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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3262-2011 (O&M)
Date of decision: 26.09.2023

Ramesh and another
.....Petitioners
versus
State of Haryana
.....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- None.

ARUN MONGA, J. (ORAL)

Due to a call given by the Bar Council of Punjab and Haryana, the Executive Committee of the Bar Association has unanimously decided not to work today i.e. on 26.09.2023 in solidarity with the District Bar Association, Sri Muktsar Sahib as one of the Bar members is alleged to have been falsely implicated by the police officials at Sri Muktsar Sahib.

2. Revision herein is for setting aside impugned judgment of conviction and order of sentence dated 05/06.06.2009 passed by learned Judicial Magistrate First Class, Karnal (for short ‘trial Court’) vide which petitioners were convicted of having committed offences punishable under Sections 326, 325, 324, 323, 506 of the Indian Penal Code, 1860 (for short ‘IPC’) and they were sentenced to undergo rigorous imprisonment as per the table below:

Sr. No.	Section	Sentence	Default stipulation
1.	326 IPC	Rigorous imprisonment two years and fine Rs.1000/- each	Simple imprisonment for 20 days
2.	325IPC	Rigorous imprisonment one year and fine Rs.500/- each	Simple imprisonment for 10 days
3.	324IPC	Rigorous imprisonment six months	-
4.	323IPC	Rigorous imprisonment three months	-
5.	506 IPC	Rigorous imprisonment six months	-

All the sentences were ordered by learned trial Court to run concurrently. Petitioners herein have also impugned herein judgment dated 16.12.2011 passed by learned Additional Sessions Judge, Karnal (for short 'Appellate Court') whereby appeal filed by petitioners was dismissed and judgment/order of learned trial Court was upheld in toto.

3. Succinct factual background, as noted in the judgment of learned trial Court, reads as under:

"2. Brief facts of the prosecution case are that on 29.10.1998, ASI Dharam Pal along with constable Baldev Singh was present at bus stand, police station, Gharaunda Ward Servant PHC, Gharaunda moved a ruqa regarding a quarrel case. On this, ASI Dharam Pal along with Constable Baldev Singh reached the PHC, Gharaunda and after obtaining the opinion of the doctor, he recorded the statement of complainant Rajesh. The complainant stated that he is an agriculturist. On 29.10.1998 at 7.a.m. he along with his elder brother Ashok had gone to the fields. The accused persons Ramesh, Baleshwar, Jeet, Sher Singh and Lakhpat came on the tractor bearing registration no.HR-05E-3053 regarding which they were having a partition dispute. Accused Ramesh was holding an Gandasi in his hand. Accused Lakhpat was holding an iron rod and rests of them were holding lathis. Accused Baleshwar was driving the abovesaid tractor and after parking their tractor in the fields, they stepped down along with the weapons. Accused Ramesh gave a Lalkara to catch hold of Rajesh and Ashok and that they should be taught a lesson for quarreling upon the tractor. On this, accused Ramesh gave a gandasi blow on the left side of his head. The second blow given by the accused Ramesh by the gandasi struck on the middle of thumb and finger of the left hand of the complainant. On this, his brother Ashok ran away towards the house. Accused Baleshwar gave a lathi blow on his head twice. Meanwhile, his father Baru Ram, mother Daya Devi and brother Ashok came at the spot. Accused Ramesh again gave a Lalkara to catch hold of all of them and that they be killed. On this, accused Sher Singh gave a lathi blow on the right knee and left thigh of Daya Devi. Accused Lakhpat gave an iron rod blow which hit on the left thigh, back and shoulder of complainant's father Baru Ram. Accused Jeet gave a lathi blow on the head of his father Baru Ram. His brother Ashok ran away from the spot due to fear. Thereafter, accused Baleshwar also gave him lathi blows. He further stated that Ram Phal and Om Parkash who were working in the nearby fields witnessed the incident and came to their rescue and saved them. The accused persons went away to the village along with the weapons. Thereafter, his elder brother Ashok took all of them to the hospital. On this statement, matter was investigated. Accused were arrested. Statement of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, challan was presented in the court."

4. Pertinently, FIR was registered under Sections 323, 324, 325, 326, 506, 148 read with Section 149 of the IPC against five accused, namely, Ramesh

(petitioner No.1 herein), Jeet (petitioner No.2), Lakhpat, Baleshwar and Sher Singh. Accused Lakhpat was acquitted by both Courts below while accused Baleshwar and Sher Singh died during pendency of trial and proceedings against them were dropped by learned trial Court.

5. Petitioners and co-accused Lakhpat were charge-sheeted under Sections 323, 324, 325, 326, 506 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

6. To support the charges, prosecution examined as many as 8 witnesses, namely, complainant Rajesh as PW1, Ashok Kumar, elder brother of complainant as PW2, Dr. Sham Wadhwa, Ex. Senior Medical Officer as PW3, Daya Devi Injured as PW4, Baru Ram (another injured) as PW5, Om Parkash/eye witness as PW6, Biram Singh SHO as PW7 and Dr. H.O. Bhatia, Ex. Senior Medical Officer as PW8.

7. 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 Head Constable Jai Narain as DW-1 and Dr. H.O. Bhatia as DW2.

8. After hearing both the parties, learned trial Court held accused/petitioners to be guilty for the commission of the offences punishable under Sections, 323, 324, 325, 326, 506 of the IPC and accordingly convicted and sentenced them to undergo rigorous imprisonment, as detailed in para 2 above, vide judgment/order dated 05/06.06.2009, while co-accused Lakhpat was acquitted of the charges framed against him.

9. Aggrieved against the impugned judgment of conviction and order of sentence, both parties filed separate appeals; one was filed by the convicts (petitioners herein) and second was filed by complainant/injured Rajesh. Both the appeals were dismissed vide impugned judgment dated 16.12.2011 passed by learned Appellate Court.

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

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20. *Whereas as per the statement of the complainant before the police and testimony of witnesses before the court, it is proved that in furtherance of common intention, accused Ramesh gave a gandasi blow on his head and another blow which struck between thumb and finger of his left hand. He was also given lathi blow by accused Baleshar (deceased). Injuries were also caused to injured Baru Ram with lathis by accused Jeet Singh and to Daya Devi on various parts of her body by accused Sher Singh (deceased). The statement of witnesses is corroborated by medical evidence. It is further proved on record that on the same day the accused persons criminally intimidated the complainant and other injured that they will be done to death.*

21. *So, on the basis of above, there is no reason to disbelieve the charges levelled by the prosecution against the accused Ramesh and Jeet. Keeping in view the above discussion and the evidence on record, it is held that the prosecution has been able to prove the allegations against accused Ramesh and Jeet that on 29.10.1998, they in furtherance of their common intention inflicted injuries to the complainant Rajesh, his father Baru Ram and his mother Daya Devi. Therefore, accused Ramesh and Jeet are held guilty under Sections 323/324/325/326/506 of the Indian Penal Code. Let they be heard on quantum of sentence on 6.6.2009.”*

11. Learned First Appellate Court while hearing the appeal observed as below:

“18. *Accordingly after considering the contentions of both the parties on merits of the case, let us first of all take the issue of true genesis of occurrence and the role of all the accused persons for the same. After going through the records and evaluating the evidence, it comes out that there is no blemish in the prosecution version, in so far as, the way and the manner, in which the occurrence took place and the persons responsible for the same as held by learned trial court as there is nothing on record to disbelieve the ocular version of the prosecution witnesses which is duly supported by the medical evidence. The evidence of the prosecution has been appreciated in a legal manner and the contentions raised by the learned counsel for the appellants are rightly disbelieved as from the stand taken by injured and eye witness, the true genesis as set out in the FIR is duly proved. Needless to say the learned trial Court has taken all the contentions of counsel for the appellants as set out in para no. 18 to 20 of the impugned judgment and rightly discussed the evidence viz-a-viz the contentions of learned defence counsel and held the appellants guilty and acquitted one of the accused Lakhpatt. The learned trial court has discussed the entire evidence of the prosecution as well defence in para numbers 3 to 12 of the impugned judgment and there is no need to reiterate that evidence in this judgment. On the contrary, as held by the learned trial court, from the oral testimony of the injured and the eye witness alongwith the medical evidence, it is categorically proved on file that the stand of the complainant and injured eye witnesses that they were assaulted and injured by the appellants is well founded and there is no ground to interfere with the said findings and all the main contentions of learned counsel for the appellants are without any basis and were rightly discarded by trial Court.*

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21. Now comes the defence version that injuries on the person of accused have not been explained. In this regard, during the cross-examination of the injured and eye witnesses it was suggested to them that it was the complainant party who attacked the accused party with intention to take forcible possession and the accused persons have caused injuries to them in the right of private defence of their property and life. However, it is undisputed fact that no complaint or case was ever lodged by the accused party in this regard. No doubt during investigations, one of the accused made a statement to police that actually the complainant party of this case has assaulted them but during investigations that version was found to be false and no action was recommended against the complainant party. Then it is also admitted that if the police has not believed the version of the accused, they were at liberty to file a complaint for their version but no such complaint was ever lodged and any action was taken on these lines. Although the accused examined a doctor in their defence who proved some injuries on the person of deceased accused Sher Singh but his testimony itself is not sufficient to say that it was the complainant party, who was aggressor or initiated the attack. If there is nothing on record to believe the defence version of the accused party. On the other hand once they admitted the occurrence and injuries to complainant party and their defence as to the true genesis of occurrence is without any evidence, it is obvious that the stand taken by the complainant party is true and trustworthy.

22. As far as the next plea of learned counsel for the accused that there is no evidence on record to prove the presence of accused Ramesh in this occurrence and he was summoned as an additional accused only on the basis of unreliable statement of the complainant whereas during investigation, he was found innocent. However, after going through the statement taken by injured and eye witnesses it is proved that from the very beginning of the lodging of FIR till their statements before the court, the injured and eye witnesses have categorically named that accused Ramesh was very much present in this occurrence and the main grievous injury on the person of the injured Rajesh was in the hands of this accused as such there is nothing on record to say that the accused Ramesh, was not involved in this occurrence and he was summoned on the basis of unreliable evidence. As such, this plea also proved in vain to raise any doubts about the stand taken by the complainant.

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25. At the same time, the oral evidence of the prosecution is duly supported by the medical evidence. It is categorically proved by PW-8, Dr. H.O.Bhatia, who has medically examined the injured, Rajesh, Baru Ram, and Daya Devi wife of Baru Ram and categorically deposed the nature of the injuries suffered by this injured along with the weapons and ultimate nature of the injuries simply because of the fact that he has

admitted that he possibility of the injuries of all the injured can be caused by falling on the earth or with friendly hands. It cannot be concluded that the injuries were not suffered in the manner stated by the injured and eye witnesses.

26. As far as the last resort that no offence under section 326 IPC is made out from the medical evidence, is concerned, this plea is also not well founded and without basis. PW-2, Dr. Sham wadhwa, has proved the radio-logical reports of the injured, EX.PW3/A and ExPW-3/1. Needless to say originally the offence under section 323 and 324 were attributed but keeping in view the radio-logical report and the fact

that there was fracture of the base of left thumb of injured Rajesh and fracture of the second and third rib of injured, Baru Ram and since the fracture injury caused by accused Ramesh by sharp edged weapon the offence under section 325 and 326 was introduced. And as no. is clear from the MLR of injured Rajesh, injuries 1 and 5 were caused by sharp edged weapons and later on injury no. 1 was found to be fracture, whereas injuries on the person of Baru Ram was also found to be having fracture caused by blunt weapons, the provisions of Section 325 and 326 of IPC was rightly inserted and attracted to the facts in hand and there is nothing on record to say that no offence under section 326 of IPC is made out.

27. *No doubt no opinion was obtained by the police from the doctor who has examined the injured but from the nature of the fracture and the seat of injuries, it is proved that the injury on the person of injury Ramesh due to fracture was a grievous injury caused by the sharp edged weapon and thus a clear case as punishable under Section 326 of IPC is made out. As such, the plea raised by counsel for the appellants in this regard is without any basis. As far as the case law relied upon on this aspect is concerned in Kailash Prasad Kanodia and another vs. State of Bihar, AIR, 1980, Supreme Court, 106, there was no medical evidence disclosing any serious injury on any vital part and the doctor admits the absence of fracture of serious nature but in this case the statement of PW-2, who proved the fractures remained unrebutted and it is proved that the injury no.1 on the person of injured Rajesh, was grievous caused by sharp edged weapon, as such, this authority is of no help to the appellants.*

28. *As far as the plea of counsel for the that there are contradictions and appellants improvements in the stand of both the injured and eye witness which shows that eye witness, PW-6 was not at all present at the spot, is concerned, there is no substance in this because admittedly there are some contradictions and discrepancies in the stand of injured and eye witness but the same are minor and have no affect on the main allegation of assault by convicted accused persons. Learned defence counsel had failed to point out any material contradiction or discrepancy in their stand and mere some difference of time of the occurrence and time when the matter was reported to police, is not sufficient to discard their stand on material aspect of the matter. As stated above simply because of the fact that there is no injury on the person of PW-6, who allegedly intervened to save the complainant party, it cannot be stated that he was not there especially when he has categorically stated that after seeing the assault by the accused he reached at the spot and save the injured and accused ran away. Then the main defence as to the cause of injuries is already proved to be a plea without substance. Thus this fact alone shows that there is nothing on record to disbelieve the genesis of occurrence as stated by injured and eye witness, leading to injuries to the injured complainant. And thus learned trial court rightly held that the convicted accused have assaulted the injured complainant and caused injuries to him on a small matter, which erupt on the spur of moment.*

29. *In view of the above discussed legal and factual position, it comes out that there is nothing on record to disbelieve the genesis of occurrence as put forward by the complainant injured and as supported by remaining evidence of prosecution as such the findings of the learned trial court that both the 1 and appellants accused along with deceased Shar Singh Baleshwar caused injuries on the person of injured without any provocation or cause is well founded.”*

12. It is stated in the revision petition that petitioners have been falsely implicated in the present case on account of a previously instituted civil litigation between the parties. Complainant and eye witnesses belong to the same caste and are highly interested witnesses. The injuries suffered by co-accused Sher Singh (since deceased) has remained unexplained. The injuries suffered by co-accused Sher Singh were proved by examination of Dr. H.O. Bhatia, who appeared in the witness box as DW-2 and MLR of co-accused Sher Singh is proved as Ex.DW1/B. Learned Courts below failed to appreciate that the Investigating Officer in the case has not been examined. No recovery of any weapon has been effected from the petitioners.

12.1 It is also pleaded in the instant petition that injuries constituted under Section 323 were further enlarged under Section 325 IPC for allegedly causing grievous hurt. However, there is no corresponding injury to invoke the offence under Section 326 IPC as there was no grievous hurt by sharp edged weapon. Thus, no offence under Section 326 IPC is made out. Even no ingredients for offence under Section 325 are made out. Offences under Sections 324 and 323 IPC are compoundable. Therefore, petitioners may at least even otherwise be entitled to grant of probation and may with the rider that the same will not affect the service of the petitioner No.1, who is currently posted as Extra Head Constable (EHC) in the office of Superintendent of Police, Panipat.

12.2 It is further averred in the revision petition that both petitioners have undergone 01 month and 27 days of the actual custody, as per the custody certificates. No recovery of any weapon was effected from the petitioners. Petitioner No.1 was initially found innocent. Learned Courts below have failed to appreciate that the presence of petitioner-Ramesh has not been proved by the prosecution and he has been involved only on account of being a Government servant. There is an unexplained delay in lodging the FIR. Petitioners are not previous convicts and are entitled to the benefit of provisions of Probation of Offenders Act. Learned Courts

on 17.12.2011 and their sentence was suspended vide order dated 08.02.2012 passed by a coordinate Bench of this Court.

13. File perused.

14. Before proceeding further, it would be apt to discuss the medical evidence on record. Dr. H.O. Bhatia, Ex-Senior Medical Officer was examined as PW-8. He deposed that on 29.10.1998 at 8.45 a.m. he had medico legally examined Rajesh and proved his MLR Ex. PW8/A. He further stated that injuries were simple in nature and the injuries No.1 to 5 were caused by sharp edged weapon and rest of them were due to blunt weapon. He further stated that on the same day, he he had medico legally examined Baru Ram and proved the MLR Ex. PW8/B. The injuries were caused with blunt weapon. He further proved the MLR Ex. PW8/C of Daya Devi wife of Baru Ram and injuries was caused with blunt weapon. This witness proved the ruqa sent by him to the police Ex. PW8/A and opinion regarding the fitness of injured Ex. PW8/E.

14.1. Dr. Sham Wadhwa, Ex-Senior Medical Officer was examined as PW-3. He deposed that on 31.10.1998, he had radiologically examined complainant Rajesh and found the chip fracture of base of left thumb proximal phalanx and fracture of acromian process of right scapula. He further proved the X-ray report of Rajesh Ex. PW3/A and x-ray films Ex. PW3/B to Ex. PW3/H. He further proved X-ray report of injured Baru Ram Ex. PW3/I and x-ray films Ex. PW3/J to Ex. PW3/O. He stated that he had found the fracture of 2nd and 3rd ribs of right side of Baru Ram. He further proved the X-ray report of Daya Devi Ex. PW3/P and X-ray films Ex. PW3/R and Ex. PW3/R and stated that no fracture was seen.

15. Having perused the impugned judgments and evidence on record, my considered opinion is that learned Courts below fell in error in holding that the grievous injuries on the persons of complainant party were caused by a sharp edged/dangerous weapon so as to invoke provisions of Section 326 IPC. The medical evidence led by the prosecution does not prove that the grievous injuries suffered by

complainant party were caused by a sharp edged/dangerous weapon. Evidence of PW-2 Dr. Sham Wadhwa, who proved radiological reports of injured (Ex.PW3/A and Ex.PW3/I) and found fracture on persons of Rajesh and Baru Ram, is insufficient to show that the same was caused with sharp edged weapon. PW-8 Dr. H.O. Bhatia, who had conducted medico-legal examination of all the injured, was the best witness to describe the corresponding injuries to have been caused with sharp edged weapon. To the contrary, he deposed in his cross-examination that the injured never came to him to show X-ray report nor police contacted him to get any opinion regarding injuries. PW-8 minced no words in admitting during his cross-examination that possibility of injuries of all the injured caused by a fall or with friendly hand cannot be ruled out. In the absence of positive evidence, at the most it can be concluded that simple injuries were caused to the injured by sharp edged weapon attracting Section 324 IPC and grievous injuries suffered by them were caused by blunt weapon, thereby attracting Section 325 IPC. However, ingredients of Section 326 IPC are not made out at all. Hence, petitioners are acquitted of the charge framed under Section 326 IPC.

15.1. As regards the other Sections i.e., 323, 324, 325, 506 IPC are concerned, the prosecution witnesses withstood the test of cross-examination and nothing could be elicited in favour of petitioners. 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 offences punishable under Sections 325, 324, 323 and 506 IPC, which need no interference by this Court. Consequently, the conviction of the petitioners under Sections 325, 324, 323 and 506 IPC, as mentioned above, is maintained.

16. Insofar as releasing the petitioners 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, 1958 to the convict/petitioners herein.

17. 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.”

18. 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.

19. 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 counseling 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.

19.1 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.

20. 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.”

21. Keeping the aforesaid in mind, I am thus of the view that the release of the convict/petitioners on probation, as 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 their future criminal conduct, while also providing an opportunity for reform and rehabilitation.

22. In the premise, instant revision petition is hereby partly allowed and

personal bond in the sum of Rs.50,000/- without surety subject to the condition that they shall keep peace and be of good behaviour for a period of one year under supervision of D.P.O. In addition petitioner No.1 shall for a period of one year remain under whose control he is posted as EHC. These bonds be furnished before learned trial Court within one month from today. It is further ordered that the fine deposited by the petitioners will be treated as costs of proceedings. In case of default of aforesaid directions, the instant revision petition shall stand dismissed and the petitioners shall undergo the sentence, as awarded by learned Courts below. However, the fine of Rs.1000/- each deposited by the petitioners under Section 326 IPC be refunded to them against effectual receipts.

23. As regards petitioner No.1, it is also made clear that in addition to report to be submitted by the Probation Officer, he shall also give an undertaking that during the period of supervision if his conduct is found not acceptable by the concerned S.P., it will be open to the competent authority to take appropriate decision about his continuation in service. Subject to furnishing of the bond, as aforesaid, he will be tentatively allowed to continue in service on the post on which he is currently employed.

24. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

26.09.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No