

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

CRR-2581-2017(O&M)

Date of decision:-10.1.2018

Rahul Sharma

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.Rakesh Gupta, Advocate  
for the petitioner.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

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**H.S. MADAAN, J.**

This revision petition is directed against the judgment dated 15.5.2017 passed by learned Additional Sessions Judge, Patiala vide which the judgment and order of sentence dated 2.3.2017 passed by learned Sub Divisional Judicial Magistrate, Rajpura convicting accused Rahul Sharma for the offences under Sections 458 and 380 IPC and sentencing him for those offences were upheld, whereas the appeal filed by accused-convict was dismissed.

The accused-convict – Rahul Sharma, who is petitioner before this Court prays that this revision petition be accepted, the

impugned judgment of his conviction and order of sentence passed by Sub Divisional Judicial Magistrate, Rajpura and judgment in appeal by learned Additional Sessions Judge, Patiala be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that on 13.3.2013 at about 5:00 a.m. when the complainant Balwinder Singh son of Bachan Singh, resident of House No.3246, backside Gurudwara Singh Sabha, Rajpura had gone to Gurudwara and when he returned home at 6:00 p.m., he observed that his wife Balbir Kaur was crying and blood was oozing out from her left arm. On being asked, she told the complainant that while she was sleeping on the bed, she heard a noise from the store room and when she went there, she found that accused was committing theft of gas cylinder from there and while she tried to stop him, then he gave a blow with sharp edged weapon on her ankle joint and then fled away with the cylinder of Bharat Gas. Injured was removed to A.P. Jain, Hospital, Rajpura for treatment. Formal FIR was recorded on the basis of statement made by complainant – Balwinder Singh to the police on 14.3.2013. After registration of the FIR, the matter was investigated. The accused was arrested along with bicycle and stolen cylinder, which was identified by the complainant as the one regarding, which theft had taken place from his residential house.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Rajpura, 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 Sub Divisional Judicial Magistrate, Rajpura finding that charge for offences under Sections 458 and 380 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he 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 five witnesses, namely, PW1 Balwinder Singh, PW2 Balbir Kaur, PW3 HC Jaswinderpal, PW4 Charanjit Singh and PW5 SI Rupinder Singh.

Thereafter, the prosecution evidence was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

The accused did not examine any witness in defence evidence.

Following point for determination was framed by learned Sub Divisional Judicial Magistrate, Rajpura:

*Whether on 13.3.2013 at about 5:00/6:00 a.m. in the area of H.No.3246, backside Gurudwara Singh Sabha, Rajpura town, accused committed lurking house trespass by entering into the house of complainant Balwinder Singh, used as a*

*human dwelling having made preparation for causing hurt to complainant and putting any person in fear of hurt and wrongful restrain and committed theft of Bharat Gas Cylinder belonging to complainant and thereby committed offence under Sections 458 and 380 of IPC?*

After hearing arguments, learned Sub Divisional Judicial Magistrate, Rajpura vide judgment dated 2.3.2017 convicted accused Rahul Sharma for the offences under Sections 458 and 380 IPC and sentenced him to undergo rigorous imprisonment for a period of two years for the offence under Section 458 IPC and he was further sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 380 IPC, both the sentences were ordered to run concurrently. The appeal preferred against the judgment of conviction and order of sentence passed by the Sub Divisional Judicial Magistrate, Rajpura was also decided against the accused by learned Additional Sessions Judge, Patiala, which left petitioner – accused Rahul Sharma aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record.

In this case the prosecution had successfully proved its charge by leading cogent and convincing evidence both oral as well as documentary evidence. The star witness for the prosecution happened to be Mrs. Balbir Kaur (PW2), injured who supported the prosecution story on material aspects regarding the vital details of the case. She having

suffered injuries in the incident is a stamped witness and her presence at the spot at the relevant time cannot be doubted. Her husband Balwinder Singh (PW1) also supported the prosecution story as regards his observing his wife Balbir Kaur in injured condition and Balbir Kaur narrating the incident to him. He is also an important witness having himself seen an important part of the incident i.e. *res gestae*.

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 him falsely or to depose against him to secure his conviction.

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.

However, as regards the sentence part, the accused has been sentenced to substantive imprisonment for two years. As per the custody certificate submitted by learned State counsel, accused has undergone one year, five months and twenty five days i.e. almost one and a half years of imprisonment. He is not shown to be involved in any other criminal case and he is stated to be of young age not having any past criminal record.

I find that ends of justice would be squarely met if the petitioner is sentenced to imprisonment already undergone by him, while in custody in the present case. Therefore, the impugned judgments are upheld as regards conviction part qua the petitioner.

However, as far sentence part is concerned, the same is modified and the petitioner is sentenced to imprisonment already undergone by him as mentioned supra.

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

The petitioner – Rahul Sharma, who is stated to be in custody is ordered to be released forthwith, if not required in any other case.

Necessary intimation be sent to the quarter concerned.

10.1.2018  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**