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

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Date of Decision: 05.05.2015

Gurcharan Singh

... Appellant (s)

Versus

State of Punjab 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. K.B.Raheja, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Challenge in the present criminal revision is to the judgment dated 25.04.2014 passed by Additional Sessions Judge, Ferozepur whereby appeal filed by the petitioner has been dismissed and judgment of conviction and order of probation releasing respondents no.2 to 5 on probation have been upheld.

In brief, the facts relevant for disposal of instant revision are to the effect that on 18.03.2006, complainant-Gurcharan Singh got recorded his statement to the effect that on 16.03.2006, at about 7.00 P.M, he was returning from his fields and when reached near the street nearby his house, he was encountered by Gurmej Singh son of Balbir Singh armed with *dang*, Bittu Singh son of Piara Singh armed with

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gandasi, Shanka Singh son of Joga Singh armed with iron rod and Surjit Singh son of Piara Singh empty handed. Out of them, Surjit Singh raised *lalkara* that he(complainant) be taught lesson for stopping them for excavating earth from their land. In the meanwhile, Bittu Singh son of Piara Singh inflicted *gandasi* blow upon his left bicep. Shortly thereafter, Shanka Singh gave a rod blow which fell upon right hand little finger and thereafter Gurmej Singh son of Balbir Singh gave a *dang* blow upon his right side of the chest. Again Gurmej Singh hit him with *dang* on left shoulder. He raised hue and cry which attracted his son Balwinder Singh and Mangal Singh who came from their house and rescued him from the clutches of the accused who immediately ran away alongwith their respective weapons. Thereafter, his son brought him to their home and called their relative Baggu Singh who arranged a vehicle and removed him to Civil Hospital, Mamdot. He stated that motive behind the occurrence is that he is having a litigation with Bahal Singh son of Khanda Singh regarding land measuring 3 kanals 16 marlas wherein the lessee had tried to remove earth from the said land but he stopped them from doing so. He maintained that Bahal Singh is grandfather of Bittu Singh and Surjit Singh and paternal uncle of Gurmej Singh. Therefore, the accused had caused injuries to him. After recording the statement, ruqa was sent for registration of FIR. Site plan was prepared. On receipt of X-ray report, Section 325 of the Indian Penal Code (in short, 'IPC') was added. After completion of investigation, challan against the accused was presented before the

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Court.

On finding *prima facie* case, the accused were charge-sheeted under Sections 323, 324 and 325 read with Section 34 IPC and were charge-sheeted accordingly, to which they pleaded 'not guilty' and claimed trial.

In support of its case, the prosecution examined PW 1 complainant-Gurcharan Singh, PW 2 Balwinder Singh and PW 3 Dr. Balkar Singh. Thereafter, evidence on behalf of the prosecution was closed by the Court order, vide order dated 05.01.2011.

Statements of accused under Section 313 of the Code of Criminal Procedure (in short, '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. However, the accused did not lead any evidence in their defence.

The trial Court, vide judgment of conviction and order of sentence dated 24.02.2012, convicted all the accused under Sections 323 and 324 read with Section 34 IPC, however, instead of sentencing them to imprisonment, they were released on probation for a period of one year and further to compensate the complainant and the exchequer of the State, they were also ordered to pay the costs of ₹2000/- each i.e. total ₹8,000/- and out of that sum of ₹8,000/-, it was directed to disburse ₹7,000/- to the complainant as compensation and the balance of that ₹1,000/- was to be remitted to the exchequer of the State. The trial Court also held that conviction of respondents no.2 to 5 for the offence under

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Section 325 IPC is not sustainable due to non-examination of radiologist.

Against that, the petitioner preferred appeal before the Additional Sessions Judge, Ferozepur, who dismissed the appeal and upheld the judgment of conviction and order of sentence passed by the trial Court. Hence, this criminal revision.

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

Learned counsel for the petitioner vehemently contended that there is concurrent findings of fact with regard to conviction of respondents no.2 to 5 for the commission of offences punishable under Sections 323 and 324 read with Section 34 IPC. The petitioner filed revision before the Additional Sessions Judge (IV), Ferozepur, impugning the order dated 05.01.2011 whereby evidence of prosecution was closed by the Court order. The said revision was still pending. The trial Court held that Section 325 IPC is not sustainable due to non-examination of radiologist. The trial Court decided the case in a haste manner without waiting for the decision of revision, therefore, case may be remanded to the trial Court for examination of concerned radiologist. Respondents no.2 to 5 caused injuries with sharp and deadly weapon to the petitioner, therefore, they are not entitled for the benefit of probation. In support of his contentions, learned counsel relied upon ***Mridul Saikia @ Babu vs. State of Assam*** 2002(3) CCR 125 and ***Palacharia Rama Rao vs. State of A.P.*** 2002 CrL. L.J. 4189.

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

Before proceeding further with the present revision, it would be apposite to reproduce relevant provisions. Section 360 (1) of Cr.P.C. 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

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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 Cr.P.C. 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 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 more than 09 years. Keeping in view the fact that no bad antecedents of respondents no.2 to 5 have been brought on

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record by the petitioner in order to dub them as habitual offenders, both the Courts below have rightly released respondents no.2 to 5 on probation on furnishing their personal bonds in the sum of ₹10,000/- each with one surety in the like amount for the period of one year. Moreover, the probation period has 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 respondents no.2 to 5 behind bars, at this stage. The remittance of matter will cause harassment to respondents no.2 to 5, who have been released on probation and probation period has been expired. The case law cited by learned counsel for the petitioner are found distinguishable to the facts and circumstances of the present case, as in the present case, both the courts below have acquitted respondents no.2 to 5 under Section 325 IPC.

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

Dismissed.

05.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE