

2024:PHHC:109375



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111+219

CRR- 4406 of 2015 (O&M)
Date of Decision: 23.08.2024

Rohit Kumar and others ...Petitioners
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Vipul Aggarwal, Advocate, for petitioner No. 2.
Mr. G.S. Bajwa, Advocate, for petitioner No.3.
Mr. Rohit Bansal, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present revision petition against the impugned judgment 29.09.2015 passed by the Additional Sessions Judge, Amritsar and the impugned judgment and order dated 02.05.2015 passed by the Judicial Magistrate 1st Class, Amritsar, whereby, the petitioner No. 3, Rahul @ Nonu @ Kaku had been convicted for the offence punishable under Section 324 IPC whereas Rohit Kumar @ Anda and Rajan @ Rajan Kumar had been convicted for the offence punishable under Sections 324/34 of IPC. Further, all the petitioners had also been convicted for the offence under Sections 324/323 read with Section 34 IPC and were sentenced as under:-

Name of Accused	Under Section	Sentence
Rahul Kumar @ Nonu @ Kuku	324 IPC	Rigorous imprisonment for 03 years and fine of Rs. 1,000/-. In default of fine, he shall further undergo rigorous imprisonment for two weeks.
	323 IPC	Rigorous imprisonment for 01 year and fine of Rs. 500/-. In default of fine, he shall further undergo rigorous imprisonment for one week.
Rohit Kumar @ Anda	324/34 IPC	Rigorous imprisonment for 03 years and fine of Rs. 1,000/-. In default of fine, he shall further undergo rigorous imprisonment for two weeks.
	323 IPC	Rigorous imprisonment for 01 year and fine of Rs. 500/-. In default of fine, he shall further undergo rigorous imprisonment for one week.
Rajan @ Rajan Kumar	324/34 IPC	Rigorous imprisonment for 03 years and fine of Rs. 1,000/-. In default of fine, he shall further undergo rigorous imprisonment for two weeks.
	323 IPC	Rigorous imprisonment for 01 year and fine of Rs. 500/-. In default of fine, he shall further undergo rigorous imprisonment for one week.

However, the petitioners had filed a criminal appeal before the first appellate Court and vide impugned judgment dated 29.09.2015, the sentence awarded under Section 324 IPC was reduced

to two years whereas sentence awarded under Section 323 IPC was maintained.

2. During the pendency of the present petition, Rohit Kumar @ Anda, petitioner No. 1 had expired and the said fact has been verified by the State counsel. Accordingly, the revision petition qua petitioner No. 1 Rohit Kumar @ Anda stands abated.

3. At the outset, learned counsel appearing on behalf of the petitioners No. 2 and 3 submit that they do not wish to challenge the judgment of conviction, however, some leniency may shown, while awarding the sentence to the petitioners No. 2 and 3. Even though, learned counsel for the petitioners No. 2 and 3 do not wish to challenge the conviction, still, this Court has examined the merits of the case and the findings recorded by both the Courts.

4. The FIR in the present case was lodged on the basis of the statement made by Deepak Kumar, who had alleged that on 27.5.2010, at about 9.30 p.m., he was going towards his house when on his way Rahul and Deepak were fighting and he intervened and separated them. Thereafter, when he was standing in his street then Rahul alias Kaku armed with *kirpan*, Rajan armed with baseball, Rohit alias Anda armed with *dater* and Killy armed with baseball came behind him and Rahul raised *lalkara* to catch hold of him and that he should be taught lesson of intervening in their fight. On this, Rahul hit him with his *kirpan* which fell on left side of his back. Then Rahul made two blows with his *kirpan* which fell on the right side of

his back and again Rahul hit him with his *kirpan* which fell on his left leg below his knee and Rajan hit him with his baseball which fell on his left eye and on seeing this, his friend Sonu along with his mother came and tried to save him when Rohit alias Anda hit his mother Bimla with his *dater* which fell on her left shoulder and Killy hit his mother with his baseball which fell on her thigh and Rahul alias Kaku Rajan, Rohit alias Anada and Killy had beaten him, Sonu and his mother with their respective weapons and also broken away their Indica Car standing in the street bearing No. PB02-AQ-0039 and had broken the front glass of the car with baseball and also thrown brickbats and also picked up his gold chain which had fallen down at the place of occurrence.

5. After completion of the investigation, the final report under Section 173 Cr.P.C. was presented before the Court. The charge under Sections 326, 323, 427 read with Section 34 of IPC was framed against the petitioners and they pleaded not guilty and claimed trial.

6. In support of the charge, the prosecution examined PW1 Deepak Singh, who reiterated the averments made in the FIR. His testimony was supported by PW2 Sonu, who stated that he was the eye witness in the present case. The prosecution further examined PW3 ASI Tarsem Singh, who had recorded the disclosure statement of Rahul @ Nonu and got recovered the *kirpan* vide memo Ex.PW3/1. The prosecution further examined HC Kasim Masih as PW4, who arrested Rajan and Rohit @ Anda. Rohit @ Anda produced *datar*,

which was taken into possession vide recovery memo Ex.PW4/3. He proved on record Ex.PW3/3, Ex.PW3/4 and Ex.PW3/5. Dr. Brij Bhushan was examined as PW5, who conducted the MLR of Manjit Singh and found seven injuries on his person. He proved the MLR Ex.PW5/1 and treatment slip as Ex.PW5/2. Dr. Manjit Singh was examined as PW6, who conducted the MLR of Bimla as Ex.PW6/1 and he submitted that the possibility of injury by friendly hand could not be ruled out. PW7Ajay Kumar had also witnessed the occurrence. Another witness Ashwani Kumar (wrongly numbered as PW7) was also examined, who was witness of recovery of *kirpan* from the house of Rahul.

7. The prosecution examined PW8 ASI Sohan Lal, who produced Rohit before the Juvenile Court as he was minor. He proved on record the recovery memo as Ex. PW4/1 and Ex. PW4/3 and intimation memo as Ex. PW4/5 and Ex. PW4/2. He proved on record the rough sketch of *dater* as Ex. PW4/4 and rough sketch of *kirpan* as Ex. PW8/1, the rough sketch of baseball as Ex. PW8/2 and rough sketch of *kirpan* as Ex. PW3/B. He proved on record the arrest memo of accused Rahul alias Nonu as Ex. PW3/2 and personal search memo as Ex. PW3/5. He submitted that during inquiry, Rahul made disclosure statement which is Ex. PW3/6. He proved the rough sketch of *kirpan* as Ex. PW3/1. He submitted that Rahul alias Tinda had produced *kirpan* before the police which was taken into possession vide memo Ex. PW3/7. He produced on record *kirpan* as Ex. MO1,

kirpan as Ex. MO2, baseball as Ex. MO3 and *dater* as Ex. MO4. In cross-examination, he submitted that he had not got cleared the alleged weapons used in the alleged occurrence from any expert.

8. The prosecution further examined PW8 (wrongly numbered) Dr. Rajiv Chaudhary, who proved the MLR Ex.PA of Deepak, his opinion Ex.PB, application for X-ray Ex.PD. He also proved the MLR of Sonu Ex.PE. He also proved the MLR of Ajju @ Ajay as Ex.PF. The prosecution further examined PW9 Kuldeep Singh, who stated that the offence under Section 326 IPC was added on the basis of the X-ray report and proved the report Ex.PW9/A. Manjit Singh PW10 was another witness examined by the prosecution, who supported the statement of PW1 Deepak Singh.

8. After recording the prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded and the accused denied the evidence and pleaded innocence and false implication.

9. I have heard learned counsel for the parties and perused the record.

10. In the present case, the FIR was registered on the basis of the statement of Deepak, who appeared in the witness box and supported the case of the prosecution. His testimony was duly corroborated by the statement of PW2 Sonu, injured, PW7 Ajay Kumar and PW10 Manjit Singh. The statements of these witnesses were duly corroborated by PW8 Dr. Rajiv Chaudhary, who proved Ex.PA, medical record. Even injury No. 5 was declared to be

grievous, which was suffered by Deepak Singh at the hands of Rahul @ Nonu @ Kaku. Even the injuries suffered by other witnesses were duly proved by their own testimonies as well as the testimonies of doctors, who were examined by the prosecution. Further, ASI Tarsem Singh had proved the disclosure statement made by Rahul @ Nonu @ Kaku and also proved the recovery of *kirpan* from him. PW8 ASI Sohan Lal and PW9 Kuldeep Singh had further corroborated the statement of PW3 ASI Tarsem Singh. Thus, not only the identification of the accused was established, but also the allegations were fully proved by the prosecution. Thus, the petitioners No. 2 and 3 were rightly convicted by the trial Court as well as appellate Court under Sections 323, 324 read with Section 34 IPC.

11. Now adverting to the sentence, the petitioners have been sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs. 1,000/- under Section 324 IPC and have been sentenced to undergo rigorous imprisonment for a period of 01 year alongwith fine under Section 323 IPC. In the present case, the FIR was registered on 29.05.2010 and the petitioners No. 2 and 3 are facing the prosecution for the last more than 14 years. Even, the petitioner No. 2 has already undergone 03 months and 06 days, whereas petitioner No. 3 has undergone 03 months and 25 days out of total sentence of 02 years. Still further, both the petitioners are sole bread winners for their families and have already faced the agony of trial/revision for the last more than 14 years. Still further, after the

suspension of their sentence by this Court, the petitioners have not misused the concession of bail in any manner. Even, no criminal case was ever registered against the petitioners No. 2 and 3.

12. Keeping in view the above discussion, the sentence imposed on the present petitioners No. 2 and 3 is reduced to the period already undergone by them. However, the sentence of fine will remain the same.

13. With the above modifications, the revision is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present petitioners No. 2 and 3 is reduced to the period already undergone by them. However, the sentence of fine will remain the same.

14. All pending applications, if any, are disposed off, accordingly.

23.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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