

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3188-2013 (O&M)
Date of decision:10.12.2015

Kartar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.K.S.Sidhu, Advocate for the petitioner.
Ms.Anmol Grewal, AAG, Punjab.
Mr.G.L.Bajaj, Advocate for respondents No. 2 to 4.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of the complainant, is directed against the impugned judgment dated 18.7.2013 passed by the learned Additional Sessions Judge (Fast Track Court), Bathinda, whereby appeal of the convicts was dismissed with modification in sentence, releasing the convicts-private respondents on probation, upholding the judgment of conviction dated 9.1.2012 passed by the learned Sub Divisional Judicial Magistrate, Talwandi Sabo.

Brief facts, as noticed by the learned appellate Court in para 3 of its judgment, are that on 4.10.2008 one information was received from Civil Hospital, Raman qua hospitalization of Kartar Singh (petitioner herein). Upon this, ASI Mohan Singh reached Civil Hospital and sought the opinion of the doctor qua the fitness of the injured-complainant and the doctor opined injured unfit to make the statement. On 5.10.2008, he again

reached Civil Hospital and sought the opinion of the doctor and got recorded the statement of injured-complainant (Kartar Singh) to the effect that they had night guarding system in their village by rotation. On 3.10.2008 Mohinder Singh Sondha son of Chand Singh, Pappa Singh son of Jeet Singh, Nika Singh son of Leela Singh, Ginni Singh son of Pargat Singh were on duty. It was about 9.15 PM. Accused Gursewak Singh son of Bhan Singh and accused Bagga Singh son of Karnail Singh were fighting with night guards, who were on duty near the house of his nephew Mohinder Singh. The electric bulb of house of Mohinder Singh was on. Hearing the alarm, he went to the spot where he found accused Gursewak armed with gandasa, accused Jiwan Singh with stick, accused Jasbir Singh with gandasa and accused Bagga Singh with stick. He asked them why they had laid the night guards as they were looking for their safety. Accused Bagga Singh exhorted that he would be taught a lesson for supporting the night guards and told others to encircle him. In the meantime, accused Gursewak Singh gave a blow with gandasa which fell on his head. Accued Bagga Singh gave blow with stick which fell on his nose. He then fell. Accused Jiwan Singh and Jasvir Singh gave injuries with their respective weapons which fell on his shoulder. As he tried to turn they again way laid him. The occurrence was witnessed by Gondha Singh, who got him rescued else they would have caused more injuries. Hearing his alarm, said persons fled away. Mohinder Singh @ Godha Singh got him admitted in the hospital, where he was medico legally examined. Motive of occurrence was that accused Gursewak Singh and Bagga Singh were abusing the night guards and he being closely associated with Mohinder Singh @ Gondha Singh rescued him and all the said persons in furtherance of their common intention caused

injuries upon him.

Ruqa was sent through PHG Balkaur Singh, on the basis of which, formal FIR was registered. Site was inspected at the instance of Mohinder Singh. On receipt of report of x-ray, injury No. 2 was declared as grievous and injury No.1 and 3 were declared as simple. Offence under Section 325 of the Indian Penal Code ('IPC' for short) was enhanced. Accused were arrested and weapons of offence were also recovered. Sketch of gandasas were prepared. After completion of necessary formalities of investigation, challan against the accused was presented in the court.

Copies of documents, as envisaged under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short) were supplied to the accused. On consideration, prima facie case was found and accordingly, the accused were charge-sheeted for the offences punishable under Sections 335, 323, 341 and 34 IPC. They pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as four witnesses, besides producing on record other relevant documentary evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record, was put to the accused. They denied all the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. Opting for leading defence evidence, accused examined as many as two witnesses.

After hearing learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against the accused. Accordingly, the accused were convicted for the

charges framed under Sections 325, 323, 341 and 34 IPC vide judgment of conviction dated 9.1.2012.

Consequently, the convicts were awarded the sentence vide order of sentence of even date i.e. 9.1.2012 and relevant part thereof reads as under:-

<i>Name of convict</i>	<i>Under Section</i>	<i>Sentence</i>
Bagga Singh	325 IPC	RI for one year and fine of Rs.500 and in default of payment of fine, RI for one months
	323 IPC	RI for six months
	341 IPC	RI for 15 days
Gursewak Singh, Jiwan Singh and Jasvir Singh	323 IPC	Ri for six months
	325/34 IPC	RI for six months each and fine of Rs.250/- and in default of payment of fine, RI for one month.
	341 IPC	RI for 15 days

All the sentences were ordered to run concurrently.

The above-said judgment of conviction and order of sentence were challenged by the accused by way of appeal, wherein the learned Additional Sessions Judge upheld their conviction, however, order of sentence was modified, extending the benefit of probation to the convicts namely Jiwan Singh, Jasbir Singh and Bagga Singh vide judgment dated 18.7.2013. However, learned trial Court was directed to issue non-bailable warrant against accused Gursewak Singh and to procure his presence and thereafter accused Gursewak Singh be sent to jail for undergoing his remaining sentence. Hence this criminal revision petition, at the instance of the complainant.

Learned counsel for the petitioner submits that the convicts-

respondents were not entitled for the benefit of probation under the provisions of the Probation of Offenders Act, 1958. However, since the learned first appellate court misdirected itself, while not appreciating the true facts of the case as well as the nature of offences committed by the convicts, the impugned judgment has resulted in miscarriage of justice and the same is liable to be set aside. He prays for setting aside the impugned judgment, by allowing the instant petition.

Learned counsel for the State as well as learned counsel for the private respondents submit that the learned first appellate did not commit any error of law, while upholding conviction of the respondents and extending the benefit of probation to them. They jointly pray for dismissal of the present petition.

Having heard the learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment would show that the learned first appellate court has discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at its judicious conclusion. Oral as well as documentary evidence available on record were appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned first appellate court committed no error of law, while extending the benefit of probation to the convicts-

respondents and the impugned judgment deserves to be upheld.

The above-said view taken by this Court also finds support from the following judgments:-

1. **M.C.D. v. State of Delhi and another, 2005 (4) SCC 605;**
2. **Ramesh Dass v. Raghu Nath and others, 2008(2) SCC (Crl.) 470;**
3. **State through CBI, Anti Corruption Branch, Chandigarh v. Sanjiv Bhalla and another, 2014 (8) Scale 377;**
4. **Sant Lal v. State of Haryana, 1999 (2) RCR (Crl.) 563 (P&H);**
5. **Chuni Lal v. State of Haryana, 2006(1) RCR (Crl.) 844;**
6. **State of Punjab v. Harinder Singh @ Raju, 2008 (2) RCR (Crl.) 294 P&H);**
7. **CRR No.97 of 2002 (Mani Ram v. State of Punjab), decided on 30.7.2010 (P&H);**
8. **CRR No.1385 of 2012 (Chander Parkash v. State of UT Chandigarh), decided on 15.5.2012 (P&H); and**
9. **CRR No.1289 of 2015 (Pardeep and others v. State of Haryana), decided on 30.4.2015.**

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgment in **Sanjiv Bhalla's** case (supra), which can be gainfully followed in the present case, read as under:-

“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift - from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the

*Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition *[18] or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.*

****[18] Probation of Offenders Act, 1958 Section 3:***

Power of court to release certain offenders after admonition. - When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation. - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.”

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgment passed by the learned first appellate court, so as to enable this Court to interfere in the impugned judgment, while exercising its revisional jurisdiction taking a

different view than the one taken by the learned first appellate court. In fact, the impugned judgment passed by the learned first appellate court has been found to be factually correct as well as legally justified and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present criminal revision petition stands dismissed, however, with no order as to costs.

10.12.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE