

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2038-SB of 2003
Date of Decision: November 04, 2015

Balbir Singh and others ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.S. Sidhu, Advocate
for the appellants.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

The appellants-convicts were tried by the Court of learned Additional Sessions Judge, Fast Track Court, Ferozepur in case FIR No.60 dated 02.04.2002 under Sections 308,323,34 IPC registered with Police Station, Jallalabad and vide impugned judgment dated 22.10.2003 were found guilty for commission of offences under Sections 325, 323 and 34 IPC and were sentenced as under:-

Under Section 325 and 34 IPC	Rigorous imprisonment for five years and to pay a fine of Rs.1000/- and in default thereof to further undergo rigorous imprisonment for nine months.
Under Section 323 and 34 IPC	Rigorous imprisonment for six months and to pay a fine of Rs.200/- and in default thereof to further undergo rigorous imprisonment for one month.

Against the findings of the Court below the appellants have come up in this appeal.

Heard learned counsel for the parties and perused the records of the case.

Before venturing into the very intricacies of the case the factual scenario that stands reflected from the records and the submissions of the counsel are that on 31.3.2002 around 7.30 a.m. Sumer Chand injured-complainant had gone to his fields in village Jamalgarh, when around 7.30 a.m. after stationing his cart was going to his house to fetch spade and had reached near village school, when accused Balbir Singh and Vijay Kumar armed with iron pipes and accused Anwar Chand (also referred as Anwar Singh) armed with *gandasa* along with accused Makhan Singh, empty handed, were standing on the way. After an altercation, it is alleged that accused Makhan Singh raised *lalkara* at which accused Balbir Singh caught hold of the injured, whereas, accused Vijay Kumar gave iron rod blow on his left eye and accused Anwar Chand gave *gandasa* blow from its reverse side on the head of the injured and on raising *raula* the accused ran away from the spot. The injured was taken to Civil Hospital Jallalabad, where he was medically examined and the MLR was dispatched to the Police Station, on the basis of which ASI, Lekh Raj recorded statement of the injured and, thereafter, the present case was got registered. After the investigations, the challan was presented against the accused. The appellant Anwar Chand, who was earlier found innocent during investigation was summoned with the aid of Section 319 Cr.P.C. The prosecution in all examined PW1 Dr. Pritam Singh Sauna, PW2 Dr. Parveen Kumar Garg, PW3 Dr. Harpreet Singh, PW4 ASI Jassa Singh and, thereafter, injured complainant stepped into the witness box as PW5 followed by testimony of PW6 Sher Singh, eye-witness, PW7 HC Darshan Singh, PW8 ASI Lekh Raj, PW9 ASI Prithipal Singh, PW10 Dr. Hardut Jyoti and lastly PW11 C. Bhagwan Dass. The accused denied the

allegations of the prosecution in stand taken under Section 313 Cr.P.C. The accused in his defence examined DW1 S.I. Jaspal Singh, DW2 Gurmit Singh, DW3 Kashmir Singh and closed the evidence leading to the pronouncement of the impugned findings.

Learned counsel for the appellants at the very onset had made a humble prayer that the learned trial Court had failed to consider the grant of probation to the appellants in terms of Section 360 of the Cr.P.C. and has prayed for the same.

Keeping in view that since the year 2002 for almost a period of 13 years the appellants have undergone the rigor of this litigation and, thus, have suffered enormously together with the fact that only injuries are by means of blunt weapons on the person of the injured. There is nothing tangible brought on the records that the injured has suffered enormously in terms of consequences arising out of these injuries and which apparently as per the testimony of PW2 Dr. Parveen Kumar Garg is only one lacerated wound, whereas, other is only a reddish colour bruise. The accused-appellants were not armed with any deadly weapon. The appellants as per the own submission of the learned State counsel are not previous convicts and the parties belong to the same very village and, thus, taking a lenient view by granting the relief of probation there is every likelihood that it will bring about harmony and atmosphere of goodwill peace else it would sow seeds of hatred and vengeance and also facilitate more enmity.

Thus, in the totality of the circumstances and the fact as has been brought to the notice of this Court that the appellants are young persons, first offenders and it would sub-serve the ends of justice if the appellants are allowed concession of probation under the provisions of Section 360 Cr.P.C subject to their furnishing probation bonds in the sum of ₹25,000/- with one surety in the like amount each

before the trial Court and will keep peace and be of a good behaviour and in default of the same will appear before the Court as and when called upon to do so during the period of next one year and undergo remaining sentence.

However, it is made clear that the appellants shall not face any disqualification and would be benefited by the removal of this disqualification in terms of Section 12 of the Probation of Offenders Act 1958.

Thus, the instant appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

November 04, 2015
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