

216-1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2230-SB-2014 (O&M)

Date of decision: 22.02.2024

Yogesh and others

....Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohan Lal Singla, Advocate
for the appellants

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.

1. This instant appeal has been preferred against the judgment of conviction dated 21.04.2014 and order of sentence dated 22.04.2014 passed by learned Additional Sessions Judge, Fatehabad in FIR No.67 dated 05.03.2011 registered under Sections 323, 506, 279, 336 of IPC and Section 3 of the Scheduled Castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989. The appellants were sentenced as under:-

Under Section	Sentence
323 r/w 34 IPC	<i>R.I of 4 months with a sum of Rs.4,000/- each</i> to be paid as compensation to the complainant-injured under Section 357(3) Cr.P.C.

FACTUAL BACKGROUND

2. Briefly, the facts are that on 05.03.2011, complainant Hawa Singh gave his statement to the police to the effect that when he was going in his car, a

motorcyclist who was driving the same in a rash and negligent manner came and struck his motorcycle in the car of the complainant. When the complainant asked about name of the father of the said motorcyclist, the appellants along with two other accused who were mere bystanders threw rubbish/garbage on the face of the complainant. Upon him resisting, appellant no.1 Yogesh gave iron rod blow on the neck of the complainant as well as on the left arm and on the left side of his head. Appellant no.2 Sunil inflicted lathi (stick) blow on the right hand of the complainant, whereas, appellant no.3 Vinod inflicted lathi (stick) blow on his foot. Other assailants also inflicted injuries upon the complainant and all of them called casteist slurs to him as he belongs to a Scheduled Tribe. When the complainant raised an alarm, his son along with another person rescued him while the appellants and other assailants fled away from the spot. While leaving the spot, the appellants threatened the complainant with dire consequences.

3. The learned trial Court upon finding a prima-facie case, framed charges against the appellants-accused under Section 323 and 506 read with Section 34 of IPC as well as Section 3(1)(x) of the SC&ST Act, 1989 on 27.03.2102, to which they pleaded not guilty and claimed trial.

4. On assessing the material available on record, the learned trial Court vide judgment and order dated 21.04.2014/22.04.2014 convicted and sentenced the appellants under Section 323 read with Section 34 of IPC. Aggrieved by the same, the appellants have approached this Court in the present appeal.

CONTENTIONS

5. Learned counsel for the appellants contends that he is not assailing the impugned judgment of conviction dated 21.04.2014 on merits and restricts

his prayer to modification of the order of quantum of sentence dated 22.04.2014 to that of the sentence already undergone by the appellants on the basis that they have reformed and intend to live their life as law-abiding citizens.

6. *Per contra*, learned State counsel opposes the prayer of the appellants and submits that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, as such, they do not deserve any leniency.

ANALYSIS AND OBSERVATIONS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

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 of the Hon'ble Supreme Court 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. 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.

9. As per the custody certificates produced by the learned State counsel, details of custody period of the appellants are tabulated as under:-

Appellant-Yogesh (released on bail on 30.03.2011):

Sr No.	Particulars	Period	Duration
1.	Custody under trial	15.03.2011 to 30.03.2011	16 days
2.	Custody after conviction	-	0 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	-
5.	Actual undergone period	-	-
6.	Earned remission	-	-
7.	Total sentence including remission	-	16 days

Appellant-Sunil Kumar (released on bail on 03.06.2011):

Sr No.	Particulars	Period	Duration
1.	Custody under trial	27.05.2011 to 03.06.2011	8 days
2.	Custody after conviction	-	0 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	-
5.	Actual undergone period	-	-
6.	Earned remission	-	-
7.	Total sentence including remission	-	8 days

Appellant-Vinod Kumar (released on bail on 03.06.2011)

Sr No.	Particulars	Period	Duration
1.	Custody under trial	27.05.2011 to 03.06.2011	8 days
2.	Custody after conviction	-	0 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	-
5.	Actual undergone period	-	-
6.	Earned remission	-	-
7.	Total sentence including remission	-	8 days

10. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its finding and the same is based on correct appreciation of evidence available on record. Learned counsel for the appellants has not assailed the judgment of conviction on merits, rather he has restricted his prayer to modification of quantum of sentence qua the appellants.

CONCLUSION

11. The FIR in the present case was instituted on 05.03.2011. Appellants have been facing protracted proceedings for about 14 years. As per their respective custody certificates, there are no other criminal cases pending against the appellants. Out of the total sentence awarded of 4 months, appellant no.1 Yogesh has undergone 16 days of custody, whereas, appellant no.2 Sunil Kumar and appellant no.3 Vinod Kumar have undergone 8 days of custody, each. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment awarded to the appellants is reduced to the period of custody already undergone by them.

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

- (i) The conviction of the appellants is upheld, however, the sentence awarded to them is modified to the period of sentence already undergone by them.
- (ii) The total amount of compensation of Rs.12,000/- (Rs.4,000/- each) directed to be paid by the appellants is increased to Rs.24,000/- (Rs.8000/- each). The appellants are directed to deposit the increased amount of compensation before the trial Court within one month from the date of receipt of certified copy of this order, failing which, this order shall be liable to variance. Thereafter, the trial Court shall disburse the amount of compensation to the complainant/injured.

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

(HARPREET SINGH BRAR)
JUDGE

22.02.2024
Neha

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