

CRR-2229-2009 (O&M)

1

251

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2229-2009 (O&M)

Date of Decision: March 11, 2024

Kartar Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioners.

Mr. Rishab Singla, AAG Punjab.

Mr. A.D.S. Sukhija, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 11.07.2009 passed by learned Additional Sessions Judge (Fast Track Court), Bathinda vide which judgment of conviction and order of quantum of sentence dated 23.01.2009 passed by the learned Sub Divisional Judicial Magistrate, Phul in FIR, bearing no. 73 dated 06.09.2001 under Sections 326, 323, 324, 325, 34 of the IPC registered at Police Station Phul, Bathinda, was upheld. The petitioners were sentenced as under: -

Offence	Sentence
Section 326 IPC (Both petitioners)	Rigorous imprisonment for 2 years and a fine of Rs. 500/-, in default of which rigorous imprisonment for 3 months.
Section 326/34 IPC (Both petitioners)	Rigorous imprisonment for 2 years and a fine of Rs. 500/-, in default of which rigorous imprisonment for 3 months.
Section 325 IPC (Both petitioners)	Rigorous imprisonment for 1.5 years and a fine of Rs. 500/-, in default of which rigorous imprisonment for 3 months.
Section 323 IPC (Both petitioners)	Rigorous imprisonment for 1 year.

Section 323/34 IPC (Petitioner no. 1)	Rigorous imprisonment for 1 year.
--	-----------------------------------

FACTUAL BACKGROUND

2. The facts, in brief, are that the FIR was registered on the basis of the statement of complainant-injured Dalwar Singh, wherein he alleged that he along with his wife were headed to Village Dhapali on the morning of 06.09.2001. Both the petitioners-accused resided in the adjoining house. On seeing the complainant and his wife, both the petitioners charged at them. The petitioner no. 1 was armed with an axe, while petitioner no. 2 was armed with a gandasa. Both the petitioners dealt several blows with their respective weapons on the persons of the complainant and his wife. As a result, both of them sustained grievous injuries. When both the complainant and his wife raised an alarm, the petitioners fled from the scene with their respective weapons. The motive behind the attack was a dispute regarding exchange of land. On the basis of the statement of the complainant and the MLR, ruqa was sent to the police station, which resulted in the registration of the FIR (supra).

3. On being charged under Sections 326, 325, 323, 34 of the IPC by the learned Sub Divisional Judicial Magistrate, Phul, the petitioners pleaded not guilty and claimed trial.

4. The prosecution examined as many as 07 witnesses to prove its case. Subsequently, the statement of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein the petitioners pleaded false implication, however, no witness was examined in order to prove the innocence of the petitioners.

CRR-2229-2009 (O&M)

3

5. After taking into account all the material on record, the petitioners were convicted by the learned trial Court vide judgment dated 23.01.2009. Aggrieved by the same, the petitioners preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 11.07.2009.

CONTENTIONS

6. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 23.01.2009 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioners as petitioner no. 1 has already undergone a period of 3 months and 21 days in custody, while petitioner no. 2 has already undergone a period of 3 months and 05 days in custody. Furthermore, no other case is pending against them.

7. Learned counsel for the petitioners further submits that the petitioners have reformed and they intend to live their lives as law-abiding citizens.

8. Per contra, learned State counsel opposes the prayer of the petitioners as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned Lower Appellate Court, and as such, they do not deserve any leniency.

OBSERVATIONS AND ANALYSIS

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

10. 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

CRR-2229-2009 (O&M)

4

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. 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 reformatory.

11. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioners are tabulated as under: -

CRR-2229-2009 (O&M)

5

Petitioner no. 1-Kartar Singh

Sr No.	Particulars	Period	Duration
1.	Custody under trial	13/09/2001 to 12/10/2001 and 05/08/2009 to 21/08/2009	1 month and 15 days
2.	Custody after conviction	23/01/2009 to 31/01/2009 and 11/07/2009 to 03/09/2009	2 months and 02 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	23/01/2009 to 31/01/2009 and 11/07/2009 to 03/09/2009	2 months and 02 days
5.	Actual undergone period		3 months and 17 days
6.	Earned remission		4 days
7.	Total sentence including remission		3 months and 21 days

Petitioner no. 2- Sukhdev Singh

Sr No.	Particulars	Period	Duration
1.	Custody under trial	13/09/2001 to 12/10/2001	29 days
2.	Custody after conviction	23/01/2009 to 31/01/2009 and 11/07/2009 to 03/09/2009	2 months and 02 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	23/01/2009 to 31/01/2009 and 11/07/2009 to 03/09/2009	2 months and 02 days
5.	Actual undergone period		3 months and 01 day

6.	Earned remission		4 days
7.	Total sentence including remission		3 months and 05 days

12. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Counsel for the petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

13. The FIR in the present case was lodged on 06.09.2001 and the case was instituted in the trial Court on 22.02.2002. The petitioners have faced the agony of a protracted trial, which has lasted for approximately 22 years. Since their conviction in the present case, the petitioners have grown into law-abiding citizens and desire to live a peaceful life. As per their custody certificates, there are no other criminal cases pending against them. Out of the total sentence of 2 years under Sections 326, 326/34 IPC, 1.5 years under Section 325 IPC, and 1 year under Sections 323, 323/34 IPC, the petitioners have undergone actual sentence of 03 months and 17 days (Petitioner no. 1), and 03 months and 1 day (Petitioner no. 2). Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence awarded to the petitioners is reduced to the period already undergone by them.

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

- i The judgment dated 11.07.2009 passed by learned Additional Sessions Judge (Fast Track Court), Bathinda confirming the conviction of the petitioner is upheld,

however, the order of sentence dated 23.02.2009 is modified to the extent that the sentence of rigorous imprisonment for 2 years under Sections 326, 326/34 IPC, 1.5 years under Section 325 IPC, and 1 year under Sections 323, 323/34 IPC, (to run concurrently) awarded to the petitioners is reduced to the period of sentence already undergone by them.

- ii
- The sentence of fine of an amount of Rs. 3000/- imposed upon the petitioners (Rs. 1500/- each) by the trial Court is increased to Rs.10,000/- each of the petitioners. The petitioners are directed to deposit the amount of fine 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 petitioners shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

11.03.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No