

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

Criminal Revision No. 2161 of 2015 (O&M)

Date of decision : 21.9.2018

Binder

..... Petitioner

VS

State of Haryana

..... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Munish Behl, Advocate, for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal J.

The petitioner was arrayed as an accused in FIR No. 102 dated 5.6.2008 registered under Sections 323 and 325 IPC at Police Station, Naraingarh, District Ambala.

Briefly, the facts are that FIR in question was recorded on the statement of Shiv Kumar son of Mahinder Pal, resident of Village Panjlasa, Police Station Naringarh with the allegations that on 23.3.2008 at around 5.00 p.m., he was going towards his house, when in the street Sohan Lal and his two sons Binder Singh petitioner and Sinder and their mother Kalawati met him. Kalawati and Sohan Lal caught hold of him and their sons Sinder and Binder gave danda blows on his head. He was rescued by his brothers Parveen Kumar and Sanjeev Kumar.

After completion of investigation, challan was presented against the petitioner. He was charged for offence punishable under Sections 323 and 325 IPC to which he pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, examined as many

as five witnesses. In his statement recorded under Section 313 Cr.P.C., the petitioner stated that he has been falsely implicated in this case.

Considering the evidence on record in the form of statements of eye witnesses, learned trial Court acquitted the petitioner. In the appeal filed against the order of acquittal, the learned Sessions Judge upheld the order of the trial Court with regard to offence under Section 325 IPC against the petitioner, however, as regard offence under Section 323 IPC, he was sentenced to undergo rigorous imprisonment for a period of six months and also to pay a fine of ₹ 1,000/-.

Though, initially learned counsel for the petitioner sought to assail the findings of the learned Sessions Judge whereby the petitioner was convicted and sentenced to undergo imprisonment for the offence committed under Section 323 IPC, however, finding it difficult in view of the statement of the persons who were the eye witnesses, learned counsel for the petitioner prayed that keeping in view the fact that the petitioner was not a habitual offender, he had faced agony of trial for about ten years and further that he has small family to support and being the sole bread-earner of the family and having undergone actual imprisonment for a period of two months and ten days, out of six months awarded by the learned Additional Sessions Judge, the sentence awarded to him may be reduced to the period already undergone.

On the other hand, learned counsel for the State submitted that the case of the prosecution has duly been proved. The punishment awarded is merely six months, however, he did not dispute the fact that the petitioner was a first offender and had not been involved in any other case subsequent to the case in hand.

Heard learned counsel for the parties and perused the paper book.

Considering the facts of the case in hand where the petitioner has been convicted by the learned Sessions Judge, I do not find that there is any error in the findings recorded by the Court below as regards conviction of the petitioner. However, I find merit in the contentions raised by learned counsel for the petitioner for reduction of the sentence. The incident pertains to the year 2008. About 10 years have gone by. The petitioner was a first offender and there is no record of his further involvement in any case. It was a sudden fight. Out of six months imprisonment awarded, he has already undergone two months and ten days of actual imprisonment.

Considering the above factors, in my opinion, the sentence awarded to the petitioner deserves to be reduced to the period already undergone, by upholding the conviction. Ordered accordingly.

The petition is disposed of.

21.9.2018
vs.

(**Rajesh Bindal**)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No