

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

Sr. No. 232

CRR-3081-2009

Decided on 21.11.2023

Gurjit Kaur

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present:- Mr. Lal Singh Sandhu, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed by petitioner-against the judgment dated 6.11.2009, passed by the learned Additional Sessions Judge (Fast Track Court), Sirsa, whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 11.10.2006/23.10.2006, rendered by the learned Judicial Magistrate Ist Class, Sirsa, was dismissed. The petitioner alongwith other two co-accused, namely, Roop Singh and Ghughu @ Jagtar Singh, were sentenced as under:

Offence U/s	Imprisonment	Fine	In default of payment of fine
323 IPC	RI for 6 months	---	---
324 IPC	RI for 6 months	---	---
336 IPC	RI for 2 months	Rs.1,000/- each	SI for 2 months

2. Succinctly the facts of the prosecution case are that on receipt of a ruqa on 2.2.1998, HC Jamna Dass went to General Hospital, Sirsa to record statement of injured-complainant-Hassan Ram, who was

declared unfit to make statement. On 4.2.1998, being declared fit to make a statement, the complainant stated that on 2.2.1998 at about 9.15 PM, when he was returning home after purchasing vegetables and had reached near the house of Roop Singh, the petitioner armed with a gandasa, Ghugu with dattar, Gurbachan Singh with sword and Gullo alias Surjit Kaur with lathi suddenly came out from the house of said Roop Singh. Upon raising of a lalkara Roop Singh, all the assailants attacked the complainant and caused injuries to him with their respective weapons. On hearing hue and cry made by the complainant, Bhajan Singh and other people reached at the spot and saved him from the clutches of the assailants. Thereafter, all the assailants ran away from the spot with their respective weapons and the complainant, who received multiple injuries and was unconscious, was rushed to the hospital. On the basis of said statement, FIR in question was registered against the petitioner, Surjit Kaur, Roop Singh, Jagtar Singh @ Ghugu and Bachana Singh.

3. After investigation, a report under Section 173 Cr.P.C. was filed in the Court, upon which, the petitioner alongwith other co-accused were charged with commission of offences under Sections 148, 323, 324, 326, 149 IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined Dr.GS Somani, Medical Officer as PW-1, Dr.SL Aggarwal, Medical Officer as PW-2, Indraj Singh MHC as PW-3, Hassan Ram, complainant-injured as PW-4, Sohan Singh as PW-5, Jamna Dass as PW-6 to prove their case and by placing on record other documentary evidence closed its evidence.

5. On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations and claimed themselves to be innocent. However, accused did not lead any evidence in their defence.

6. 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 proved its case, bringing home guilt of the accused Jagtar Singh, Roop Singh and the petitioner. Accordingly, Surjit Kaur and Banchan Singh were acquitted of the charges whereas accused-petitioner alongwith two other co-accused were convicted and sentenced as mentioned above.

7. Feeling aggrieved, the convict-petitioner alongwith other two co-convicts had filed an appeal, which was dismissed by the learned Additional Sessions Judge (Fast Track Court), Sirsa vide impugned judgment dated 6.11.2009.

8. Hence, the present revision petition.

9. Learned counsel for the petitioner, at the very outset, submits that he does not wish to challenge the judgment of conviction and confines his prayer to modification of order of sentence awarded to the petitioner to the period already undergone by her. He submits that the petitioner is a poor labourer and the only sole bread earner in the family, which consists of wife and two minor school going children. Further, as per the custody certificate, the petitioner has already undergone total sentence of 1 months 20 days, out of the total sentence of 2 year awarded to him. Furthermore, the petitioner has been facing the agony of a

protracted trial since the date of incident i.e. 2.2.1998, and as such deserves concession of modification of sentence to the period already undergone.

10. Per contra, learned State counsel submits that the learned Courts below, after appreciating every aspect of the matter have rightly convicted and sentenced the petitioner and therefore, prays for the dismissal of the present petition.

11. Heard the learned counsel for the parties have been heard and perused the record.

12. A two Judge Bench of the Hon'ble Supreme Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antesocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

13. In ***Deo Narain Mandal v. State of UP (2004) 7 SCC 257***, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court.

Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

14. A perusal of the *ratio decidendi* culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

15. As per the custody certificates produced by the learned State counsel, details of total period undergone out of the sentence imposed on the petitioner are tabulated as under:-

Name of the appellant	Sentence Awarded	Total/Actual period undergone including remission.
Gurjeet Kaur	RI for 2 years	1 month & 20 days

16. The petitioner has given up his challenge to the judgment of conviction and restricted his prayer only with regard to reduction of his sentence as undergone, in view of the mitigating circumstances as mentioned above. Both the Courts below have scrutinized the evidence on record in the right perspective and correctly convicted the petitioner as mentioned above. There is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioner is affirmed.

CONCLUSION:

17. The FIR in the present case was lodged on 04.02.1998 and the appellants have suffered the agony of trial for about 25 years now. After her conviction, she has grown into law abiding citizen with a desire to live a normal and peaceful life. After overall assessment of evidence available on record, this Court is of the considered opinion that it is a case of free fight in which every accused-appellant is liable for his individual act. Out of total sentence awarded to the petitioner, she has already undergone a substantial period. Since learned counsel for the petitioner has not assailed the judgment of conviction on merit and the accused-petitioner is living in the same vicinity peacefully after burying the hatchet, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment of 2 years awarded to the petitioner is reduced to the period already undergone by her.

18. Consequently, the present revision petition is disposed of in the following terms:-

(i) The judgment dated 11.10.2006 passed by the learned Judicial Magistrate Ist Class, Sirsa convicting the petitioner is upheld, however, order on quantum of sentence dated 23.10.2006 is modified and the sentence awarded to the petitioner is reduced to the period of sentence already undergone by her.

(ii) The sentence of fine imposed upon the petitioner by the trial Court is kept intact. The petitioner is directed to deposit the amount of fine, if not already paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody.

19. Bail bonds and surety bonds of the appellant stand discharged.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

21. The case property, if any, may be dealt with as per rules.

Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

21.11.2023
yogesh

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No