

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

Criminal Revision No.1468 of 2016 (O&M)
Decided on:- November 20, 2018.

Rajbala and another

.....Petitioners.

Versus

Sanjay and others

.....Respondents.

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

Present:- Mr. Rahul Vats, Advocate
for the petitioners.

Mr. Raman Chawla, Advocate
for respondents No.1 to 6

Mr. Anmol Malik, A.A.G., Haryana.

HARI PAL VERMA, J.

The petitioners, namely, Rajbala and Udham Singh, who are complainant and injured respectively have filed the present revision petition against judgment dated 15.02.2016 passed by learned Additional Sessions Judge, Hisar whereby two appeals, one filed by respondents No.1 to 6-accused and the other filed by the petitioners-complainant against the judgment of conviction and order of sentence dated 26.02.2014 passed by learned Judicial Magistrate 1st Class, Hisar were partly allowed and the conviction of the respondents-accused was maintained, but while invoking the provisions of the Probation of Offenders Act, 1958, they were released on probation of good conduct.

Briefly stated, the FIR No.330 dated 04.12.2008 under Sections 323, 324 and 325 read with Section 34 IPC was registered against the respondents No.1 to 6-accused at Police Station Agroha with the allegations that on 30.11.2008 at about 02.30/3.00 P.M., complainant Rajbala and her son Udham Singh (petitioners herein) were taking tea in their fields. In the meantime, their neighbours Sajjan Singh, Bimla Devi and Sunder and one Sanjay son of Lilu Ram, resident of village Bhatla came there. Accused Sajjan Singh was armed with Gandasa, accused Bimla was armed with Lathi, Accused Sunder was armed with rod and accused Sanjay was armed with Gandasi. Accused Sajjan Singh asked Udham Singh that why did they pass through their fields. On this, Udham Singh replied that the field was empty and as such, they passed through the empty passage of the field. On this, accused Sajjan Singh gave a Gandasa blow on the head of Udham Singh, whereas accused Sunder gave a rod blow on his knee. Udham Singh fell down and when accused Sanjay tried to give a Gandasi blow on his person, the complainant fell down on her son Udham Singh to rescue him and the Gandasi blow hit on her head. Accused Bimla also gave a Lathi blow on the leg of complainant. Thereafter, 2-3 other person came there and gave Lathi blows on the complainant and her son Udham Singh. The complainant made hue and cry and on hearing her noise, some persons from neighbourhood and her nephew Suresh Kumar and son-in-law Amir Singh came there and on seeing them, all the accused fled away from the spot along with their weapons. The complainant and her son Udham Singh were got admitted in CMC Hospital, Hisar.

After registration of the case, police investigated the matter and submitted Challan in the Court as provided under Section 173 Cr.P.C. The copies of Challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. Finding a prima-facie case under Sections 323, 324 and 325 read with Section 34 IPC against the accused, they were charge-sheeted accordingly to which they did not plead guilty and claimed trial.

The trial Court vide judgment dated 26.02.2014 held the respondents No.1 to 6-accused guilty for commission of offence under Sections 323, 324 and 325 read with Section 34 IPC. Vide separate order dated 26.02.2014, learned Magistrate sentenced them to undergo imprisonment as under:

<u>Offence</u>	<u>Sentence</u>
323 IPC	Simple imprisonment for six months each.
324 IPC	Simple imprisonment for one year each.
325 IPC	Simple imprisonment for one year and to pay a fine of Rs.500/- each and in default thereof, to further undergo simple imprisonment for a period of one month each.

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

Against the judgment of conviction and order of sentence dated 26.02.2014 passed by learned Magistrate, the respondents No.1 to 6 filed an appeal before the Court of Session. A separate appeal was also filed by complainant Rajbala and injured Udham Singh (petitioners herein) for

enhancement of the sentence of imprisonment awarded to respondents No.1 to 6 and for grant of appropriate compensation.

Vide common judgment dated 15.02.2016 passed by learned Additional Sessions Judge, Hisar, both the appeals were partly allowed. The operative paragraph No.12 of the said judgment reads as under:

“12. Hence, the criminal appeals are partly allowed. The judgment dated 26.2.2014 is upheld. The order dated 26.2.2014 is partly set aside. Fine of Rs.500/- each shall be treated as cost of prosecution. The appellants-accused are ordered to be released on probation on their executing personal bonds in the sum of Rs.20,000/- each with one surety each of the like amount with an undertaking to keep peace and be of good behaviour for a period of one year and to appear and receive the sentence during said period as and when called upon to do so. The appellants are also directed to pay fine Rs.5000/-each as compensation in addition to fine of Rs.500/- already deposited. Requisite bonds and amount of compensation have to be furnished by appellants within one month before trial Court. In case appellants-accused fails to furnish the requisite bonds and deposit compensation, the order of sentence shall come to force. After realisation of Rs.5,000/- each from accused, Rs.5000/- be paid to complainant Smt. Rajbala and Rs.25,000/- to injured Udham Singh. The order shall remain in criminal appeal titled Sanjay Vs. State and its attested copy be kept in other file. Copy of judgment along with trial Court record be sent back for compliance. After due compliance, file be consigned to the record room.”

It is in these circumstances, the petitioners, who are complainant and injured respectively, have filed the present criminal revision impugning

the judgment dated 15.02.2016 passed by learned appellate Court qua the sentence part.

Learned counsel for the petitioners has argued that the trial Court has rightly convicted the respondents-accused and has passed the order of sentence. However, learned appellate Court has wrongly released the respondents-accused on probation. While releasing the respondents No.1 to 6-accused on probation, learned appellate Court has ignored the nature of injuries suffered by petitioner No.2 Udham Singh.

He has further argued that as per the MLR and medical report of Udham Singh (PW2), he received serious head injuries and fracture on his right tibia. He also received fracture on both of his bones of forearm and he remained admitted for 15 days in CMC Hospital, Hisar. In this manner, a huge amount was spent on his treatment. He, rather, became a permanently disabled person. However, adequate compensation has not been granted by the learned appellate Court.

He has further contended that petitioner-complainant Rajbala also received head injuries i.e. about 10 x 2 cms on skull and she remained unconscious for some days. Her CT scan was also conducted. She spent about Rs.2 lakh on her treatment, when she remained hospitalised in CMC Hospital, Hisar.

He has further argued that the approach of learned appellate Court while releasing the respondents-accused on probation is illegal and perverse in view of the serious charges levelled against the respondents-accused. The appellate Court has failed to appreciate the facts and

circumstances of the case as well as the evidence led by the prosecution while releasing the respondents-accused on probation resulting in grave miscarriage of justice.

On the other hand, learned counsel for respondents No.1 to 6-accused has argued that conviction of the respondents No.2 to 6 has been maintained by the appellate Court and looking into the totality of the circumstances as well as in the larger interest of justice, the appellate Court has released the respondents-accused on probation. The respondents have also completed the period of probation. The respondents have already sufficiently faced the agony of trial and, therefore, no interference is warranted in the judgment dated 15.02.2016 passed by learned appellate Court.

I have heard learned counsel for the parties.

It would be pertinent to mention here that scope of revisional jurisdiction is vested with limited powers. The record reveals that the prosecution has not proved that the respondents-accused are habitual offenders either before the trial Court or before the appellate Court. As such, the appellate Court has rightly accepted the prayer of respondents-accused for releasing them on probation of good conduct. Moreover, quantum of sentence is always fixed by the Court and is a prerogative of the Court unless a minimum sentence is prescribed for an offence.

However, considering the fact that the petitioners were injured in the case, this Court finds that they need to be adequately compensated. In the statements of petitioner-complainant Rajbala (PW1) and petitioner-injured Udham Singh, it has been alleged that the accused persons came to their field

on 30.11.2008 at about 2.30/03.00 p.m. and gave Gandasi, rod and Lathi blows to them. This ocular testimony has been corroborated with the medical evidence of Dr. Hitesh Moolchandani (PW5), Dr. R. Kumar (PW6) and Dr. Munish Soni (PW7), who have proved the injuries found on the person of the petitioners. Besides this, ASI Mahavir Parsad (PW8) has stated in his examination-in-chief that blood stained clothes handed over by the doctor were taken in possession vide separate memo Ex.PW8/B. In this manner, the ocular version has been corroborated with the medical evidence produced by the prosecution. The incident had occurred on 30.11.2008 at about 02.30/3.00 P.M. and the complainant was medico-legally examined in the hospital at 04.15 P.M. on the same day as reported by Dr. R. Kumar (PW6) in his report Ex.PW6/B. Similarly, injured Udham Singh was also medico-legally examined on the same day as per report of Dr. Munish Soni (PW7) vide his report Ex.PW7/A. Thus, injuries on the person of the petitioners are duly established.

Therefore, taking into consideration the injuries suffered by the petitioners at the hands of respondents No.1 to 6, this Court is of the considered opinion that the compensation awarded to the petitioners by learned appellate Court is inadequate viz. a viz. the injuries suffered by them. Thus, respondents No.1 to 6-accused are directed to pay compensation to the petitioners to the tune of Rs.50,000/- i.e. a sum of Rs.10,000/- to petitioner Rajbala and Rs.40,000/- to petitioner Udham Singh over and above the compensation already awarded by learned appellate Court within a period of two months from today.

It is made clear that in case the respondents No.1 to 6 fail to pay the aforementioned enhanced compensation of Rs.50,000/- to the petitioners within the stipulated period of two months from today, the order of sentence dated 26.02.2014 passed by learned trial Court shall come into force.

With aforesaid modification in the impugned judgment dated 15.02.2016 passed by learned Additional Sessions Judge, Hisar, the present criminal revision stands disposed of.

November 20, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No