

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

CRR-523-2012(O&M)

Date of decision:-12.1.2018

Mahender Singh and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjay Vashisth, Advocate
for the petitioners.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Mahender Singh (aged 65 years), Rameshwar (70 years), Jitender (38 years), Satbir (37 years) and Rajender (35 years) having been booked in case registered vide FIR No.243 dated 30.11.1999 for the offences under Sections 323, 325, 34 IPC, Police Station Khol faced trial by Additional Chief Judicial Magistrate, Rewari on the allegations that on 19.9.1999 at about 9:00 p.m., when complainant Kamla Devi along with her family was present at her plot situated at village Pali, then accused Mahender Singh came and threatened to teach her a lesson as she was giving direction to Ramanand son of Kalu Ram to block the water; that Mahender Singh hit her on the head with a lathi; that in the meanwhile Rameshwar son of Phua Ram came to the spot; that he was armed with a *lathi* and he gave a *lathi* blow to complainant hitting her on right hand;

that then Jitender son of Rameshwar armed with a jelly gave a jelly blow to the complainant on her left hand; that Satbir and Rajender sons of Mahender Singh also arrived at the spot while armed with *lathies* and caused injuries to the complainant by hitting her on stomach and back; that on alarm being raised by the complainant, her son Ram Niwas and Sajjan Kumar intervened and rescued her from the assailants; that while leaving the spot, the assailants threatened the complainant of dire consequences, if the matter was reported to the police. The motive for the incident was release of water by the accused causing damage to the wall of house of complainant. The injured was taken to General Hospital, Rewari and was got medico legally examined. On the basis of statement made by complainant – injured Kamla Devi, which was corroborated by her son Ram Niwas, formal FIR was registered. Accused were arrested. After completion of investigation and other formalities, challan against the accused was prepared and presented in the Court.

On presentation of challan in the Court concerned, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Additional Chief Judicial Magistrate, Rewari finding that charge for offences under Sections 323, 325 read with Section 34 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as eight witnesses, namely, Kamla as PW1, Ram

Niwas as PW2, Dr.OP Dabas as PW3, Rajender Singh, SI (Retd.) as PW4, Dr.Joginder Singh as PW5, Rajender Parshad, ASI as PW6, Kartar Singh, ASI as PW7 and Hazari Lal, ASI as PW8.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

In defence evidence, accused examined Dayanand, Clerk of DC Office, Complaint Branch, Rewari as DW1, Sajjan Kumar, DRIC as DW2 and Har Bai as DW3.

After hearing arguments, learned Additional Chief Judicial Magistrate, Rewari vide judgment dated 4.12.2008 convicted all the accused for the offences under Sections 323, 325 read with Section 34 IPC and vide order dated 5.12.2008 sentenced them as under:

Under Sections	Sentence Awarded
323/34 IPC	Rigorous imprisonment for six months each.
325/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default thereof, to further undergo rigorous imprisonment for a period of three months each.

Both the sentences were ordered to run concurrently.

The appeal preferred against the judgment of conviction and order of sentence passed by the Additional Chief Judicial Magistrate, Rewari was also decided against the accused by learned Additional

Sessions Judge, Rewari vide order dated 27.1.2012, which left petitioners – accused aggrieved and they have filed the present revision petition, notice of which had been issued to the respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

As far as conviction of the accused is concerned, there cannot be two opinions regarding the same inasmuch as complainant injured Kamla appearing as PW1 narrated the incident as per prosecution story. She being injured is a stamp witness and her presence at the spot cannot be doubted. Presence at the spot of PW2 Ram Niwas also comes out to be natural and probable. He also lend support to the prosecution story. Both of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the episode.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

The judgments of conviction passed by the Courts below are well reasoned ones, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Therefore, the impugned judgments are upheld as regards conviction part qua the petitioners.

However, coming to the sentence part, it has been urged by learned counsel for the revision petitioners that petitioner - Mahender Singh is aged 65 years, Rameshwar is aged 70 years, Jitender is 38 years, Satbir is 37 years and Rajender is 35 years and their families are dependent upon them for financial support; that the incident is of the year 1999; that the petitioners/convicts do not have any previous criminal record and they have not indulged in any criminal act after having been released on bail; that they have undergone one month and 26 days of imprisonment each in the case, therefore, a lenient view in the matter may be taken. He further stated that the petitioners are ready to pay any reasonable compensation to the injured.

Learned State counsel has opposed the request vehemently.

However, I find that keeping in view the facts and circumstances of the case, the antecedents of the petitioners and more than 18 years have passed since the occurrence, the ends of justice would be squarely met if the petitioners are sentenced to imprisonment already undergone by them, while in custody in the present case and adequate compensation can be awarded to the complainant. Therefore, the petitioners are directed to pay a sum of Rs.25,000/- each to the complainant by depositing the amount in the trial Court within one month

from today. The complainant may withdraw the amount by moving application in the trial Court. In case of petitioners not depositing the amount of compensation within the stipulated period, the present revision petition would be deemed to be dismissed in toto.

As such the present criminal revision petition, challenging the impugned judgments stand disposed of with above modification in sentence.

Necessary intimation be sent to the quarter concerned.

12.1.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No