

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

CRR No.1607 of 2008 (O&M)

Date of Decision : 21.07.2016

Rohtash and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Sandeep Jasuja, Advocate
for the petitioners.

Mr. Deepak Sabherwal, Addl. Advocate General, Haryana
for the respondent-State.

FATEH DEEP SINGH, J.

In this criminal revision, the petitioner/convicts-Rohtash, Devinder and Man Singh have challenged the dismissal of their appeals by learned Additional Sessions Judge, Rewari through judgment dated 21.07.2008 as well as their initial conviction by the Court of learned Judicial Magistrate, 1st Class, Rewari through judgment dated 30th July, 2004 in case bearing FIR No.82 dated 04.5.1998 under Sections 323, 325 read with Section 34 IPC registered with Police Station Kosli, whereby they are sentenced to undergo rigorous imprisonment for one year under Section 323/34 IPC and two years and a fine of Rs.500/- each under Section 325/34 IPC and in default of payment of fine to further undergo rigorous imprisonment for six months each.

It is by complaint Ex.PW-4/A, complainant-Mahabir alleged that on 19th April, 1998 around 10.00 p.m. he had gone to see video film at the chopal of the village and at that time someone had thrown a stone hitting on the back of one Devender and it is thereafter, a fight ensued, which was put to an end by the intervenors. It is subsequent thereto, complainant-Mahabir, his father-Surat Singh and brother-Dharambir were coming to their house after patching up the matter and on the way accused -Lachhu Ram intercepted them and gave Mussal blow on the left side of the head of Surat Singh whereas Devender gave a blow on the head of the complainant, Man Singh gave a blow of lathi on the right ear of Surat Singh while Lachhu gave blows of mussal on the left hand of Surat Singh and two consecutive blows on the back of the Surat Singh as well as on both the legs. This accused gave further blows on the right shoulder of the complainant. All the victims were also given fist blows and leg blows by the accused and in the process of this, Rohtash caught Dharambir and Devender gave lathi blow on his left hand and on raising alarm, the accused ran away leading to registration of the case.

Upon investigation, the challan was submitted. At the trial, the prosecution examined PW1-Dr. Chitranjan, PW2-HC Om Parkash, PW3-Surat Singh, PW4-Mahabir Singh, PW5-Dharambir, PW6-Surender and PW7-SI Bhojraj and thereafter, closed the prosecution evidence. The accused denied the offences but did not lead any evidence, thus, leading to passing of judgment of conviction. The accused/convicts challenged the judgment of conviction through two appeals which were disposed off

together.

Heard Mr. Sandeep Jasuja, Advocate for the petitioners and Mr. Deepak Sabherwal, Addl. Advocate General, Haryana for the respondent-State and perused the records of the case.

At the very outset learned counsel for the petitioners had made a humble submission that the petitioners have been convicted for commission of offences under Sections 323, 325 read with Section 34 IPC which are not of heinous nature and have sufficiently suffered on that by undergoing incarceration for almost 03 months each and that they are first offenders and there has been total failure of the two Courts below to comprehensively consider their case for the grant of probation in terms of Sections 360/361 of the Cr.P.C. Though, on behalf of the State there has been a strong resistance put up to this prayer of the petitioners' side on the grounds that it is a case of political factionalism in the village and will bolster the present petitioners and may lead to another episode.

Appreciating the submissions of the two sides as is there on the records PW1-Dr. Chitranjan, who examined the witnesses had clearly enumerated that the injured-Surat Singh, Mahabir and Dharambir though have received injuries but the injuries on the person of Surat Singh were simple by blunt weapon and the only injury which is grievous by blunt means is a fracture of left leg. The parties are co-villagers and it was a case of sudden fight over a trifling. The petitioners are first offenders and if sent to Jail would sow seeds of enmity and hatred and may lead to serious repercussions. Since, the petitioners have a clean previous record and if

they are sent behind the bars may come in contact with hardened criminals. The petitioners have already suffered a lot as they have already undergone sentence of almost 03 months each, the petitioners have family to support and sending them to jail would further bring about misery, pain and agony for the family and would have its own repercussions on the children. Thus, in the totality of the same and that the petitioners now are in their advanced age and three petitioners-Rohtash, Devinder and Man Singh are real brothers calls for showing compassion. The provisions of Section 360 Cr.P.C. have been specially enshrined as a tool of social justice to bring out change in the sentencing system so that persons who do not have any history or background of criminality and have been engulfed in a single instance are not made to go off the path of rectitude and that they are reformed so that they prove to be beneficial for the society. Counsel for the State could not show to this Court how there have been sufficient reasons in terms of Section 361 Cr.P.C. spelled out by the Courts below as to why they have denied such a concession of probation to the petitioners in such a situation, when these persons for almost 18 years have been facing prosecution in this episode, thus impels this Court to exercise its inherent powers to grant this concession of probation to the petitioners.

In the light of the same, the petitioners namely Rohtash, Devinder and Man Singh are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year each on their entering into a bond in the sum of Rs.20,000/- each with one surety each of the like amount to the satisfaction of the trial Court

undertaking therein that they shall keep peace and maintain good behavior and shall appear and receive sentence as and when called upon to do so during the said period.

In the light of the same, the revision petition stand disposed off accordingly.

July 21, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No