

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

CRR-165-2005

Date of decision:4.2.2016

Suraj Mal and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Ajay Ghangas, Advocate for the petitioners

Mr.Sandeep Vashisht, Deputy Advocate General,
Haryana

SNEH PRASHAR, J.

The present criminal revision petition has been filed by petitioners Suraj Mal and Rajbir @ Sukhbir assailing the judgment of conviction dated 9.12.1999 and order of sentence dated 10.12.1999 passed by learned Judicial Magistrate, 1st Class, Panipat vide which, they were convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.300/- each under Section 324 of the Indian Penal Code (for short 'IPC') and further sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.700/- each for commission of offence under Section 325 IPC and in default of payment of fine to further undergo simple imprisonment for a period of three months. Both the

sentences were ordered to run concurrently. The petitioners filed appeal against the said judgment of conviction and order of sentence, which was dismissed by learned Additional Sessions Judge, Panipat vide judgment dated 26.10.2004.

The brief facts of the case are that on 5.12.1987 after receipt of ruqa intimating admission of Dayanand in CHC Samalkha with injuries on his person, ASI Rajinder Singh alongwith his companion went to the hospital and after taking opinion of the doctor, recorded the statement of the injured-victim. He deposed that on 4.12.1987 at about 4.30 PM, he and his brother Jai Narain and nephew Shamsheer were ploughing the fields. When he went to switch on the tubewell, he found Suraj Mal and Rajbir were already standing there. He was to take Rs.100/- from them for watering the fields. When he demanded the money, Suraj Mal armed with 'Gandasi' and Rajbir armed with Lathi opened attack on him and inflicted injuries with their respective weapons. His cries attracted his brother Jai Narain and nephew Shamsheer and seeing them, the assailants fled away.

On the basis of the statement of victim- Dayanand, First Information Report No.210 dated 5.12.1987 was recorded and a case under Sections 324 and 325 read with Section 34 IPC was registered at Police Station Samalkha. The accused were arrested. On

completion of investigation, final report under Section 173 of the Code of Criminal Procedure was presented in the Court.

Both the accused were charge-sheeted under Section 324 and 325 read with Section 34 IPC to which, they pleaded not guilty and claimed trial.

To prove its allegations, prosecution examined as many as six witnesses. After closure of evidence of the prosecution, statements of the accused- petitioners under Section 313 Cr.P.C. were recorded. All the incriminating evidence put to them was denied and pleaded innocence. In defence, they examined four witnesses.

Analysing the evidence led by the parties and considering the submissions made by learned Assistant Public Prosecutor for the State and learned counsel representing the accused-petitioners, learned trial Court convicted and sentenced both the accused as noted above. Being aggrieved, the petitioners preferred an appeal, which was dismissed by learned Additional Sessions Judge, Panipat vide judgment dated 26.10.2004

Being still dissatisfied, the present criminal revision petition was filed.

The submissions made by learned counsel for the parties have been heard and record perused.

As the matter was opened for arguments, learned counsel for the petitioners submitted that he does not opt to challenge the judgment of conviction recorded against the petitioners by learned trial Court and affirmed by learned First Appellate Court. He confined his prayer to the extent that the petitioners, who are poor persons and have a large family to support, be given the benefit of probation under the Probation of Offenders Act, 1958. He also submitted that one of the petitioner namely Suraj Mal is handicapped. They are first offenders and have never misused the concession of bail granted to them during the pendency of the revision.

On perusal of the record it transpires that PW5 Dr.RK Aggarwal proved the injuries suffered by complainant Dayanand and his medico legal report Ex.PW5/A. PW3 Dr.OP Gogia, proved the X-ray report Ex.PW3/A and X-ray films Ex.P1 and Ex.P2 and testified that the complainant suffered fracture of mandible on right side. The statement deposition of injured Dayanand stands corroborated by eye witnesses Jai Narain and Shamsheer Singh. Who unequivocally stated that the petitioners inflicted the injuries on complainant. Thus, the prosecution case is well established on facts and the conviction of the petitioners recorded by learned trial Court and affirmed by learned First Appellate Court calls for no

intervention.

The record shows that a prayer for releasing the petitioners on probation was made before learned First Appellate Court, but the same was declined. As per the custody certificate dated 31.7.2010, petitioner Rajbir @ Sukhbir had undergone three months and 22 days, whereas petitioner Suraj Mal had undergone four months of actual imprisonment.

Considering the submissions made on behalf of the petitioners and the fact that the petitioners are having a family to look after and are facing the agony of the protracted trial since 1987, to my mind, the interest of justice would be best served, if they are given a chance to reform themselves. Thus, the sentence awarded to the petitioners is set aside and they are ordered to be released on probation on executing probation bonds in the sum of Rs.20,000/- with one surety in the like amount under Section 4(i) of Probation of Offenders Act, 1958 to the satisfaction of learned Chief Judicial Magistrate, Panipat with an undertaking to maintain peace and be of good behaviour and to appear in the Court to receive the sentence as and when called upon to do so during the period of one year. If they violate any condition of probation bonds, the present petition shall be deemed to be dismissed. The petitioners are further directed to deposit Rs.5000/- (Rs.2500/- each) as litigation expenses. The fine amount deposited by them is also converted into litigation expenses and the

said amount alongwith the litigation expenses imposed by this Court will be paid to injured Dayanand as compensation.

The revision petition stands disposed of accordingly.

4.2.2016
gsv

(SNEH PRASHAR)
JUDGE