

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

206

CRA-S-89-SB-2005 (O&M)  
Decided on : 12.04.2023

Satwinder Singh @ Sattu and another

. . . Appellant(s)

Versus

State of Punjab

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. M.S. Dhami, Advocate  
for appellant No.2.

Mr. JS Arora, DAG, Punjab  
assisted by ASI Manjit Singh Gill.

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**SANJAY VASHISTH, J. (Oral)**

1. Present appeal has been filed by Satwinder Singh @ Sattu, then aged 18 years, and Manjit Singh, then aged about 27 years (at the time of conviction), against the judgment of conviction and order of sentence dated 23.12.2004, passed by learned Addl. Sessions Judge-cum-Presiding Officer, Fast Track Court, Rup Nagar, in Sessions Case No.RT-73/29.10.2003/10.4.2004, arising from FIR No.179, dated 13.12.2002, under Sections 307, 324, 34 of IPC, registered at Police Station Morinda, District Ropar.

2. By recording finding of acquittal for offence under Section 307 of IPC, both the appellants were accordingly discharged, but were convicted for offences under Section 325/34 of IPC. During the pendency of present appeal, appellant No.1 – Satwinder Singh @ Sattu, expired, and appeal qua him was ordered to have abated by this Court vide order dated 06.02.2023, which says as under:-

*“Vide judgment dated 23.12.2004, passed by Ld.*

*Addl. Sessions Judge-cum-Presiding Officer, Fast Track Court, Rup Nagar, in Sessioins Case No. RT-73/29.10.2003/10.04.2004, accused (1) Satwinder Singh @ Sattu, and (2) Manjit Singh, were tried for offences under Sections 307/324/34 of IPC, in proceedings arising from FIR No. 179, dated 13.12.2002, registered at P.S. Morinda, Distt. Ropar.*

*While acquitting for the offences punishable under Section 307 of IPC, both the accused were convicted for offences punishable under Section 325 read with Section 34 of IPC, and were accordingly sentenced for a period of two years each, along with a fine of Rs.1000/- each, and in default of payment of fine, further RI for three months each.*

*Thereafter, present appeal is pending since the year 2005.*

*Order dated 30.08.2018, says as under:-*

*“Learned State counsel has placed on record photo copy of death certificate of appellant no.1 – Satwinder Singh. The same is taken on record.*

*Satwinder Singh – appellant No.1 has died on 19.6.2008 and none has appeared on his behalf to pursue this appeal.*

*Mr. Varun Mittal, Advocate has put in appearance on behalf of appellant no.2 and seeks adjournment to inspect the record before making submissions.*

*List on 27.9.2018.*

*Lower court record be summoned.”*

*Today, again none of the counsel is in a position to dispute the factum of death of appellant No.1 – Satwinder Singh @ Sattu. Therefore, appeal qua him stands abated. However, same would be subject to the terms & conditions, passed by this Court in **IOIN-CRA-S-4686-SB-2018 in CRA-S-4686-SB-2018**, titled as, **“Shivji Ram @ Dimple Vs. State of Punjab”**, decided on **24.11.2022**.*

*Now, decision of the present appeal qua the culpability of appellant No.2 – Manjit Singh, is to be done.*

*Counsel for the appellant seeks a short accommodation to address arguments.*

*Adjourned to 22.02.2023.”*

3. While dealing with the appeal filed by appellant No.2, on the previous date of hearing i.e. on 21.03.2023, this Court observed as under:-

*“Order dated 27.02.2023, says as under:-*

*“Counsel for the appellant(s) submits that incident in the present case took place in the year 2002 for which appellant-Manjit Singh was convicted under Section 325 read with Section 34 IPC and was accordingly, sentenced for a period of two years, alongwith fine amount of Rs. 1000/- and in default of payment of fine, further RI for three months.*

*Counsel submits that fine amount of Rs. 1000/- had already been deposited by the appellant- Manjit Singh.*

*Learned counsel for the appellant(s) submits that except the present case, appellant- Manjit Singh is not involved in any other criminal case till date. More importantly, incident took place around more than 20 years back, when appellant was 27 years of age and thereafter, during the pendency of the present appeal also, appellant never got not involved in any other criminal case. Counsel submits that appellant being the sole bread earner has the responsibility to look after his complete family, thus, prays for grant of probation by relying upon the judgment passed by this Court in case **“Arjan Dass and others v. State of Haryana and another”** Criminal Appeal S-319-SB-2000, decided on 19.01.2017, 2017 (1) Law Herald 795, Law Finder Doc Id # 838932.*

*Learned State counsel seeks time to verify the antecedents of the appellant- Manjit Singh.*

*Adjourned to 21.03.2023.”*

*Learned State counsel submits that according to the instructions received by him and as per the report from the O/o Dy. Supdt. of Jail, Ropar, appellant – Manjit Singh never remained inside jail, thus, custody certificate is not available qua him.*

*However, learned counsel for the appellant files an affidavit dated 27.02.2023 of the appellant – Manjit Singh, to substantiate his submission that appellant is not involved in any other criminal case, except the present one. Said affidavit is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.*

*The relevant portion of the aforesaid affidavit is reproduced hereunder:-*

*“1. That the deponent is appellant no.2 in the above appeal no. CRA-S-No 89-SB-2005, which is pending adjudication.*

2. *That the deponent is not involved in any criminal proceedings during his life time except the criminal proceedings, against which the above said appeal no. CRA-S-No 89-SB of 2005 has been filed and pending adjudication.*
3. *That the deponent is a poor person, sole bread earner for his family, and having responsibility to look after & support his complete family including old aged mother.*
4. *That the parties involved in the criminal proceedings in question are resident of same and one locality.*
5. *That the deponent undertakes to abide by all the conditions for grant of benefit of probation granted by the Hon'ble High Court."*

*Learned State counsel is given one more opportunity to find out the antecedents of the appellant – Manjit Singh, and to place the same on record of this appeal.*

*Adjourned to 12.04.2023."*

4. Today, learned State counsel on instructions from ASI Manjit Singh Gill, informs the Court that there is no other criminal case against appellant No.2 – Manjit Singh, therefore, nothing against his credentials is found.

5. Reiterating the submissions, Mr. M.S. Dhami, learned counsel for appellant No.2, 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 Probation of Offenders Act, 1958, to appellant No.2. 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.”*

6. Learned counsel for appellant No.2 also submits that appellant No.2 – Manjit Singh, is facing proceedings in the present case since the year 2002, and now he is well established in his life along with his family members. He is the main person responsible for earning the livelihood for his family. Moreover, learned counsel relies upon his unblemished career in the last more than two decades, and thus, prays for releasing appellant No.2 on probation.

7. On the other hand, learned State counsel is also unable to rebut the contentions addressed by the learned counsel for appellant No.2.

8. I have considered the submissions addressed by both the sides

and examined the record also.

9. 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.

Regarding the prayer of taking a lenient view and to consider release of appellant No.2 on probation, it is noticed that appellant No.2 has not undergone any part of his substantive sentence, but he has faced the agony of a protracted trial for almost 20 years. He is not a previous convict nor has been involved in any other criminal offence during this period.

10. 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.”*

11. This Court has also noticed that during the period of last more

than two decades, appellant No.2 – Manjit Singh is not even alleged to be involved in any other criminal activity, and when offence was committed, he was of the age about 27 years. Thus, submissions of the appellant that he is now well settled within his family, 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 appellant No.2, after reforming himself would be detrimental to his family also.

In other words, since last two decades, appellant No.2 – Manjit Singh, was never found indulged in any other similar activity, which shows that with the passage of time, appellant has adopted the principles of reformatory theory, which otherwise also sends a direct message to reform oneself despite facing conviction in a criminal case.

12. 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)*

13. 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)*

14. 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”.*

15. 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 appellant No.2 – Manjit Singh, while upholding his conviction. The offences for which the accused-appellant has 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 appellant under Section 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 appellant No.2 – Manjit Singh, and he is ordered to be released on probation for a period of one year, subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned. He would also file an undertaking with regard to the maintaining of peace and good behaviour during the period of probation. He would appear and undergo the sentence, as and when he may be called upon to do so, in case he violates any of the conditions of the probation.

16. Further, keeping in view the facts and circumstances of the case, appellant No.2 is 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

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complainant(s)/victim(s) against proper receipt. In case he fail to do so, the benefit of probation granted to him, shall stand withdrawn forthwith and he shall undergo the remaining part of his sentence.

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

(SANJAY VASHISTH)  
JUDGE

April 12, 2023  
J.Ram

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