

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

**Criminal Revision No.2760 of 2013 (O&M)
Date of Decision: 17.05.2016**

Raju @ Tilak Raj

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Maharaj Kumar, Advocate
for the petitioner.

Ms. Shaveta Sanghi, AAG, Haryana.

Mr. Nitin Goyal, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondents no.2 to 7.

HARI PAL VERMA, J.

The petitioner-complainant has filed the instant revision petition assailing the judgment dated 7.6.2013 passed by learned Additional Sessions Judge, Karnal, whereby respondent nos.2 to 7 have been ordered to be released on probation for a period of one year on their furnishing probation bonds in the sum

of Rs.20,000/- with one surety of the like amount to the satisfaction of the trial Court subject to the condition that they shall maintain peace and harmony and be of good behaviour for a period of one year. It has been further ordered that the fine deposited by them will be treated as costs of proceedings.

Briefly stated, the case of the prosecution is that on 31.10.2004, complainant Tilak Raj @ Raju got recorded his statement before the police to the effect that he was an agriculturist by profession. They were three brothers, he was the the eldest of them. They had some land situated near Yamuna Bandh which was adjacent to the land of one Kanwar son of Mange Ram. On 30.10.2004 at about 9.00 p.m., he had gone to his fields for ploughing the land with tractor. The younger brothers of Kanwar namely Preet, Dhir and Harnam were also present in their fields. They made a complaint to the complainant that he had damaged the embankment of their land. Said Harnam, Preet and Dhir then started hurling abuses and assaulted the complainant. On hearing his noise, his father Ami Chand reached the spot and rescued him from the clutches of the accused. His father also requested the accused that if they had any doubt about the measurement of their land, they could get their land demarcated. Thereafter, all the accused went away from the spot. However, on same day, at about 4-00 p.m., accused Kanwar armed with sword and accused Harnam, Dheer and Preet armed with *lathis* came at the spot and after raising *lalkara* started causing injuries to the

complainant. Accused Kanwar caused a sword blow from its reverse side on the fingers of his right hand. Accused Dheer gave a *lathi* blow on his waist, Bhateri, mother of accused and Suman, wife of the accused, gave *lathi* blows on his back side, which hit his shoulders, legs and right knees. His father Ami Chand and brother Balraj also reached the spot and the accused also caused injuries to them. Accused Kanwar gave a sword blow from its reverse side on the head of Balraj. Accused Dheer gave a *lathi* blow on the fingers of left hand of Balraj. Then accused Harnam, Preet and Suman also gave *lathi* blows on the fingers of left hand of Balraj. Accused Kanwar, Harnam and Dheer also caused injuries to the father of the complainant with their respective weapons. In the meantime, Lata, cousin of complainant who was coming with tea, started running back towards the village on seeing the accused persons, but accused Bhateri and Suman caused injuries to her with *lathis*. On hearing noise, several persons gathered at the spot. On seeing them, the accused fled away from the spot with their respective weapons.

The complainant, his father Ami Chand, brother Balraj and cousin Lata were got medico-legally examined at PHC Gharaunda. On the statement of the complainant, Rapat No.11 dated 31.10.2004 was lodged and after receiving the x-ray reports of the injured, FIR No.428 dated 11.11.2004 under Sections 323 and 325 read with Section 34 IPC was registered against the accused persons in Police Station Gharaunda.

However, the police found the accused Suman and Bhateri innocent and presented challan against accused Kanwar Pal, Dheer Singh, Harnam Singh and Pritam Singh. Copies of the documents were supplied to the accused as envisaged under Section 207 CrPC. Finding a *prima facie* case against the respondents-accused under Sections 323, 325 and 34 IPC, the accused were charge-sheeted, to which they pleaded not guilty and claimed trial. In order to substantiate its charges, the prosecution examined seven witnesses. Statement of the accused was recorded under Section 313 CrPC in which they pleaded false implication. In defence evidence, one witness was examined by the accused and thereafter, defence evidence was closed.

Learned trial Court after hearing both the sides and appreciating the evidence on record, held the accused guilty for offences punishable under Sections 323 and 325 read with Section 34 IPC vide judgment dated 11.2.2011 and vide separate order dated 12.2.2011 sentenced them as under:-

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
<i>323 IPC</i>	<i>RI for 6 months</i>	<i>Rs.300/-</i>	<i>RI for one month</i>
<i>325 IPC</i>	<i>RI for two years</i>	<i>Rs.500/-</i>	<i>RI for one month</i>

Both the sentences were ordered to run concurrently.

Aggrieved from the judgment of conviction and sentence passed by the trial Court, the respondents-accused filed an appeal before the lower Appellate Court and learned Additional Sessions Judge, Karnal vide judgment dated 7.6.2013,

while maintaining the conviction, set aside the sentence and instead directed them to be released on probation, as stated above.

It is in these circumstances, the petitioner-complainant has filed the instant revision petition, impugning the judgment dated 7.6.2013 passed by the Appellate Court.

Learned counsel for the petitioner-complainant has contended that the learned Appellate Court erred at law by releasing the respondents-accused on probation, as there are serious allegations against them, for which, they were rightly sentenced by the trial Court. He further argued that once the prosecution has proved its case beyond reasonable doubt, the impugned judgment dated 7.6.2013 passed by the Appellate Court cannot sustain in the eyes of law and the same is liable to be set aside.

I have heard learned counsel for the parties and perused the impugned judgment.

A perusal of judgment dated 7.6.2013, reveals that learned lower Court has held the respondents-accused entitled to be released on probation, considering the fact that they had suffered protracted trial for about nine years and further, they were first time offenders. Moreover, except Bhateri, the remaining accused were of young age and therefore, they are entitled for the benefit of probation in view of judgment of this

Court in **Ram Lal @ Ramu v. State of Punjab, 2003(1) RCR (Criminal) 188.**

It is pertinent to mention here that the scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

The records further reveals that neither before the trial Court nor before the lower Appellate Court, the prosecution has proved that the respondents-accused are habitual offenders and as such, the Appellate Court has rightly accepted the request of the respondents-accused for releasing them on probation. Moreover, the quantum of sentence is always fixed by the Court and is sole prerogative of the Court unless a minimum sentence is prescribed for an offence. Therefore, this Court does not find any illegality, irregularity or perversity in the impugned judgment passed by learned Appellate Court, which may warrant interference of this Court by invoking its revisional jurisdiction.

In view of the above, affirming the judgment dated 7.6.2013 passed by learned Additional Sessions Judge, Karnal, the present revision petition, being devoid of any merit, is dismissed.

May 17, 2016
AK

(HARI PAL VERMA)
JUDGE