

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

**CRA-S-1401-SB-2004
Decided on : 07.11.2019**

Rajesh Kumar and another
... Appellant(s)

Versus

State of Haryana
... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. S.S. Dinarpur, Advocate
for the appellant(s).

Mr. S.S. Pannu, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment dated 12th July, 2004 and order of conviction dated 13th July, 2004, passed by Addl. Sessions Judge, Yamuna Nagar at Jagadhri, whereby, the accused-appellant(s) were convicted and sentenced as under : -

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) in default of payment of fine(s)</i>
<i>Rajesh Kumar Mukesh Kumar</i>	<i>332 IPC</i>	<i>Rigorous imprisonment (RI) for 02 years each</i>	<i>₹ 1000/- each</i>	<i>Imprisonment for 06 months</i>
	<i>353 IPC</i>	<i>RI for 01 year each</i>	<i>--</i>	<i>--</i>

Both the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 29th September, 1998, a message was received by ASI Des Raj (PW-6) from an unknown person about a quarrel which had taken place in front of the Tehsil. When the police officials

reached the spot, PW-5/Kesar Singh made a statement Ex.PC, wherein, *inter alia* he stated that at about 2:30 P.M. when he was having tea at the Tea Stall, he received information to the effect that Mukesh Kumar (appellant No.2) s/o Chet Ram, against whom, a case stood registered was going in front of the Tehsil. Pursuant to the receipt of this information, he stopped Mukesh Kumar s/o Chet Ram, who was then told by the complainant (PW-5/Kesar Singh) that since a case stood registered against him, he should accompany him. While he was taking Mukesh Kumar towards the police station, two more persons i.e. Rajesh Kumar (appellant No.1) and Chet Ram i.e. brother and father of Mukesh Kumar, respectively, stopped the rickshaw and started giving fist blows to the complainant. The complainant told the aforementioned accused-appellants that he was employed with the Police Department and a case stood registered against Mukesh Kumar. Despite being told so, the appellants continued giving injuries to the complainant. Vijay Kumar and Ashwani Kumar were attracted to the spot and rescued the complainant from the clutches of the appellants. On the basis of this statement, FIR (Ex.PD) bearing No. 348, dated 29.09.1998, under Sections 186, 333, 353, 34 IPC at Police Station City Jagadhri, was got registered.

3. The investigation thereafter was set in motion, accused were arrested and challan was put in Court against the accused persons. Charges were framed against the accused-appellants, to which they pleaded not guilty and claimed trial.

4. In support of their case, the prosecution examined as many as 08 witnesses including complainant, who stepped into witness-box as PW-5 and tendered all the relevant documentary evidence.

5. The accused when confronted with the incriminating circumstances appearing against them and examined under Section 313 Cr.P.C., denied the charges against them and pleaded false implication. They stated that a false case

had been planted by the police in connivance with one Sunehra etc. with whom they had a civil dispute.

6. The learned trial Court after going through the evidence and other material on record, convicted the accused-appellants under Section 332 & 353 IPC read with Section 34 IPC. The learned trial Court extended the benefit of probation to convict Chet Ram, in view of the fact that he was about 59 years of age. However, co-accused i.e. Rajesh Kumar and Mukesh Kumar were convicted and sentenced as already detailed hereinabove.

7. Learned counsel for the appellant(s) at the very outset contended that he does not challenge the findings of fact recorded by the learned trial Court and the conviction of the appellants on merits and would thus confine his prayer only on the point of quantum of sentence. He has submitted that the occurrence pertains to the year 1998 and the appellants have thus suffered the agony of protracted trial of about 21 years. In the intervening period, they have not been involved in any other criminal offence and have been leading the life of disciplined and peaceful citizens. Further, it has been contended that during this period, they have been fastened with many liabilities, hence, a lenient view be taken and mercy be shown in the matter of sentence against the appellants and they be released on probation of good conduct.

8. The learned State counsel on the contrary argued that the prosecution had been able to prove its case beyond shadow of reasonable doubt as all the ingredients constituting the offences under Sections 332, 353 IPC read with section 34 IPC stood duly proved.

9. I have given my anxious consideration to the submissions made by both the parties.

10. I do not find any perversity or infirmity in the findings of the learned

trial Judge in the impugned judgment. The complainant as well as the other prosecution witnesses have corroborated each other on every material fact of the case. Coming to the prayer of the learned counsel for the appellants to take a lenient view and consider release of the appellants on probation, even though the appellants have not undergone any part of their substantive sentence, they have faced the agony of a protracted trial for almost 21 years. They are not previous convicts nor have they been involved in any other criminal offence as stands reflected from their custody certificates filed by the State counsel.

11. Section 360 Cr.P.C. which reads as under, mandates a court to release an accused on probation:-

“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 subsection (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.”

12. In view of the facts and circumstances of the case and after going through the evidence as well as other material on record, in my considered opinion it is a fit case wherein the benefit of probation can be extended to the appellants while upholding their conviction. The offences for which the accused-appellants have been convicted do not involve any moral turpitude nor the same can be said to be heinous in nature. Moreover, co-accused Chet Ram was extended the benefit of probation by the learned trial Court in view of his old age i.e. 59 years, I do not find any reason thus to discriminate the appellants in the matter of sentence, merely, because Chet Ram was 59 years of age while they were 29 years and 24 years of age at the time of their conviction. The appellants Rajesh Kumar and

Mukesh Kumar are now aged about 50 years and 45 years, respectively. Therefore, it would not be fair to deny the benefit of probation to both the appellants and send them behind the bars.

13. Resultantly, while upholding the conviction of the appellant under Sections 332 & 353 of IPC read with Section 34 IPC, their substantive sentence of imprisonment is set aside. Instead, they are ordered to be released on probation for a period of three years subject to their executing bonds to the satisfaction of the Chief Judicial Magistrate concerned. They would undertake to maintain peace and good behaviour for the said period. They would appear and receive the sentence as and when they may be called upon to do so, in case they violate any of the conditions of the bonds.

14. Further, keeping in view the facts and circumstances of the case, the appellants are directed to pay a sum of ₹ 10,000/- each as compensation to the complainant within two months of this order. The amount of compensation shall be deposited with the trial Court/Successor Court in the form of Demand Draft, which shall be disbursed to the complainant against proper receipt. In case they fail to do so, the benefit of probation granted to them, shall stand withdrawn forthwith and they shall undergo the remaining part of their sentence.

15. The appeal stands disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

November 07, 2019

J.Ram

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>