

CRR-1739-2015(O&M)

DATE OF DECISION: 29.07.2024

Rakesh @ Kalu and another

.....Petitioners

VERSUS

State of Haryana and another

.....Respondents

CORAM HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present

Mr.Ashok Kaushik, Advocate,
for the petitioners.

Mr.Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J (ORAL)

1. This revision has been preferred against the judgment dated 18.04.2015 passed by learned Additional Sessions Judge, Jhajjar vide which judgment of conviction and order of quantum of sentence dated 10/12.10.2012 passed by learned SDJM, Bahadurgarh in FIR No.76 dated 05.09.2004 filed under Sections 323,354 and 506 IPC registered at Police Station Line Par Bahadurgarh has been upheld. The petitioners were sentenced as under:

Offence	Sentence
Section 323 IPC	To undergo SI for a period of one year and to pay fine of Rs.1,000/- each and in default of payment of fine to further undergo SI for one month
Section 506 IPC	To undergo SI for a period of one year and to pay fine of Rs.2,000/- each and in default of payment of fine to further undergo SI for one month

Both the sentences were ordered to run concurrently.

2. Allegations as per FIR are that on 05.09.2004, ASI Bachhan Singh along with Constable Bijender Singh No. 841 were present on Indira Colony, Gali No.



1 turn, when complainant Kamlesh met them alongwith her parents and sister Sushila and moved a complaint in which complainant submitted that she resides in Gali No. 1 Shankar Garden Line Par, Bahadurgarh and studies in B.A. III rd year in Vaish Arya Kanya Mahavidhalaya. Sanjay and Sonu, both sons of Om Parkash, r/o Gali No.1 Shankar Garden Bahadurgarh used to tease her and her sister for last several months. In this regard both of them complained to their parents, who further complained to the family of the accused but to no effect. On 05.09.2004 i.e today at 05:30 am, the complainant alongwith her sister Sushila and her younger brothers Naveen and Lalit went for morning walk. While returning at about 06:30 am, when they reached near the shop of one Satish, at that time, accused Sanjay and Sonu restrained them and outraged their modesty. Further they tried to drag them towards their house. When complainant and her sister resisted, they inflicted slaps and punches. In the meanwhile, accused Kalu and Manu came to their help with sticks in their hands and started beating them. The complainant and her sister received injuries. Listening to their hue and cry, one Ramesh and Vinod intervened. Subsequently, the parents of the complainant reached the spot. At that time, accused Krishan and accused Neetu started inflicting stick blows on her parents. Witnesses Ramesh and Vinod saw the entire incident. While leaving, the accused Sanjay and Sonu criminally intimidated them that if complaint is made to the police, the entire family would be killed. On this complaint, FIR No.76 dated 05.09.2004, under Sections 323,354 and 506 IPC was registered at Police Station Line Par Bahadurgarh.

3. The petitioners were convicted and sentenced vide judgement dated 10/12.10.2012 by the learned trial Court which has also been upheld by lower Appellate Court vide judgment dated 18.04.2015.



4. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 10.10.2012 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 they have already undergone a period of six months and eighteen days and are not involved in any other criminal activity.

5. 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 also been upheld by the learned lower Appellant Court and as such, he does not deserve any leniency.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. In Deo Narain Mandal v. State 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.

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

9. The FIR in the present case was lodged on 05.09.2004 and the petitioners have been suffering the agony of trial since the last about 20 years. Since their conviction, the petitioners have grown into a law-abiding citizen and desire to live a peaceful life. As per their custody certificate, they are not involved in any other case and have undergone actual sentence of six months and eighteen days out of total sentence of one year in the instant case.

10. 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 him.

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

(i) The judgment dated 18.04.2015 passed by the learned Additional Sessions Judge, Jhajjar affirming the judgment of conviction is upheld, however, the order of sentence dated 12.10.2012 is modified to the extent that the sentence of simple imprisonment for one year under Sections 323/506 IPC each and 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 an amount of Rs.1,000/- and Rs.2,000/-each under Sections 323 and 506 IPC respectively imposed upon the petitioners by the trial Court is increased to Rs.5,000/- and Rs.10,000/- each respectively. 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.

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

29.07.2024
mamta

(HARPREET SINGH BRAR)
JUDGE

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