

CRR-979-2014

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

CRR-979-2014 (O & M)

Date of Decision: 27.03.2015

Rajiv Kumar

... Appellant (s)

Versus

State of Haryana and another

... 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. B.K.Bagri, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A. G. Haryana.

Dr. Deepa Singh, Advocate,
for respondent no.2.

Paramjeet Singh, J.

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Allowed, as prayed for, subject to all just exceptions.

Annexures P-2 and P-3 are taken on record.

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Challenge in the present criminal revision is to the judgment dated 11.12.2013 passed by learned Sessions Judge, Rewari whereby respondent no.2-Manish has been released on probation and order on sentence passed by the trial Court has been set aside to this extent.

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In brief, the facts relevant for disposal of instant revision are to the effect that on 14.02.2009, a tempo ran over a dog. The dead body of the dog was lying in front of the house of complainant-Rajiv Kumar. At about 10:00 a.m, he picked up and threw the dead body in the open ground of the school. Manish Sharma, Titu, Tannu and Manish's father started abusing him stating as to why the dead body had been thrown there. When the complainant stated that he had put the dead body in the open space, Manish Sharma gave a fist blow on his face. This was followed by a fist blow on his face by Tannu. Manish brought a hockey stick and struck on his back. Titu and Manish's father gave him kick blows. He raised alarm which attracted several persons from the neighbourhood. They rescued him. His elder brother Hemant Kumar took him to General Hospital, Rewari from where an information was given to the police. The statement of complainant was recorded. After receipt of the radio-logical examination, formal FIR was registered. Investigation was set into motion. The accused were arrested. After completion of investigation, challan against the accused was presented before the Court.

On finding a prima facie case, charges under Sections 323 and 325 read with Section 34 of the Indian Penal Code were framed by the trial Court, to which the accused pleaded “not guilty” and claimed trial.

In support of its case, the prosecution examined complainant-Rajiv Kumar as PW 1, Dr. J.K.Saini as PW 2, SI Dhanpat

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Singh as PW 3, Hemant Kumar as PW 4, Chander Kanta as PW 5, EHC Virender Singh as PW 6, Ramphool, the then Sub Inspector as PW 7 and Dr. Anil Yadav, Dental Surgeon as PW 8.

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 dated 21.04.2012, convicted accused-Manish and Prag for the commission of offences punishable under Sections 323 and 325 read with Section 34 of the Indian Penal Code and vide order dated 23.04.2012, accused-Prag has been released on probation and accused-Manish has been sentenced as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Sentence</i>
1	Section 323 IPC	Simple imprisonment for three months and fine of ₹ 250/-, in default of payment of fine to undergo simple imprisonment for five days.
2	Section 325 IPC	Simple imprisonment for a period of two years and fine of ₹ 3,000/-, in default of payment of fine to further undergo simple imprisonment for a period of three months.

Against that, respondent no.2-Manish preferred appeal before learned Sessions Judge, Rewari, who upheld the judgment of conviction, however, set aside the order on sentence and released respondent no.2-Manish on probation and respondent no.2 has been directed to pay compensation of ₹ 10,000/- to the complainant-injured. Hence, this revision.

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

Learned counsel for the petitioner vehemently contended that the trial Court has rightly convicted respondent no.2 and sentenced him accordingly for causing injuries. The injuries inflicted on the person of the complainant are supported with the medical evidence. Learned counsel further contended that respondent no.2-accused had caused injuries to complainant with hockey, therefore, he is not entitled for the benefit of probation.

Per contra, learned State counsel and learned counsel for respondent no.2 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned judgment.

I have considered the rival contentions of learned counsel for the parties.

It is pertinent to mention that since respondent no.2 has not filed any appeal against the impugned judgment, therefore, 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

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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.

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***

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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, respondent no.2 is not the previous convict and there is nothing on the file that he has indulged in anti-social activities. The dispute arose on a very petty issue and respondent no.2 has been suffering the agony of protracted trial for the six years. No bad antecedent of respondent no.2 has been brought on record by the petitioner in order to dub him as habitual offender. The lower Appellate Court has rightly released respondent no.2 on probation on furnishing his personal bonds in the sum of ₹ 10,000/- with one surety in the like amount for the period of one year and respondent no.2 has been directed to pay compensation of ₹ 10,000/- to the complainant-injured. Moreover, the probation period has already expired and nothing adverse against respondent no.2 during the said period has been brought to the notice of the Court. No useful purpose would be achieved by sending respondent no.2 behind bars, at this stage.

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

Dismissed.

27.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE