

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

**CRR No.1655 of 2014 (O&M)
Date of decision: 25.02.2019**

Charanjit Singh

....Petitioner

Versus

Jasvir Singh @ Kala and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Salar, Advocate
for the petitioner.

Mr. Arun Jindal, Advocate
for respondent No.1.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN J.

Prayer in this revision petition is for setting-aside the order dated 04.04.2014 passed by the Lower Appellate Court vide which the Lower Appellate Court granted the concession of probation to respondents No.1 and 2 under Section 4(1) of the Probation of Offenders Act, 1958 on their furnishing probation bonds in the sum of Rs.10,000/- and with an undertaking to maintain peace and good behaviour for a period of 01 year and further the respondents/accused were directed to pay the costs of Rs.2500/- each, which will be released to the complainant as a part of compensation for the injuries suffered by him.

Brief facts of the case are that the complainant – Sadhu

Singh got the FIR No.106 dated 31.10.2007 registered under Sections 323, 325 read with Section 34 of the Indian Penal Code, (in short 'IPC') at Police Station Amargarh with the allegation that on 28.10.2007, he was talking to his grandson Charanjit Singh and Pal Singh, when the accused came and started irrigating their fields through the watercourse of the complainant and when he prevented them from doing so on the pretext that the common land was partitioned and they should irrigate their land from their own watercourse, respondent No.1 – Jasvir Singh exhorted to teach him a lesson and gave a stick blow on his right wrist and bicep. Thereafter, respondent No.2 – Balwinder Singh @ Binder gave him kick blow on his back and caused multiple injuries. The complainant was rescued by Charanjit Singh and Pal Singh and he was taken to Civil Hospital, Malerkotla where his MLR and X-ray was conducted and then, the FIR was registered.

After completing the investigation and on presentation of challan, the trial Court framed charge against the accused under Section 323, 325 read with Section 34 IPC, to which the accused did not plead guilty and claimed trial.

The prosecution in support of its case examined the complainant – Sadhu Singh as PW1, Charanjit Singh as PW2, Dr. Daljinder Singh as PW3, Jaspal Singh as PW4, Dr. Lachhman Singh as PW5, HC Pardeep Kumar as PW6, HC Jagtar Singh as PW7 and thereafter, the evidence of the prosecution was closed.

After conclusion of the evidence of the prosecution, the statement of accused/respondents was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution

produced against them, was put to them to tender explanation for the same. The respondents/accused denied the allegation of the prosecution and pleaded that they have been falsely implicated in the case. However, no defence evidence was produced by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction as well as the order of sentence dated 12.03.2013, held the accused/respondents No.1 and 2 guilty for offence punishable under Sections 325, 323 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.1500/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 12.03.2013, the accused/respondents No.1 and 2 have preferred an appeal before the Lower Appellate Court and the same was partly allowed. The Lower Appellate Court while upholding the judgment of conviction dated 12.03.2013, however, released respondents No.1 and 2 on probation. The operative part of the judgment dated 04.04.2014 passed by the Lower Appellate Court reads as under:-

“20. Face with this eventuality, the learned counsel for the accused-appellants contended that the appellants were first offenders and were having dependency of their respective families being bread winner of their families and that there was scope for reformation of the accused-appellants if lenient view was taken by releasing the accused-appellants on probation under Probation of

Offenders Act, 1958. In support of his submission, the learned counsel placed reliance upon Ram Chander versus State of Haryana, 2011(1) Recent Criminal Reports 829 (P&H).

21. *I have anxiously considered the contentions in this behalf and find that though the accused-appellants were charged and convicted for offences punishable under Sections 325 and 323 read with Section 34 of the Indian Penal Code yet the grievous hurt was on non-vital part and other injuries were simple with blunt weapon. Moreover, the accused-appellants since the presentation of challan in this case in December, 2007 had been attending the trial Court for a period of more than five years for facing the trial and have also been appearing in the appeal on different dates for the last more than one year. No previous conviction of the accused-appellants has either been alleged or proved by the prosecution. Even in case of Ram Chander versus State of Haryana (Supra), the accused convicted for offence punishable under Section 325 of the Indian Penal Code was released on probation and in that case besides other injuries, there was bone deep injury on the skull of the injured. Therefore, taking in account the totality of the circumstances of the case in hand coupled by the fact that they are only bread winners of their families and first offenders, we find that there is possibility of reformation of the accused-appellants in case they are extended the benefit of probation of good conduct and accordingly, the accused-appellants are ordered to be released on probation under Section 4(1) of Probation of Offenders Act, 1958 on their furnishing probation bonds in a sum of Rs.10,000/- with one surety in the like amount each with undertaking to maintain peace and be of good behaviour for a period of one year and to receive the sentence, as and when called*

upon during the said period of one year; and order of sentence dated 12.03.2013 passed by the learned trial Magistrate is, accordingly, modified and the appeal in this behalf is, accordingly, allowed. The accused-appellants are also directed to pay Rs.2500 each as costs of proceedings. The amount of fine and the costs of proceedings shall be released to complainant as part compensation for the injuries suffered by him in the occurrence, after the decision of appeal or revision, if any.”

The petitioner – Charanjit Singh, who is the grandson of the victim – Sadhu Singh, has filed the present revision petition challenging the judgment passed by the Lower Appellate Court.

It is relevant to note that during the pendency of the appeal before the Lower Appellate Court, the victim – Sadhu Singh died in the year 2009 and during the pendency of the present revision petition, even respondent No.2 namely Balwinder Singh @ Binder died on 18.12.2016.

Counsel for the petitioner has argued that the Lower Appellate Court before passing the impugned judgment has neither obtained the report from the Probation Officer as per Section 4 of the Probation of Offenders Act, 1958 nor has awarded adequate compensation to the victim – Sadhu Singh.

Counsel for the State, on the other hand, has submitted that the Lower Appellate Court has passed the order in exercise of its power and the petitioner has not pointed out any jurisdictional error or patent illegality, which is apparent on record. It is further submitted that the

Lower Appellate Court has awarded compensation of Rs.5,000/-, which is recovered from the accused persons as fine.

Counsel for the respondents/accused has argued that the accused are facing the trial since 2007 and the accused – Balwinder Singh @ Binder has already been died. It is further submitted that the present revision petition filed by the petitioner – Charanjit Singh is not maintainable as he is neither the complainant nor the victim in the case and the victim – Sadhu Singh has died in the year 2009. It is also submitted that the Lower Appellate Court has granted the concession of probation to the accused, considering the fact that they are the only bread earners in the family, they are the first offenders and there is a possibility of reformation of the accused.

After hearing the counsel for the parties, I find no ground to interfere in the impugned judgment passed by the Lower Appellate Court. The period of 01 year of probation granted by the Lower Appellate Court expired on 04.04.2015 and it is note the case of the petitioner that subsequent thereto, they have misused the said concession. Needless to say that the main accused – Balwinder Singh @ Binder has already been expired and respondent No.1 – Jasvir Singh @ Kala has not misused the concession in any manner and has shown improvement in his behaviour. It is also worth noticing that the FIR pertains to the year 2007 and for the last about 11 years, there is no complaint that either of the accused has extended any threat to the complainant when he was alive or to the petitioner, who is the grandson of the victim – Sadhu Singh. The Lower Appellate Court has already

granted the compensation of Rs.5000/-, which was payable to the victim, therefore, I find no ground to interfere in the impugned judgment.

Accordingly, the present revision petition is *dismissed*.

(ARVIND SINGH SANGWAN)
JUDGE

25.02.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No