

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

CRR No.3428 of 2014.
Decided on:-17.11.2016.

Suraj Bhan.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Present:- Mr. Ramender Chauhan, Advocate
 for the petitioner.

HARI PAL VERMA, J.

The petitioner-complainant has filed the present revision petition against the judgment dated 10.09.2014 passed by learned Additional Sessions Judge, Bhiwani whereby the respondents-accused No.2 and 3 were released on probation for commission of offence under Sections 323, 341 and 506 read with Section 34 IPC.

Briefly stated, case of the prosecution is that on 7.5.2006, the petitioner-complainant made a statement before the police that he has two sons. On 6.5.2006 at about 10.30 p.m., when he was sleeping on the cot near buffaloes, Bajrang son of Jai Narain, Ram Kumar son of Mehtab and Ashok son of Ram Kumar came there along with weapons like Lathis and knife. Bajrang gave a knife blow, which hit on the palm of his left hand, whereas Ram Kumar gave a Lathi blow, which hit on his right leg. Accused Ashok also gave a Lathi blow on his left leg. On making noise by him, Devender son of Babu Singh and his son Bhupender Singh came on the spot. On seeing them coming, all the three persons ran away from the spot along with

their respective weapons. But many persons gathered at the spot. His son Kuldeep Singh, after arranging a private vehicle, got him admitted in General Hospital, Bhiwani.

On the basis of aforesaid allegations, FIR No.229 dated 7.5.2006 under Sections 323, 324, 325 and 506 IPC was registered at Police Station City Bhiwani. After completion of investigation, report under Section 173 Cr.PC was presented in the Court by the police. During investigation, accused Ram Kumar and Ashok Kumar were found innocent and were not challaned. They were summoned by the trial Court on the basis of an application under Section 319 Cr.PC moved by the prosecution.

Learned Magistrate vide judgment dated 25.11.2011 held all the three accused guilty and convicted them for commission of offence under Sections 323, 324 325 and 506 read with Section 34 IPC. Vide order on sentence dated 26.11.2011, learned Magistrate had released accused Ram Kumar on probation on executing the personal bonds for a period of two years in the sum of Rs.25,000/- with one surety in the like amount.

However, accused Bajrang and Ashok Kumar (respondents No.2 and 3 herein) were sentenced as under:

U/s 323 IPC read with Sec. 34 IPC	Six months rigorous imprisonment and fine of Rs.300/- in case of default of payment of fine, they shall further undergo sentence of fifteen days rigorous imprisonment each.
U/s 324 IPC read with Sec. 34 IPC	One year rigorous imprisonment and fine of Rs.500/- in case of default of payment of fine, they shall further undergo sentence of one month rigorous imprisonment each.

U/s 325 IPC read with Sec. 34 IPC	One and half year rigorous imprisonment and fine of Rs.1000/- in case of default of payment of fine, they shall further undergo sentence of one months rigorous imprisonment each.
U/s 506 IPC read with Sec. 34 IPC	Six months rigorous imprisonment and fine of Rs.300/- in case of default of payment of fine, they shall further undergo sentence of fifteen days rigorous imprisonment each.

It was, however, ordered that all the substantive sentences shall run concurrently.

Aggrieved against the said judgment and order of learned trial Court, the petitioner-complainant as well as respondents-accused Bajrang and Ashok Kumar preferred their respective appeals. All the three appeals were decided by learned Additional Sessions Judge, Bhiwani vide common judgment dated 10.9.2014. The appeal filed by the petitioner-complainant was dismissed being devoid of merits, whereas the appeals filed by respondents-accused Bajrang and Ashok Kumar were also dismissed with modification in the order of quantum of sentence, passed by the trial Court.

Learned appellate Court vide aforesaid judgment, released respondents-accused Bajrang and Ashok Kumar on probation of good conduct for a period of two years subject to their furnishing probationary bonds to the satisfaction of the Court, for a sum of Rupees 1,00,000/- with one surety of like amount each to appear and receive sentence when called upon. It was also ordered that during such period, the accused will keep the peace and be of good behaviour. Respondents-accused Bajrang and Ashok

Kumar were also directed to pay compensation amount of Rs.50,000/- in equal shares to the complainant-injured Suraj Bhan within a period of one month from the date of passing of judgment i.e. 10.9.2014. In addition to it, they were also directed to pay cost of proceedings amounting to Rs.5,000/- in equal shares to the complainant-injured. It was also ordered that in default thereof, the complainant would be at liberty to recover the said amount from them as a fine in accordance with the provisions of Cr.P.C.

It is in the aforesaid circumstances, the petitioner-complainant has filed the present revision petition challenging the judgment dated 10.09.2014 passed by learned Additional Sessions Judge, Bhiwani.

Learned counsel for the petitioner-complainant has contended that learned appellate Court has committed a legal error by releasing the respondents No.2 and 3, on the minor punishment of probation. The evidence has not been properly appreciated by the appellate Court while imparting lesser punishment in quantum of sentence. When there is medical evidence on record regarding the injury suffered by complainant Suraj Bhan which were attributed to the respondents-accused No.2 and 3, they were not entitled to be released on probation. Both the accused in furtherance of their common intention had voluntarily inflicted simple as well as grievous injuries to the complainant with blunt and sharp edged weapon.

Learned counsel for the petitioner-complainant has further contended that the respondents No.2 and 3 are liable to be convicted for the offence for which they have been convicted and their release on probation is

contrary to the injuries suffered by the petitioner-complainant. He has prayed for modification of the impugned judgment dated 10.9.2014 passed by learned appellate Court and for restoration of the order of sentence dated 26.11.2011 passed by learned trial Court.

I have heard learned counsel for the petitioner-complainant and perused the paper book.

Perusal of judgment dated 10.9.2014 passed by learned appellate Court reveals that the Court has rightly extended benefit of probation by considering the previous history of the respondents No.2 and 3. The relevant observations made by learned appellate Court in para Nos.16 to 18 of the judgment read as under:

“16. Since third accused Ram Kumar had already been released on probation by the trial Court, keeping in view of his age factor. Present accused-appellants are not of younger age. Accused Ashok is aged about 37 years whereas accused-appellant Bajrang is aged about 41 years. They are first offenders. They caused injuries to complainant on non-vital part of the body. They pleaded themselves to be poor persons. None is behind them to look after their families. They are on bail. They have their permanent abode in Mohalla Dobi Talab within the municipal area of City Bhiwani. Therefore, in the opinion of this Court, they also deserve for the same relief of probation which had been granted by the trial Court to third accused Ram Kumar.

17. Consequently, instead of sending them to jail at once, I order them to be released on probation of good conduct for a period of two years while invoking my powers under section 360 Cr.P.C. read with section 4 of Probation of

Offenders Act, 1958 as prayed for by their counsel, subject to their furnishing probationary bonds to the satisfaction of this Court, in sum of rupees one lac with one surety of like amount each to appear and receive sentence when called upon during such period and in the mean time, they will keep the peace and be of good behaviour. Accordingly, order of quantum of sentence qua appellants Ashok and Bajrang passed by the learned trial Court stands modified. However, in default of terms of the probationary bonds, they will surrender before the trial Court to receive the sentence awarded by it.

18. *Keeping in view of the fact that appellants-accused Bajrang and Ashok caused simple as well as grievous injuries to an old aged complainant without his fault, resulting to suffer disability by the complainant in his walking and working in his daily routine life, I think it proper to compensate the complainant in terms of money. Therefore, while invoking my powers under section 5 of the Probation of Offenders Act, 1958, I direct the appellants-accused Ashok and Bajrang to pay compensation amount Rs.50,000/- in equal shares to the complainant-injured Suraj Bhan within the period of one month from today. In addition to it, they will have also to pay cost of proceedings amounting to Rs.5,000/- in equal shares to the complainant-injured. In default thereof, complainant would be at liberty to recover the said amount from them as a fine in accordance with the provisions of Cr.P.C.”*

In view of the above, the evidence adduced by the prosecution and overall facts and circumstances do not make out any scope of interference by this Court. Both the respondents-accused have suffered a protracted trial for about 8 years and they were first time offenders.

Therefore, learned appellate Court has not committed any illegality while extending the benefit of probation to the respondents-accused No.2 and 3. The appellate Court was well within its power to release the respondents No.2 and 3 on probation in view of the judgment of this Court in ***Ramesh Kumar Versus State of Haryana and others 2011(3) RCR (Criminal) 155*** and ***Sukhdev Kumar Versus State of Punjab and anr. (P&H), 2012(3) RCR (Criminal) 158.***

During the course of arguments, it has not been denied by learned counsel for the petitioner-complainant that the respondents-accused have not paid the compensation amount of Rs.50,000/- and the cost of proceedings of Rs.5,000/- to the petitioner-complainant, as ordered by learned appellate Court. 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 dated 10.9.2014 passed by learned appellate Court, which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, affirming the judgment dated 26.9.2014 passed by learned appellate Court, the present revision petition, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

November 17, 2016
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No