

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

CRR No.3038 of 2009

Date of decision: 14th July, 2016

Bakhtawar and others

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vishal Rattan Lamba, Advocate for
Mr. Daldeep Singh, Advocate
for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The revision petitioners Bakhtawar, Maha Singh, Rambir, Sombir, Sumer Singh, Hawa Singh and Desh Raj were tried initially in case bearing FIR No.121 dated 24.08.2009 under Sections 323/325/452/34 IPC by the Court of learned Sub Divisional Judicial Magistrate, Loharu, District Bhiwani and were held guilty for these offences and sentenced to undergo rigorous imprisonment for three months and to pay a fine of ₹100 each under Section 323 IPC read with Section 34 IPC, to undergo rigorous imprisonment for 2 ½ years and to pay a fine of ₹400 each under Section 325 IPC read with Section 34 IPC. They were further sentenced to undergo rigorous imprisonment for 2 ½ years and to pay a fine of ₹400 each under Section 452 IPC. In

default of payment of fine the petitioners were sentenced to undergo further imprisonment for one month.

Heard Mr. Vishal Rattan Lamba, Advocate on behalf of Mr.Daldeep Singh, Advocate representing the petitioners and Mr.Munish Sharma, Asstt. Advocate General, Haryana for the respondent/State and perused the records.

The prosecution story in brief is that after receipt of information on 24.08.2009 ASI Ravinder Kumar from Police Station Loharu reached General Hospital, Bhiwani and after seeking medical opinion recorded statement of Rajender Singh. In his statement, the complainant alleged that he was puffing *Hukka* in the *Baithak* of his house when Anil and Mahipal, his co-villagers, came canvassing for elections and in the meanwhile Bakhtawar, Rambir, Sombir, Maha Singh, Desh Raj, Sumer and Hawa Singh, co-villagers came armed with axe, lathi and iron pipes and started assaulting the complainant. It is alleged that Bakhtawar gave a blow of iron pipe on the right leg of the complainant and the remaining accused gave blows with their respective weapons, and on the intervention of Anil and Mahipal he was saved and thereafter admitted in the hospital.

Prosecution at the trial examined complainant/injured as PW1 who proved his statement to the police as Ex.PA. PW2 Dr.K.L. Bawa proved x-ray reports and his opinion through documents Ex.PW2/A and Ex.PW2/B. PW3 Dr. Sukhbir Singh proved the medico-

legal report of the injured and thereafter PW4 Investigating Officer SI/SHO Ravinder Kumar testified.

The accused denied the allegations in their stand and in defence examined DW1 Ghisha Ram, DW2 Partap Singh and DW3 Shish Ram leading to the judgment of conviction.

Mr. Vishal Rattan Lamba, Advocate representing the petitioners at the very onset of his submissions has argued that the petitioners have been convicted for commission of offences punishable under Sections 323/325/452/34 IPC and have already undergone trauma of protracted trial and proceedings through different courts and thus prayed that since the injuries are only on non-vital parts of the body, there is non-consideration in view of the settled provisions of law as to the denial of concession of probation, and has made compassionate appeal that the case of the petitioner be considered for grant of probation. Though on behalf of the State, the same is sought to be opposed.

Appreciating the submissions, there are seven accused who have been alleged to be armed with different weapons and a close look at the MLR shows that there is only a single injury by way of swelling on the right leg and the other two are a contusion and a bruise, and all these injuries apparently are caused by blunt means and thus, reflects that all the accused have not been instrumental in causing injuries. The parties to this case belong to the same village and apparently there is a

political rivalry which has led to this episode over canvassing for votes and more so appears to be in a fit of rage, spontaneous one.

The occurrence has taken place on 24.08.1999 and till date for almost 17 years the petitioners have been suffering ordeal of the investigations, prosecution and trial and the sword of Damocles remained hanging over their heads for so many years, besides the fact as has been canvassed that two of the petitioners were senior citizens at the time of occurrence and by now must be in their old age and rest of the petitioners must have too approached the dawn of their lives. Keeping in view this period for which they have undergone mental agony certainly to the mind of this Court would have sobered them down. They must be having families to maintain and they do not have any criminal history as has been conceded at the bar by learned State counsel. The provisions of Section 360 Cr.P.C. have been enacted for a purpose to keep such first offenders within the stream of civic life and if they are sent behind the bars would certainly bring them in contact with the hardened criminals and might bring about more ills to the society which would sow the seeds of enmity and hatred. Even otherwise, the courts below have failed to follow the mandate of Section 361 Cr.P.C. and which was a necessary pre-requisite to be followed by criminal courts in consonance with reformatory theory of criminal jurisprudence. Thus, it would not subserve any purpose to send the petitioners behind bars and to ameliorate their families it is essential to grant them this concession.

In the light of the same, the petitioners are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on their entering into a bond in the sum of ₹25,000 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 behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

The revision petition stands disposed off with these modifications. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

July 14, 2016

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Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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