

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.3304 of 2014
Date of Decision : 11.9.2015

Jagdish Chand

.....Petitioner

Vs.

Raju Ram and others

.....Respondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Aayush Gupta, Advocate for the petitioner.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned judgement dated 7.7.2014 passed by the learned Sessions Judge, whereby appeal of the respondents-convicts against the judgement of conviction was dismissed, while granting them the benefit of probation, complainant has approached this court by way of instant criminal revision petition.

Brief facts of the case, as noticed by the learned Sessions Judge in para 3 of the impugned judgement, are that as per prosecution version on 18.8.2009, on receipt of medical ruqqa alongwith MLR of injured Jagdish son of Kirpa Ram, Jhinwar, resident of village Guhla from Community Health Centre, Guhla through Ward Servant, in which there was reference of his referal to General Hospital, Kaithal, ESI Mange Ram alongwith other police

officials reached General Hospital Kaithal and moved an application seeking opinion of the doctor regarding fitness of injured to make statement, on which the injured was declared unfit to make statement. There was no eye witness near the injured so ESI returned to the Police Station on that day. Then on 19.8.2009 ESI Mange Ram along with other police officials, again reached General Hospital, Kaithal and after obtaining opinion of the doctor regarding fitness of injured to make statement, he recorded statement of injured Jagdish (Ex.PW3/C), in which he disclosed that he is a milk vendor. On 17.8.2009 Misro Devi wife of Dev Raj was bathing her buffaloes in the street for which his mother Chameli objected. On that Misro Devi abused her mother. On 18.8.2009 at about 5 AM, when he was cleaning the drums of milk on the water tap, Raju came out of his house and caught him from his neck. However, he rescued himself from Raju. In the meantime, Lovely son of Kirpa Ram armed with a 'Barchhi' came there and gave its blow on the right side of his stomach. Then Dashmesh alias Meshu armed with a 'gandasi' came there and gave its blow from reverse side on the left side of his head. He raised noise of 'Mar Dia Mar Dia'. On hearing the noise his brother Nikka Ram and mother Chameli Devi came out of the house and rescued him from the accused. He further alleged that Sanju armed with a sword came in the street but he did not cause any injury to him. Thereafter, the accused alongwith their respective weapons went to their house and started pelting brick bats upon him which hit on his right thigh, left arm, left knee and right arm. Thereafter, many people gathered at the spot. His brother Nikka Ram and mother Chameli Devi shifted him to CHC Guhla, where he was medico legally examined and thereafter, he was referred to General Hospital, Kaithal and he was got admitted there. On these allegations, a legal action was prayed for against the accused.

After conclusion of the investigation, challan was presented by the investigating agency. Copy of the challan alongwith documents attached therewith was supplied by the learned trial court to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the accused, they were charge sheeted for the commission of offences punishable under Sections 325,323/34 IPC. Accused pleaded not guilty and claimed trial.

With a view to substantiate its allegations, prosecution examined as many as 7 PWs, besides producing on record the other relevant documentary evidence. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. However, they did not lead any defence evidence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the prosecution has brought home the guilt against the accused by proving its case beyond reasonable shadow of doubt. Accordingly, conviction of the accused-respondents was recorded, vide judgement of conviction dated 9.7.2013. Thereafter, vide order of sentence dated 11.7.2013, the accused were sentenced as under :-

“ Under Section 323/34 IPC	To undergo rigorous imprisonment for a period of three months and to pay fine of Rs.500/- each and in default of payment of fine to
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further undergo simple imprisonment for a period of fifteen days each.

Under Section 325/34 IPC

To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000 each and in default of payment of fine to further undergo simple imprisonment for a period of one month each.

However, both the sentence were ordered to run concurrently. Amount of fine was deposited. It is pertinent to note here that accused Sanju was acquitted by the learned trial court.

All the three convicts-respondents no.1 to 3 filed their appeal against the above said judgement of conviction and order of sentence. The learned Sessions Judge affirmed the conviction of the respondents-convicts. However, after hearing learned counsel for the convicts on sentence, learned Sessions Judge found them entitled for the benefit of the probation under Probation of Offenders Act, 1958 (the 'Act of 1958' for short), vide impugned judgment dated 7.7.2014. Hence, this revision petition, at the instance of the complainant.

Learned counsel for the petitioners, while referring to the medical evidence, injuries suffered and the order of sentence, submits that the respondents-convicts were not entitled for the benefit of the provisions of the

Act of 1958. He further submits that since the learned Sessions Judge has failed to appreciate the offences committed by the respondents-convicts, the impugned judgement to the extent of granting benefit of probation to the respondents-convicts, is illegal and the same is liable to be set aside. He prays for setting aside the impugned judgement to the limited extent indicated above, qua granting of benefit of probation to the respondents, by allowing the present petition.

Having heard learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the present case, noticed herein above, instant one has not been found to be a fit case, warranting interference at the hands of this court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the relevant part of the impugned judgement passed by the learned Sessions Judge, Kaithal, would show that each and every relevant aspect of the matter has been considered and appreciated in the correct perspective, before arriving at a judicious conclusion. The cogent reasons given by the learned Sessions Judge for granting the benefit of probation to respondents no.1 to 3 have not been found to be suffering from any patent illegality. Having said that, this court feels no hesitation to conclude that the learned first appellate court committed no error of law, while passing the impugned judgement and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned Sessions Judge recorded well convincing and cogent findings taking into consideration all the

relevant factors for the purpose of granting the benefit of probation to the respondents. In this regard, the observations made by the learned Sessions Judge in para 29 to 31 of the impugned judgement, which deserves to be noticed here, read as under :-

“ Learned counsel for the appellants stated that the appellants-accused have roots in the society. Convict-accused Dashmesh alias Mesha is aged about 30 years; Lovely is aged about 32 years and Raju is aged about 43 years. They are living with their respective families and their antecedents are clean. They are not previous convicts and sole bread winners of the families, which are large in number. The occurrence is dated 18.8.2009. The appellants have not misused the concession of bail during pendency of the trial as well as appeal. They have undergone mental stress and agony about all these years. In these circumstances they should be given an opportunity to mend themselves.

The sentencing includes in itself policy of deterrence and reformation. The policy of reformation provides that an offender be given an opportunity to mend his criminal tendency by adopting himself in the society by exercising restrained upon him and by undergoing the process of reformation. The provisions under Section 4 of the Probation of Offenders Act, 1958 speaks on putting an offender on the path of reformation. In the authority titled as Banwari Lal Vs. State of Punjab 1981 CLR 136 our own Hon'ble High

Court allowed the benefit of probation and laid down the guidelines for releasing an accused-conviction on probation. It was held that the object of punishment is not only retributive but also reformative and so, the court decided to withhold the benefit of Section 360 Cr.P.C., to an offender is bound to record its special reasons. If the court finds that the convicts are incorrigible and cannot be reformed then the only then the benefit of Section 360 Cr.P.C., can be withheld. The Hon'ble High Court further observed that the benefit of probation should not be withheld unless it is found that the convicts cannot be reformed. In *Bishnu Deo Shaw Vs. State of West Bengal*, 1979 CAR (SC) 385 the Hon'ble Supreme Court held that special reasons mentioned in Section 361 Cr.P.C., mean to compel the court to hold that it is impossible to reform and rehabilitate the offenders with regard to their age, character, antecedents and circumstances of the case.

There is no such evidence on record from where it can be considered and infer that appellants are incorrigible and cannot be reformed. Having considered the fact and circumstances of the case, age and antecedents of convicts, nature of offence; that the fracture injury was not on vital part of injured and that the occurrence is five years old, this court is of the view that the ends of justice would be amply met, if leniency in the matter of sentence is taken for the accused. Accordingly, taking the same and invoking the

provisions of Section 4 of the Probation of Offenders Act, 1958, they are released on probation of good conduct. Accordingly, the plea of convicts-accused for releasing them on probation is allowed. Instead of immediate imprisonment, they are ordered to be released on probation of good conduct for a period of six months on furnishing probation bonds in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of this court on the condition that each of the appellant shall deposit a sum of Rs.2,000/- as compensation to be paid to injured Jagdish. In addition to this, out of the amount of Rs.4500/- deposited by the appellants-accused before the learned trial court as fine, a sum of Rs.500/- shall be converted towards costs of proceedings and the remaining amount of Rs.4000/- is converted as compensation and shall also be paid to the injured as compensation. Accordingly, in whole the injured Jagdish (PW4) shall be entitled to compensation of Rs.10,000/-. After the expiry of period of appeal/revision or its decision as the case may be. In case the appellants-accused fail to deposit the amount of compensation, the appeal shall stand dismissed. However, in the meantime, the appellants-accused are directed to keep peace and be of good behaviour and to receive sentence as and when required.”

A bare glance at the above said findings recorded by the learned Sessions Judge would leave no room for doubt that the learned Sessions Judge proceeded on a factually correct and legally justified approach, while granting

the benefit of probation to respondents no.1 to 3. Further, during the course of arguments, learned counsel for the petitioners could not point out any factual error, patent illegality or jurisdictional error in the impugned judgement passed by the learned Sessions Judge, so as to enable this court to take a different view than the one taken by the learned courts below. In this view of the matter, it can be safely concluded that the learned Sessions Judge has not exceeded its jurisdiction, while passing the impugned judgement and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present criminal revision petition has been found to be misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

11.9.2015
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(RAMESHWAR SINGH MALIK)
JUDGE