

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA-S-2399-SB of 2008
Date of decision : 6.4.2015**

Nepal Singh and others

.....Appellants

v.

State of Haryana and another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. Narinder Singh, Advocate, for the appellants

Mr. M.D. Sharma, AAG, Haryana

Mr. D.S. Randhawa, Advocate, for respondent No.2/complainant

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Raj Rahul Garg, J.

The present appeal has been filed by the appellants challenging the judgment of conviction dated 17.11.2008 vide which they were convicted for commission of offences punishable under Sections 332, 333, 342, 353, 356 and 34 IPC and order on sentence dated 19.11.2008 vide which they were sentenced as under :-

<u>Under Section</u>	<u>Punishment</u>
332 IPC	RI for one year and fine of ₹ 500/-each In default of payment of fine, SI for three months
333 IPC	RI for three years and fine of ₹ 1000/-each In default SI for six months

342 IPC	RI for six months
353 IPC	RI for six months and fine of ₹ 500/-each In default SI for three months
356 IPC	RI for six months and fine of ₹ 500/-each In default SI for three months
(All the sentences shall run concurrently.)	

The accused/appellants were prosecuted for commission of offences punishable under Sections 332/333/342/353/356/34 IPC with the allegations that on 20.8.2007, in the area of Gali No. 28, Sanjay Colony, Sector 23, Faridabad, they in furtherance of their common intention voluntarily caused grievous hurt to Rafique Ahmad, Meter Reader, a public servant, while performing his official duties. The accused/appellants also confined him and snatched his register meant for recording meter readings.

Briefly, facts of the prosecution case are like this, that FIR Ex.P 2 of the present case was lodged on the basis of a complaint Ex.P 1, received in the police station from the Assistant General Manager, DHBVN, Sector 22, Faridabad. It was alleged in the complaint that on 20.8.2007, Rafique Ahmad, Meter Reader, visited Gali No.28, Sanjay Colony, Sector 23, Faridabad Before taking reading, he knocked the door of a house. But no one came out. After sometime, the accused/appellants at once came out of the house and started beating him. After beating, they confined him inside the room and snatched his register, meant for recording meter reading. The neighbours and one Ashok, who was with him at that time, rescued him from the clutches of the accused/appellants. He also wrote a letter in this regard to the Assistant General Manager, DHBVN, Sector 22, Faridabad, which is Ex.P 9. Endorsement Ex.P 3 was made on the FIR and investigation of the case started. During the course of

investigation, ASI Tota Ram, Investigating Officer, got the complainant, Rafique Ahmad, medico legally examined. His medico legal report is Ex.P13. His X-ray report and X-ray film are Ex.P 9 and P 11 respectively. The Investigating Officer inspected the spot of occurrence and rough site plan of the place of occurrence Ex.P4 was prepared. Application, submitted by the injured Rafique Ahmad to the SDO, Electricity was also taken on record, which is Ex.P 9. Duty slip of the complainant Ex.P 7 was also collected by the Investigating Officer. Accused/appellants were arrested and register was recovered from their custody vide memo Ex.P 5. Scaled site plan of the place of occurrence Ex.P 12 was also got prepared. Statements of other witnesses were also recorded during the course of investigation. After completion of necessary investigation, the challan was put in Court against the accused/appellants.

Finding prima facie case against the accused/appellants for committing offences punishable under Sections 332/333/342/353/356/34 IPC, they were charge sheeted accordingly, to which accused pleaded not guilty but claimed trial.

After taking prosecution evidence, statements of accused under Section 313 Cr.P.C, were recorded. Each incriminating material coming on record against the accused, was put to the accused to which, they denied and pleaded their innocence.

After hearing Mr. Narinder Singh, Advocate, for the appellants, Mr. D.S. Randhawa, Advocate, for respondent No.2 and Mr. M.D. Sharma, AAG, Haryana, for the State and appraising the entire evidence and material coming on record, the learned Additional Sessions Judge, Faridabad, vide judgment dated 17.11.2008 convicted the accused/appellants for committing offences

punishable under Sections 332, 333, 342, 353, 356 and 34 IPC and vide order dated 19.11.2008 sentenced them as mentioned in earlier part of this order.

During the course of hearing of arguments, learned counsel for the accused/appellants contended that he does not contest the finding of the learned trial Court recorded on merits. However, some leniency may be shown regarding matter of sentence. It was argued that the present occurrence is of the year 2007. More than 6 years have passed. This was the first offence of the appellants. During the aforesaid period, accused/appellants did not commit any other offence. In fact, the accused/appellants have compromised this case with the complainant but since the offences are not compoundable, therefore, they may be released on probation after giving them benefit of Section 4 of the Probation of Offenders Act, 1958. It was also contended that the compromise has already been placed on the file. Even Mr. D.S. Randhawa, Advocate, learned counsel for the complainant present in Court, affirmed the factum of compromise and contended that the complainant has no objection in case the appeal of the appellants is allowed or they may be given benefit of probation of offenders Act.

Learned counsel for the appellants also cited some judgments which are as under :-

- "1. Davinder Singh and others v. UT Chandigarh and another 1996 (2) AICLR 408 P & H.**
- 2. Buta Singh v. State of Punjab 2004 (3) RCR (CrL.) 605 P & H.**
- 3. Nasib Hussain Siddi and others v. State of Gujarat 2011 (4) RCR (CrL.) 698 SC."**

Under the above discussed circumstances and keeping in view the fact that the accused/appellants have already faced protracted trial and further

that they have compromised the matter with the complainant and in this manner, both the parties would be able to live peacefully, burying their enmity for ever. As the accused/appellants are the first offenders, therefore, in view of the aforecited case law on the point, I have no hesitation in accepting the prayer of learned counsel for the appellants for giving benefit of Section 4 of the Probation of Offenders Act, 1958, to the accused/appellants.

For the reasons recorded above, while maintaining the judgment of conviction dated 17.11.2008, benefit of Section 4 of the Probation of Offenders Act, 1958, is given to the accused/appellants in the matter of sentence. They are directed to be released on probation for a period of 3 years, on their furnishing probation bond in the sum of ₹ 10000/-each with one surety each in the like amount, to the satisfaction of concerned Chief Judicial Magistrate. During this period, they shall undertake to keep peace and be of good behaviour failing which they shall make themselves available to appear and receive sentence as and when called upon to do so.

Except with the above modifications, the appeal fails and is dismissed.

(RAJ RAHUL GARG)
JUDGE

6.4.2015
Ashwani