

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

238

CRR-2000-2018 (O&M)

Date of Decision:13.08.2018

Rameshwar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. V.P. Sangwan, Advocate,
for the petitioner.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition impugning the judgment dated 18.01.2018 passed by learned Additional Sessions Judge, Bhiwani, whereby judgment passed by the trial court convicting the accused-respondent Nos.2 to 6 and sentencing them vide order dated 12.02.2015 has been set aside.

Learned counsel for the petitioner has argued that firstly, inadequate compensation has been awarded to the petitioner for the injuries suffered by the petitioner and his wife Bharna Devi and secondly, less sentence has been awarded.

Briefly stated that the petitioner had filed a complaint under Sections 147, 148, 323, 325 and 452 read with Section 149, 506 IPC with an averment that the accused persons formed a group of anti-social and unscrupulous persons against the family of the complainant. On 09.11.2011

at about 9.00 PM, when petitioner along with his wife Brahma Devi were

sleeping in their house, the accused knocked the door of the house of the complainant. However, when the complainant opened the door, he noticed all the accused were armed with lathi, danda and rods. They gave a lalkara to kill the complainant. However, when the complainant asked them the reason to come to his house, then the accused in furtherance of their common intention gave beatings to the complainant. Accused Mange gave an iron rod blow which landed on his nose, whereas accused Surender gave a lathi blow on his back. Similarly, Bijender gave a danda blow on his eye and accused Sandeep gave a danda blow on his hand. After that the complainant fell down. Then accused Sombir gave kick and fist blows to the complainant due to which he received many injuries. After hearing the noise of the complainant, his wife came out. When she tried to rescue the complainant then Hoshiari Devi caught his wife from her hair and dragged her. Accused Sombir gave a danda blow, whereas Surender gave a danda blow on the right arm of his wife. However, when the complainant and his wife raised an alarm, then Dharambir, son of the complainant and Gulab came there. After watching Dharambir and Gulab, accused persons fled away from the spot. Still while leaving, the accused persons gave a threat to kill them. Though a complaint was made, but the police has not taken any action against the accused. The complainant and his wife were taken to the hospital and because of severe injuries, they were referred to the General Hospital, Bhiwani on 11.11.2011. Their radiological examination was conducted in a private hospital and a fracture was found on the nose of the complainant.

The trial court vide judgment dated 12.02.2015 held the accused guilty for the offence under Sections 147, 148, 323, 325, 452 read

with Section 149, 506 IPC and they were sentenced as under:-

<u>Section</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>In default</u>
147/149 IPC	RI for one year	Rs.300/- each	seven days
148/149 IPC	RI for two years	Rs.500/- each	seven days
323/149 IPC	RI for six months	Rs.500/- each	seven days
325/149 IPC	RI for two years	Rs.1000/- each	Ten days
452/149 IPC	RI for two years	Rs.1000/- each	Ten days
506 IPC	RI for one year	Rs.1000/- each	Ten days

Aggrieved against the aforesaid conviction and order of sentence, the accused preferred an appeal, whereby the learned lower appellate court modified the sentence and released the accused on probation vide judgment dated 18.01.2018, the relevant portion of which is reproduced as under:-

“The learned counsel for the accused has argued that the accused may be given benefit of probation under section 360 Cr.P.C. The same was opposed by the learned counsel for the complainant while arguing that the accused had inflicted grievous injury on the person of complainant-injured Rameshwar. Keeping in view the age, antecedents and the nature of the offences, a lenient view has to be taken against the accused and they are accordingly released on probation of good conduct by giving them benefit of section 360 of the Code of Criminal Procedure, for a period of one year on their furnishing probation bonds in the sum of Rs.50,000/- with one surety in the like amount each. The accused are also directed to pay an amount of Rs.20,000/- as compensation to the complainant-injured Rameshwar and Rs.10,000/- to injured Brahma Devi, in view of section 357(3) of the Code of Criminal Procedure. The amount of compensation and the probation bonds would be furnished before the learned trial court

within a period of one month and the learned trial court is directed to deliver the amount of compensation to the complainant-injured against proper verification and receipt as per rules. In case, the amount of compensation as directed above is not paid within the prescribed period then they shall have to undergo imprisonment awarded to them by the learned trial court vide order dated 12.02.2015 and benefit of probation granted to them shall come to an end. The accused are further directed that during the period of one year, they shall keep peace and be of good behaviour and will not indulge in any such illegal activities. The amount of fine imposed upon the appellants by the learned trial court be treated as litigation expenses.”

Learned counsel has argued that once the lower appellate court had modified the sentence and released the accused on probation, the lower appellate court was not required to set aside the judgment of the trial court and it is only on the sentence part, the lower appellate court should have interfered with.

I have heard learned counsel for the petitioner and find substance in it.

Paragraph 22 of the judgment passed by lower appellate court does refer that the lower appellate court while taking into consideration the age, antecedents and nature of offences has taken a lenient view against the accused and it is thereafter, the accused were released on probation of good conduct by giving them the benefit of section 360 Cr.P.C. for a period of one year. The accused were required to furnish probation bonds in the sum of Rs.50,000/- with one surety in the like amount each. Apart from the above, the accused were also held liable to pay an amount of Rs.20,000/- as compensation to the complainant-injured Rameshwar and Rs.10,000/- to

injured Brahma Devi, in view of section 357(3) Cr.P.C.

So far as quantum of punishment is concerned, it is for the court to award sentence commensurate with the offences so committed. In the case in hand, the lower appellate court has maintained the conviction and has released the accused on probation. Therefore, this Court finds that the lower appellate court was required to modify the sentence only and not set aside the judgment of the trial court. To the mind of this Court, probably it is a typographical error. The spirit of the order does reflect that the lower appellate court has maintained the conviction of the accused-respondent Nos.2 to 6.

Accordingly, this Court does not find any merit in the present revision petition. However, the concluding paragraph of the lower appellate court, whereby the word “set aside” is used that would be read as “modified”.

The present revision petition is accordingly disposed of.

No notice is required to be issued to the respondents as the same is only for clarification of the judgment dated 18.01.2018 passed by learned Additional Sessions Judge, Bhiwani.

August 13, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No