

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.232

CRR-2753-2012(O & M)

Date of Decision:29.11.2018

Ganga Dayal and others

....petitioners

Versus

State of Haryana

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Abhilaksh Grover, Advocate
for the petitioners

Mr.Surender Singh, AAG Haryana

ARVIND SINGH SANGWAN, J. (ORAL):

Prayer in this petition is for setting aside the judgement dated 14.09.2011, passed by the Judicial Magistrate First Class, Gurgaon, holding the petitioners guilty of offence punishable under Sections 332/353 of the Indian Penal Code, 1860, (for short, 'IPC'), read with Section 34 IPC, as well as the order of sentence dated 15.09.2011, vide which the petitioners were directed to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1500/- each and in default of payment of fine to further undergo simple imprisonment for a period of two months, as well as the judgment dated 04.09.2012 passed by the lower appellate Court, vide which the appeal filed by the petitioners was dismissed.

At the very outset, learned counsel for the petitioners submits
that petitioner No.3-Mukesh has died and the proceedings qua him stands

abated.

Brief facts of the case are that as per the statement of complainant- Lal Singh made before the police, he was working as Executive Officer in the Central Co-operative Bank Limited, Gurgaon, with its branch at Manesar. On 09.05.2003, he along with Babu Lal Gunman, Prem Parkash, Secretary and Suresh, Salesman of Co-operative Society Fazalwas, had gone to village Fazalwas to recover the bank loan. They had obtained the arrest warrants of Mukesh and Naresh sons of Ganga Dayal. At about 08.15 AM, when they reached their house, they tried to explain the accused person to pay the loan amount to avoid arrest. But the accused persons neither returned the loan amount nor accompanied the recovery team. They started abusing and fighting with the members of recovery team. Accused Mukesh attacked the complainant with an iron rod in the centre of his head. Accused Naresh attacked the complainant with iron rod on his head while their father Ganga Dayal caught hold of them. The members of the recovery team immediately returned back after receiving injuries and got themselves admitted in General Hospital, Gurgaon. The FIR was registered on the basis of the complaint.

Thereafter, the police submitted the challan under Section 173 Cr.P.C. The trial Court framed the charges against the petitioners under Sections 332/353/34 IPC. In the prosecution evidence, PW1-ASI Phool Singh, appeared and deposed on the line of the investigation conducted by him.

PW2- Babu Lal and PW3-Suresh Kumar, did not support the prosecution version and they were declared hostile. Both these witnesses were the eye witnesses and they were cross-examined by the public

prosecutor. However, they did not support the prosecution version.

PW4- Dr.Nawal Kishore, proved on record the MLR of the injured as PW3/B and PW3/C.

PW5-Lal Singh/complainant deposed on the line of the version given in the FIR and PW6- Prem Parkash, eye witness also deposed on the same line.

Thereafter, statement of the accused persons were recorded under Section 313 Cr.P.C. and all the incriminating evidence which had come against them was put to them. They denied the same and pleaded false implication. However, no defence evidence was led. Thereafter, learned trial Court, vide impugned judgement of conviction and order of sentence dated 14/15.09.2011, sentenced them as noticed above.

The appeal filed by the petitioners was dismissed by the lower appellate Court vide judgement dated 04.09.2012.

Sentence of petitioner No.1-Ganga Dayal was suspended by this Court, vide order dated 04.10.2012 and on 04.12.2012, sentence of petitioner No.2-Naresh and petitioner No.3-Mukesh (deceased) was also suspended by this Court.

Learned counsel for the petitioners has argued that the prosecution has failed to produce on record any documentary evidence to show that on the date of occurrence, the complainant and the witnesses were working in the Central Co-operative Bank Limited, with its Branch at Manesar. It is also submitted that no evidence has been collected during the investigation that any loan amount was pending against the accused persons and on the date of occurrence, the employees of the Bank had gone to recover the loan amount after obtaining the arrest warrants. It is further

argued that the complainant-Lal Singh (PW5) has admitted in the cross-examination that though the duty hours of the bank were from 10.00 AM to 05.00 PM, however, they reached at the house of the petitioners/accused at 08.15 AM, which were not the official working hours of the bank. Learned counsel has further submitted that two of the prosecution witnesses i.e. PW2- Babu Lal and PW3- Suresh Kumar who were cited as eye witnesses, have not supported the prosecution version and, therefore, the conviction of the petitioners on the statements of PW5 and PW6, who are the interested witnesses is not sustainable. Learned counsel for the petitioners has also referred to certain discrepancies in the statement of these two witnesses on the material points. Learned counsel for the petitioners has argued that petitioner No.1-Ganga Dayal is about 85 years of age and petitioner No.2-Naresh is about 45 years of age. Learned counsel for the petitioners further submits that both the petitioners are the first offenders and are facing the agony of protracted trial since 2003. Learned counsel further submits that petitioner No.1 Ganga Dayal has undergone 01 month and 08 days of actual sentence and petitioner No.2 Naresh has undergone 03 months and 09 days of actual sentence. Both of them have their own families to support and they were on bail during the pendency of the trial and their sentence was suspended during the pendency of the first appeal as well as the present petition. In the intervening period, both the petitioners have not repeated any such offence and they have shown improvements in their behaviour. Therefore, it is submitted that the sentence of the petitioners be reduced to the period already undergone by them.

Learned State counsel has filed the custody certificate of

petitioners No.1 and 2. As per the certificate, petitioner No.1 is aged about 85 years and petitioner No.2 is aged about 45 years and have undergone 01 month and 08 days and 03 months and 09 days of actual sentence, respectively. Learned State counsel further submits that both the Courts below have recorded a finding of fact that all the three petitioners have caused injuries to the employees of Central Co-operative Bank and that they had obstructed the execution of the warrant of arrest against them and therefore the present petition be dismissed.

After hearing learned counsel for the parties, I find that both the Courts below on the basis of appreciation of statement of PW5/complainant, who is the prosecution witness as well as eye witness have recorded a finding that the petitioners have committed offence under Sections 332/353 IPC. However, I find merit in the statements made by learned counsel for the petitioners that the sentence awarded to the petitioners be reduced to the sentence already undergone by them for the following reasons:

1. Petitioner No.1 is presently aged about 85 years and he has already undergone the substantive sentence. Petitioner No.2 is aged about 45 years of age and has his own family to support.
2. Both these petitioners have faced the protracted trial since 2003 and they were on bail during the trial; their sentence was suspended during the pendency of the appeal and they have not repeated any such offence.
3. Both the petitioners are the sole bread earner of their families and considering their behaviour during the pendency of the trial/appeal, I deem it appropriate to reduce

the sentence awarded to petitioners No.1 and 2 to the sentence already undergone by them.

With the aforesaid observations, the petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

29.11.2018
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Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No