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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2677-2015 [O&M]

Date of Decision : October 9th, 2015

Kulvir Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr.A.P.S.Rehan, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

This is complainant's revision petition against the judgment dated 3.4.2015 passed in appeal by learned Additional Sessions Judge, Hoshiarpur whereby appeal against judgment of conviction and order of sentence dated 5.3.2015 passed by Sub Divisional Judicial Magistrate, Mukerian was accepted partly and the accused – respondents No. 2 to 9 herein have been ordered to be released on probation.

2. Relevant facts of the case, that on 15.03.2009, police received a medical ruqa from Civil Hospital, Mukerian but as per opinion given by the doctor concerned, the petitioner – injured was unfit to make the statement and thereafter, the Investigating Officer recorded the statement of injured on 17.3.2009. As per the statement of Kulvir Singh, injured, petitioner herein, on 15.3.2009, he was going towards his fields from his home. At

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about 3.30 PM, when he reached the house of Chaman Singh, Sukhdev Singh and Shakuntla Devi were standing outside the gate of Sukhdev Singh and exhorted that since Kulvir Singh is alone, he be taught a lesson for illegally encroaching their land. At that time, Rajesh Kumar son of Sukhdev Singh armed with baseball slugger, Vijay Kumar son of Hoshiarpur Singh, armed with bat, Jatinder Kumar son of Hoshiar Singh armed with stick, Varinder alias Bindu son of Sukhdev armed with Cudgel, Sudesh Kumar son of Mala Ram armed with Cudgel, Sarwan Kumar son of Sudesh Kumar were running after him while hurling filthy abuses. Rajesh Kumar alias Sodu wielded a blow with baseball slugger which hit front portion of his head. Vijay Kumar gave a blow with his bat which hit his left elbow when he raised his left arm in order to save himself. Jatinder Kumar wielded a stick blow thereby hitting backside of his left hand. Varinder Singh gave another Cudgel blow hitting his right thigh. Thereafter, all the accused persons started thrashing him. The injured raised alarm which attracted his brother Randhir Singh, Kuldip Singh and his wife Malkiat Kaur at the spot. Thereafter accused persons fled away from the spot. The basis of dispute was land belonging to Godi Dharamshala which Sukhdev Singh used to cultivate on lease basis and an year prior to the occurrence, Randhir Singh started cultivating the land.

3. Police started the investigation. Learned trial Judge completed the trial, including framing of charge against the accused, recording of evidence and examining the accused under Section 313 Cr.P.C., and after considering the prosecution evidence and defence evidence held the accused guilty and convicted and sentenced them

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on 5.3.2015 as under :-

Name of the accused	Under Section	Sentence
Vijay Kumar	325 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323/149 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Jatinder Kumar	325 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323/149 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Rajesh Kumar	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Varinder Kumar	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.

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Name of the accused	Under Section	Sentence
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Sarwan Kumar	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Sudesh Kumar	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.
Sukhdev Singh	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.

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Name of the accused	Under Section	Sentence
Shakuntala Devi	325/149 IPC	Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	323 IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, further undergo Rigorous Imprisonment for 15 days.
	341/149 IPC	Rigorous Imprisonment for one month.

4. Respondents No. 2 to 9 preferred appeal before the Court of Sessions and learned Additional Sessions Judge, Hoshiarpur vide judgment dated 3.4.2015 ordered the accused persons to be released on probation as per provisions of Section 4 of the Probation of Offenders Act, 1958 being first offenders.

5. Revisionist – injured is aggrieved of passing of said order dated 3.4.2015 passed by learned Additional Sessions Judge, Hoshiarpur and has preferred this revision petition.

6. Learned counsel for the revisionist-injured mainly submitted that learned Magistrate had rightly held the respondents-accused guilty and convicted and sentenced them, but learned Additional Sessions Judge modified the order of sentence and ordered to release them on probation in a hurried manner and without even giving effective opportunity to the Public Prosecutor and complainant. Mere presence of State counsel on 3.4.2015, after acceptance of notice, was not an effective hearing. Respondents-accused had committed heinous crime and they were not deserving to be released on probation. So, the revision petition be accepted and the

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judgment dated 3.4.2015 of learned Additional Sessions Judge, Hoshiarpur be set-aside.

7. Having considered the submissions made by learned counsel for the revisionist and the fact that respondents-accused were held guilty for commission of offence under Sections 323, 325 and 341/149 IPC and they were ordered to undergo Rigorous Imprisonment for one year, three years, and one month with default stipulation, learned Additional Sessions Judge while maintaining the judgment of conviction, modified the order of sentence holding that the accused-respondents be released on probation. As regards plea taken by learned counsel for the revisionist that State counsel as well as the complainant were not given adequate opportunity, it is evident from the judgment dated 3.4.2015 that learned Additional Sessions Judge has passed the order under challenge after hearing both the sides and after considering the matter in its entirety. The only point which probably weighed in the mind of learned first Appellate Court is that the accused-respondents were not touching the merits of the case and rather, a prayer for modification of the order of sentence was only made.

8. As regards to the order passed by learned first Appellate Court, thereby releasing the respondents on probation rather than directing them to undergo imprisonment as ordered by learned Magistrate, the first Appellate Court was conscious of the fact that the accused-respondents were not previous convicts and an opportunity should be given to reform themselves instead of sending them to jail for such like offence. Moreso, no injury was found on the vital part of the injured person. Learned first Appellate Court also took into consideration the fact that no reasons were

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recorded by the Court below for not allowing the benefit of probation to accused persons. The first Appellate Court rightly placed reliance upon the judgment of this Court in **Rajbir Vs. State of Haryana 2011(2) RCR [CrI.] 379 [P&H]** wherein, accused were convicted for commission of offence punishable under Sections 323 and 325 IPC and were ordered to undergo Rigorous Imprisonment for 2 years, but they were ordered to be released on probation mainly on the ground that no purpose would be served by sending such offender in the company of hardcore criminals, rather opportunity to reform is to be given by releasing him on probation.

9. In view of the above, there is absolutely no illegally calling for interference in the well reasoned judgment dated 3.4.2015 of learned Additional Sessions Judge, Hoshiarpur in the revisional jurisdiction by this Court. The Revision Petition lacks merits and is dismissed *in limine*.

(SHEKHER DHAWAN)
JUDGE

October 9th, 2015
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