

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

CRA-S-1109-SB-2014

Date of decision : 27.08.2015

Sumel Singh (minor, through his father) ...Appellant

Versus

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ramandeep Singh, Advocate for the appellant.

Mr. Luvinder Sofat, AAG, Punjab

Mr. A S. Cheema, Advocate for respondent No.2

JITENDRA CHAUHAN, J. (Oral)

1. This appeal has been filed for setting aside the order dated 02.12.2013 passed by the learned Additional Sessions Judge, (Fast Track Court), Bathinda, whereby the accused-respondent No.2 had been released on probation in case of FIR No.4 dated 01.01.08 under Sections 336, 338 IPC registered at Police Station Kotwali, Bathinda.

2. Brief facts of the case in hand, as recorded in the opening para of the impugned judgment, are reproduced as under:-

“2. *This case was registered on the statement of complainant Ravinderpal Singh S/o Raghvir Singh, R/o House No.216, House Fed Colony, Bathinda, got recorded with the police to the effect that he is employed in District Courts, Bathinda and the Kothi No.217, is owned by Krishan Kumar. Plot No.219 has been purchased by close relation of Krishan Kumar and in*

this regard agreement to sell has been executed and in order to obtain water connection said Krishan Kumar had got dug up drain, across the road on 29.12.2007 and on that day at about 8.00 PM, when he was coming to his house, then his scooter struck in the said drain, but he did not receive any injury and he complained the matter to Krishan Kumar and asked him to get the drain filled up with mud, but he did not pay any heed to it. That on 30.12.2007, at about 8/8.30 PM, his son Sumel Singh left the house to bring packet of 'Dalia' from the shop and after some time they heard shrieks of his son and on this his brother Daminderpal Singh came out of the house and saw that his son was lying on the road and blood was oozing from the injuries sustained by him and his bicycle was lying on the drain. Due to fall, bone of forehead of his son was fractured and injury was also inflicted on his chin. He along with his brother Daminderpal Singh got admitted his son in Civil Hospital, Bathinda, for treatment and later on he shifted his son to Jha Neuro and Dental Hospital, near Pukhraj Cinema, Bathinda, where his son Sumel Singh is being treated. That his son received injuries due to fall in drain, got dug up by Krishan Kumar. On the basis of this statement, the instant FIR was got registered. The IO inspected the spot and prepared rough site plan. Statements of witnesses were recorded. On completion of investigation and other formalities of the case, challan was presented against accused, in the Court below.

3. *As soon as challan was presented against the accused, in the Court below, the copies of challan and other documents as relied upon by the prosecution, were supplied to him free of costs, as required under*

Section 207 of the Code of Criminal Procedure. Thereafter, charges were framed against the accused for the offence under Section 336/338 IPC, to which he pleaded not guilty and claimed to be tried.

4. *The prosecution in support of its case, examined PW1 Ashok Kumar, Photographer, PW2 Dr. Vijay Shankar Jha, PW3 Daminder Pal Singh, PW4 Ravinder Pal Singh, complainant, PW5 HC Jaidev Singh, Investigating Officer, PW6 Gurjit Singh, Clerk Housefed Colony, PW7 Sumel Singh, injured, PW8 Dr. Kamal Sharma, PW9 Harjit Singh, PW10 Dr. Shekhar Mangal and thereafter prosecution closed its evidence.*

5. *Thereafter, statement of the accused was recorded under Section 313 of Cr.P.C., by the trial court. He denied the allegations of the prosecution case and pleaded his false implication in this case at the instance of complainant, who is inimical towards him. He further pleaded that he has no concern with the plot No.219, neither its owner is related to him nor any vegetables were grown in the said plot. He further stated that the complainant is employee of District Court, Bathinda, and by suing his influence, he got him entangled in this case. However, the accused did not lead any evidence in his defence and ultimately closed the same.*

6. *On conclusion of evidence and arguments, the trial court, vide its impugned judgment and order dated 24.03.2012 convicted the accused for the above referred offence and imposed the sentence on the appellant, as referred above. Aggrieved by the impugned judgment of conviction and order of sentence dated 24.03.2012 of the Court below, the accused, now appellant has come up with this appeal against the*

same.”

3. After appraisal of the documents, prosecution evidence and the defence evidence, the learned Additional Sessions Judge (Fast Track Court), Bathinda released the accused-respondent No.2 on probation in case of FIR No.4 dated 01.01.08 under Sections 336, 338 IPC registered at Police Station Kotwali, Bathinda.

4. Feeling aggrieved against the same, the victim-appellant has filed this appeal.

5. The learned counsel for the appellant contends that while passing the impugned order dated 02.12.2013, the first appellate court ignored the fact that due to the rash and negligent act of respondent No.2, the appellant suffered head injury and he had to undergo surgery of his head and could not attend school w.e.f 02.01.08 to 29.02.08 and remained under follow up treatment upto 11.04.08. Thereafter, the appellant could not appear in the 6th class examinations.

6. On the other hand, the learned counsel for the respondent No.2 states that the first appellate court has rightly passed the impugned order dated 02.12.2013 while taking into consideration that the respondent No.2 is a time first offender and an opportunity should be granted to him to become a noble citizen, instead of putting him behind bars in the company of hard core criminals.

7. The learned State counsel has not disputed the aforesaid factual position and supported the contentions raised by the learned counsel for the

respondent No.2.

8. I have heard the rival contentions of both the parties and perused the record of the case on the file.

9. The first appellate court has passed the impugned order dated 02.12.2013 by taking the lenient view in favour of the respondent No.2 as he was a first time offender. Probation period of one year had already expired on 01.12.2014. There is no allegation that during this probation period, he has violated any of the terms and conditions of the requisite bonds.

10. In view of above, the order passed by the learned Additional Sessions Judge (Fast Track Court), Bathinda, is in accordance with law and cannot be termed to be illegal, arbitrary and against the facts proved on record in the given set of circumstances, which is hereby affirmed.

11. Accordingly, the instant appeal is hereby dismissed.

27.08.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**