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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1011-2019 (O&M)

Date of decision: 20.09.2023

Tarlochan Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Vikram Preet Arora, Advocate for
For the applicant-petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)**CRM-38687-2023**

Application herein is for fixing actual early date of hearing in main case, which was admitted vide order dated 17.08.2022.

For the reasons stated in application and as it is not being opposed by learned State counsel, same is allowed and main case is taken up on Board for hearing today itself.

Main case (O&M)

Revision herein is for setting aside impugned order/judgment dated 13.10.2015 passed by learned Judicial Magistrate First Class, Fatehgarh Sahib vide which petitioner was convicted of having committed an offence under Section 325 IPC for having caused grievous hurt to injured Mohan Lal by way of blunt weapon and he was sentenced to undergo rigorous imprisonment for a period of one year. Appeal was filed by the petitioner which too was dismissed vide order dated 18.04.2019 passed by learned Additional Sessions Judge, Fatehgarh Sahib whereby conviction of the petitioner/appellant was upheld but sentence of imprisonment was reduced to three months.

2. Succinct factual background, as noted in the judgment of trial Court, reads

“2. Brief prosecution story is that the case was registered on the basis of statement made by complainant Ram Sarup that he is agriculturist and owned 16 acres of land at village Khalaspur. This land is of Dera Udasin and they cultivating the land since six generations. On 06.06.2009, he along with his brother Mohan Lal, father Om Parkash and Dharampal son of Dev Singh, his cousin Gurjivan Singh, Sunil son of Shiv Dayal, Brahmpal son of Janak Singh, Ajmer Singh son of Prem Singh and other 15-20 persons of village were going to cultivate the land with 3-4 tractors then about 100 persons, ladies and children armed with sotis came there. They tried to fled away from the spot to save their lives but some unknown person gave soti blow on his right arm, leg and back. Tarlochan Singh gave soti blow on the thumb of left hand of his brother Mohan Lal. They raised the alarm of marta marta. After saving themselves from the clutches of accused, they got admitted in civil hospital Bassi Pathana. Accused also damaged their tractors and motorcycles. They remained under treatment and X-rays were conducted. Site plan of the place of occurrence was prepared X-ray films and reports taken from the hospital. Accused were arrested and weapons used in the occurrence recovered and taken into police possession. Statements of witnesses recorded. After completion of necessary formalities challan was presented in the Court.

3. Seven accused, including petitioner, were charge-sheeted under Sections 323, 325, 148 read with Section 149 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

4. To support the charges, prosecution examined as many as 12 witnesses, namely, Mohan Lal as PW1, Balbir Singh as PW2, Ram Sarup as PW3, Baljit Singh Inspector (Retd.) as PW4, Gurjivan Singh as PW5, HC Baljit Singh as PW6, Dr. Jatinder Kumar as PW7, Amrik Kaur Nurse (reted.) as PW8, Dr. Ruby Chowdhary as PW9, Om Parkash as PW10, Sukhwinder Singh Patwari as PW11, Ram Kishan as PW11 (wrongly numbered) and ASI Paramjit Singh as PW12.

5. All the incriminating evidence produced by the prosecution was confronted to the accused in their statements under Section 313 Cr.P.C. They controverted the same and pleaded innocence. In defence, accused examined Rajinder Kaur, Civil Ahlmad, who proved the plaint in civil suit No.2507/2013 titled ‘Mahant Om Parkash Versus Jagdev Singh’ and the photocopy of plaint as Ex.D1.

6. After hearing both the parties, learned trial Court held accused/petitioner to be guilty for the commission of the offence punishable under Section 325 of the IPC and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/-; in default, imprisonment for 15 days vide order

Joga Singh, Garibu and Jagtar were acquitted of the charges levelled against them.

Petitioner Tarlochan Singh was also acquitted of charges under Sections 323, 148 read with Section 149 IPC by learned trial Court.

7. Aggrieved against the impugned judgment of conviction and order of sentence dated 13.10.2015, appeal was filed by the convict (petitioner herein), which was dismissed with modification in the order of sentence by reducing it to three months vide impugned judgment dated 18.04.2019.

8. Learned trial Court, *inter alia*, has held as under:

“23. The initial version of the complainant is Ex. PA. In the said version Ram Sarup and Mohan Lal have averred that while they were running from the fields when mob of 100 persons had attacked on them; some persons had hit the complainant Ram Sarup on right arm, legs, calves and hips. Mohan Lal had been hit by Tarlochan Singh son of Hakam Singh. Thereafter there is no other exhibited statement of the complainant which shows that the other accused were identified lateron. Statement under Section 161 Cr.P.C. cannot be countenanced until and unless they are used under section 145 CrPC (which they have not been). Even otherwise, the incident is of 06.06.2009 and statement of complainant under section 161 CrPC wherein names had been taken of accused persons other than Tarlochan Singh is of 27.06.2009. Father of the complainant PW10 Om Parkash admitted in his cross-examination that there are civil litigation with the said persons. It creates a doubt as to the role of the accused persons who were already known to the complainant party due to the civil litigation. No doubt the injuries were suffered by complainant Ram Sarup, had it been the present accused persons other than Tarlochan Singh; the complainant would have taken their names on the first date of statement itself. There is no supplementary statement on record nor there is other proof as to how the accused other than Tarlochan Singh were roped in. Investigating Officer could not explain the said factum in his examination in chief. Though the FIR is not encyclopedia of facts but the material facts such as names of accused persons was the relevant fact under section 8 of Indian Evidence Act. Section 8 of Indian Evidence Act contemplates that the conduct of the parties to the litigation around the time of the incident or the occurrence is a relevant fact. The conduct of the complainant as well as Mohan Lal in the statement Ex.PA shows that they concealed the names of real assailants except Tarlochan Singh so as to rope in parties who were litigating in civil dispute with them. Thus it is crystal clear from the above discussion that complainant had concealed the truth of the matter about the true assailants and the accused persons Jagdev Singh Harjang Singh, Joga Singh, Garibu and Jagtar Singh are entitled to benefit of doubt.

24. As far as Tarlochan Singh is concerned; both the Mohan Lal and Ram Sarup deposed against him qua the only injury that had been inflicted upon Mohan Lal Ex.PA which is the initial statement of complainants also corroborates their stand. PW9 Dr. Ruby Chowdhary had declared dislocation of thumb on the date of incident i.e. 06.06.2009 itself. Dr. Jatinder Kumar PW7 duly proved the said injury to be dislocation of thumb. The said injury is palpably grievous in nature caused by blunt weapon by Tarlochan Singh. Presence of other accused persons is already doubtful as discussed above. It is also doubtful that mob of 100 persons

would have given only few minor injuries to Ram Sarup. Thus in view of the above discussion, accused persons namely Jagdev Singh, Harjang Singh, Joga Singh, Garibu and Jagtar Singh are acquitted by the charges levelled against them. Accused Tarlochan Singh is convicted of having committed an offence under section 325 IPC for having caused grievous hurt to injured Mohan Lal by way of blunt weapon. He is acquitted of the charges under section 323, 148, 149 IPC in view of the doubt of presence of other accused persons. Let convict Tarlochan Singh be taken into custody and be heard on the quantum of sentence."

9. Learned First Appellate Court while disposing of the appeal observed as below:

"9. I have heard rival contentions raised by the learned counsel for appellant as well as learned Addl.PP for State. The prosecution witnesses Ram Sarup and Mohan Lal unanimously deposed that while they were running from the fields, a mob of 100 persons had attacked on them; some persons hit the complainant Ram Sarup on right arm, legs, calves and hips. Mohan Lal had been hit by Tarlochan Singh son of Hakam Singh. The ocular version of complainant and eye witnesses has been corroborated by medical evidence. Accordingly, learned trial Court was justified in convicting the appellant under section 325 IPC. Appellant is facing the trial for the last 10 years and injury was also inflicted on his thumb with blunt weapon. Upholding the impugned judgment of conviction and accordingly, part of sentence is modified for three months. Appeal in hand stands dismissed. Appellant is ordered to be taken into custody and sent to Jail for undergoing imprisonment awarded to him. The period of detention already undergone by the convict during the investigation and trial be set off against the sentence of imprisonment imposed upon him. Record of learned trial court be returned whereas file of this Court be consigned to the record room after due compliance."

10. Learned counsel for the petitioner submits that no case under Section 325 IPC is made out against the petitioner. Case of prosecution is not supported by any corroborating evidence. Independent witness did not support the case of the prosecution. Version of injured is not supported by medical evidence. PW-7 Doctor declared the injury as grievous. In cross-examination he said such like injury can be caused by falling on the hard surface. All witnesses of prosecution are from the same family. The alleged injured persons are interested in land where dispute is alleged to have taken place. There is not even a single other witness from the village or from the nearby village. Complainant nominated seven persons in the FIR and all other accused were acquitted by learned trial court.

10.1. Learned counsel for petitioner further submits that in the alternative, petitioner is entitled to be released on probation. Learned Courts below should have

18.04.2019 and his sentence was suspended vide order date 20.05.2019 passed by a coordinate Bench of this Court.

11. Per contra, learned State counsel submits that learned Courts below were justified in convicting the petitioner under Section 325 IPC. Learned Appellate Court has already taken a lenient view and reduced the sentence to three months imprisonment. He further contends that the judgment passed by learned Appellate Court does not call for any interference by this Court and while considering the quantum of sentence to be imposed for the offence of voluntarily causing grievous hurt, one of the prime considerations should be deterrence.

12. I have heard the rival contentions of learned counsels for the parties and have perused the record.

13. Having perused the impugned judgments, my considered opinion is that the prosecution witnesses withstood the test of cross-examination and nothing material could be elicited in favour of petitioner. The submissions made before learned Appellate Court were duly considered and rightly repelled by recording sound and sufficient reasons consistent with the trustworthy evidence on record. I am inclined to agree with the findings of conviction recorded by learned trial Court, as upheld by learned Appellate Court, for the offence punishable under Section 325 IPC, which need no interference by this Court. Consequently, the conviction of the petitioner, as mentioned above, is maintained.

14. Learned State counsel has though been able to defend this case on merits, but in so far as releasing the petitioner on probation is concerned, I have considered the applicability of the benefits of Sections 360, 361 Cr.P.C. and the Probation of Offenders Act to the convict/petitioner herein.

15. Probation of Offenders Act, 1958 (for short "Act") was enacted in order to save offenders in appropriate cases from being habitual offenders by providing them with a chance to reform rather than dumping into jails. For ready reference, Section 4 of Act is reproduced herein below:

"Section 4 of The Probation of Offenders Act, 1958

4. *Power of court to release certain offenders on probation of good conduct.—*

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, 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 the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

16. There is no gainsaying that the relevant statutory provisions and the principles underlying and pertaining to release of offenders on probation, instead of straightaway sentencing them, need to be kept in mind by the Courts while passing sentencing orders.

17. Objectives and principles of criminal law as envisioned in the provision *ibid*, apart from deterrence against committing crime against society, are inter-alia focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime.

The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potential of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of reoffending.

17.1 Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society.

18. I need not labour all over again as issue involved herein has already been dealt with by me in similar case bearing CRM-A-38-MA-2017 titled **Nasri Vs. State of Haryana**. For ready reference, relevant portion of the aforesaid judgment is reproduced herein below:

“Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. In my opinion, following principles or what can be termed as potential benefits of release on probation ought to be kept in mind by the learned sentencing Courts below for exercise of judicial discretion to grant probation, provided a deserving case is made out.

- a) **Nature of the Offense:** The severity and type of offense committed by the individual are important considerations. Less serious offenses, such as non-violent crimes or violent but arising out of self defense or first time offenses, might make an individual more eligible for probation.*
- b) **Individualized Justice:** Before grant of the benefit of release on probation, one has to take into consideration the individual circumstances of the offender viz., the nature of the crime vis-a-vis the potential for positive change. It allows for tailored sentencing that considers the unique needs and*

- characteristics of the offender, promoting a more just and proportionate response to the offense.*
- c) **Criminal History:** *A convict's prior criminal history must be assessed to determine if they have a pattern of repeat offenses. A history of violent or serious crimes might make an individual less likely to be granted probation.*
 - d) **Rehabilitation Potential:** *The offender's willingness and potential to rehabilitate play a significant role. If there's evidence that the individual is committed to changing their behavior, participating in counseling, and addressing the underlying causes of their criminal activity, they ought to be considered for probation.*
 - e) **Compliance with Probation Terms:** *Convicts on probation are required to follow specific conditions, such as regular reporting to a probation officer, avoiding criminal activity, and attending counseling or rehabilitation programs. A person's willingness and ability to comply with these terms would influence their eligibility for probation.*
 - f) **Preventing Recidivism:-** *Probation, as an alternative to incarceration, can indeed help prevent first-time offenders from becoming habitual or "hardened" criminals. By providing rehabilitation and support services, probation aims to address the underlying factors that contribute to criminal behaviour, giving offenders a chance to change their ways.*
 - g) **Community Ties:** *An assessment of offender's ties to the community, such as family, employment, and stable housing ought to be carried out. Strong community ties can indicate a support system that can help prevent further criminal activity.*
 - h) **Risk to Public Safety:** *The safety of the community is a crucial factor. Assessments are made to determine whether releasing an individual on probation poses a low risk of committing new offenses or harming others.*
 - i) **Reducing Overcrowding:-** *Probation can help alleviate the overcrowding of jails and prisons. Non-violent offenders who are eligible for probation can be kept under community supervision, freeing up space in correctional facilities for more serious offenders.*
 - j) **Promoting productivity:-** *By allowing offenders to remain in the community and engage in productive activities such as work, education, or community service, probation can contribute to making them productive members of society. This, in turn, can lead to them contributing as taxpayers instead of being a burden on the State.*
 - k) **Second chance and Reformation:-** *Probation offers a second chance to offenders by allowing them to avoid imprisonment and providing an opportunity for reformation. Through counselling, treatment, and supervision, offenders can address the root causes of their criminal behaviour and work towards positive change.*
 - l) **Reintegration into Society:** *Probation allows offenders to maintain ties with their families, jobs and communities, which can enhance their chances of successful reintegration after their sentence. This reduces the likelihood of recidivism and helps break the cycle of criminal behaviour.*
 - m) **Compensation to the aggrieved:** *Court can even ask the offender to pay compensation (by way of penalty) to the aggrieved person as means of retribution or penance as a pre condition of release on probation.*

- n) **Probation Officer Assessment:** Probation officer may be asked by a court to conduct an assessment of the offender to gather information about their background, behavior, and potential for rehabilitation. Such an assessment would help take an informed decision regarding probation.
- o) **Judicial Discretion:** In the end, depending on facts and circumstances of the case, it is the discretion of court to determine whether to grant probation. It shall consider all relevant factors and balance the interests of rehabilitation, public safety, and justice in the decision-making process. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety.”

19. Keeping the aforesaid in mind, I am thus of the view that the release of the convict/petitioner herein on probation, in the present case, can indeed serve the dual purpose of deterrence and reformation. By allowing release on probation, the aim herein is to deter his future criminal conduct, while also providing an opportunity for reform and rehabilitation.

20. In the premise, instant revision petition is hereby partly allowed and petitioner is ordered to be released on probation of good conduct on his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount subject to the condition that he shall keep peace and be of good behaviour for a period of two years. These bonds be furnished before learned trial Court within one month from today. It is further ordered that the fine deposited by the petitioner will be treated as costs of proceedings. In case of default of aforesaid directions, the instant revision petition shall stand dismissed and the petitioner shall undergo the sentence, as awarded by learned Appellate Court.

21. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

20.09.2023
vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No