

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-1707-2011 (O&M)

Date of Decision: 01.12.2023

KHARAITI SINGH AND ANOTHER

...Petitioners

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajwant Singh Chahal, Advocate
for the petitioner No. 2.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been preferred against the judgment dated 27.07.2011 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri affirming the judgment of conviction dated 18.11.2009 and order of sentence dated 24.11.2009 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby petitioners were convicted under Sections 323, 435 and 506 read with Section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months.

FACTUAL BACKGROUND

2. The prosecution case is that on 11.5.2001 on receipt of information regarding the admission of injured Rupinder Kaur and Joginder Kaur in C.H.C. Mustafabad, H.C. Krishan Singh went there. However, the injured were declared unfit to make statement. The investigation officer again visited the hospital next day and recorded the statement Ex. PG of Rupinder Kaur, who stated that on 11.5.2001 at about 7.00 a.m., she along

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with her father Bachan Singh had gone to their fields on motor cycle. Her mother Joginder Kaur reached there on a bicycle. A dispute is going on with her uncles Charan Singh and Kharaiti Singh with regard to land measuring 3 Kanals. Chari crop was sown in the said land. Since the motor cycle of her father got punctured, therefore, he went to Bilaspur on his duty on the bicycle of her mother. Because of strong storm, Bhusa had spread in their fields. The complainant and her mother started collecting the same. work, they were going back home at about 2.00 p.m. when they reached in front of the house of Dharam Singh, Kharaiti Singh and Charan Singh (both accused-appellants) came out of the house of Dharam Singh and started abusing them. When her mother stopped them from hurling abuses, both the said accused threatened to burn the entire family members of the complainant by sprinkling kerosene on them. In the meantime accused Maan Kaur also came there having a Danda in her hand and accused Himmat Kaur wielding a Danda in one hand and a plastic can containing kerosene also reached there. They caught hold of her mother Joginder Kaur and Maan Kaur started hurling danda blows to Joginder Kaur and put her on the ground by holding her hair. The complainant parked the motor cycle in the street put herself on her mother to save her. Kharaiti Singh and Charan Singh, who were having Fawdas in their hands, inflicted blows to Joginder Kaur, which also hit the complainant in his left foot. Maan Kaur also inflicted danda blow in the stomach of the complainant. Charan Singh also gave Fawda blow in her right knee and Himmat Kaur also gave her danda blow in her right foot and one blow on her left foot. Thereafter, accused Kharaiti Singh snatched the can containing kerosene from Himmat Kaur and sprinkled it on the motor cycle and also on the complainant and her

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mother and set the motor cycle on fire. The injured raised a noise whereupon Swaran Singh, Rakha Ram, Chandan Ram came at the spot and saved them otherwise the accused would have set them ablaze. Thereafter all the accused went to their house along with the weapons. injured were taken to the hospital. On this statement of the complainant, the present case was registered. The police conducted the investigations and arrested the accused and after completion of the investigation, charge sheet was filed in the court for trial against the accused.

CONTENTIONS

3. Learned counsel appearing for the petitioner No. 2 submits that during the pendency of revision petition, petitioner No. 1-Kharaiti Singh has passed away. He further contends that he is not assailing the impugned judgment of conviction dated 08.11.2009 on merits and restricts his prayer to modification of the order dated 24.11.2009 on quantum of sentence to that of the sentence already undergone by the petitioner No. 2. He was convicted under Sections 323, 435 and 506 read with Section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months. He has already undergone more than one month of custody. No other case is pending against him prior to the registration of the present FIR nor was he involved in any other criminal case after suspension of his sentence in the present case.

4. Learned counsel for the petitioner No. 2 further contends that petitioner No.2 has reformed and intend to live a fruitful and peaceful life. It is also contended that there is no minimum sentence provided under Section 323, 435 and 506 read with Section 34 of IPC and therefore, prays that

order of sentence of the petitioner No. 2 be modified to that of already undergone.

5. Per contra, learned State counsel, however, admitted the factum of death of petitioner No. 1 and placed on record his death certificate but opposes the prayer of the petitioner No. 2 for modification of the order of sentence to that of already undergone on the ground that the petitioner No. 2 caused injuries to the complainant party and also sprinkled kerosene oil and damaged the motor cycle of the complainant. The statement of the witnesses is consistent and corroborated with medical evidence and as such, he does not deserve any leniency. It is also contended that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record.

ANALYSIS AND OBSERVATION

6. A two Judge Bench of the Hon'ble Supreme Court in **State of Haryana Vs. Janak Singh AIR 2013 SC 3246** has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to

press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

A two Judge Bench of the Hon’ble Supreme Court in **State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its

mind while imposing sentence.”

7. A two Judge Bench of the Hon’ble Supreme Court in **Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

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 antisocial 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."

8. 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.

9. A perusal of the ratio decidendi culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to

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determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

10. As per the custody certificates produced by the learned State counsel, details of custody period of the petitioner No. 2 is tabulated as under:-

Detail of custody period in this case					
Sr. No.	Particulars	Period	Years	Months	Days
1.	Custody as undertrial		00	00	00
2.	Custody after conviction	27/07/2011 to 27/08/2011	00	01	02
3.	Bail period, if any	Nil	00	00	00
4.	Parole availed (-)	Nil	00	00	00
5.	Detail of overstay/absent from parole/furlough (-)	Nil	00	00	00
6.	Actual Custody period after conviction [S. No. 2-(4&5)]		00	01	02
7.	Actual undergone period including custody as Undertrial [S. No. 1+6]		00	01	02
8.	Earned Remission+ GR (+)		00	00	00
09.	Total Sentence including remission [S. No. 7+8]		00	01	02
**10.	UT period served during conviction in other cases		00	00	00
**11.	Custody served after deduction of undertrial period served during conviction in other cases [S. No. 9-10]		00	01	02

11. A perusal of the judgment of conviction passed by the trial court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Counsel for the petitioner No. 2 has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

12. As the petitioner No. 1-Kharaiti Singh has expired during the pendency of revision petition, as such the proceedings against him stood abated.

13. The FIR in the present case was lodged on 12.05.2001 and the petitioner No. 2 has suffered the agony of trial for more than 11 years. After conviction, he has grown into law abiding citizen with a desire to live a fruitful and peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision petition. There are no other criminal cases pending against him. Out of total sentence of 06 months, petitioner No. 2 has already undergone actual sentence of more than 01 month out of the substantive sentence awarded to him. Accordingly, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 01 year awarded to the petitioner is reduced to the period already undergone by them.

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

(i) The judgment dated judgment dated 27.07.2011 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri affirming the judgment of conviction dated 18.11.2009 and order of sentence dated 24.11.2009 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby petitioners were convicted under Sections 323, 435 and 506 read with Section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months is reduced to the period of sentence already undergone by petitioner No. 2-Charan Singh.

(ii) The sentence of fine of an amount of Rs.1000/- imposed upon the petitioner No. 2 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 be liable to be taken into custody and made to undergo rigorous imprisonment for three months.

15. Bail bonds and surety bonds of the petitioner No. 2-Charan Singh stands discharged.

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

(HARPREET SINGH BRAR)
JUDGE

01.12.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No