

CRM-A-536-2022
CRR-1366-2022

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225+234

CRM-A-536-2022 (O&M)
Date of decision: 11.01.2023

TARSEM SINGH

....Appellant(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CRR-1366-2022 (O&M)

TARSEM SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. B.S. Jatana, Advocate for the appellant/petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned cases,
as both the cases arise out of same judgment dated 08.03.2022 passed by
learned Sessions Judge, Patiala.

Present petitions have been filed against the judgment dated
08.03.2022 passed by learned Sessions Judge, Patiala vide which accused-
respondent No.2 has been acquitted of the charges under Sections 379-B,
506 and 411 of IPC and sentenced awarded to the accused-respondent No.2
under Sections 326 and 323 of IPC is on the lower side.

Briefly put, the facts as narrated in the report under Section 173 CrPC presented by the police are that the agricultural land of accused-Gurtej Singh is adjacent to the land of complainant-Tarsem Singh and his brother Gurjeet Singh. There is a common passage to the land of both the parties. During the Harri/Rabi season, accused-respondent No.2 had purchased two trolleys of husk from the complainant. The accused-respondent No.2 did not make payment for the husk despite repeated requests by the complainant-petitioner. On 29.6.2019 at about 5.00 pm, the complainant and his brother Gurjeet Singh were cutting fodder in their fields. At that time, Gurtej Singh came to him and challenged him for not paying the money to him. He was carrying a kulhari (axe) and gave a blow on the left leg of the complainant. When the complainant fell down, he gave another blow with kulhari on the right flank of the complainant. He gave another blow with kulhari on the jaw of the complainant. When complainant raised raula, his brother Gurjeet Singh also reached. However, the accused-respondent No.2 grappled with him also. The complainant was having currency notes of Rs.70,000/- in his pocket. While leaving the spot, accused-respondent No.2 took away the said currency notes, mobile phone of the complainant having SIM No.9915982494 as well as kulhari with him. The accused-respondent No.2 had threatened him that he would kill the petitioner on some other day. The complainant Tarsem Singh was rushed to Civil Hospital, Samana. He made a statement on the basis of which, FIR in question was registered against the accused. On completion of investigation, the police presented the challan in the Court of the learned Illaqa Magistrate.

On finding a prima facie case, trial Court charge-sheeted the accused under Sections 326, 323, 506, 379B, 411 IPC, to which, he pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, the prosecution examined PW1 Tarsem Singh, complainant, PW2 Gurjeet Singh, PW3 Dr. Ramanvir Singh, PW4 Dr. Harpreet Singh, PW5 ASI Gurdev Singh, Investigating officer, PW6 ASI Prem Singh.

On closing of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. However, he denied the allegations and claimed false implication. In defence, accused- No.2 examined Jarnail Singh as DW1.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has successfully proved the case, bringing home guilt against the accused. Accordingly, the accused- petitioners were convicted and sentenced to undergo RI for a period of 3 ½ months and to pay a fine of Rs.30,000/- and in default of payment of fine to further undergo RI for three months for the offence under Section 326 IPC– and further sentenced to undergo RI for a period of 3½ months for the offence under Section 323 IPC. Further directed that in case amount of fine is realized, Rs.25,000/- shall be disbursed to the complainant-injured.

Aggrieved complainant-petitioner filed the present petitions.

Learned counsel for the petitioner contends that the learned trial Court has committed grave error while acquitting respondent No.2 of the

charges under Sections 379-B, 411 and 506 of IPC by observing that there is a delay of 24 hours in lodging of the FIR. In para 20 of the judgment, the learned trial Court had categorically observed that the occurrence took place at 05:00 PM on 29.06.2019 and the petitioner/appellant was medico legally examined on the same day at 07:00 PM. The learned trial Court also erred in observing that as to why PW-2 Gurjit Singh i.e. the brother of the complainant-appellant did not report the matter to police and wrongly considered the evidence of petitioner/appellant regarding source of money in his pocket which was snatched by respondent No.2. It is clear from the statements of petitioner/appellant and his brother that the said amount was collected from the farmers on behalf of the labourers and it was to be given to them. Even respondent No.2 had himself got recorded his disclosure statement under Section 27 of Evidence Act before the Investigating Officer and on the basis of the same, he had got recovered the amount of Rs.70,000/- out of the said amount and mobile phone snatched from the petitioner/appellant, which was a piece of evidence that was admissible.

Heard and perused.

It is apposite to note that the learned trial Court while passing the order of sentence has taken into consideration the fact that the respondent remained in custody from 17.7.2019 to 25.10.2019 and 2.4.2021 to 7.4.2021, thus, had already undergone imprisonment of 3½ months. He was aged 30 years, not a previous convict, family consists only of his mother and younger brother. The amount of Rs.10,000/- was directed to be returned to the accused and the mobile phone to the person, who is able to produce any evidence regarding the ownership of the sim found therein.

The trial Court while dealing with the charges under Sections 379B, 411 and 506 IPC observed thus:

“22. So far as recovery of the currency notes of Rs.10,000/- and mobile phone of the complainant from the accused are concerned, the evidence of the prosecution in this regard does not inspire confidence of the Court. The accused allegedly made his disclosure statement Ex.PP before the Investigating Officer. The version of the Investigating Officer with regard to disclosure statement and then recovery in pursuance thereof has been corroborated by PW5 ASI Prem Singh. However, the Investigating Officer has admitted that he did not call any independent witness at the time of interrogation of the accused. The alleged recovery was effected from the residential house of the accused. The house of the accused is situated in the abadi of the village. However, the Investigating Officer did not join any independent witness at the time of alleged recovery. Even otherwise, there is nothing to establish the identity of the currency notes in question. Similarly, the prosecution could not produce any evidence regarding ownership of the mobile phone. As per the prosecution story sim in the mobile phone was still working at the time of the recovery. However, the Investigating Officer did not collect any call detail record from the service provider to establish that by whom the sim had been got issued and then the said mobile phone remained in possession of the accused from the date of the occurrence. Therefore, the prosecution evidence with regard to the snatching of the amount of Rs.70,000/- and mobile phone from the complainant by the accused cannot be believed. Hence the charge u/s 379B, 411 and 506 IPC fails.”

From the perusal of the aforesaid, it is evident that the prosecution had miserably failed to prove the charge under Sections 379B, 411 and 506 IPC as no evidence was produced to substantiate the allegations, thus, the trial Court has rightly found that the offences under the aforesaid Sections were made out.

In so far the conviction under Sections 323, 324 and 506 IPC is concerned, the offence under, which the FIR had been registered, the

learned trial Court observed that the injuries received by the petitioner were on his left knee region, which was declared grievous injuries while the remaining two injuries were simple in nature, in the fight that is said to have ensued on 29.6.2019 upon a quarrel that took place between the petitioner and the respondents in their fields, having a common passage, at about 5 pm on account of the fact that during Harri/ Rabi season, respondent had purchased husk from the petitioner, the payment of which, he had not given.

Hon'ble The Supreme Court in the case of **Bed Raj vs. State of Uttar Pradesh**, 1955 AIR 778 observed that, “A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; see for example the observations in *Dalip Singh v. State of Punjab* [1954] S.C.R. 145, 156 and *Nar Singh v. State of Uttar Pradesh* [1955] 1 S.C.R. 238, 241(2). In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate.”

In the case of **Guru Basavaraj @ Benne Settapa vs. State of Karnataka**, (2012) 8 SCC 734, Hon'ble The Supreme Court of India held that, “We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the

crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. (emphasis supplied)”

In State of Madhya Pradesh vs. Udham and Ors., 2019 SCC

OnLine SC 1378, Hon’ble The Supreme Court of India observed thus:

“12. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).”

A sentence is to be enhanced only if it is manifestly inadequate that amounts to miscarriage of justice. The Court is reluctant to exercise its power of enhancement except when the cause of justice demands was held by the Delhi High Court in the case **State (Govt. of NCT of Delhi) vs. Sonu**, 2019(4) JCC 4000, while observing thus:

10. Consequently, the Court while awarding a sentence has to consider all the mitigating as well as the aggravating circumstances that arise in each case.

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14. In broad terms, the appellate Court will interfere when:-

- a) The sentence is not justified by law, in which case it will interfere not as a matter of discretion, but of law;
- b) Where sentence has been passed on a wrong factual basis;
- c) Where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or
- d) Where the sentence was wrong in principle or manifestly excessive/inadequate.

15. The above-mentioned categories are not exhaustive and they may overlap.”

The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases were the observations of Hon’ble The Supreme Court of India made in the case of **A. Hazara Singh vs. Raj Kumar & Ors.**, (2013) 9 SCC 516, elucidating upon the concept of sentencing in India.

Adverting to the facts of the case in hand, the allegations, injuries, cause of fight, the petitioner and accused-respondent being co-farmers, having land adjacent to each other, with common passage to their fields, the dispute having arisen regarding the payment of husk purchased by the respondent, the evidence led during trial, observations and findings of the trial Court, and the mitigating circumstances as also in addition to the sentence, fine having been imposed in the shape of compensation to the tune of Rs.25,000/- to be paid to the petitioner-complainant, although, sentencing an accused while exercising the judicial discretion is an

intricate issue, but bearing the settled principles in mind and in wake of the facts as narrated hereinabove, this Court finds that in the present case, the sentence awarded to the respondent is adequate being proportionate to the offences committed and thus, the cause of justice does not demand it to be enhanced.

In view of the above discussion, this Court finds no illegality or perversity in the judgment/ order of the trial Court, which calls for any intervention and as such, both the petitions are dismissed being bereft of merit.

A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

January 11, 2023
M.Kamra/gsv

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>