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

CRR-3639-2012 (O & M)

Date of Decision: 19.03.2015

Gaja Nand

... Appellant (s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Sushil Bhardwaj, Advocate,
for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

Mr. Sanjay Vashisth, Advocate,
for respondent no.6.

Paramjeet Singh, J.

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Allowed, as prayed for, subject to all just exceptions.

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Challenge in the present criminal revision is to the judgment dated 22.08.2012 passed by Additional Sessions Judge (I), Bhiwani whereby judgment of conviction and order of sentence passed against respondent no.6-Rishi Ram have been set aside and he has been acquitted of the charges framed against him whereas judgment of conviction against respondents no.2 to 5 has been upheld but they have

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been released on probation.

In brief, the facts relevant for disposal of instant revision are to the effect that on 22.05.2003, on getting a wireless message that Gajanand (PW 1) was admitted in General Hospital, Bhiwani, in injured condition, the police party reached the hospital. The police party, after obtaining the opinion of the doctor, recorded the statement of Gajanand. Gajanand reported that he is a resident of village Sirsa Ghoghra. He is an employee of electricity department. On 21.05.2003, at about 7.00 p.m. While he was on his way from his fields to his house and reached near the canal, accused Rishi Ram, Pawan Kumar, Hanuman and Jai Bhgwan waylaid him. Rishi Ram was armed with '*gandasi*' and Pawan Kumar was armed with '*lathi*'. Rishi Ram gave a '*Lalkara*' that they would teach him a lesson for constructing a house on their plot. Rishi Ram gave a '*gandasi*' blow on his left arm. Pawan gave a *lathi* blow on his chest. Hanuman gave him fist blows. Chiman, Sanjay and Ramdhari also joined them and gave him fist blows. He raised alarm, which attracted Ratipal and Ram Charan, who rescued him from the assailants and accused left the spot. On his statement (Ex.PW 1/A), DDR No.11 dated 22.05.2003 was recorded and on 24.05.2003, formal FIR was lodged. The investigation was set into motion. After investigation, the police filed the challan.

In support of its case, the prosecution examined complainant-Gaja Nand as PW 1, Ram Charan as PW 2, Dr. Dara Singh as PW 3 and ESI Surjeet Singh as PW 4.

Statements of accused under Section 313 Cr.P.C. were

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recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. In their defence, the accused examined Rati Pal as DW 1, Gautam Kumar as DW 2 and Sube Singh as DW 3.

The trial Court, vide judgment dated 02.07.2010, convicted all the accused under Sections 148, 323 and 324 read with Section 149 of the Indian Penal Code (for brevity, 'IPC') and vide order dated 03.07.2010 sentenced them to undergo as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Sentence</i>
1	Section 148 IPC	Simple imprisonment for a period of six months each
2	Section 323 IPC	Simple imprisonment for a period of one year and fine of ₹ 1,000/- each.
3	Section 324 IPC	Simple imprisonment for a period of one year and fine of ₹ 1,000/- each.

Against that, respondents no.2 to 5 and respondent no.6 filed two separate appeals before Additional Sessions Judge (I), Bhiwani, who allowed the appeal filed by accused-Rishi Ram (respondent no.6) and acquitted him of the charges framed against him and affirmed the conviction of remaining accused, however, set aside the order of sentence and released them on probation. The findings recorded by the lower Appellate Court are as under:

“19- As per the prosecution, the occurrence had taken place on 21.5.2010 at about 7.00 p.m. Accused Rishi Ram has taken the defence that he was not even present at the place of occurrence. He has examined the Sarpanch of the village. However, the trial Court has brushed aside the testimony of defence witness without any cogent reason.

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The trial court has also overlooked the fact that there was enmity between the parties as the complainant had been convicted under section 307 IPC at the instance of the accused. On the other hand, accused have admitted the occurrence, but they have taken the stand that only Hanuman and Pawan were involved in the occurrence. In these circumstances, I am of the considered view that the presence of Rishi Ram was doubtful at the spot. There is a great tendency among people to implicate those who are in government job. This is done to ruin the opponents.

20- *Having considered the evidence on the record, I am of the considered view that whereas the conviction of accused Hanuman; Pawan; Sanjay and Chiman is well founded, while it is doubtful that Rishi Ram was present at the spot. Accordingly, I acquit accused Rishi Ram by giving him the benefit of the doubt; I affirm the conviction of accused Hanuman; Pawan; Sanjay and Chiman under section 148; 323 and 324 read with Section 149 IPC. Let the convicts be heard on quantum of sentence.*

21- *Convicts/accused Pawan; Hanuman; Chiman and Sanjay have made a statement that they are first offenders. They have been convicted under Sections 148, 323 and 324 read with Section 149 IPC. The trial court should have considered their case for probation. Accused are not hardened criminals. They are first offenders. They appear to be ordinary villagers with no record of criminality. They have also faced the trial for the last nine years. Considering all the circumstances, the sentence passed by the ACJM, Bhiwani is hereby set aside. All the accused are ordered to be released on probation subject to their furnishing probation bonds in the sum of Rs.20,000/- each with one surety in the like amount each to the satisfaction of trial Court, for a period of one year to*

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maintain peace and be of good behaviour and to serve the sentence when called up to do so during the above mentioned period, within ten days, failing which the sentence imposed by the Magistrate shall take effect. The amount of fine, if any, deposited by the accused in the Trial Court shall be treated as costs of proceedings.”

Hence, this criminal revision.

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

Learned counsel for the petitioner vehemently contended that the trial Court has rightly convicted the accused and sentenced them accordingly for causing injuries with blunt as well as sharp edged weapons. A specific role has been attributed to accused-Rishi Ram that he had raised the '*lalkara*' and caused injury with '*gandasi*' to the complainant. The injuries inflicted on the person of the complainant are supported with the medical evidence. However, the lower Appellate has wrongly acquitted accused-Rishi Ram without considering the medical evidence. Learned counsel further contended that the accused had caused injuries to the complainant with deadly weapons and respondents no.2 to 5 are not entitled for the benefit of probation.

Per contra, learned State counsel and learned counsel for respondent no.6 supported the impugned judgment of the lower Appellate Court.

I have considered the rival contentions of learned counsel for the parties.

So far as the revision against respondent no.6 is concerned,

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this Court is of the view that the lower Appellate Court has rightly held on the basis of evidence that accused-Rishi Ram was not present at the spot at the time of alleged occurrence. The lower Appellate Court has also rightly observed that trial Court has brushed aside the testimony of defence witnesses without any reason and also overlooked the fact that there was enmity between the parties as the complainant had been convicted under Section 307 IPC at the instance of the accused.

Admittedly, respondents no.2 to 5 have been convicted for the offences punishable under Sections 148, 323 and 324 read with Section 149 of IPC, however, they have been released on probation by the lower Appellate Court. Before proceeding further with the present revision qua respondents no.2 to 5, it would be apposite to reproduce relevant provisions. Section 360 (1) of the Code of Criminal Procedure, 1973 reads as under:-

“Order to release on probation of good conduct or after admonition.- (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second

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class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).”

Section 4 (1) of the Probation of Offenders Act, 1958 reads as under:

“Power of court to release certain offenders on probation of good conduct.-*When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.*

The above provisions make it clear that benefit of probation is to be extended to the person convicted if the offence is not punishable with death or imprisonment for life. In ***Joginder Singh vs. State of Punjab***, 1980 Criminal Law Journal 1218, a Full Bench of this Court has held that prescription of minimum sentence is no bar for attracting the provisions of the Probation of Offenders Act, 1958 or Sections 360 and 361 of the Code of Criminal Procedure, 1973. The Probation of Offenders Act is one of the big departures from the ordinary rule of penology. It was promulgated with a view to provide benefit of probation to the first offenders who are convicted of an offence not

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punishable with imprisonment of life or death. It is the result of the recognition of the doctrine that object of criminal law is more to reform the individual offender than to punish him.

Admittedly, respondents no.2 to 5 are not the previous convicts and there is nothing on the file that they have indulged in anti-social activities. Moreover, they have been suffering the agony of protracted trial for the last 12 years approximately. Keeping in view the fact no bad antecedents of respondents no.2 to 5 have been brought on record by the petitioner in order to dub them as habitual offenders. The lower Appellate Court has rightly released respondents no.2 to 5 on probation on furnishing their personal bonds in the sum of ₹ 20,000/- each, for a period of one year with undertaking not to repeat the offence and be of good behaviour. Moreover, the probation period has already expired and nothing adverse against respondents no.2 to 5 during the said period has been brought to the notice of the Court. No useful purpose would be achieved by sending them behind bars, at this stage.

In view of above, no ground is made out to interfere with the impugned judgment.

Dismissed.

19.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE