

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

- 1)

CRA-S-2288-SB-2008 (O&M)
Decided on : 27.04.2023
- Rakesh and others

... Appellant(s)
- Versus
- State of Haryana

... Respondent(s)
- 2)

CRR-2444-2009
- Satya Parkash

... Petitioner(s)
- Versus
- State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashit Malik, Advocate
for the appellant(s) (in CRA-S-2288-SB-2008).

Mr. Nitin Rathee, Advocate for
Mr. Sanjeev Sheoran, Advocate
for the petitioner(s) (in CRR-2444-2009).

Mr. Pawan Kumar Jhanda, AAG, Haryana.

SANJAY VASHISTH, J.

1.

This judgment shall dispose of CRA-S-2288-SB-2008 (O&M) and CRR-2444-2009, as they both are interconnected matters and are arising out of the same judgment of conviction dated 12.11.2008 and order of sentence dated 15.11.2008. However, for the sake of convenience, the facts are being extracted from CRA-S-2288-SB-2008.
2.

Appellants – Rakesh, Joginder alias Kalu and Rampal, have filed present appeal against the judgment of conviction dated 12.11.2008 and order of sentence dated 15.11.2008, passed by Ld. Additional Sessions Judge (Fast Track Court), Bhiwani, in Sessions Case No.29 of 22.05.2008, Sessions Trial

No. 89 of 21.05.2008, arising out of FIR No.206, dated 27.08.2001, under Sections 323, 325/34 of IPC, registered at Police Station Sadar, Dadri, and Sessions Case No.28 of 22.05.2008, Sessions Trial No.880 of 21.05.2008, arising out of Criminal Complaint filed under Sections 325/307/397/120-B of IPC and Section 25 of the Arms Act.

3. Accused-appellants were held guilty for commission of offences punishable under Sections 323, 325/34 of IPC, and were ordered to undergo sentence(s), as detailed in the following table:

Name of Convict(s)	Under Section	Sentence	Fine	In Default
Rakesh, Joginder alias Kalu, Rampal	323 IPC	06 months RI	Rs. 500/- each	
Rakesh, Joginder alias Kalu, Rampal	325 r/w 34 IPC	03 yearsRI	Rs. 5,000/- each	01 month SI (each)

All the substantive sentences were ordered to run concurrently. However, the period of detention already undergone by the accused-appellants, if any, was ordered to be set off against the substantive sentence.

4. By recording finding of acquittal for offence under Sections 397, 307 of IPC and Section 25-54-59 of the Arms Act, the appellants were convicted for offences under Section 323, 325/34 of IPC.

5. In CRR-2444-2019, petitioner prayed for modification of judgment of conviction dated 12.11.2008 and order of sentence dated 15.11.2008, to the extent of convicting all the accused-respondents under Sections 323, 325, 307 read with Section 34 of IPC.

6. While addressing arguments on behalf the appellants, learned counsel submits that except the present case, the appellants are not involved

in any other criminal case till date. More importantly, incident took place around more than 22 years back, and thereafter, during the pendency of the present appeal also, appellants were never got involved in any other criminal case.

7. Even, learned State counsel informs the Court that there is no other criminal case against the appellants, therefore, nothing against their credentials is found.

8. Learned counsel for the appellants further submits that he has the instructions to not to challenge the conviction as held by the Ld. Trial Court, however, he prays for grant of the benefit of probation under Section 360 Cr.P.C. or under the Probation of Offenders Act, 1958, to the appellants. He relies upon the judgment of this Court rendered in Arjan Dass and others vs. State of Haryana and another, 2017(1) Law Herald 795 (Law Finder Doc Id # 838932), and refers para Nos. 17 & 18 of the said judgment. Para Nos. 17 & 18 are reproduced herein-below:-

“17. As regards the question of sentence, it may be mentioned here that the appellants are facing the agony of criminal prosecution for the last about twenty two years. While being heard on the quantum of sentence as required under Section 235 Cr.P.C., the appellants had stated that they were first offenders; they belonged to one family; and, having minor children to support. The said stand taken by the appellants was not challenged by the complainant party. The appellants have been convicted and sentenced for the offences, which are punishable with imprisonment upto seven years. Under these circumstances, this Court finds that the sentences of the appellants can be set-aside and, instead, the appellants can be released on probation.

18. Resultantly, the impugned judgment of conviction passed by the learned trial Court is upheld. The sentences of imprisonment imposed upon the appellants by the learned trial Court are set-

aside. Instead, the appellants shall furnish bonds to the satisfaction of the Chief Judicial Magistrate, Sirsa, within a period of three months from today to keep peace and be of good behaviour for a period of one year and to receive sentences as and when called upon to do so. The fine imposed upon them by the learned trial Court which stood paid, shall be treated as costs of proceedings. At the same time, it is observed that the appellants shall not suffer any disqualification attaching to their conviction in terms of Section 12 of the Probation of Offenders Act, 1958.”

9. Learned counsel for the appellants also submits that the appellants are facing the proceedings in the present case since the year 2001, and now they are well established in their respective lives along with their family members. They are the main persons responsible for earning the livelihood for their families. Moreover, learned counsel relies upon their unblemished career in the last more than two decades, and thus, prays for releasing appellants on probation.

10. On the other hand, learned State counsel is also unable to rebut the contentions addressed by the learned counsel for the appellants.

11. I have considered the submissions addressed by both the sides and examined the record also.

12. I do not find any perversity or infirmity in the findings given by 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.

13. Regarding the prayer of taking a lenient view and to consider release of the appellants on probation, it is noticed that appellants have not undergone any part of their substantive sentences, but have faced the agony

of a protracted trial for almost 22 years. They are not previous convicts nor have been involved in any other criminal offence during this period.

14. 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.”*

15. This Court has also noticed that during the period of last more than two decades, appellants are not even alleged to be involved in any other criminal activity, and the offence committed, was an outcome of previous enmity between the complainant and the accused persons, as the complainant – Satya Parkash was also facing trial of having caused injuries to one Munshi

Ram, who belonged to the accused persons. Further, the submissions of the appellants that they are now well settled within their families, is worth believing.

Otherwise also, this Court is of the view that to send a person of clean antecedents in the last two decades, inside jail, would not be fruitful to either side, rather, joining the company of other jail inmates by the appellants, after reforming themselves, would be detrimental to their families also.

In other words, since last two decades, the appellants, were never found indulged in any other similar activity, which shows that with the passage of time, appellants have adopted the principles of reformatory theory, which otherwise also sends a direct message to reform oneself despite facing conviction in a criminal case.

16. On the issue of reformatory theory in context to any wrong doer, His Lordship V.R. Krishna Iyer, J., of Hon'ble Apex Court, in case titled as **Mohammad Giasuddin v. State of Andhra Pradesh**, (1977) 3 SCC 287, has observed as under:-

“5. If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.” (emphasis added)

17. In case titled as **Satish @ Sabbe v. State of Uttar Pradesh** (Special Leave Petition (Crl.) No. 7369 of 2019, decided on 30.09.2020 : Law Finder Doc ID # 1746022), His Lordship Surya Kant, J., says as:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a

civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.” (emphasis added)

18. This Court also can not ignore the observation made by their Lordships’ of Hon’ble Apex Court in the case of Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644:-

“9. The modern approach should be to reform a person instead of branding him as a criminal all his life”.

19. Therefore, 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, 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.

Resultantly, while upholding the conviction of the appellants under Section 323, 325 read with Section 34 of IPC, the substantive sentence of imprisonment is set aside. Accordingly, benefit of provision of Section 360 Cr.P.C. is extended to the appellants, and **they are ordered to be released on probation for a period of two years, subject to their executing bonds to the satisfaction of the Chief Judicial Magistrate concerned.** They would also file an undertaking with regard to the maintaining of peace and good behaviour during the period of probation. They would appear and undergo the sentence, as and when they may be called upon to do so, in case they violate any of the conditions of the probation.

20. 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(s)/victim(s) 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(s)/victim(s) 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.

21. **The appeal stands disposed of in the above terms.**

22. So far as, CRR-2444-2009, filed by Satya Parkash is concerned, during the course of arguments, learned counsel for the petitioner could not submit any plausible defect or perversity in the findings recorded by the Ld. Trial Court, observing not finding of any evidence, which could lead to the accused/appellants being held guilty of the offence punishable under Section 307 of IPC.

Still, to satisfy the conscious of the Court, paragraph No.29 of the impugned judgment has been perused by this Court, wherein, Ld. Trial Court has discussed that the accused never had the intention to outrightly kill or even attempt to kill the complainant Satya Parkash. The relevant extract of paragraph No.29 of the impugned judgment says as under:-

“..... The accused never had the intention to outrightly kill or even attempt to kill the complainant Satya Parkash as per the prosecution case itself and the testimony of complainant Satya Parkash PW1, in which he has stated that even at the time of the incident, the accused discussed and decided not to kill him with the pistol. The version of the complaint case that accused had struck the jeep against the complainant Satya Parkash, was also found to be false during investigation and not being the allegation in the original complaint Ex.DB. All these factors clearly show that there is no involvement of Sections 397, 307 IPC or Section 25-54-59 of Arms Act, where no recovery of any pistol also has been made.”

23. Moreover, no State appeal against any of the finding recorded by

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the Ld. Trial Court, has been filed.

Accordingly, finding no merit in criminal revision petition, same
is **dismissed**.

(SANJAY VASHISTH)
JUDGE

April 27, 2023
J.Ram

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