

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CRA-S-419-2021

Date of Decision: 17.09.2021

Savitri and another

...Appellants

Versus

Om Parkash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vikas Bishnoi, Advocate, for the appellants.
Mr. Neeraj Poswal, AAG, Haryana.
Mr. Ashish Kumar, Advocate, for the complainant.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

By this appeal, the appellants assail the judgment and order of sentence dated 07.04.2017 passed by the learned Addl. Sessions Judge, Rohtak, whereby they have been convicted for the commission of offences punishable under Section 323 read with Section 34 of the IPC, and were ordered to be taken into custody vide the said order. However, in the order pronounced as regards quantum of sentence, on that very date, they were directed to be released on probation on their furnishing personal bonds (within four weeks from the date of the order), in the sum of Rs.25,000/- each, with one surety in the like amount, to the satisfaction of the trial court, subject to them keeping peace and being of good behavior, for a period of one year from the date of passing of that order. Each appellant was directed to pay an amount of Rs.2000/- to each injured, namely PW-1 Om Parkash and PW-2 Usha Devi, i.e. each injured was to get Rs.4000/- each.

The appellants also challenge the order of the learned Addl.

Sessions Judge, Rohtak (successor to the court that had convicted the appellants), dated 18.03.2021. Vide that order, the learned Addl. Sessions Judge, upon finding that the appellants/convicts had not deposited the amount of compensation as had been directed, with the complainant having filed an application stating to that effect, bailable warrants were ordered to be issued to secure their presence, upon which they had appeared before that court and had stated that they could not deposit the compensation.

After noticing that vide the order dated 07.04.2017 it had been directed that the if amount of compensation was not deposited within 4 weeks from the date of that order, they would appear before that court and receive sentence, it was further observed that the court was therefore left with no option but to pass the necessary sentence; and consequently, they were ordered to be sentenced to undergo rigorous imprisonment for a period of 4 months each for the commission of an offence punishable under Section 323 of the IPC read with Section 34 thereof; and further sentenced to pay a fine of Rs.500/- each, and in default of payment of such fine, they would undergo simple imprisonment for a period of one month each.

However, vide a separate order passed on the same date (18.04.2021), that court had admitted the appellants to bail for a period of 30 days on their furnishing bail bonds in the sum of Rs.20,000/- each, with a surety in the like amount, to the satisfaction of that court (upon a plea raised before it that they wished to appeal against that order, as also the order of conviction).

Consequently, this appeal came to be filed.

Notice of motion having been issued in the appeal, as also in

the application seeking suspension of sentence, on April 09, 2021, (with them allowed to remain as bail), thereafter on 13.09.2021 the following order had been passed:-

“Case heard via video conferencing.

Notice having been issued in the appeal as also in the application seeking suspension of sentence, the record of evidence has not been put up today, hearing being via video conference.

It is to be noticed that learned counsel has submitted that the applicants-appellants have been ordered to undergo 4 months' imprisonment because they did not deposit the amount of compensation that they were required to pay as a condition to them being released on probation of one year, after their conviction for the commission of an offence punishable under Sections 323, read with Section 34 of the IPC.

A perusal of the judgment of the learned appellate court and the order of sentence passed on 07.04.2017, reveals that indeed they were to pay a total sum of Rs.2000/- each, to each of the two injured persons, i.e. Om Parkash and Usha Devi, and therefore, in all, each applicant-appellant had to pay Rs.4000/- by way of compensation.

That amount not having been paid by them, vide an order passed on 18.03.2021 the 'successor court' sentenced them to rigorous imprisonment for a period of 4 months each, for the commission of the aforesaid offence, with them also further ordered to pay a fine of Rs.500/- each for the commission of the said offence, in default of which they would undergo further simple imprisonment of one month.

Learned counsel for the applicants-appellants submits that they would now pay the entire amount of compensation and fine ordered by the appellate court, within a period of 15 days from today and are also ready

to pay Rs.1000/- each in addition to the aforesaid sum, on account of the delay in paying the compensation.

Adjourned to 24.08.2021 to enable him to furnish proof of such payment, on the next date of hearing.
Interim order to continue till that date.”

The turn of the case having come up thereafter only on 07.09.2021, the following order had been passed on that date:-

“On July 13, 2021, learned counsel for the appellant made a statement before this court (as recorded in that order), that the applicants would pay the entire amount of compensation and fine ordered by the appellate court, within a period of 15 days from that day and would also pay Rs.1000/- each in addition to the aforesaid amount, on account of the delay in paying the compensation.

Thus, the entire amount was to be paid by 24.08.2021.

The turn of the case never having come up thereafter till today, even today learned counsel seeks one weeks’ time to do the needful, with him stating that applicant no.2 has met with an accident (though there is no such evidence placed on record).

Be that as it may, since he is asking for only one weeks’ time, hearing in this matter is adjourned to 17.09.2021.

To be shown in the urgent motion list on that date.

It is made clear that if the amount of Rs.10,000/- (as both learned counsel agree is to be paid), is not paid before that date, with an acknowledgment by counsel for the complainant as per his instructions, this application shall stand dismissed on that date, with no further order required to be passed in that regard.

Consequently and obviously, even if counsel for the applicants seeks an adjournment, that would not be allowed.”

Today learned counsel for the appellants submits that they have paid the entire amount of Rs.10,000/- to the injured (complainants,) in the presence of the learned Sub-Divisional Judicial Magistrate, Meham, on 13.09.2021, with a photocopy of a receipt issued by that court also having

been handed over to the Reader of this court and sent to me (since hearing is being held by way of video conference).

Learned State counsel also submits that as per his instructions the said amount has been paid.

Learned counsel for the complainant submits that he has no specific instructions from his clients, though a copy of the receipt has also been given to him.

It is to be noticed here that in fact the appellants had been acquitted of the charges framed against them, alleging therein the commission of an offence punishable under Sections 323 read with Section 34 of the IPC, by the learned SDJM, Meham, as per his judgment dated 30.11.2015; but with an appeal having been preferred against that judgment by the respondent-complainant, before the learned Addl. Sessions Judge, Rohtak, the appellants were found to have been guilty of the commission of the aforesaid offence and were ordered to be taken into custody vide the order dated 07.04.2017. However, as already observed hereinabove, in the order pronounced as regards quantum of sentence, on that very date, they were ordered to be released on probation on their furnishing personal bonds (within four weeks from the date of the order), in the sum of Rs.25,000/- each, with one surety in the like amount, to the satisfaction of the trial court, subject to the condition that they would keep peace and be of good behavior for a period of one year from the date of passing of that order, with them further directed to pay an amount of Rs.2000/- to each injured, namely PW-1 Om Parkash and PW-2 Usha Devi, i.e. each injured would get Rs.4000/- each.

On account of there being a delay in the payment, as already noticed in the previous order passed by this court, the appellants were directed to pay a total amount of Rs.10,000/- to the complainant and Usha Devi, which they are now stated to have paid.

That being so and with learned State counsel submitting on instructions that there has been no complaint against them regarding keeping good behavior, since 07.04.2017, the learned counsel for the appellants submits that the appellants do not press this appeal on merits, with the order of the learned Addl. Sessions Judge, Rohtak, having been duly complied with as regards the payment of compensation to the victims, and they having kept good behavior for one year. Nothing therefore further remains to be said by this court, with this appeal consequently ordered to be dismissed as withdrawn, with the bail and surety bonds furnished by the appellants in terms of the order dated 18.03.2021 passed by the learned Addl. Sessions Judge, Rohtak, to stand discharged, the period of probation already being over.

The appeal itself having been withdrawn and the order passed by the learned Addl. Sessions Judge, Rohtak, dated 07.04.2017, having been complied with, the application seeking suspension of sentence has been rendered infructuous and is disposed of as such.

However, it is made clear that the surety and bail bonds would only stand discharged if the appellants are found to have also paid the fine of Rs.500/- each as was imposed upon them vide the order of the learned Addl. Sessions Judge, Rohtak, dated 18.03.2021.

If that fine is not paid within one month from today (if not

already paid), the surety and bail bonds shall not be discharged and in fact they shall then be taken into custody to undergo imprisonment in default of payment of fine, as was imposed vide the said order, i.e. simple imprisonment for a period of one month each.

17.09.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No