

CRR No.745 of 2008(O&M)

1

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

CRR No.745 of 2008(O&M)

DATE OF DECISION:31.01.2020

Sarad Singh and others

...Petitioners

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Himmat Singh Deol, Advocate
for the petitioners.

Mr. Harpreet Singh Multani, AAG, Punjab.

LALIT BATRA, J. (Oral)

This is a revision petition against the judgment of conviction dated 10.02.2007 and order of sentence dated 10.02.2007 passed by Sh. S.P.Sood, the then, learned Judicial Magistrate, Ist Class, Talwandi Sabo, in Criminal case No.7 of 2001, titled "State Vs. Sarad Singh and others" FIR No.45 dated 24.09.2000 under Sections 148 and 434 IPC read with Section 149 IPC, Police Station Kot Fatta, vide which revisionists have been convicted and sentenced as under:-

Under Section 434 IPC

To undergo rigorous imprisonment for a period of six months and pay fine of Rs.100/- each, and in default of payment of fine to further undergo imprisonment for 15 days.

Under Section 148 IPC

To undergo rigorous imprisonment for a period of six months.

Substantive sentences were ordered to run concurrently.

Petitioners have also challenged the judgment dated 17.03.2008 rendered by Sh. G. K. Dhir, the then, learned Additional Sessions Judge, Bathinda, in terms of which, Criminal Appeal No.13 of 2007 preferred by the appellants (petitioners herein) impugning the legality of judgment of conviction and order of sentence both dated 10.02.2007, has been dismissed by the Appellate Court.

2. Prosecution case, in brief, is that Chhota Singh (complainant) had reported to the Police as if possession of the land allotted to him in course of partition proceedings was handed over by Revenue Authorities with assistance of local Police. Marks were affixed on support in presence of revisionists, but they dismantled and removed the same without caring for consequences. DDR No.11 dated 14.08.2000 was reported by Halqa Patwari to show compliance of orders passed by District Magistrate, Bathinda, qua delivery of possession of land to Chhota Singh (complainant) and one Gurdev Singh. Removal of *Thaddas* or points fixed at the time of delivery of possession took place next day of induction into possession. Revisionists had removed *Thaddas* with the help of spade, *Kasia* and sticks. Above said occurrence was witnessed by complainant party and thereafter informed local Panchayat. Revenue officials recorded report Roznamcha Wakiati entry No.724 dated

14.08.2000 qua delivery of possession. On these allegations, instant case was registered. Necessary investigation was conducted. Statements of witnesses were recorded. Accused were arrested. After completion of investigation, challan was presented against accused in the Court.

3. Copies of challan and other documents were supplied to the accused, free of costs, as envisaged under Section 207 Cr.P.C.

4. After perusing the documents on record, accused were charge-sheeted to face trial for the commission of offence punishable under Sections 148 and 434 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution has examined PW-1 Chhota Singh, PW-2 Gurjant Singh, Mal Patwari, PW-3 Ajit Singh, Junior Assistant, PW-4 Gurdev Singh, PW-5 ASI Nachhattar Singh, PW-6 Gurnam Singh, Chowkidar and PW-6 ASI Major Singh (wrongly numbered as PW-6). Thereafter, prosecution evidence was closed by learned Public Prosecutor for the State.

6. Statements of accused as envisaged under Section 313 Cr.P.C. were recorded, wherein, they have denied all the allegations made against them.

7. Accused were called upon to enter in their defence and they have examined DW-1 Om Parkash, DW-2 Darshan Singh and DW-3 Sukhdev Singh.

8. Trial Court, after hearing learned Public Prosecutor for the

State as well as learned defence counsel, held the revisionists-accused guilty, convicted and sentenced them to undergo imprisonment, as detailed above, for the commission of offence punishable under Sections 148 and 434 IPC read with Section 149 IPC, vide judgment of conviction and order of sentence both dated 10.02.2007.

9. Feeling aggrieved by the findings recorded by trial Court, vide judgment of conviction and order of sentence both dated 10.02.2007, revisionists-accused had preferred appeal, which was dismissed by Appellate Court, vide judgment dated 17.03.2008.

10. Learned counsel for the revisionists-accused at the very outset has urged that revisionists-accused did not want to challenge the judgment of conviction dated 10.02.2007 upheld in appeal, vide judgment dated 17.03.2008 and in fact, having regard to their clear antecedents, the fact that revisionists-accused have already faced vagaries of criminal trial for about nineteen years and the fact that this trial has been hanging like a damocles' sword upon them for the last about nineteen years, therefore, Court should release them on probation of good conduct.

11. On the other hand, learned State counsel has argued that since there was sufficient evidence on the record to warrant the conviction of the revisionists-accused, they are not entitled to be released on probation.

12. While having due regard to the contentions of learned counsel

for revisionists-accused and learned State counsel, it is observed that a perusal of oral testimonies of above said witnesses coupled with documentary evidence led on record, it is crystal clear that revisionists-accused while having formed unlawful assembly and armed with deadly weapons removed the marks affixed by Revenue Authorities. Appreciation of evidence by the trial Court is quite proper and just and the prosecution has been able to prove its case beyond all reasonable doubt. Trial Court has rightly convicted the revisionists-accused for the commission of offence punishable under Sections 148 and 434 IPC read with Section 149 IPC and, thus, no fault could be found with the same. Further, Appellate Court has rightly dismissed the appeal of appellants (revisionists herein). Therefore, finding no merit, instant criminal revision, filed by revisionists-accused against the judgment of conviction dated 10.02.2007 and further upheld in appeal, is dismissed.

13. Regarding contention of learned counsel for the revisionists-accused that as revisionists-accused have faced vagaries of criminal trial for the last about nineteen years and, therefore, Court should release them on probation of good conduct, it is observed that revisionists-accused have been found guilty of offences, which expressly fall within purview of Section 360 of the Code of Criminal Procedure. There are no special reasons for denying the benefit of probation to the revisionists-accused. Keeping in view the fact that revisionists-accused have faced vagaries of criminal trial for the last about nineteen years and during this period, they

have suffered a lot of mental agony, it is reasonable that they should be released on probation of good conduct, so that, they may reform themselves and be careful and cautious citizens. So, the conviction is maintained. Sentence of imprisonment is modified and the revisionists-accused are ordered to be released on probation of good conduct under Section 4 (1) of The Probation of Offenders Act, 1958, on their furnishing personal bonds in a sum of ₹50,000/- with one surety in the likewise amount each for a period of one year to the satisfaction of trial Court within three weeks from today with the condition to appear and receive sentence when called upon to do so during the period of one year and in the meantime to keep the peace and be of good behaviour.

14. Learned counsel for the revisionists-accused has brought to the notice of this Court that as revisionists-accused namely Sarad Singh and Seeta Singh are working as Gangman in Indian Railways and they being public servants, lenient view may be taken qua impact of conviction on their service aspect. Since revisionists-accused namely Sarad Singh and Seeta Singh are public servants working as Gangman in Indian Railways, thus, in view of nature of offence committed by them, while invoking provisions of Section 12 of The Probation of Offenders Act, 1958, revisionists-accused namely Sarad Singh and Seeta Singh being public servants shall not suffer disqualification, if any, attaching to a conviction of an offence under the law.

15. Subject to modification in the sentence, instant criminal

revision petition fails and is dismissed. Record of trial Court alongwith copy of this judgment be sent back to quarter concerned forthwith.

(LALIT BATRA)
JUDGE

31.01.2020
rimal

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No