

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

Date of decision: 28.02.2020

1. CRR-344-2019 (O&M)

Laddi @ Kashmir Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

2. CRR-570-2019 (O&M)

Shinderpal Kaur and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Sidharth Sehgal, Advocate
for the petitioner (in CRR-344-2019).

Mr. R.S. Sekhon, Advocate
for the petitioners (in CRR-570-2019).

Mr. M.S. Nagra, AAG, Punjab.

Mr. Tarun Sharma, Advocate
for respondent No.2 (in both cases).

ARVIND SINGH SANGWAN, J.

This order shall dispose of aforementioned two revision petitions praying for is for setting aside the judgment of conviction as well as the order of sentence dated 25.09.2018, vide which the petitioners were convicted for offence punishable under Sections 323, 326, 452 read with Section 34 of Indian Penal Code (for short 'IPC') and were sentenced to undergo rigorous imprisonment for a period of 02 years along with a fine of Rs.10,500/- each and in default of payment of fine, the petitioners further ordered to undergo R.I. for a period of one month as well as the judgment dated 21.01.2019 passed by the Additional Sessions Judge, Ferozepur, vide which the sentence of 02 years R.I. awarded by the trial Court, was reduced to 1½ years, without changing the amount of fine and sentence awarded in default thereof.

Brief facts of the case are that on 14.03.2012, Balkar Singh, brother of complainant came to house of the complainant and sold the joint Toka (fodder cutting machine). Balkar Singh gave half of the amount of sale of Toka to the complainant. Accused Shinderpal Kaur demanded half sale amount of Toka, but that amount was taken by Balkar Singh. On 15.03.2012, the complainant came back to his house, after finishing his work. Ninder Kaur wife of the complainant was preparing meals and bulb of the room was on. Then accused Shinderpal Kaur along with accused Amrik Singh, Sunny and Ladi forcibly trespassed into the room of complainant at about 09:30 PM. At that time, accused Amrik Singh was armed with kirpan, accused Sunny was empty handed and accused Shinderpal Kaur and Ladi were armed with dang. Accused Shinderpal Kaur raised lalkara. Thereafter, accused Sunny caught hold the complainant, when he lying down on the cot, then accused Amrik Singh gave

kirpan blow towards the complainant and when the complainant raised his right hand to save himself, the blow hit on the little finger of his right hand. Accused Shinderpal Kaur gave dasti dang blow to the complainant, which hit near his left eye. Then accused Shinderpal Kaur and accused Ladi gave dang blows on the back of the complainant. Complainant raised noise, upon which Ninder Kaur wife of the complainant came at the spot, who saved him from the clutches of the accused. Then all the accused fled away from the spot with their respective weapons. Out of fear, complainant did not get admitted in the hospital. On the next day i.e. 16.03.2012, the complainant was admitted in Medical Hospital, Faridkot. He never refused to give statement to police, rather police intentionally did not record his statement. A rapat was got registered by complainant at Police Station Mallanwala bearing No.25 dated 18.03.2012. A cancellation report was presented by the police regarding the alleged occurrence, which was ordered to be attached with the present complaint vide order dated 28.05.2015.

After recording the preliminary evidence, the trial Court summoned all the accused to face trial for the offences under Sections 326, 452, 323, 34 IPC.

In pre-charge evidence, the complainant examined Ninder Kaur as CW1, he himself appeared as CW2, HC Resham Singh as CW3, Dr. Karam Chand as CW4 and Dr. Rajiv Joshi as CW5. Finding a prima facie case, charges under Sections 452, 326, 323 IPC read with Section 34 IPC were framed against the accused, to which they pleaded not guilty and claimed trial. In post-charge evidence, no witness was cross-examined by the accused.

After conclusion of the complainant evidence, statements of accused were recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the complainant produced against them, was put to them to tender explanation for the same. The accused denied the allegations and pleaded false implication. In defence, the accused examined Mitha Singh and Mohinder Singh as DW1 and DW2 respectively.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction and order of sentence of even date i.e. 25.09.2018, convicted and sentenced the petitioners-accused under Sections 323, 326, 452 IPC read with Section 34 IPC.

The petitioners preferred an appeal before the Court of Sessions and the Additional Sessions Judge, Ferozepur, vide judgment dated 21.01.2019, reduced the sentence of 02 years R.I. awarded by the trial Court, to 1½ years, however, the amount of fine and sentence awarded in default of payment of fine was ordered to remain intact.

Learned senior counsel for petitioner Laddi @ Kashmir Singh, at the very outset, submits that since out of total sentence of two years rigorous imprisonment awarded by the trial Court, the petitioners have already undergone about 07 months of total sentence including remission, he does not intend to address arguments on merits and sentence of the petitioner may be reduced to the period already undergone by him.

Learned senior counsel for the petitioner, in support of his arguments, has further submitted that the petitioner is a poor person and has his own family to support; he has faced the agony of protracted trial and the trial

Court has not granted the benefit of Probation of Offenders Act, therefore, by taking a lenient view, the sentence awarded to the petitioner may be reduced to the period already undergone by him.

Learned counsel for petitioners Shinderpal Kaur, Amrik Singh and Sandeep Kumar has made the similar submissions.

Learned senior counsel for petitioner Laddi @ Kashmir Singh as well as learned counsel for petitioners Shinderpal Kaur, Amrik Singh and Sandeep Kumar have submitted that the petitioners will deposit an amount of Rs.15,000/- each with the trial Court, to be paid to the complainant as compensation.

Learned State counsel has filed the custody certificates dated 27.02.2020 in the Court today and has not disputed the sentence undergone by the petitioners.

After hearing learned counsel for the parties, I uphold the judgment of conviction passed by the trial Court, as the same is based on appreciation of prosecution evidence, however, considering the fact that the petitioners have faced the agony of protracted trial; they have already undergone about 07 months of total sentence; they have joined the mainstream of the society and also in view of the fact that they are poor persons and have their own family to support, both these revision petitions are partly allowed and sentence of two years R.I. awarded by the trial Court and reduced to 1½ years R.I. by the lower appellate Court, is further reduced to the period already undergone by the petitioners. However, the imposition of fine of Rs.10,500/- is upheld. The petitioners are directed to deposit the fine, if not deposited so far, within a

period of 02 months from today.

As undertaken, the petitioners are further directed to deposit Rs.15,000/- each with the trial Court within a period of three months from today, which shall be paid to the complainant as compensation.

Since the petitioners have been granted the concession of interim suspension of sentence vide orders dated 10.09.2019, their bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

28.02.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No