

In the High Court of Punjab and Haryana at Chandigarh

(1)

Crl. Revision No. 2975 of 2011
Date of Decision: 31.1.2019

Debi

.....Petitioner

Versus

State of Punjab

.....Respondent

(2)

Crl. Revision No. 227 of 2012

Bittu and others

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. O.P.Kamboj, Advocate
for the petitioner (in CRR-2975-2011).

Mr. Vikram Satpal Anand, Advocate
for the petitioners (in CRR-227-2012).

Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J.

Vide this order, above mentioned two petitions would be disposed of as these have arisen out of the common judgment.

Custody certificates have been filed by the learned State counsel which are taken on record.

Petitioners along with other co-accused had faced the trial qua

commission of offence punishable under Sections 326, 325, 324, 323, 34 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 64 dated 5.6.2001, registered at Police Station City, Ferozepur. Trial Court vide judgment/order dated 10.10.2008 ordered the conviction and sentence of the petitioners as under:-

Under Sections 148 IPC	To undergo rigorous imprisonment for six months each.
Under Section 326 IPC	Accused Bittu was sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of Rs. 1,000/- and in default of payment of fine, he was to further undergo rigorous imprisonment for one month.
Under Section 326/149 IPC	Accused Gabbar, Kitta, Gejo, Sohan and Debi were sentenced to undergo rigorous imprisonment for a period of 1½ years each and to pay a fine of Rs. 1,000/- each and in default of payment of fine, they were to further undergo rigorous imprisonment for one month each.
Under Section 324 IPC	Accused Bittu was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 500/- and in default of payment of fine, he was to further undergo rigorous imprisonment for 15 days.
Under Section 324/149 IPC	Accused Gabbar, Kitta, Gejo, Sohan and Debi were sentenced to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs. 500/- each and in default of payment of fine, they were to further undergo rigorous imprisonment for 15 days each.
Under Section 325 IPC	Accused Gabbar was sentenced to undergo rigorous imprisonment for a period of nine months and to pay a fine of Rs. 500/- and in default of payment of fine, he was to further undergo rigorous imprisonment for 15 days.

Under Section 325/149 IPC	Accused Bittu, Kitta, Gejo, Sohan and Debi were sentenced to undergo rigorous imprisonment for a period of nine months each and to pay a fine of Rs. 500/- each and in default of payment of fine, they were to further undergo rigorous imprisonment for 15 days each.
Under Section 323 IPC	Accused Kitta was sentenced to undergo rigorous imprisonment for three months.
Under Section 323/149 IPC	Accused Bittu, Gabbar, Gejo, Sohan and Debi were sentenced to undergo rigorous imprisonment for three months each.
Under Section 323 IPC	Accused Bittu was sentenced to undergo rigorous imprisonment for three months.
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Under Section 323 IPC	Accused Gabbar was sentenced to undergo rigorous imprisonment for three months.
Under Section 323/149 IPC	Accused Bittu, Kitta, Gejo, Sohan and Debi were sentenced to undergo rigorous imprisonment for three months each.
Under Section 323 IPC	Accused Sohan was sentenced to undergo rigorous imprisonment for three months.
Under Section 323/149 IPC	Accused Bittu, Kitta, Gabbar, Gejo and Debi were sentenced to undergo rigorous imprisonment for three months each.
Under Section 323 IPC	Accused Debi was sentenced to undergo rigorous imprisonment for three months.
Under Section 323/149 IPC	Accused Bittu, Gabbar, Kitta, Gejo and Sohan were sentenced to undergo rigorous imprisonment for three months each.

Aggrieved against the said judgment/order of their conviction

and sentence, accused preferred an appeal. The Additional Sessions Judge,

Ferozepur vide judgment dated 15.9.2011 dismissed the appeal qua the petitioners and co-accused Sohan. However, other co-accused namely Gejo was released on probation. Hence, the present petition by the petitioners.

Prosecution story, in brief, is that on receiving MLRs pertaining to injured George and Ravi, ASI Surjan Singh along with other police officials reached Civil Hospital, Ferozepur and after obtaining the opinion of the doctor, statement of complainant George was recorded wherein he had stated that on 4.6.2001, at about 8.00 P.M. he came out of his house for attending the call of nature. When he reached near the main gate of Power House, accused Bittu armed with knife, Kitta armed with Hockey, Gabbar armed with Hockey, Debi armed with *dang*, Sohan armed with Soti and Gejo empty handed came there. On the *lalkara* raised by Gejo, Kitta gave a hockey blow which hit on the forehead of George. Kitta gave another blow in the center of his eyes. Accused Gabbar gave hockey blow on his nose. Accused Debi gave *dang* blow which hit near his neck, accused Sohan gave *dang* blow on his right shoulder. Due to this, the complainant fell on the ground and while he was lying on the ground, accused Bittu gave two knife blows which hit on his right ear. Complainant raised noise upon which Ravi son of Darshan, came at the spot and asked the reason for beating the complainant, but the accused also gave injuries to Ravi. Both of them raised noise upon which wife of George and his sister-in-law came at the spot and all the accused persons ran away from the spot with their respective weapons. The injured were got admitted in the hospital. *Ruqa* was sent to the police station on the basis of which FIR in question was registered.

After completion of investigation and necessary formalities,

challan was presented against the accused.

Charge was framed against the accused under Sections 326, 325, 324, 323, 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 7 witnesses during trial.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and claimed the trial and pleaded false implication.

Three witnesses were examined by the accused in their defence.

The trial Court vide judgement and order dated 10.10.2008, convicted and sentenced the accused, as mentioned above.

The appeal preferred by the petitioners was dismissed on 15.9.2011 by the Appellate Court.

Learned counsel for the petitioners have submitted that the petitioners are the first offenders and have been facing protracted trial for the last about 17 years. The incident is of the year June 2001 and the petitioners had remained in custody for about six to eight months. Learned counsel for the petitioners further contends that during this period, no similar incident had taken place and the sentence be reduced to the period already undergone by them. Reliance has been placed on ***Des Raj versus State of Haryana 2017 (3) R.C.R. (Criminal) 298.***

Learned State counsel has opposed the petitions. As per learned Counsel for the State of Punjab, the prosecution witnesses have fully supported the case of prosecution. Both the eye witnesses/injured have supported and corroborated testimony of each other and attributed the injuries to the accused. Medical evidence is in consonance with the ocular

version of the eye witnesses. Even the Investigating Officer, while making statement has proved all the material documents of the prosecution and charges levelled against the accused have been proved beyond shadow of doubt. Thus, prayer for the dismissal of revision petition has been made.

The occurrence took place on 4.6.2001. The petitioners were convicted and sentenced by the trial Court vide judgment/order dated 10.10.2008. Their appeal was dismissed by the Sessions Court on 15.9.2011 and they were taken into custody. The petitioners have remained in custody for about 6-8 months. They have been facing protracted trial for more than 17 years. There is no report of misuse of concession of bail by the petitioners.

The purpose of criminal law justice is to bring peace, discipline and harmony in the society. An opportunity has also to be given to an erring individual to reform himself. The Apex Court in ***Karamjit Singh v. State (Delhi Admn.), 2000(3) RCR (Crl.) 561 (SC) : 2001(9) Supreme Court Cases 161*** has observed as under :-

"Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the Court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such case; a balance between the interest of the

individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided again within the permissible limits of law."

In ***Sadhu Singh versus State of Punjab 2004(2) R.C.R. (Criminal) 108*** this Court held as under:-,

"In a recent judgment rendered in Amarjit Singh v. State of Punjab, 2003(3) RCR(Crl.) 450 upholding the conviction under Section 326 Indian Penal Code, this Court while relying upon Bohar Singh v. State of Punjab, 2000(2) RCR 387 has reduced the sentence to the period already undergone (viz. two months). While enhancing the fine as the accused had already faced the agony of protracted trial for 14 years. In the instant case, the petitioners have suffered even more period i.e. 18 years. The additional factor for showing leniency is that some persons from the accused side have also suffered injuries.

Keeping in view the totality of facts and circumstances of the case, the sentence awarded to the petitioners is reduced to the period already undergone by him. However, the sentence of fine of Rs. 200/- already awarded by the trial Court qua Gurdev singh petitioner is enhanced to Rs. 5,000/-. The

enhanced amount shall be deposited by him within three months from the date of receipt of a certified copy of this judgment. In default of payment of fine, Gurdev Singh shall undergo the whole of the substantive sentence as imposed by the trial Court. In case the enhanced amount of Rs. 4600/- is deposited (i.e. total amount of Rs. 5,000/- minus Rs. 400/- already imposed), it shall be disbursed to injured Gurbax Singh without any delay by the trial Court.”

This Court in ***Om Parkash and others versus State of Punjab 2016(5) R.C.R. (Criminal) 441***, has held as under:-

“Having heard learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the appellants behind the bars, once again, to undergo their remaining sentences of imprisonment. Ends of justice would be met suitably by setting aside their remaining sentences of imprisonment. At the same time, the sentence of fine of Rs.1,000/- imposed upon each of the appellants under Section 326 IPC can be enhanced to Rs.25,000/- so that the same may be paid to the injured persons, as compensation.”

Similar view was taken by this Court in ***Baldev Ram and others versus State of Punjab 2011(5) R.C.R. (Criminal) 588***.

Keeping the entire conspectus into view, I feel that ends of justice would be met if the sentence awarded to the petitioners is reduced to the period already undergone with a condition that the petitioners would pay Rs. 10,000/- each, to George, complainant-injured, as compensation.

Accordingly, conviction of the petitioners under Section 148, 326, 325, 324, 323, 149 IPC is maintained. However, sentence qua imprisonment of the petitioners, is reduced to the period already undergone by them. There shall be no modification in the fine.

The amount of compensation shall be deposited within one

month from today with the Chief Judicial Magistrate, concerned, failing which this petition shall be deemed to have been dismissed and the petitioners would undergo imprisonment as awarded by the Court below. The said amount of compensation be released to George, complainant-injured forthwith on identification.

With the above modification alone, both the revision petitions stand disposed.

(HARNARESH SINGH GILL)
JUDGE

January 31, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes