

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

CRA-S-3209-SB-2017

Date of decision:-23.5.2018

Jatinder Kumar and others

....Appellants

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sidharth Gupta, Advocate
for the appellants.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

The complainant Pardeep Kumar had filed a complaint for the offences under Sections 323, 307, 341, 506 IPC read with Section 34 IPC against accused Jatinder Kumar and his brother Bala @ Balkrishan as well as father Jagdish Rai on the allegations that on 29.3.2010 complainant Pardeep Kumar had gone to shop of accused Bala @ Balkrishan to pick up his father Baldev Singh and his friend Kewal Kumar, who had gone there in connection with some work; that Jatinder Kumar came out of the shop and inquired from the complainant regarding his name to which the complainant informed, then accused Bala @ Balkrishan intercepted the complainant; that Jatinder Kumar brought a gandasi from inside the shop and attacked the complainant therewith; the complainant received the blow on his head; that on

Jagdish Rai exhorting that the complainant be killed, father of the complainant came outside on hearing the noises and he intervened and saved the complainant from the clutches of the accused; the injured was taken to Civil Hospital, Rampura Phul. Police came there. According to the complainant, his signatures were obtained on blank papers, however, no action was taken against the accused. As such, the complainant brought a private complaint in the Court of Area Magistrate at Phul, who after recording preliminary evidence summoned the accused to face trial for the offences under Sections 323, 341, 307, 506 IPC vide order dated 5.7.2013 and observing that offence under Section 307 IPC is exclusively triable by the Court of Sessions committed the case to the Court of learned Sessions Judge, Bathinda vide order dated 9.4.2014. The case was then assigned to learned Additional Sessions Judge, Bathinda.

On receipt of case in the Court, learned Additional Sessions Judge, Bathinda, observing that prima facie charge for offences under Sections 307, 341, 506 IPC IPC was made out against all the accused accused, they were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

Learned Additional Sessions Judge, Bathinda on conclusion of trial found all the accused to be guilty for the offences under Sections 341, 324 and 506 read with Section 34 IPC and convicted them thereunder. They were heard on the point of quantum of sentence, where they pleaded that they are poor persons and not previous convicts. They requested that they be released on probation. That request was opposed by APP for the State assisted by counsel for the complainant submitting

that accused had committed heinous crime, as such, they be granted severe punishment.

Learned Additional Sessions Judge, Bathinda, granted benefit of probation to all the accused/convicts making observations in para Nos.3 and 4, which are necessary to be reproduced here and the same are as under:

“I have considered the rival contentions of both the sides. The present complaint pertains to the year 2011 and was committed by the trial Court in the year 2014. The accused-convicts are facing protracted trial for the last about more than 6 years. Both the parties are known to each other and are residing in the same locality. It has also come in the evidence that they are having litigation also. Moreover, the previous conduct of the accused-convicts remained good. So, from all the facts and circumstances brought on the file and on the request of learned counsel for convicts, I deem it proper to give the benefit of probation to the convicts. Since the complainant has suffered injuries so in order to compensate him the convicts are directed to pay compensation to the tune of Rs.30,000/- (Rs.10,000/- by each convict) to the complainant/injured Pardeep Kumar.

In view of my aforesaid discussion, all the convicts namely Jatinder Kumar, Bala @ Balkrishan and Jagdish Rai are ordered to be released on probation under Section 4(1) of the Probation of Offenders Act for a period of one

year after furnishing personal bonds in the sum of Rs.50,000/- each with one surety in the like amount each with the conditions that the convicts/accused will keep and maintain peace and be of good behaviour during this period of one year. The convicts are directed to pay compensation to the tune of Rs.30,000(Rs.10,000/-) by each convict) to the complainant/injured Pardeep Kumar.

Feeling aggrieved by the said judgment of their conviction and order of sentence, the accused have preferred the present appeal.

I have heard learned counsel for the parties besides going through the record.

At the very outset, it may be stated that the very maintainability of the appeal is suspect. Section 376 of Cr.P.C. provides that there would not be any appeal in petty cases. Sub-Section (b) provides that where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine. In this case, the accused have not been sentenced to any imprisonment, rather they have been released on probation, subject to their furnishing personal bonds for a period of one year and paying compensation to the tune of Rs.30,000/- i.e. Rs.10,000/- by each convict payable to the complainant/injured Pardeep Kumar. Even otherwise, the judgment passed is well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. A perusal of the conviction order goes to show that accused/convicts themselves had prayed for grant of benefit of

probation, which was allowed by the trial Court. Now they cannot find fault with such order. There is no illegality or infirmity therein.

I do not find any reason to interfere with the judgment passed by the Court below. The said judgment of conviction and order of sentence are upheld, whereas appeal is found to be without any merit and the same is dismissed accordingly.

23.5.2018
Brij

(H.S.MADAAN)
JUDGE

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