

CRR-4519-2016 &
CRR-4888-2016

[1]



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4519-2016 &
CRR-4888-2016
Reserved on 03.09.2024
Date of decision: 16.09.2024

CRR-4519-2016

Parveen Kumari ...Petitioner

Versus

State of Punjab and Another ...Respondents

AND

CRR-4888-2016

Parveen Kumari ...Petitioner

Versus

State of Punjab and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

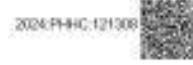
Argued by: Mr. TPS Makkar, Advocate for the petitioner.

Mr. Inderjeet Singh Ladher, DAG, Punjab.

Mr. Tushaar Madaan, Advocate for respondent No.2.
in CRR-4519-2016.

KARAMJIT SINGH, J. (ORAL)

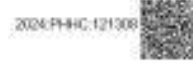
1. Both the petitions are taken up together for final disposal since they are interconnected being arising out of the common judgment dated 16.08.2016 passed by the Court of Additional Sessions Judge, Sri Muktsar Sahib in two connected criminal appeals filed by Amit Sethi and his brother Rajan Sethi.



2. Petitioner Parveen Kumari has filed revision petition No.4519-2016 against the judgment dated 16.08.2016 passed by the Court of Additional Sessions Judge, Sri Muktsar Sahib whereby the appeal filed by respondent No.2 Amit Sethi was allowed and he was acquitted of offence punishable under Section 323 IPC and revision petition No.4888-2016 was filed by the petitioner against aforesaid judgment dated 16.08.2016 whereby the appeal filed by respondent No.2 Rajan Sethi was partly allowed and he was directed to be released on probation.

3. The brief facts of the case are that petitioner/complainant Parveen Kumari filed criminal complaint under Section 452, 392, 324, 506 read with Section 149 IPC and under Section 148 IPC against Amit Sethi and Rajan Sethi sons of Ramesh Kumar Sethi, in the Court of Illaqa Magistrate wherein petitioner alleged that she is resident of Malout. On death of her first husband, petitioner got married with Ramesh Kumar Sethi a widower. The petitioner was having one daughter from her first marriage while Ramesh Kumar Sethi was having two sons namely Amit Sethi and Rajan Sethi from his first marriage. After their marriage, Amit Sethi and Rajan Sethi started demanding property from their father and finally settlement was effected. The house situated in Dashmesh Colony was given to Amit Sethi and Rajan Sethi and the house in question was kept by complainant and her husband. About 9 months back, Ramesh Kumar Sethi died. Thereafter, Amit Sethi and Rajan Sethi time and again tried to grab the house wherein the complainant was residing and they also assaulted the petitioner.

4. On 21.04.2008, the petitioner was preparing tea on a gas stove



and in the meantime, Rajan Sethi and his wife Sunita came there and Rajan Sethi poured boiling water on the face of petitioner and also started beating her and later on, petitioner was got admitted in civil hospital. Subsequently, panchayat was convened and matter was resolved amicably and no police complaint was lodged. Amit Sethi and Rajan Sethi agreed to pay Rs.5000/- per month to the petitioner in lieu of management of Atta Chakki and they also gave assurance not to enter the house of the petitioner. However, on 31.07.2008, Amit Sethi drafted 'no objection' in the shape of affidavit from the side of petitioner regarding transfer of her share in shop which was earlier owned by Ramesh Kumar Sethi and Amarnath Sethi situated in Grain Market, Malout. On that day, at about 01:30 PM Amit Sethi entered the house of petitioner and tried to take signatures of the petitioner on aforesaid affidavit, forcibly but she refused to do so and finally, Amit Sethi had torn the said affidavit and assaulted the petitioner and also caused damage to the household articles and threatened her with dire consequences. After the said incident, on the same very day, the petitioner contacted her brother Vinod Kumar, who reached her house from Kotakpura. At about 08:30 PM Amit Sethi and Rajan Sethi gave knock at the door of house of petitioner, which was opened by Vinod Kumar and at that time, five more persons armed with *lathis* were there along with Amit Sethi and Rajan Sethi. Amit Sethi was armed with knife and then both the brothers entered house of the petitioner. Rajan Sethi gave two *lathi* blows on the head of Vinod Kumar. Rajan Sethi got hold of the petitioner, while Amit Sethi gave knife blow which hit on the inner side of her left hand. Rajan Sethi gave another *lathi* blow which hit on her right shoulder. Fist blow given by Amit



Sethi hit on the lower lip of the complainant. Another *lathi* blow given by Rajan Sethi hit on her forehead. Amit Sethi pulled her hair and snatched her gold chain and Rs.20,000/-. When complainant and her brother raised alarm, the aforesaid persons ran away from there. The complainant and her brother were admitted in civil hospital, Malout. The matter was reported to the police but police failed to take any action. Then private criminal complaint was filed in the Court of Illaqa Magistrate concerned.

5. In preliminary evidence, complainant herself appeared in the witness box as CW-1 and also examined Vinod Kumar Stamp Vendor as CW-2. Her brother Vinod Kumar appeared in the witness box as CW-3 while Dr. Prabhjit Singh was examined as CW-4. On completion of preliminary evidence, Amit Sethi and Rajan Sethi were summoned by the learned trial Court under Section 324, 323 and 34 IPC. On their appearance, the accused were admitted on bail.

6. In pre-charge evidence, the complainant herself appeared in witness box as CW-1 and also examined Vinod Kumar Stamp Vendor and further examined her brother Vinod Kumar as CW-3, HC Surjit Singh as CW-4 and Dr. Prabhjit Singh as CW-5.

7. Thereafter, trial Court framed charges under Section 324 read with Section 34 IPC and under Section 323 IPC against both the accused to which, they pleaded not guilty and claimed trial.

8. In post-charge evidence, the complainant appeared as CW-1 Vinod Kumar Stamp Vendor appeared as CW-2, HC Surjit Singh appeared as CW-3, Dr. Prabhjit Singh was examined as CW-4.

9. On conclusion of the complainant's evidence, both the accused



were examined under Section 313 Cr.P.C. They pleaded innocence and false implication. In defence accused Amit Sethi examined DW-1 Bihari Lal Makkar and DW-2 Dinesh Kumar Assistant Administrator Officer (LIC).

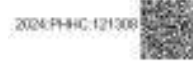
10. After hearing the rival contentions of the counsel for the parties, the learned trial Court convicted and sentenced both the accused to rigorous imprisonment for a period of six months each under Section 323 IPC vide judgment and order dated 07.12.2015.

11. Being aggrieved, the accused persons filed two separate appeals. After hearing the counsel for the parties, the Court of Additional Sessions Judge, disposed of the said appeals vide common judgment dated 16.08.2016 whereby Amit Sethi was acquitted and Rajan Sethi was ordered to be released on probation as his conviction under Section 323 IPC was upheld.

12. Aggrieved by the aforesaid judgment dated 16.08.2016, petitioner/complainant has filed the present revision petitions.

13. I have heard, the counsel for the parties.

14. The counsel for the petitioner/complainant has contended that the impugned judgment passed by the Court of Additional Sessions Judge, dated 16.08.2016 is not sustainable. It has been further argued that on the day of occurrence, Amit Sethi was present in the area of Malout and he actively participated in the occurrence along with his brother Rajan Sethi and both of them caused injuries to the petitioner and her brother Vinod Kumar. That the ocular version narrated by the petitioner and her brother is corroborated by the medical evidence. It has been further submitted that judgment of conviction and sentence passed by the learned trial Court

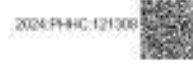


against Amit Sethi deserves to be restored. The counsel for the petitioner has further argued that the Court of Additional Sessions Judge also fell into error while granting concession of probation to Rajan Sethi who assaulted and threatened a widowed lady, in order to grab her property by illegal means.

15. The State counsel also adopted the same line of arguments.

16. The counsel appearing on behalf of private respondents submits that there is no illegality or infirmity in the impugned judgment dated 16.08.2016 passed by the Court of Additional Sessions Judge. It has been further submitted that the said Court while acquitting Amit Sethi took into consideration the concerned documents Ex.DW-2/B and Ex.DW-2/D regarding the place of posting of Amit Sethi at the time of occurrence. The said Court rightly observed that it was not possible for Amit Sethi to cover a distance of 400-450 km in 3 to 4 hours to travel from Kathua to Malout, as at the relevant time, he was posted at Kathua. The counsel for the private respondents has further contended that offence under Section 323 IPC is punishable with sentence up to one year or with fine extending up to Rs.1000/- or with both. Further, Rajan Sethi was having no criminal antecedents. Thus, the Court of Additional Sessions Judge while exercising its powers under Section 360 Cr.P.C, gave concession of probation to Rajan Sethi. That there is no illegality in the said order whereby Rajan Sethi was directed to be released on probation with undertaking to keep peace and be of good behavior for a period of one year and to pay Rs.10,000/- as compensation to Parveen Kumari.

17. I have considered the submissions made by counsel for the



parties.

18. Admittedly, Amit Sethi and Rajan Sethi were convicted and sentenced to imprisonment under Section 323 IPC by the learned trial Court vide judgment and order dated 07.12.2015. However, the petitioner did not file any appeal/revision against the aforesaid judgment and order dated 07.12.2015.

19. DW-2 Dinesh Kumar Assistant Administrative Officer, LIC proved the relevant record as per which Amit Sethi was working as Assistant Administrative Officer in Kathua, District Jammu at the relevant time and on 31.07.2008, he was not on leave as per leave record Ex.DW-2/B. Thus, the Court of Additional Sessions Judge rightly observed that the presence of Amit Sethi in the area of Malout on the day of occurrence seems to be highly doubtful as at that time, Amit Sethi was working in the area of Kathua which was at a distance of 400-450 km from Malout. So, the Appellate Court rightly acquitted Amit Sethi while passing the impugned judgment dated 16.08.2016.

20. In the instant case, Rajan Sethi who was more than 21 years of age was convicted under Section 323 IPC i.e. an offence punishable with fine only or with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs.1000/- or with both. Rajan Sethi was having statutory right for claiming the benefit of beneficial provision of Section 360 Cr.P.C, he being not a previous convict. The Appellate Court was under a duty to consider the applicability of Section 360 Cr.P.C, as mandated under Section 361 Cr.P.C. In view of express provision of Section 360 Cr.P.C and considering the facts and circumstances of the



case, nature of the offence, the character of the accused and the time period which had lapsed since the date of incident, the Appellate Court rightly exercised its power and gave concession of probation to the said accused.

21. In light of the above, the counsel for the petitioner has failed to point out any illegality or infirmity in the impugned judgment dated 16.08.2016 passed by the Court Additional Sessions Judge, Sri Muktsar Sahib. Thus, no ground for interference is made out in the criminal revision petitions filed by the petitioner/complainant.

22. Consequently, both the revision petitions are hereby dismissed being devoid of merits.

16.09.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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