against the awarded sentence of two years, they have remained in custody for more than 6 months including the remission. He contended that the petitioners do not wish to challenge the impugned judgment of conviction and have rather prayed that the sentences awarded to them be reduced to the period already undergone by them. Thus, he has confined his arguments only qua the quantum of sentence.

On the other hand, learned State counsel has opposed the plea of taking a liberal view, as pleaded by the learned counsel for the

petitioners, but conceded that there is no other case against the petitioners. The custody certificates filed by learned State counsel in Court today, are taken on record.

I have heard learned counsel for the parties and gone through the impugned judgments of the Courts below.

Since the complainant has suffered an injury and as per MLR, as stated by Dr. Hardeep Singh, PW2, Medical Officer, RSB, injury No.4 is “complaining of pain over the left calf muscle area, no external injuries seen and was advised X-rays” in the opinion of the Doctor, Ex.PG, the injury is grievous in nature. Though injury Nos.1, 2 and 3 are simple in nature.

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 his 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 a 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.2874 of 2012 decided on 31.10.2012** this Court had reduced the sentence of the accused therein under Sections 323, 328 and 326 IPC.

The custody certificates of the petitioners as produced by the State nowhere show that the petitioners are involved in any other case except the present one. Further, as against the awarded sentence of two years, petitioner-Binder Singh remained in custody for about 10 months and 23 days including remission, whereas other petitioners, namely, Jagtar Singh and Gurtej Singh @ Teji remained in custody for 6 months and 14 days including remission. Therefore, considering the fact that the petitioners have suffered a protracted trial since the year 2007 and there is no previous conviction to their discredit, coupled with the fact that they have already suffered incarceration, I find that the petitioners have not crossed the age where their behaviour cannot be corrected. As such, this Court feels that ends of justice would be met if the conviction of the petitioners is maintained, but the sentence awarded to them is reduced to the period already undergone by him

Accordingly, the judgments of conviction passed by the Courts below are upheld. The present revision petitions are dismissed with modification in the sentence awarded by the trial Court to the effect that the sentence awarded to the petitioners is reduced to the period already undergone, however, subject to payment of compensation which is assessed at ₹30,000/- (i.e. ₹10,000/- by each petitioner).

The petitioners shall deposit the said amount of compensation with the trial Court within a period of one month from the date of receipt of

certified copy of this order. The trial Court shall disburse the said amount to the complainant or his legal heirs, as the case may be. It is made clear that in case the petitioners fail to deposit the amount of compensation with the trial Court within the stipulated period, the present revision petitions would be liable to be dismissed in toto and the petitioners shall have to undergo rigorous imprisonment of the remaining sentence as awarded by the trial Court vide judgment of sentence dated 5.2.2011.

October 09, 2018

seema

(HARI PAL VERMA)

JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No