

CRR-2997-2014

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

CRR-2997-2014 (O & M)

Date of Decision: 20.03.2015

Jasman 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. Saurabh Arora, Advocate,
for the petitioner.

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 19.05.2014 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur whereby accused-respondents no.2 to 5 have been released on probation and order of sentence passed by the trial Court has been modified to this extent.

In brief, the facts relevant for disposal of instant revision are to the effect that complainant-Jasman Singh got recorded his statement to the police. In his statement, complainant alleged that he had purchased 4 kanals 6 marlas land from Joginder Singh, however, he had

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not taken the possession. In the joint land, he and Ram Pal entered into agreement of land measuring 64 kanals 12 marlas of land on 31.12.2009 with Kuldeep, Sukhjeet Singh, Sukhdev Singh sons of Jaswant Singh, Amarjit Kaur, Kuldeep Kaur and Jasbir Kaur for consideration amount of ₹ 27 lacs. The total price of ₹ 27 lacs was fixed and he was not in possession. On 10.05.2011, he and his brother Kewal Singh had gone to cultivate the land with his tractor. Then at about 5.00 p.m, his brother was ploughing the fields with his tractor and he was standing on the embankment (Watt). In the meantime, Sukhjeet Singh armed with *gandasi*, Major Singh armed with *gandasi*, Kaka Mund armed with stick, younger son of Ram Singh, Ex-Sarpanch came to him and Major Singh raised *lalkara* to teach them a lesson for entering in the fields. Then, Sukhjeet Singh gave blow of *gandasi* which hit on the right side of his head, Kaka Mund gave stick blow which hit on the right side of his head, Kaka Mund gave stick blow which hit on the right side of his back, then Major Singh gave *gandasi* blow which hit reversely on the right thumb. Then he fell down on the ground. Sukhjeet Singh again gave *gandasi* blow which reversely hit below the right knee and younger son of Ram Singh gave kick blows. The complainant raised hue and cry upon which attracted his brother Kewal Singh, Joginder Singh, Kulwinder Singh and Mohinder Singh, who rescued him from the clutches of the accused. Thereafter, the accused fled away from the spot with their respective weapons. The complainant got admitted in the Civil Hospital, Hajipur. On the basis of his statement, FIR No.18 dated 21.05.2011 was

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registered. Investigation was set into motion. The accused were arrested. After completion of investigation, challan against the accused was presented before the Court.

In support of its case, the prosecution examined complainant-Jasman Singh as PW 1, Kewal Singh as PW 2, Joginder Singh as PW 3, Dr. Sukhdev Singh as PW 4, ASI Bhupinder Singh as PW 5, ASI Major Singh as PW 6 and Gurdev Singh as PW 7. 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. However, the accused did not lead any evidence in their defence.

The trial Court, vide judgment of conviction and order of sentence dated 12.11.2013, convicted all the accused under Sections 323 and 324 read with Section 34 of IPC and sentenced them, respectively, to undergo as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Sentence</i>
1	Section 323 read with Section 34 of IPC	Rigorous imprisonment for a period of six months each.
2	Section 324 read with Section 34 of IPC	Rigorous imprisonment for a period of one year and fine of ₹ 2,000/-, in default of payment of fine to further undergo rigorous imprisonment for seven days each.

Against that, respondents no.2 to 5 preferred appeal before Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, who

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upheld the judgment of conviction, however, reversed the order of sentence and released accused-respondents no.2 to 5 on probation. 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 blunt as well as sharp edged weapons. The injuries inflicted on the person of the complainant are supported with the medical evidence. Learned counsel further contended that the accused had caused injuries to complainant with *gandasi* and *danda*, therefore, they 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 Court, respondents no.2 to 5 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.

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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 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 04 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 with one surety in the like amount for the period of one year. Moreover, the probation period is likely to be expired and nothing adverse against respondents no.2 to 5 during the said period has been

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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.

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

Dismissed.

20.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE