

**CRR-2878-2015 (O&M)****1****798 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-2878-2015 (O&M)****Date of Decision: 14.11.2024****VINOD KUMAR @ KALU****.....Petitioner****Versus****STATE OF HARYANA****.....Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Aditya Sanghi, Advocate and
Mr. Himanshu Garg, Advocate for the appellant.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Rahul Rathore, Advocate with
Ms. Ishita Negi, Advocate for the complainant.

**********HARPREET SINGH BRAR, J. (ORAL)**

1. Present revision petition has been preferred by the petitioner against the judgment of conviction and order on quantum of sentence dated 28.01.2015/29.01.2015 vide which petitioner was convicted under Sections 323 and 354 of Indian Penal Code and sentenced to undergo substantive sentence of rigorous imprisonment for one year by learned Additional Chief Judicial Magistrate, Narnaul and the said judgment of conviction was partly upheld by learned Additional Sessions Judge, Narnaul vide judgment dated 29.07.2015 as the conviction under Section 354 of IPC was upheld, however, the petitioner was acquitted under Section 323 of IPC.

2. The present case was registered on the basis of complaint dated 28.4.2009 made by complainant Savita, wherein it was stated that complainant's husband is an army personnel and on 24.04.2009 at about 5:30 AM the complainant in order to meet natural call went to field. It was further

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averred that when the complainant was in the field, a boy while covering his face with handkerchief was seen by the complainant and on seeing him, the complainant raised objection, but the boy proceeded towards her. Therefore, complainant stood up and started walking, however said boy rushed and pushed the complainant, resultantly, the complainant fell down on earth. It was further averred that the said boy covered the mouth of complainant with his hands, however complainant succeeded in removing the handkerchief from the face of said boy and she could identify him as Kalu alias Vinod son of Vikram, resident of village Sihma. It was further averred that Kalu alias Vinod started manhandling her and when she raised alarm, the brothers-in-law of complainant namely Ajit and Ramanand reached at the spot, however, Vinod while leaving the complainant on the spot fled away towards the field and after reaching back home, the complainant disclosed the facts to her family members. It is further averred that after sometime, Vinod and his family members reached to the house of complainant and gave kick and fist blows to them. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 28.01.2005 passed by learned Additional Chief Judicial Magistrate, Narnaul and judgment of conviction dated 29.07.2015 passed by learned Additional Sessions Judge, Narnaul on merits and restricts his prayer to modification of the order of quantum of sentence to that of sentence already undergone by the petitioner as he has already undergone a period of 01 month and 27 days and including remission not involved in any other case.



4. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record which has also been partly upheld by the learned lower Appellate Court and as such, he does not deserve any leniency. However, he could not controvert the fact that petitioner is not involved in any other case.

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

6. 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.

7. A perusal of the judgment of conviction passed by the learned lower Appellate Court indicates no perversity in its findings and submits that the said judgment is based on correct appreciation of evidence available on record. Moreover, learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

8. Perusal of record indicates that FIR(supra) was registered in the year 2009 and the amendment in Section 354 of Indian Penal Code was carried out in the year 2013. As such, there is no embargo in modification of the sentence to that of already undergone by the petitioner. The petitioner has been suffering the agony of trial since the last 15 years. As per the custody certificate, the petitioner has undergone total sentence of 01 month and 27 days out of substantive sentence of one year and he is not involved in any other case.

9. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

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

- (i) The judgment dated 29.07.2015 passed by the learned Additional Sessions Judge, Narnaul partly upholding the judgment of

conviction dated 28.01.2015 is upheld, however, the order of sentence dated 29.01.2015 is modified to the extent that the total sentence of rigorous imprisonment for one year awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 10,000/- is imposed upon the petitioner. The petitioner is 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 petitioner shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

14.11.2024
Ajay Goswami

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