

230.

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

CRR-2151-2017

Date of decision:26.07.2017

OM PARKASH

... Petitioner

versus

MUKESH & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Sumit Ahuja, Advocate,
for the petitioner.

HARI PAL VERMA, J.

The petitioner-complainant, namely, Om Parkash has filed the present revision petition against the order dated 27.02.2017 passed by learned Sessions Judge, Narnaul, whereby the accused-respondents No.1 to 3, namely, Mukesh, Virender and Krishan @ Pardeep, were though held guilty for the commission of offence under Sections 323/452/34 IPC along with respondent No.4-Surender, who was already convicted by the learned Judicial Magistrate Ist Class, Narnaul, vide order dated 27.01.2016, but respondents No.1 to 3 were released on probation.

Briefly stated, an FIR No.235 dated 09.09.2011 under Sections 323/452/506/34 IPC, Police Station Sadar, Narnaul, was registered at the behest of the petitioner. As per the prosecution version on 30.08.2011, Jawahar son of Naresh being nephew of

complainant was doing some mischief and, therefore, the petitioner scolded him. On 31.08.2011 at about 2:30 PM, accused-Krishan came to his house, followed by other accused, namely, Virender and Mukesh. While they were sitting in the room, two more people joined them and one of them was Surender son of Umrao. He (Surender) gave an axe blow on the head of the complainant, whereas the others gave the complainant some slaps and fist blows due to which, the complainant became unconscious. His wife-Sushila and his brother-Rama Nand saved him and took him to the hospital. An MLR was conducted and the accused were arrested on 09.09.2011. However, they were released on bail on 10.09.2011.

On the basis of evidence so led by the complainant, the trial Court, vide judgment dated 27.01.2016, convicted respondent No.4-Surender for the commission of offence punishable under Sections 323, 452 read with Section 34 IPC, but had acquitted the other accused i.e. respondents No.1 to 3, namely, Mukesh Virender and Krishan @ Pardeep. Since the prosecution failed to prove the offence under Section 506 IPC, respondent No.4-Surender was acquitted of that charge. Vide separate order dated 28.01.2016, learned Magistrate sentenced the accused-respondent No.4, namely, Surender to undergo rigorous imprisonment for a period of 2 years along with fine of ₹2,000/- for the offence punishable under Section 452 IPC read with Section 34 IPC and in default of fine, to further undergo simple imprisonment of 2 months. Similarly for the commission of offence

punishable under Section 323 IPC read with Section 34 IPC, the accused-Surender was also directed to pay fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment of 1 month.

Not satisfied with the sentence awarded to the respondent No.4-Surender as well as the acquittal of other co-accused, namely, Mukesh, Virender and Krishan @ Pardeep i.e. respondents No.1 to 3, the petitioner filed an appeal before the learned Sessions Judge, Narnaul. Taking into consideration the evidence, learned Sessions Judge, Narnaul, vide order dated 27.02.2017, set aside the acquittal of respondents No.1 to 3, namely, Mukesh, Virender and Krishan @ Pardeep and held them guilty for commission of offence punishable under Sections 323, 452 and 34 IPC along with Surender, who was already convicted and sentenced for the period indicated above. However, vide separate order of even date, learned Sessions Judge, while passing the order on quantum of sentence, released the accused on probation of good conduct on furnishing probation bond in the sum of ₹30,000/- each with one surety in the like amount for a period of two years and within the period of two years, the convicts shall be of good conduct and shall maintain peace. The respondents-convicts were also directed to pay compensation of ₹30,000/- (₹10,000/- each) to the complainant-injured, namely, Om Parkash, who had suffered simple as well as grievous injuries.

It is in the aforesaid circumstances, the petitioner-Om Parkash has challenged the release of respondents No.1 to 3 on

probation and acquittal of respondent No.4 for the offence under Section 506 IPC.

Learned counsel for the petitioner has argued that the prosecution has examined six witnesses in support of its case and the testimonies of these witnesses is reliable, warranting conviction of all the accused for the commission of offence under Sections 323, 452, 506 34 IPC. Learned Sessions Judge has committed illegality in acquitting respondent No.4 under Section 506 IPC. No leniency was required to be shown for respondents No.1 to 3 while releasing them on probation, more particularly, when they have caused injury to the complainant and have trespassed into the house of the complainant. Adequate compensation should have been awarded in favour of the petitioner. The respondents are not entitled for even probation as extended to them by the learned Sessions Judge.

I have heard learned counsel for the petitioner.

In the examination-in-chief of PW1-Om Parkash (petitioner), there is no specific attribution of any injury to Krishan and Virender, whereas the alleged injury inflicted by Mukesh has been contradicted by the evidence of PW3-Sushila. But since the learned Magistrate has observed that there were certain other persons who caused injury to Om Parkash, learned Sessions Judge correlated the role of other accused, namely, Mukesh, Virender and Krishan @ Pardeep. The claim of these accused not only finds mention in the initial statement made by the complainant but even in the testimonies

of PW1 and PW3, their presence has been recorded. Therefore, the observations made by learned Magistrate that the accused, namely, Mukesh, Virender and Krishan @ Pardeep have not caused any injury did not find favour by the learned Sessions Judge, Narnaul. Accordingly, the trial Court's judgment dated 27.01.2016 was modified and the accused, namely, Mukesh, Virender and Krishan @ Pardeep were held liable for the commission of offence under Sections 323, 452, 34 IPC.

The contention of learned counsel for the petitioner that the complainant-petitioner should be adequately compensated for the injuries caused to him and the respondents-accused i.e. Mukesh, Virender and Krishan @ Pardeep are not entitled for the benefit of probation, cannot be accepted.

This Court feels that the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring individual to reform himself, so that there is everlasting peace in the society. This view finds support from a judgment of Hon'ble the Apex Court in the case of **Karamjit Singh Versus State (Delhi Admn.)-2001(9) SCC 161**, wherein the observations made are as under:-

“Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action

and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case the Court has to weight the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.”

Keeping in view the ratio of law laid down in the abovementioned judgment and fact that the respondents-accused have not crossed the age whereafter they cannot be reformed, particularly when no other criminal case has been pointed out against them coupled with the fact that they are facing the agony of trial for the last about seven years, the order passed by learned Sessions Judge, Narnaul,

releasing them on probation, does not warrant any interference. Since the petitioner-complainant has failed to adduce any evidence to make out a case for commission of offence under Section 506 IPC, this Court finds that there is no illegality in the judgment passed by the court below.

Accordingly, the present revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

26.07.2017
sanjeev

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.