

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3845 of 2017 (O&M)

DATE OF DECISION: JANUARY 9, 2020

NASEEM

...PETITIONER

VERSUS

MOHD. ASHRAF & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. B.S. AULAKH, ADVOCATE
FOR MR. GAURAV SHARMA, ADVOCATE
FOR THE PETITIONER.

MR. H.P. SINGH, ADVOCATE
FOR RESPONDENTS NO.1 TO 3.

MR. P.S. WALIA, AAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

CRM-33418-2017

Application for condonation of delay of 155 days is allowed.

Main Case

Petitioner-complainant Naseem wife of Mohd. Akbar has preferred the present revision petition against the judgment dated 20.1.2017, passed by the Addl. Sessions Judge, Sangrur, whereby the judgement of conviction dated 31.10.2015 passed by trial Court in a complaint case under Sections 452, 323, 354, 506, 34 IPC was affirmed, but the order of sentence dated 31.10.2015 was modified and the private respondents were ordered to be released on probation.

Trial Court convicted and sentenced the respondents as under:-

Conviction Under Section	Sentence
452/34 IPC	To undergo rigorous imprisonment for 1 year alongwith fine of ₹1000/- and in default, to undergo further rigorous imprisonment for 1 month each
323/34 IPC	To undergo R.I. for 1 year each

However, both the sentences were ordered to run concurrently.

It is case of the complainant that respondent No.1 and 3, namely, Mohd. Ashraf and Mohd. Iqbal were Brothers-in-law (Jeth) of the complainant and respondent No.2, namely, Khatija wife of Mohd. Ashraf was her Sister-in-law (Jethani). It was alleged that a civil litigation was going on amongst them, as the respondents were bent upon to reconstruct the house, jointly owned by them, after demolishing the same. According to her, during the pendency of the suit, the respondents carried on construction work and further on 3.8.2008 at about 1.00 p.m., when the complainant was preparing lunch, then the respondents entered her house at Mohalla Kacha Kot, Malerkotla illegally and forcibly. Accused Mohd. Ashraf and Mohd. Iqbal raised lalkara to teach lesson to her for filing cases by her husband against them. Her sister-in-law, Khatija caught hold of her and threw on the ground. Mohd. Ashraf gave stick blow on her left arm. It was alleged that the respondents alongwith other persons insulted her and had torn her clothes. On raising hue and cry by the complainant, her husband Mohd. Akbar and son Mohd. Salim came there and rescued her. The respondents alongwith other persons fled away from the place of occurrence by issuing threats to the complainant and her husband. The police was informed, but no action was taken, therefore, the complainant filed private complaint.

After examining the pre-summoning evidence, the trial Court summoned the accused and after their appearance, the pre-charge evidence was recorded. The trial Court vide order dated 24.12.2009 framed the charges against the accused for the offences punishable under Section 452, 323, 354, 506 read with Section 34 IPC. The accused pleaded not guilty and claimed trial.

After completion of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. wherein they denied the charges and pleaded innocence. In their defence, the accused examined 2 witnesses.

The trial Court after examining the evidence on record proceeded to convict the accused and sentenced them as noticed above.

Aggrieved against the said judgement of conviction and order of sentence, the convicts preferred an appeal before Addl. Sessions Judge, Sangrur, wherein the appellate Court affirmed the judgement of conviction passed by the trial Court, but taking into consideration that convicts were not previously involved in any other case and were the only bread earners of their families, proceeded to modify the sentence and released them on probation. The convicts were further ordered to pay litigation expenses of ₹2500/- each. The said judgment passed by the appellate Court has been impugned through the present revision petition.

Learned counsel for the petitioner has contended that the trial Court as well as the appellate Court have categorically held the ocular version is fully corroborated by the medical evidence, therefore, there was no reason to show leniency to the accused particularly, in the light of the

testimonies of complainant CW1 Naseem, CW2 Mohd. Salim, CW4 Sikandar Rana and CW7 Mohd. Akbar which were also found to be reliable and trustworthy. It has been further contended that no logical reason has been given by the appellate Court while releasing the respondents on probation.

On the other hand, learned counsel for the private respondents has submitted that the occurrence pertains to the year 2008, and more than 11 years have elapsed. The convicts-respondents have to look after their families and no useful purpose would be served by sending them again behind the bars. He has further submitted that the convicts are even ready to pay compensation to the complainant as may be directed by this Court.

Considering the fact that parties are close relatives and the convicts have completed the period of probation, which was never misused by them, this Court does not find it a fit case to enhance the sentence. As the respondents are ready and willing to compensate the complainant, therefore, it is ordered that the convicts shall pay an amount of ₹10,000/- each as compensation to the complainant within a period of 2 months from the date of receipt of certified copy of this judgement.

Resultantly, the conviction of the respondents as recorded by the Courts below is upheld and the sentence part is modified as indicated above.

The revision petition is disposed off.

January 9, 2020
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No