

Petitioner No.3 gave her slaps and fist blows. Petitioner No.1 gave an iron rod (*sariya*) which landed on the right thumb of complainant's daughter-Santosh. The complainant was given slaps, fist blows and *danda* blows by petitioner Nos.1 and 2 along with one Bala Devi. On hearing the commotion, the complainant's nephew Rakesh along with other villagers arrived at the spot and rescued the complainant party. The assailants fled away along with their weapons. The attack was motivated by a dispute regarding children between the two parties.

3. On finding a prima facie case, charges under Sections 323, 325, 452, 506 of IPC read with Section 34 of IPC were framed against the accused persons, to which they pleaded not guilty and claimed trial. The prosecution examined as many as 08 witnesses to establish its case. The statements of accused under Section 313 of the Cr.P.C. were recorded, wherein they denied all the incriminating evidence put to them, and claimed false implication. However, the accused persons did not examine any witnesses in their defence.

4. On assessing the material available on record, the learned trial Court vide judgment dated 09.01.2012, acquitted the petitioners-accused. Aggrieved by the judgment of conviction, the complainant preferred an appeal before the learned lower Appellate Court which was allowed vide judgment dated 31.03.2015, whereby the petitioners were sentenced as mentioned above.

CONTENTIONS

5. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 31.03.2015 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. Petitioner Nos.1 and 2 have undergone 01 month 28 days of actual custody, while petitioner No.3 has undergone 01 month 29 days of actual custody. He further submits that the

sentence of petitioners was suspended by this Court vide order dated 21.04.2015. Thereafter, vide order dated 30.10.2015, the Hon'ble Supreme Court directed the bail to be continued, till the matter is decided by this Court. Since the suspension of their sentence, the petitioners have not been involved in any other criminal activity. Furthermore, no other case is pending against them. Learned counsel further submits that the petitioners have reformed and intend to live their life as law-abiding citizen.

6. *Per contra*, learned State counsel opposes the prayer of the petitioners as the learned lower Appellate Court has passed a well-reasoned judgment, based on correct appreciation of evidence available on record and as such, the petitioners 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 certificate produced by the learned State counsel, details of custody period of the petitioners are tabulated as under:-

(i) Dharam Chand

Sr No.	Particulars	Period	Duration
1.	Custody under trial	09.04.2003 to 10.04.2003 31.03.2015 to 31.03.2015	3 days
2.	Custody after conviction	01.04.2015 to 25.05.2015	1 month 25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 month 25 days
5.	Actual undergone period		1 month 28 days
6.	Earned remission	-	1 month
7.	Total sentence including remission		2 months 28 days

(ii) Mahabir

Sr No.	Particulars	Period	Duration
1.	Custody under trial	09.04.2003 to 10.04.2003 31.03.2015 to	3 days

		31.03.2015	
2.	Custody after conviction	01.04.2015 to 25.05.2015	1 month 25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 month 25 days
5.	Actual undergone period		1 month 28 days
6.	Earned remission	-	1 month
7.	Total sentence including remission		2 months 28 days

(iii) Paras

Sr No.	Particulars	Period	Duration
1.	Custody under trial	19.07.2003 to 21.07.2003 31.03.2015 to 31.03.2015	4 days
2.	Custody after conviction	01.04.2015 to 25.05.2015	1 month 25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 month 25 days
5.	Actual undergone period		1 month 29 days
6.	Earned remission	-	1 month
7.	Total sentence including remission		2 months 29 days

11. A perusal of the judgment of conviction passed by the learned lower Appellate Court indicates no perversity in their finding and the same is based on correct appreciation of evidence available on record. Learned counsel for the petitioners have not assailed the judgment of conviction on merits, rather he has restricted his prayer to quantum of sentence qua the petitioners.

CONCLUSION

12. The FIR in the present case was lodged on 04.04.2003. Petitioners have been facing protracted proceedings for about 21 years and are

not involved in any other criminal activity, after their conviction in the present case and during the pendency of the present revision. Since their conviction, the petitioners have grown into a law-abiding citizen and desire to live a peaceful life. As per their custody certificates, there are no other criminal cases pending against the petitioners. Out of the total sentence awarded of 3 years, petitioner Nos.1 and 2 have already undergone a period of 01 months 28 days of actual custody and petitioner No.3 has undergone a period of 1 month 29 days of actual custody. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 03 years awarded to the petitioners is reduced to the period already undergone by them.

13. Consequently, judgment dated 31.03.2015 passed by learned Additional Sessions Judge, Bhiwani, convicting the petitioners is upheld, however, the order of sentence dated 31.03.2015 is modified to the extent that the sentence of rigorous imprisonment for 03 years awarded to the petitioners is reduced to the period of sentence already undergone by them.

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

- (i) The judgment dated 31.03.2015 passed by the learned Additional Sessions Judge, Bhiwani convicting the petitioners is upheld, however, the order of sentence dated 31.03.2015 is modified to the extent that the sentence of rigorous imprisonment for 3 years along with default mechanism awarded to the petitioners is reduced to the period of sentence already undergone by them.
- (ii) The sentence of fine of lump sum amount of Rs.2500/- imposed upon each of the petitioners by the learned trial

Court is increased to Rs.10,000/- each. The petitioners are directed to deposit the increased 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 each.

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

February 06, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No