

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

1. CRR No.707 of 2011 (O&M)

Om Parkash

.....Petitioner

Versus

State of Haryana

.....Respondent

2. CRR No.718 of 2011 (O&M)

Neki Ram and another

.....Petitioners

Versus

State of Haryana

.....Respondent

3. CRR No.847 of 2011 (O&M)

Raja Ram and others

.....Petitioners

Versus

State of Haryana

.....Respondent

Date of Decision : August 17th, 2016

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr.Arvind Rajotia, Advocate (in CRR No.707 of 2011),
Mr.Sunil Saharan, Advocate (in CRR No.718 of 2011)and
Mr.H.S. Sullar, Advocate (in CRR No.847 of 2011)
for the petitioners.

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

Mr. Sushil Kumar, Advocate
for the complainant.

FATEH DEEP SINGH, J.

All these three criminal revisions are an outcome of
common judgment dated 14th December, 2007 passed by the Court of

learned Judicial Magistrate 1st Class, Hisar in Criminal Case bearing FIR No.257, dated 7th June, 1997 under Sections 323, 324, 325, 326, 148, 149 IPC pertaining to Police Station Adampur whereby convicting all the accused for commission of offences punishable under Sections 323, 324, 148 read with 149 IPC, they were sentenced as under :-

Under Sections	Awarded Sentence of imprisonment	Fine	In Default
323/149 IPC	R.I. for 03 months	₹500/- each	S.I. for 15 days
324/149 IPC	R.I. for 01 year	₹2000/- each	S.I. for 02 months
148 IPC	R.I. for six months	₹2000/- each	S.I. for 02 months

The aforesaid judgment of conviction was further upheld through a common judgment dated 16th March, 2011 of the Court of learned Additional Sessions Judge, Hisar whereby three different criminal appeals by different convicts were disposed off together thereby upholding the findings of the learned trial Court and dismissing the appeals. Thus, in view of the consanguinity of facts and common law points involved and therefore to facilitate brevity and better understanding of the things, all these three matters which are interconnected are thus being disposed off together by this common judgment.

Heard Mr. Arvind Rajotia, Advocate (in CRR No.707 of 2011) Mr. Sunil Saharan, Advocate (in CRR No.718 of 2011), Mr. H.S. Sullar, Advocate (in CRR No.847 of 2011) for the petitioners, Mr. Munish Sharma, Asstt. Advocate General, Haryana for the respondent-State and Mr. Sushil Kumar, Advocate for the complainant and perused the entire records of the cases.

The brief allegations that deserve to be recapitulated and forms the prosecution story are that on 7th June, 1997 ASI Bansi Lal received medical *ruqa* from General Hospital regarding admission of injured Mohinder Singh, complainant with medico legal injuries. After necessary formalities and obtaining opinion of the doctor, the Investigating Officer recorded statement of the injured Ex.PA. The precise allegations were that when the complainant was irrigating his agricultural land by means of a watercourse which was running through the land of Rushpal regarding which there earlier existed a dispute between them and the Civil Court had given its verdict in favour of the complainant whereby the watercourse was dug up on 6th June, 1997 with the aid of the police. It was on this day around 12:16 am when it was the turn of the complainant party to irrigate their fields and they had gone, where Hanuman, Raja Ram, Ram Chander, Sarjeet, Rameesh son of Richhpal, Neki Ram and Dalip along with Om Parkash, all armed with gandasi, kulhadi, barchhi etc. reached with a view to desist the complainant side from diverting water to their fields. In the melee Hanuman gave several gandasi blows to Het Ram, accused Dalip and Neki caused injuries to Rajender with their respective weapons while accused Ram Chander, Sarjeet, Ramesh and Om Parkash caused injuries to Subhash with axes. On hearing rola, the complainant along with Dharampal and Krishan reached the spot and on their intervention the victims were saved from the clutches of the accused. Upon completion of investigations and submission of challan, the prosecution examined Ex.PW1 Mahender

Singh complainant, Ex.PW2 Subhash, Ex.PW3-Krishan, Ex.PW4-Het Ram, Ex.PW5- Dr. Daya Nand who medico legally examined the injured and proved the MLR of Het Ram Ex.PW5/A and its diagram Ex.PW5/A1, MLR of Dharampal Ex.PW5/B, MLR of Rajender Ex.PW5/C, MLR of Krishan Ex.PW5/D and MLR of Mahender Ex.PW5/E as well as MLR of Subhash Ex.PW5/F and lastly examined Ex.PW6-HC Ramphal and Ex.PW7-Inspector Ajeet Singh and closed the prosecution evidence. The accused denied the allegations but did not lead any evidence in defence and that is how the judgment of conviction was pronounced and the parties are before this Court upon dismissal of their respective appeals by the impugned judgment.

Learned counsel for the petitioners at the very onset have made a humble prayer that since the petitioners have already undergone trauma of prosecution and trial and thereafter conviction, since June, 1997 for a period of 19 years and as on date, are in their advanced age with infirm health and which has adverse impact on their respective families, leniency may be shown to them and have prayed for grant of probation.

Though, on behalf of the State, the same has been stoutly opposed on the grounds that the petitioners have taken the law in their hands and thus, were not entitled to any concession.

Appreciating the submissions of the two sides, it is well elicited that the revisionists have been convicted for commission of offences

under Sections 323, 324 and 148 IPC and all the revisionist/petitioners had undergone almost 2 ½ months each out of the awarded sentence a substantive incarceration as the maximum awarded sentence to them is of one year and have already paid the fine and the two Courts below have failed to consider this concession of probation in terms of Section 360, 361 Cr.P.C. which mandates the Courts to take into consideration this statutory provision which is enacted with a definite motive and purpose to bring back the offenders to the mainstream of life. As is admitted by the State, the petitioners are not previous convicts and they have no such criminal history and the fact that the complainant as well as the petitioners are neighbours and sending the petitioners behind the bars would further sow seeds of enmity, hatred and might lead to serious repercussion which would further jeopardise their future lives as well as those of their family members. The accused are sons and father related by blood and thus having regard to the very purpose of provisions of Section 360 Cr.P.C. which have never been put to use by the Courts below, keeping in view the long period of this litigation which had caused its own adverse impact on them, impels this Court to consider the case of the petitioners with compassion leniency and to ensure they would prove to be beneficial to the Society and in case they are sent behind the bars there are chances of mixing up with bad elements and may become hardened criminals and thus to keep on the track of rectitude the ends of justice demands that they be granted this concession of probation.

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 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 behaviour 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 above said three petitions stand disposed off in those terms thus modifying the impugned judgment.

August 17th, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No