

256.

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

CRR-855-2018

Date of decision:10.12.2018.

BAGGA SINGH

... Petitioner

Versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Jagjit Singh, Advocate,
for the petitioner.

Mr. Jagmohan Ghumman, DAG, Punjab.

HARI PAL VERMA, J.(Oral)

The petitioner-accused has filed the present revision petition against the judgment dated 01.02.2018 passed by learned Additional Sessions Judge, Kapurthala whereby his appeal against the judgment of conviction and order of sentence dated 27.10.2016 passed by learned Additional Chief Judicial Magistrate, Kapurthala, was dismissed.

Briefly stated, an FIR No.98, dated 17.10.2010, under Sections 323, 324, 326, 34 of IPC, Police Station Sadar, Kapurthala, was registered against the petitioner on the statement of Amrik Singh (complainant) wherein he had submitted that he is a resident of Village Saidowal, Police Station Sadar, Kapurthala and is working with RCF. The complainant and his brother Bagga Singh (present petitioner) along with their families are residing in a house built in their Dera. On 16.10.2010, when the complainant along with his wife Harjit Kaur went to their house, at about 5.00 PM,

petitioner, armed with sword, his son Lakhbir Singh @ Lakha, armed with *khurpa* and Resham Kaur (petitioner's mother), came there. Whereas Resham Kaur raised *lalkara*, the petitioner gave a sword blow towards the complainant's head and in order to save himself, he (complainant) raised his right hand, in this manner the sword hit on the palm of complainant's right hand. Lakhbir Singh @ Lakha gave a *khurpa* blow above the left elbow of the complainant and he (complainant) fell down. Thereafter, the petitioner again gave a sword blow, which hit on the right side of the head of the complainant. When the complainant raised an alarm, his wife Harjit Kaur came and saved him from their (accused) clutches. The accused abused them and went away along with their respective weapons. Complainant's wife took him to RCF Hospital and from there, he was referred to Kapurthala Hospital. Initially, on the basis of above statement, FIR was registered against the accused persons i.e. petitioner, his son and Resham Kaur, under Sections 323, 324, 34 of IPC and the accused were arrested. Thereafter on 25.10.2010, when the x-ray report was received, vide which, injury No.2 was declared as grievous, the offence under Section 326 of IPC was also added in the case.

After completion of investigation, Challan against the accused was presented in the Court under Sections 326, 324, 323, 34 of IPC. Copies of challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. Thereafter, the accused were charge-sheeted for the commission of offence under Sections 326, 324, 323, 34 of IPC to which they pleaded not guilty and claimed trial.

After recording the evidence and hearing the parties, the trial

Singh guilty for offence under Sections 323, 324 and 326 of IPC, since his son Lakhbir Singh died during the trial and his mother-Resham Kaur was acquitted of the charges framed against her. Vide separate order of even date, petitioner-Bagga Singh was sentenced as under:-

Sr. No.	Under Section	Sentence	Fine
1.	323 IPC	To undergo Rigorous Imprisonment for six months.	Rs.500/-. In default of payment of fine to undergo Rigorous Imprisonment for ten days.
2.	324 IPC	To undergo Rigorous Imprisonment for one year.	Rs.1000/-. In default of payment of fine to undergo Rigorous Imprisonment for twenty days.
3.	326 IPC	To undergo Rigorous Imprisonment for three years.	Rs.2000/-. In default of payment of fine to undergo Rigorous Imprisonment for one month.

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

Feeling aggrieved against his conviction and sentence by the learned Magistrate, the petitioner preferred an appeal before the Court of Session. But vide order dated 01.02.2018, his appeal was also dismissed by learned Additional Sessions Judge, Kapurthala.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition challenging the verdicts of both the Courts below.

Learned counsel for the petitioner has stated that the petitioner and the complainant are real brothers and as a result of their scuffle, the following injuries were found on the person of complainant:-

“i) An incised 3cm x 0.3 cm wound on the right frontoparietal. Fresh blood oozing from wound. Advised X-ray skull.

ii) An incised 4 cm x 5 cm wound on the palm surface of right hand which is above the base of index and middle finger. Fresh blood oozing from wound.

iii) An abrasion 8 cm x 3 cm on the left arm, which is 4 cm

above the left elbow. Redness and tenderness is present. Advised X-ray left arm.”

He has argued that as per the report of Radiologist, injuries No.1 and 3 were simple, whereas injury No.2 was grievous in nature. It was on the palm of right hand which is above the base of index and middle finger. Thus, it was on the non vital part of the body of complainant.

Learned counsel for the petitioner submits that the petitioner is facing the agony of criminal proceedings since the year 2010 and as against the awarded sentence of three years, he has remained in custody for more than 9 months including the remission period. He has contended that the petitioner does not wish to challenge the impugned judgment of conviction and has rather prayed that the sentence awarded to him may be reduced to the period already undergone by him as there is no other case against him. Thus, he has confined his arguments only qua the quantum of sentence.

On the other hand, learned State counsel has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner, but conceded that there is no other case against the petitioner. The custody certificate filed by learned State counsel in Court today, is taken on record.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 323, 324 and 326 of IPC. The appellate Court has also dismissed his appeal qua these offences. There is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner under

Court by invoking its revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, the custody certificate so placed on record by learned State counsel shows that as against the awarded sentence of 3 years, the petitioner has already undergone actual imprisonment for 9 months and 6 days. Besides this, he has also earned remission for a period of 8 days and in this manner, he has already undergone total imprisonment for a period of 9 months and 14 days. He has been facing the agony of criminal proceedings since 17.10.2010 i.e. the date when the FIR in question was registered against him. No other case has been pointed out against him.

Therefore, considering the protracted trial coupled with the fact that petitioner has already suffered incarceration for a period of 9 months and 14 days including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him, however, subject to payment of compensation of Rs.15,000/-to the complainant, as envisaged under Section 357 Cr.P.C. The said amount of compensation shall be paid within 1 ½ month from today, failing which, the petitioner shall be liable to undergo imprisonment, as awarded by the trial Court and affirmed by the lower Appellate Court.

Ordered accordingly.

However, there shall be no change in the sentence of fine

With aforesaid modification in the order of sentence, the present revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

10.12.2018
sanjeev

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.