

CRR No.1870 of 2014

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

CRR No.1870 of 2014
Date of decision: 14.05.2015

Hari Parkash

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: - Mr. Sagar Aggarwal, Advocate, for the petitioner.

PARAMJEET SINGH, J. (ORAL)

Challenge in the present criminal revision is to the judgment dated 20.03.2014 passed by Additional Sessions Judge, Kaithal, whereby accused-respondents no.2 to 4 have been released on probation and order of sentence passed by the trial Court has been modified to this extent.

It is not necessary to set out the facts in detail. Suffice it to say that petitioner made a complaint Ex.PB to the police that due to opening of the door of his bara in gate which was closed forcibly by respondents No.2 to 4 on 04.02.2009, on which he raised objection, whereupon respondents started abusing him and Mohender Singh gave a lathi blow on his left hand. Kuldeep gave a lathi blow on his left knee as a result thereof he fell down. Shishpal gave lathis blow on his back. Mohender again gave lathi blow which hit on the finger of his left hand. On hearing his hue and cry, his neighbour Shishpal @ Chhota son of Surjan and others reached the spot and rescued him from the clutches of the

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accused. Thereafter, while petitioner was going towards his house, accused-respondents chased him and gave threat to kill him. He was medico-legally examined in the hospital. On the basis of the allegations contained in the application, FIR No.16 dated 07.02.2009 under Sections 323/325/452/506/341/34 IPC was registered at Police Station Dhand. Investigation was set into motion. The accused were arrested. After completion of investigation, challan against the accused was presented before the Court. Complete copies of report submitted under Section 173 Cr.P.C. and other accompanied documents were supplied to each of the accused free of cost as envisaged under Section 207 Cr.P.C. Accused/respondents were charge-sheeted under Sections 452/323/325/506 read with Section 34 IPC vide order dated 02.05.2009 to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. Anil Verma as PW1, Hari Parkash – complainant as PW2, Shishpal son of Surjan Singh as PW3, Anand Parkash – retired SI as PW4, SI Om Parkash as PW5 and Dr. Aman Sood as PW6. Thereafter, learned APP for State closed the prosecution evidence.

Statements of accused under Section 313 Cr.P.C. were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. In defence, respondents No.2 to 4 tendered documents Ex.D1 to Ex.D3 and closed the evidence.

The trial Court, vide judgment of conviction dated 21.05.2013

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and order of sentence dated 22.05.2013, convicted all the accused under Sections 323 and 325 read with Section 34 of IPC and sentenced them to undergo as under:

<i>“U/s</i>	<i>Imprisonment & fine</i>	<i>In default</i>
<i>323/34 IPC</i>	<i>R.I. for 3 months & ₹ 500/- each</i>	<i>1 month S.I.</i>
<i>325/34 IPC</i>	<i>R.I. for one year & ₹ 500/- each</i>	<i>1 month S.I.”</i>

Both the sentences were ordered to run concurrently.

Against that, respondents no.2 to 4 preferred appeal before Additional Sessions Judge, Kaithal, who upheld the judgment of conviction, however, reversed the order of sentence and released accused-respondents no.2 to 4 on probation for one year. Hence, this criminal revision.

I have heard learned counsel for the petitioner 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 lathis. The injuries inflicted on the person of the complainant are supported with the medical evidence. Learned counsel further contended that respondents No.2 to 4 are not entitled for the benefit of probation.

I have considered the contentions of learned counsel for the petitioner and perused the record.

It is pertinent to mention that before the lower Appellate

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Court, respondents no.2 to 4 made statement that they do not challenge the judgment passed by the trial Court on conviction and want to argue only on the quantum of sentence to be awarded to them by praying that lenient view be taken against them. In view of above, the judgment of conviction has attained finality.

Before proceeding further with the present revision, 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 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

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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 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 4 are not the previous convicts and there is nothing on the file that they have indulged in antisocial activities. Moreover, they have been suffering the agony of protracted trial for the last 6½ years approximately. Keeping in view the fact no bad antecedents of respondents no.2 to 4 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 4 on probation on furnishing their personal bonds in the sum of ₹ 10,000/- each with one surety in the like amount and compensation of ₹ 15,000/- to the petitioner/complainant, for the period of one year.

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

Dismissed.

(Paramjeet Singh)
Judge

May 14, 2015
R.S.