

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

**Criminal Revision No.2998 of 2015
Date of Decision:-11.9.2015**

Sukhvir Singh @ Sukha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Gaurav Mohunta, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG Punjab.

Mr. Avtar Singh Khaira, Advocate
for the complainant.

HARI PAL VERMA J.(Oral)

Petitioner Sukhbir Singh @ Sukha son of Ajit Singh, resident of Dherian, Police Station Nakodar, District Jalandhar has filed the present revision petition challenging the judgment dated 3.8.2015 passed by the Additional Sessions Judge, Jalandhar, whereby the appeal against the judgment of conviction and order of sentence dated 7.8.2014 passed by learned Judicial Magistrate 1st Class, Jalandhar has been dismissed. Vide judgment dated 7.8.2014 petitioner was convicted for the offence under Sections 323 and 325 read with Section 34 IPC and vide separate

order on the question of sentence, the petitioner was sentenced as under :-

<i>U/Sec</i>	<i>Conviction</i>
323/34 IPC	One year Rigorous Imprisonment with fine of Rs.1000/-. In default of payment of fine to undergo simple imprisonment for seven days.
325 IPC	Two years Rigorous Imprisonment with fine of Rs.5000/-. In default of payment of fine to undergo simple imprisonment for seven days.

Against the judgment dated 7.8.2014, the petitioner has preferred an appeal before the learned Additional Sessions Judge, Jalandhar and the learned Appellate Court had modified the judgment passed by learned Magistrate dated 7.8.2014 and reduced the sentence for offence under Section 323 IPC. The petitioner was ordered to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- for an offence under Section 323 IPC, whereas sentence qua remaining offence under Section 323/34 is reduced and the petitioner was ordered to undergo rigorous imprisonment for six months for offence under Section 323/34 IPC and to pay fine of Rs.1000/-. However, both the sentences were ordered to run concurrently.

Briefly stated that the facts narrated in the case are that on the basis of complaint of Jaswinder Singh dated 24.11.2007, FIR No.360 dated 28.11.2007 under Sections 325 and 323 read with Section 34 IPC, Police Station Nakodar was registered against the petitioner. As per the complainant, he is permanent resident of Australia and is having a house and other land in Village Dherian. However, on 17.11.2007 he came to his village from Australia. He hired a JCB machine in order to level his land on 22.11.2007. The land of Mohan Singh of Village Dherian adjoin

the land of the petitioner and has a common butt. The adjoining land belong to Mohan Singh and Sohan Singh sons of Joginder Singh of Village Syaliwal. On 23.11.2007 at 9.15 AM, the JCB machine was stopped by Sukhdev Singh son of Ajit Singh on the ground that the butt of the land, in which JCB machine is operating, is wrong. Sital Singh, Sarpanch called the complainant by telephonic call asking him to come to the land because Sukhdev Singh son of Ajit Singh etc. were raising objections that the butt is wrong. At that time, Sital Singh, Sarpanch, Ajit Singh son of Milkha Singh, Sukhdev Singh son of Milkha Singh and another person were on the spot. The complainant took his car and reached to the spot and after some time Sital Singh Sarpanch, Kala Panch, Ajit Singh son of Milkha Singh, Sukhdev Singh son of Milkha Singh and three other persons also reached at the spot. After reaching at the spot, Ajit Singh started abusing the complainant stating that he had received telephonic call of Sohan Singh from England asking to stop the work. Upon this, the complainant asked that the owner can come and get the demarcation done and if any land is found to be in his possession, he will leave the excess land. The complainant asked Ajit Singh as to whether he is having any power of attorney. Then Ajit Singh pushed the complainant. Upon this, the complainant fell down and thereafter Ajit Singh and his son Sukhdev Singh gave blows on the left shoulder, left knee and left elbow of the complainant. Sukhdev Singh gave kick blows on the knee of the complainant. Ajit Singh gave blows on the left eye of the complainant and also gave kick blows on the back of the complainant. Sukhdev Singh caught hold the neck of the complainant and began to push and pull him. The complainant raised hue and cry. On

hearing the same Sital Singh, Sarpanch and Kala Panch rescued him.

The trial Court vide judgment dated 7.8.2014 has convicted the petitioner along with other co-accused Ajit Singh. Against the conviction and sentence dated 7.8.2014, the petitioner had filed an appeal before the learned Additional Sessions Judge, Jalandhar and the same was dismissed with modification of sentence as mentioned above.

Learned counsel for the petitioner has argued that the Courts below have committed legal error in maintaining the conviction of the petitioner despite the fact that it has disbelieved the entire prosecution story and more particularly when the petitioner was acquitted for offence under Section 325 IPC. Courts have to appreciate the mode and manner in which the prosecution witnesses had deposed. The learned Court below has failed to appreciate the discrepancies in the version of the prosecution witnesses. Initially the FIR was registered under Section 307 IPC on the ground that the accused had tried to kill the complainant by throttling his neck, but the petitioner was not charged for that offence, as no evidence to connect the petitioner to the said offence was attracted. Moreover, no such injury was found or depicted in the MLR of the complainant (Ex.PA). He has further submitted that only motive to falsely implicate the petitioner in the present case is with regard to existence of butt in their fields. The said disputes in the villages in this part of the country is considered to be a self-esteem disputes. The investigating officer had visited the spot alongwith the Sarpanch on 28.11.2007, but no statement of the Sarpanch was recorded by him. No independent witness was present at the spot and had been recorded.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submits that since the petitioner has not been convicted for offence under Section 325 IPC and the learned Additional Sessions Judge, Jalandhar vide his judgment dated 3.8.2015 had convicted the petitioner for offence under Section 323 IPC for infliction of injury No.1 and in addition to liability under Section 323/34 IPC for infliction of remaining injuries No.2 to 5. In this manner the learned Appellate Court had modified the sentence and has acquitted the petitioner for offence under Section 325 IPC.

Learned counsel for the petitioner on the strength of ***Sita Ram Paswan and another vs. State of Bihar 2005(4) RCR (Criminal) 138*** contends that one of the accused has been released on probation on the ground that incident occurred at spur of moment and he gave *danda* blow on the victim, but the benefit of probation was refused to second accused as he inflicted injuries with sword. He further submits that the Court should extend the benefit having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The Court must take a realistic view of the gravity of the offence as well as the impact of the offence on the victim. He further submits that the petitioner deserves to be released on probation. He referred to para 8 and 9 of the said judgment i.e. **Sita Ram Paswan's** case (supra) as under :-

“8. Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of

Offenders Act, 1958 reads thus :-

*'Section 4. - Power of Court to release certain offenders on probation of good conduct -(1)
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.'*

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall

circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.

9. The fact as emerged in this case. It is apparent that the incident occurred at the spur of the moment and is traverse in nature. There is no material on record to indicate that the appellants have any previous conviction. In the absence of such evidence, we treat appellants as first offenders. A-1, namely, Sitaram Paswan has made the assault using Danda and the fists and caused simple injuries to Krishna Devi, Paltoo Paswan and Vijay Kumar, PW-2, PW-5 and PW-4 respectively. He has been convicted with the aid of Section 34, under Section 324 IPC and under Section 323 Indian Penal Code whereas the case of A-2 Raj Kumar is different. He has caused injuries to Paltoo Paswan and Vijay Kumar using the sword. Injury found on Paltoo Paswan is sharp cuts on left side of the head and on Vijay Kumar, cut injury on the left side of the head.”

Learned counsel for the petitioner has submitted that as against the awarded sentence of six months, he is in custody since 3.8.2015 and in this manner he is in custody for the last 1-½ months. The

FIR was registered on 28.11.2007 and petitioner is suffering the agony of trial for the last about eight years. No grievous injuries have been found on the vital parts of the body of the complainant. The petitioner is not previously convicted accused. He further submits that no such specific reason was recorded for not allowing the benefit of probation. He refers to ***Ram Chander vs. State of Haryana 2011(1) RCR (Criminal) 829*** wherein this Court has allowed the probation while observing as under :-

“5. The petitioner has stood protracted trial for a period of more than 10 years. At present he is a man of advance age having a family to support. Keeping in view these mitigating circumstances, I think it proper and expedient to release him on probation in stead of sentencing him to any punishment. Accordingly, the sentence to imposed upon him is set aside and he is ordered to be released on probation on his executing personal bonds in the sum of Rs.5000/- with a surety in the like amount for a period of three years to appear and receive the sentence as and when called upon to do so during that period and to keep peace and be of good behaviour in the meanwhile. For the injuries caused to the complainant, the petitioner is liable to compensate him suitably. He is directed to pay compensation of Rs.15,000/- to Amrit Singh, complainant, under Section 357 of the Code. The bonds, to be furnished, and the compensation to be deposited before the trial Court within one month from the date of this order.

Revision petition is disposed of accordingly.”

There appears to be some substance in the submission of learned counsel for the petitioner. The petitioner being a first offender, could be ordered to be released on probation in the present case in

accordance with the provision of Probation of Offenders Act, 1958. The submission made by learned counsel for the petitioner, which have been noted herein above appears to be genuine.

In view of peculiar facts and circumstances of the case and taking into consideration the ratio of judgment of Hon'ble Supreme Court in the case of **Sita Ram Paswan's** (supra) and in the case of **Hansa Singh vs. State of Punjab (1976) 4 SCC 255** this Court is of the opinion that the petitioner Sukhvir Singh @ Sukha can be released on probation.

Accordingly while taking into account the facts and circumstances of the case, the impugned order of sentence so imposed upon the petitioner is modified to the extent that the petitioner is ordered to be released on probation. However, it shall be on execution of personal bonds to the satisfaction of the trial Court with a surety in the like amount for a period of one year to appear and receive the sentence as and when called upon to do so. During that period shall maintain peace and be of good behaviour. In the meanwhile, he shall not commit any other offence during probation.

The present revision petition is partly allowed, however, subject to payment of Rs.10,000/-, which shall be deposited with the Punjab State Legal Services Authority, Chandigarh.

September 11, 2015
Vijay Asija

(**HARI PAL VERMA**)
JUDGE