

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

CRR No. 2652 of 2018 (O&M)

Date of Decision: 10th May, 2022

Vicky

Petitioner

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B. S. Bairagi, Advocate for the petitioner.
Ms. Geeta Sharma, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

This criminal revision is filed aggrieved of the appellate order whereby sentence of the accused (respondents No. 2 to 10 in this petition) was modified and they were released on probation on furnishing of probation bonds for a period of one year with one surety and on payment of compensation of Rs.10,000/-. The revision is accompanied by an application for condoning the delay of 53 days.

The brief facts are that respondents No. 2 to 10 faced trial in case of FIR No.185 dated 20.6.2013, under Sections 323, 325 read with Section 34 IPC, registered at Police Station Uchana. The police received a telephonic information from Government Hospital that Vicky, Vikash, Balwan and Sandeep injured were admitted in the hospital. Statements of the injured were recorded. As per the allegations on 15.6.2013, Vicky along with his uncle Balwan, Sandeep and Vikash while returning home were

stopped by Satyawan and Bijender gave a jaili blow on the left knee of Vicky. Surrender gave jaili blow below the right knee of Vicky and Sakim gave jaili blow on his left hand. Jagmender and Kuldeep gave lathi blows on left hand and left ankle of Vicky. Sunehra and Rajender gave lathi blows on the head and legs of Sandeep. Respondents No. 2 to 10 were convicted under Sections 323, 325 read with Section 34 IPC vide judgment dated 17.12.2016. Vide order dated 19.12.2016, they were sentenced to undergo imprisonment as under:

<i>Under Section 323/34 IPC</i>	<i>Rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- each and in case of non-payment of fine, the convicts shall further undergo rigorous imprisonment for a period of one month each.</i>
<i>Under Section 325/34 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay fine of Rs.2000/- each and in case of non-payment of fine, the convicts shall further undergo rigorous imprisonment for a period of three months each.</i>

Both the sentences were ordered to run concurrently.

In appeal, learned counsel for respondents No. 2 to 10 restricted his prayer that accused be released on probation.

The appellate court considering the facts and circumstances, the nature of injuries, that there was no report of bad antecedents and further that respondents No. 2 to 10 were students, poor persons, sole bread earners of the families and the case falls within the ambit of Section 360 Cr.P.C., released them under Section 4(1) of Probation of Offender Act, 1958 (for short, 'the Act').

Aggrieved of the appellate order, the present revision petition

is filed.

Learned counsel for the petitioner submits that the prosecution had proved its case, the trial court on the basis of the evidence adduced convicted respondents No. 2 to 10 and the appellate court erred in releasing them on probation.

Learned counsel for the State submits that respondents No. 2 to 10 have completed the probation period. There are no reports of their involvement in any other case.

The Supreme Court in Chandreshwar Sharma v. State of Bihar, (2000) 9 SCC 245, while considering such mandate, held as under:

“3. The appellant herein was convicted under Sections 379 and 411 I.P.C. and was sentenced to rigorous imprisonment for one year as 3.5 Kg. of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal

of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of [Section 360](#) of the CrPC. [Section 361](#) and [Section 360](#) of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under [Section 360](#) of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of [Sections 360](#) and [361](#) of the CrPC. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of [Section 360](#) of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under [section 360](#), and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

Jurisdiction of this Court in the criminal revision is limited. No case is made out for legal or factual error calling for interference by this court. Moreover, respondents No. 2 to 10 were released on probation in 2018 and had completed their probation period in 2019. Interference at this stage would only amount to undoing the reformatory steps taken by the appellate court.

The petition is dismissed.

Since the main case has been dismissed, the application for condonation of delay is also disposed of.

[AVNEESH JHINGAN]
JUDGE

10th May, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |