

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.492 of 2019 (O&M)

Date of decision : 3.3.2020

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Kulwant Singh and others

.....Petitioners

vs.

Roop Singh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

...

Present: Mr. Karan Chaudhary, Advocate
for the petitioners.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

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H. S. Madaan, J. (Oral)

In a complaint filed by complainant Roop Singh, against accused Bhag Singh, Sawaran Singh, Gurcharan Singh sons of Bakshish Singh, Kulwant Singh, Harwant Singh sons of Bhag Singh, Ranjodh Singh son of Swaran Singh and Sukhwant Singh son of Gurcharan Singh, all residents of village Dhariwal Kalan, PS Qadian, Tehsil Batala, District Gurdaspur, the latter were tried by Judicial Magistrate Ist class, Batala, on the allegations that on 5.7.2010 at about 12.00 a.m. while the complainant was working in his fields, accused Bhag Singh, Swaran Singh and Gurcharan Singh armed with

axes, Kulwant Singh and Harwant Singh armed with a saw and Ranjodh Singh and Sukhwant Singh armed with a datar, criminally trespassed into his land on a tractor make Mahindra 585. Bhag Singh – accused raised a lalkara that all the mulberry trees grown on the land of the complainant be cut down. Then all the accused started cutting down the trees in the presence of complainant and Gurmeet Singh. Complainant requested the accused persons not to do so, but to no effect. Rather they threatened that if the complainant interfered in their chopping of trees, then he would be killed. Thereafter, the accused had taken away the logs of trees on their tractor. The complainant had reported the matter to the police, but to no effect, as such he had filed a private complaint.

After recording of preliminary evidence, the accused had been summoned and they put in appearance and were admitted to bail the complainant led pre-charge evidence. Thereafter, finding a prima facie case, charge for offences under Sections 427, 382, 148, 149 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. During the post charge evidence, accused opted to cross examine complainant Roop Singh further. It was so done. Thereafter, post charge evidence of the complainant was closed. Statements of all the accused were recorded in terms of Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them, to which they pleaded innocence and false implication. In defence evidence, the accused tendered into evidence certain documents and closed the defence evidence.

On conclusion of the trial vide judgment dated 16.7.2016,

all the accused were convicted, against which they had preferred an appeal before the Additional Sessions Judge, Gurdaspur, where they moved an application for additional evidence to prove on record sale deed dated 20.6.2005, which was allowed. Judgment of conviction and sentence was set aside and the matter was remanded to the trial Magistrate with a direction to give opportunity to the accused to prove sale deed and then to decide the matter afresh, after considering the sale deed. It was accordingly done.

Learned Judicial Magistrate Ist Class, Batala, vide judgment dated 6.1.2018, convicted all the accused for offences under Sections 382, 427, 148, 149 IPC and vide order of even date sentenced all the accused, namely, Bhag Singh, Swaran Singh, Gurcharan Singh, Kulwant Singh, Harwant Singh, Ranjodh Singh and Sukhwant Singh as under :-

<i>U/s</i>	<i>Sentence</i>	<i>Fine Rs.</i>	<i>In default of payment of fine RI for</i>
382 r.w. 149 IPC	RI for three years	Rs.2,000/-	Six months
427 r.w. 149 IPC	RI for six months	Rs.500/-	One month
148 IPC	RI for one year	Rs.1,000/-	Three months

All the sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment the accused had preferred an appeal before the Courts of Sessions, which was assigned to Additional Sessions Judge, Gurdaspur, who vide judgment dated 12.2.2019, directed that accused -appellants Bhag Singh, Sawaran Singh and Gurcharan Singh be released on probation of good conduct, subject to their furnishing personal bonds in the sum of Rs.20,000/- with one surety of the like amount each and to deposit

Rs.5,000/- each as litigation costs. Out of that amount a sum of Rs.10,000/- was ordered to be paid as compensation. Whereas regarding accused-appellants Kulwant Singh, Harwant Singh, Ranjodh Singh and Sukhwant Singh, their sentence was modified as under :-

<i>U/s</i>	<i>Sentence</i>	<i>Fine Rs.</i>	<i>In default of payment of fine RI for</i>
382 r.w. 149 IPC	RI for one and half years	Rs.2,000/-	Six months
427 r.w. 149 IPC	RI for six months	Rs.500/-	One month
148 IPC	RI for one year	Rs.1,000/-	Three months

All sentences were ordered to run concurrently.

Feeling dissatisfied, the accused – convicts have preferred a revision petition before this Court, notice of which was given to the complainant. The complainant was served but did not opt to put in appearance.

I have heard Learned counsel for the revisionists, learned State counsel, besides going through the record.

When the appeal filed by the accused-convicts was dismissed by the learned Additional Sessions Judge, the accused convicts had been taken into custody, which was on 12.2.2019.

As per the custody certificates filed by the State counsel, revisionist accused Kulwant Singh is shown to have undergone total imprisonment of 9 months and 24 days, including remissions, accused Harwant Singh, Ranjodh Singh @ Navjot Singh and Sukhwant Singh are shown to have undergone total imprisonment of 11 months and 5 days each including remissions, out of substantive imprisonment of one and a half year awarded to them. They are not

shown to be involved in any other criminal case.

Learned counsel for the revisionists has not challenged the impugned judgments on the point of conviction but has contended that a lenient view in the matter be taken with regard to the sentence part.

Considering the facts and circumstances of the case, the period already undergone by the revisionists-convicts in custody, the fact that they have not any past criminal record and their co-accused and convicts had been granted benefit of probation by the Ist Appellate Court, I am of the view that ends of justice shall be adequately met, if while upholding the impugned judgments on the point of conviction, the sentence awarded to them is reduced to the one already undergone by them in this case, whereas the conviction and the fine part are kept intact.

Therefore, the impugned judgments of the Courts below are upheld as regards conviction part, however, as far as sentence part is concerned, the same is modified and the petitioners are sentenced to imprisonment already undergone by them in this case as mentioned supra. As such the revision petition is accepted partly inasmuch as the same is dismissed as far as conviction part but allowed with regard to the sentence part. Petitioner-revisionists who are stated to be in custody are ordered to be released forthwith, if not required in any other case.

3.3.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes/ No
Yes/ No