

230

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-3566-2015 (O&M)
Date of Decision: 21.03.2024

SARABJIT RAI AND OTHERS

...Petitioners

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikram Preet Arora, Advocate
for the petitioners.

Mr. Eklavya Darshi, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This revision petition has been preferred against the judgment dated 14.08.2015 passed by learned Additional Sessions Judge, Pathankot vide which judgment of conviction and order of quantum of sentence dated 07.02.2013 passed by learned Judicial Magistrate Ist Class, Pathankot in FIR No. 157 dated 12.10.2008 filed under Sections 452, 324, 323, 506 and 34 of Indian Penal Code registered at Police Station Sadar Pathankot, has been upheld. The petitioners were sentenced as under:

Name	Offences under Sections	Period of Sentence	Fine
Sarabjit Rai	452 IPC	Three Years Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324 IPC	Two Years Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323/34 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month

Sukhjit Rai	452 IPC	Three Years Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324 IPC	Two Years Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month
Jagdis Raj	452 IPC	Three Years Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324/34 IPC	Two Years Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month
Sarwan Kumar	452 IPC	Three Years Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324/34 IPC	Two Years Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month

2. The prosecution case in brief is that on 12.10.2008 ASI Gurbachan along with other police officials in relation to routine patrolling and vehicle checking were present at Chotti Nehar, Byepass Bharoli Kalan, there. Complainant in this case namely Ashwani Kumar came present and handed over four MLRs pertaining to himself, Ganesh Kumar, Raj Kumar

and Bimla Devi to the investigating officer. At the same time complainant got recorded his statement with ASI Gurbachan Singh. The brief contents of the same are that on 02.10.2008, he came to his native place from Greece where he is permanently settled. On 10.10.2008 he along with his brother Ganesh Kumar, Raj Kumar and his wife Bimla Devi were sitting in the court yard of their house. At that time lights placed there were glowing At about 8.00 PM accused Sarabjit alias Sonu, armed with Kirpan, Sukhjit Rai armed with datar, Jagdish Raj armed with kirpan and Sarwan Kumar armed with stick came and started abusing the complainant and his family. Thereafter, accused/petitioners opened the gate and entered into the house of the complainant. Accused Sarabjit raised lalkara and said that today teach them a lesson for coming to their house on the day of Dushera and making complaints. On this accused Sukhjit Rai gave two datar blows on the person of the complainant. First blow struck near the thumb of right hand and the second struck on the left palm. The above said blows struck on the above said places on the person of the complainant when the complainant tried to save himself from the above said blows. Thereafter, accused Sarabjit Rai gave two kirpan blows which hit on the left side of the back of the complainant. Thereafter, accused raised hue and cry. Brother of complainant Ganesh Kumar in order to save the complainant came there. Thereafter, accused Jagdish Raj gave two blows of Kirpan on the person of Ganesh Kumar. First blow struck a little above on the left eye brow and the second blow struck on the nose of Ganesh Kumar. Thereafter, accused Sarwan Kumar gave two stick blows on the person of Ganesh Kumar. First blow struck on the back side of the head and the second blow hit on the right shoulder of Ganesh Kumar. On this Raj Kumar brother of the complainant came for-

ward to save his brother, then accused Sukhjit Rai gave two blows with the handle of the datar which hit on the person of Raj Kumar. First blow hit on the left side of the head and the second hit on the right side of the head of Raj Kumar. Accused Sarwan Kumar gave two stick blows to Raj Kumar which hit a little above over the right ear in the head and the second hit on the left cephalic region. Raj Kumar became unconscious and fell on the ground. Thereafter, wife of complainant namely Bimla Devi came forward and on this accused Sarabjit gave two blows of kirpan. In order to save herself from the blows Bimla Devi put her both hands and due to this the said blows struck on the left hand fingers of Bimla Devi. Thereafter, accused Jagdish Raj gave two blows on the person of the complainant which struck a little blow the neck and on the left palm of the complainant, respectively. The entire incident was witnessed by Sanjiv Kumar, Gurdas Mal and Mohinder Pal. Thereafter, accused went away with their respective weapons. Mohinder Pal arranged for a vehicle and took the complainant, Ganesh Kumar, Raj Kumar and Bimla Devi to the hospital where all the above injured were given first aid and were also medico legally examined. The reasons behind the above incident is stated that on 09.09.2008 on the occasion of Dushera, son of complainant namely Lovely and his nephew Rahul Sharma went to Sarna to watch Dushera function. There accused Sukhjit Rai abused his son and nephew. Thereafter, the son of the complainant narrated the whole incident to the complainant. On this the complainant along with his brother Ganesh Kumar went to the house of accused Sukhjit Rai for making complaint in this regard. There a dispute took place with Sarabjit Rai. Due to this reason the accused persons have injured the complainant and his family members. It is further stated that till date the respectable tried their

best to get the compromise effected but the same could not happen. Lastly, the complainant prayed for necessary action. Accused were arrested on 12.10.2008. During the investigation statement of the witnesses were recorded. After completion of investigation and other necessary formalities the challan was presented before the court.

3. The petitioners were convicted vide judgement dated 07.02.2013 by the learned trial Court which has also been upheld by lower appellate court 14.08.2015, however, the order of quantum of sentence was modified to the extent as follows:

Name	Offences under Sections	Period of Sentence	Fine
Sarabjit Rai	452 IPC	One and half year Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324 IPC	One year Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323/34 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month
Sukhjit Rai	452 IPC	One and half year Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324 IPC	One year Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month
Jagdis Raj	452 IPC	One and half year Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months

	324/34 IPC	One year Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month
Sarwan Kumar	452 IPC	One and half year Rigorous Imprisonment	Rs. 3000/- in default of payment of fine to further undergo rigorous imprisonment of three months
	324/34 IPC	One year Rigorous Imprisonment	Rs. 2000/- in default of payment of fine to further undergo rigorous imprisonment for two months
	323 IPC	Six Months Rigorous Imprisonment	Rs. 1000/- in default of payment of fine to further undergo Rigorous Imprisonment of one one month

4. Learned counsel for the petitioners contends that he is not as-sailing the impugned judgment of conviction dated 07.02.2013 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 have already undergone a period of 03 months 23 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, they do 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 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. Moreover, learned counsel for the petitioner/appellant 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 12.10.2008 and the petitioners have been suffering the agony of trial since the last 16 years. Since their conviction, the petitioners have grown into a law-abiding citizen and desires to live a peaceful life. As per their custody certificate, they are not involved in any other case and has undergone actual sentence of 03 months and 23 days out of total sentence of 03 years 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 are reduced to the period already undergone by them.
11. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment dated 14.08.2015 passed by the learned Additional Sessions Judge, Pathankot affirming the judgment of conviction is upheld, however, the order of sentence dated 14.08.2015 is modified to the extent that the sentence of rigorous imprisonment for one and half year 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. 6000/- each imposed upon the petitioners by the trial Court is increased to 10,000/- each. 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.

21.03.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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