

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRR No. 1380 of 2007 (O&M)
Date of decision : 31.7.2017

...

Roshni

.....Petitioner

vs.

Ram Niwas and others

.....Respondents

2) CRA S 1865-SB of 2007 (O&M)

...

State of Haryana

.....Appellant

vs.

Ram Niwas and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the petitioner (in CRR No. 1380 of 2007).

Mr. R.S. Jhand, Advocate for respondents No. 1, 2, 4 and 5
(in both cases)

Mr. Neeraj Poswal, Assistant Advocate General, Haryana
(for respondent No.6 In CRR No. 1380 of 2007)
(for the appellant in CRA S 1865-SB of 2007).

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H. S. Madaan, J. (Oral)

Vide this judgment, I propose to dispose of CRR No. 1380

of 2007 filed by complainant – Roshni and CRA S 1865-SB of 2007 filed by the State of Haryana, against the judgment dated 11.4.2007 passed by learned Sessions Judge, Fatehabad, vide which the accused-convicts were ordered to be released on probation for a period of two years on their furnishing bonds in the sum of Rs.50,000/- each with one surety in the like amount each.

There is no representation on behalf of the revision-petitioner. Similar was the position on several dates of hearing, as such I proceed to decide the revision petition with the assistance of learned counsel for the respondents No. 1, 2, 4 and 5 and learned State counsel.

Briefly stated, the facts of the case are that Ram Niwas, Balraj, Kehar Singh, Sharda and Santosh, all of them being accused in FIR No. 158 dated 31.8.1999, for offences under Sections 323, 324, 325, 341 IPC, registered at Police Station Bhuna, were tried by the Court of Judicial Magistrate Ist Class, Fatehabad, on the allegations that on 29.8.1999, at about 8.30 A.M., while complainant Roshni Devi was cleaning the street in front of her house at village Bejalpur, then Kehar Singh came there with a stick in his hand and hit the complainant on her left buttock, the second stick blow given by Kehar Singh found its target on right hand of the complainant. When complainant raised alarm, her sister Santosh, who is married to her brother-in-law (husband's brother) came there and tried to rescue the complainant from assault of the accused. In the meanwhile, Ram Niwas and Balraj, real brothers of Kehar Singh

came there. Ram Niwas was armed with a *gandasi* (axe) and he gave a *gandasi* blow to the complainant hitting her on head. When the complainant fell down, then Ram Niwas, Kehar Singh and Balraj started beating Santosh, sister of complainant. In the meanwhile, Har Chand, father-in-law of complainant arrived at the spot and he tried to rescue the complainant and her sister from the accused. At that very time Santosh w/o Ram Niwas and Sharda w/o Balraj came there, and they slapped the complainant and her sister Santosh, besides giving fist blows to them. It was with the intervention of Har Chand that complainant and Santosh were released from clutches of accused, otherwise they would have caused more injuries to them. Then the accused left the spot with their respective weapons. Thereafter, the injured were taken to CHC, Bhuna on 29.8.1999. Statement of the complainant was recorded on 31.8.1999. Injured were medico legally examined. The accused were arrested on 9.9.1999.

After completion of investigation and other formalities challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Fatehabad. After framing of formal charge, the trial proceeded which ended in conviction of the accused and vide judgment and order dated 6.10.2006 passed by Judicial Magistrate Ist Class, Fatehabad, and they were sentenced as follows:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
Ram Niwas	323 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
	324 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
Balraj	323 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
Kehar Singh	323 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
	325 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-
Sharda	323 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
Santosh	323 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

All the sentences were ordered to run concurrently.

This judgment of conviction and sentence left the accused-convicts aggrieved and they preferred an appeal, which was heard and disposed of by learned Sessions Judge, Fatehabad vide judgment dated 11.4.2007, in pursuance of which, the conviction of the accused-appellants was maintained, however, they were granted benefit of probation under Section 360 Cr.P.C. and were ordered to

be released on probation for a period of two years on their furnishing bonds in the sum of Rs.50,000/- each with one surety in the like amount each, with an undertaking to appear and receive sentence when called upon during such period and in the meantime to keep peace and be of good behaviour and not to repeat the offence in future. Fine of Rs.3,500/- already deposited by the appellants was ordered to be adjusted as costs of proceedings. However it was directed that appellants would pay a sum of Rs.5,000/- as compensation to the injured. This judgment by the Appellate Court left the complainant aggrieved and she has filed the present revision petition praying that the same to be accepted, the order passed by the learned Sessions Judge, Fatehabad, be set aside and accused-respondents be punished/sentenced in accordance with law.

The State of Haryana has brought the present appeal praying for grant of similar relief.

I have heard learned counsel for the State, accused-respondents No. 1, 2, 4 and 5, besides going through the record.

As far as the conviction part is concerned, the State and complainant are satisfied with the same. However, they are aggrieved by the sentence part in as much as the accused-convicts have been ordered to be released on probation, giving them benefit of Section 360 Cr.P.C. For ready reference Section 360 Cr.P.C. is reproduced as under :-

“360. Order to release on probation of good conduct
or after admonition.

(1) When any person not under twenty- one years

of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a

Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating

circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

[\(4\)](#) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

[\(5\)](#) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

[\(6\)](#) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

[\(7\)](#) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is

likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960) , or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

If case of the accused-convicts is examined, then it is found to be covered by four corners of this provision, as no previous conviction against any of the accused-convict is alleged or proved.

There is nothing to show that they are hardened criminals. It comes

out that the incident had taken place on the spur of the moment without any pre-planning. The trend of modern penology is towards reform, rather than retribution. The criminals are treated like patients and their rehabilitation in the society is tried for. Admittedly, the accused-convicts have completed the period of probation without giving any reason for complaint and have not indulged in any criminal act during that period or till date. Two of the convicts namely, Sharda and Santosh are women. The other convicts are also stated to be aged persons, one of them Kehar Singh, has expired.

Keeping in view the earlier antecedents of the accused – convicts and other facts and circumstances, I find that learned Sessions Judge, Fatehabad, was justified in granting benefit of probation to the accused convicts and there is no illegality or infirmity in the said judgment. The same is upheld. Appeal filed by the State, as well as revision petition filed by the complainant are hereby dismissed, being without merit.

(H.S. Madaan)
Judge

31.7.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No