

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

236

CRR-1179-2016

Date of decision: 13.09.2023

Rachna Ram

....Petitioner

V/s

Ram Karan and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Anuj Balian, Advocate for the petitioner.

Mr. Ishnoor Singh, Advocate for

Mr. Vikram Singh, Advocate for respondent Nos. 1 to 5.

Mr. Vikas Bhardwaj, AAG Haryana.

\*\*\*\*\*

**ARUN MONGA, J. (Oral)**

Rachna Ram (the complainant) challenges appellate court order dated 27.11.2015 passed by learned Sessions Judge, Panchkula whereby accused-respondents No.1 to 5 convicted by learned Judicial Magistrate 1<sup>st</sup> Class were ordered to be released on probation of good conduct on their furnishing personal bonds in the sum of Rs.15,000/- with one surety of like amount each. They were put on trial in a case bearing FIR No.94 dated 24.09.2009, registered under Sections 323, 325, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') at Police Station, Raipur Rani.

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

*“2 In brief, the prosecution story is that on 22.9.2009 they received an information regarding injured Rachna Ram, Nirmal and Teja that they have been admitted to General Hospital at Raipur Rani after sustaining injuries in a fight. On this information ASI Jasbir Singh and Ct. Arun Kumar reached the hospital where the doctor gave the opinion that the injured were unfit to make statement. The injured were referred to General Hospital Sector-6, Panchkula where they recorded statement of complainant Rachna Ram. He stated that he is an agriculturist and has four sons Raj Kumar, Tej Pal, Ram Lal and Nirmal. Water of the village runs through their street and falls in the fields of the Village. On the*

*northern side of the street falls the house of Ram Swaroop while his house falls on the southern side. The water of the village also passes through Kachha Nala in front of the bara of Ram Swaroop. The accused have tried to block the Nala and make passage for water in front of their house. On 22.9.2009 . at about 3.00 PM, accused Ram Swaroop and his sons accused Ram Lal, Kashmira, Mahinder, Ram Karan, Joginder and Madan along with Sandeep were blocking the passage of water. When he, his son Teja and Nirmal tried to stop them the above mentioned accused attacked them with Kawadia, lathies etc. Accused Ram Karan and Kashmira were armed with Kawadia while Sarupa was armed with Kassi. Accused Ram Karan, Kashmira and Ram Swaroop attacked him and his son Nirmal while accused Ram Lal, Mahinder and Joginder gave them lathi blow. They fell on the ground and sustained injuries. The women of family of accused also attacked them with lathies. Villagers Mahinder, Tarsem, Jai Singh, Tara, Banta etc. came there to their rescue and saved them from the attack of the accused. Since a huge crowd had gathered, the accused fled the spot along with their weapons. While leaving they threatened to kill them. Since they had sustained serious injuries they became unconscious. The villagers took them to hospital Raipur Rani from where they were referred to hospital Sector-6, Panchkula. Hence the complaint.”*

3. Learned counsel for the petitioner submits that learned trial court rightly held respondents No.1 to 5 guilty of offences punishable under Sections 148, 323, 325 and 506 read with Sections 34/149 IPC. They were sentenced to undergo rigorous imprisonment for a period of six months. All the sentences were ordered to run concurrently.

3.1. However, his argument is that it is the appellate court which erred while partly allowing the appeal and releasing the respondents No. 1 to 5 on probation on furnishing personal bonds in the sum of Rs.15,000/- with one surety of like amount each, subject to the condition that they shall keep peace and be of good behavior for a period of two years. It was further ordered that fine deposited by them would be treated as costs of proceedings.

3.2. Learned counsel for petitioner further urges that in a cross fight that took place since respondents No.1 to 5 herein were the aggressors and caused grievous hurt to petitioner, inasmuch as, he had suffered three fractures, so they deserved to be sentenced and not released on probation. Learned Sessions Judge thus erred in granting the concession of probation to respondents No.1 to 5.

4. On the other hand, learned counsel for respondents No.1 to 5 supports the impugned judgment and submits that learned Sessions Judge rightly held that it was a case of free fight in which both the parties had received injuries.

5. I have perused the submissions in the revision and perused the record.

6. It transpires that in a cross case titled *Kashmiri Lal @ Kashmira vs. Rachna Ram and others*, accused Rachna Ram (petitioner herein) and others were also convicted under Sections 148 and 323 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for six months by learned trial Court. Petitioner Rachna Ram and others too filed an appeal against their conviction and sentence. Their appeal was also partly allowed releasing them on probation of good conduct.

6.1. Another appeal was filed by respondent No.3 herein i.e. Kashmiri Lal @ Kashmira seeking enhancement of sentence of Rachna Ram (petitioner herein) and others. The said appeal was dismissed. Thus effectively there were three appeals which all clubbed together and decided by a common appellate order, impugned herein to the limited extent of release of respondents 1 to 5 on probation.

6.2. Appellate court Judgment dated 27.11.2015, to the extent of upholding the conviction of both parties is, *inter alia*, premised on the following reasoning:

*“25. Accordingly, after going through the stand taken by the Rachna Ram and party and injured and their eye witnesses vis-à-vis the stand taken by the Kashmiri Lal and party, who are accused in this case, during the cross-examination of witnesses of Rachna Ram and party along with documents placed on record, it comes out that admittedly, the real dispute between the parties was regarding change of flow of a street drain and in order to ascertain this issue, we have a site plan exhibited as R-1 in the connected complaint file, and a perusal of the site plan shows that as shown in green lines, there is a drain running in street and at point 'A', its start from the 'Bara' of the appellant-accused party and then street towards northern side. The real controversy as per the appellant-accused, Kashmiri Lal and party is that on account of over flowing of this water drain in the street, water enters into their 'Bara' situated on*

*the corner and as such, they reported the matter to the Village Sarpanch, who permitted them to block the drain of the water from the 'Bara' and they accordingly were doing this, when other party headed by Rachna Ram etc. assaulted them. Whereas as per Rachna Ram party they were attacked by the other party as other party tried to divert the flow of the drain from the side of their drain as shown by point 'A' in the site plan Ex.R-1 and wants to flow towards their house by constructing a drain which was marked by letters AB with a red lines in the said site plan just to cause loss to their property and when they asked them not to do so, Kashmiri Lal and party assaulted them. As is clear from the site plan, natural flow of the drain as shown in green line from point 'A'is towards northern side and if the appellant-accused Kashmiri Lal and party were having any problem on account of this drain leading to stagnation of dirty water in their 'Bara, where they were not residing, they were sorting out the blockage of the drain by constructing a drain in the street but there was no occasion to block the drain at point 'A& 'B'. Admittedly, appellants, Rachna Ram party complainant are residing in the house as shown in the site plan, whereas appellant-accused, Kashmiri Lal and party were having only their 'Bara and the evidence shows that the real controversy starts, when the appellant-accused, Kashmiri Lal and party tried to divert the flow of water towards the house of Rachna Ram party, which was against the natural flow.*

26. No doubt, Sarpanch of the Village namely Diwan Chand appeared into the witness-box in the connected matter and tried to support the story propounded by the appellant-accused saying that he has allowed them to block the drain situated outside the house of Rachna Ram from their 'Bara' and despite the fact that he was not present, when dispute took place, he tried to justify the stand taken by the appellant- accused, Kashmiri Lal and party alleging that the dispute was raised by complainant Rachna Ram etc and they were aggressors. As is clear from his cross-examination, during cross-examination, he admitted the factual position as shown in the site plan Ex.R-1 and tried to allege that there is a drain outside the house of complainant Rachna Ram etc. but no such drain has been shown. As per the Sarpanch of the Village, he inspected the spot but no dispute took place in his presence. As such, he is not an eye witness and his stand is relevant only on the issue of drain.

27. No doubt, in the site plan Ex.R-1, it is not shown that to which side the water of the house of the complainant Rachna Ram flows but it is stated that there is a drain towards the eastern side of the house of Rachna Ram through which the dirty water of the house of the complainant Rachna Ram etc. flows. Be that as it may be, after going through the evidence led by the complainant party of this case viz.a.viz. the suggestions put to them during cross-examination and the stand taken by both the parties, it comes out that no doubt, it was the appellant- accused, who initiated this, dispute, when complainant Rachna Ram etc. stopped them from diverting the flow of the drain but at the same time, record further shows that although the appellant-accused, Kashmiri Lal and party, who tried to divert the flow of the drain towards the house of complainant Rachna Ram, initiated the dispute and they also used force to fulfill their illegal intentions but at the same time, the appellant, Rachna Ram and

*party also continued and joined the fight with an intention not to use their right of private defence but also to assault the appellant-accused, persons and thus, it is a fit case, where both the parties have indulged into free fight assaulting each other and caused injuries to each other, although fight may be initiated by the appellant- accused Kashmiri Lal and party and since it is proved that there was grievous hurt on the person of one of the members of the Rachna Ram and party on account of a grievous injury caused by blunt weapon, it is obvious that this injury was caused by the appellant-accused Kashmiri Lal and party when they initiated fight and then it becomes a free fight and thus, in the given facts and circumstances, although, the learned trial Court have not observed that it is a case of free fight but the facts shows that it was a case of free fight, where both the parties used criminal force against each other and tried to win over leading to injuries to both the parties.*

28. *The injuries suffered by the complainant Rachna Ram is duly proved on record by way of medical evidence in the form of testimony of PW-7 Dr.Rajiv Kapoor, who was cross-examined only on one point that injury on the person of Rachna Ram can be caused by falling from a height despite the fact that there was no story that said Rachna Ram fell from a height. Thus, in the given facts and circumstances, the learned trial Court rightly convicted the appellant- accused Rachna Ram and party also and there is nothing on record to say that the appellant-accused Kashmiri Lal and party were not the aggressor party and they assaulted the complainant party only to safeguard themselves by using of their right of private defence and thus, it is a case of free fight, though, initiated by the appellant-accused Kashmiri Lal and party as held above. Resultantly, both the impugned judgments of the learned trial Court convicting both the parties are accordingly affirmed.*

29. *So far as the connected appeal filed by appellant, Kashmiri Lal and party through Kashmiri Lal, who was complainant before learned trial Court, for enhancement of sentence by convicting the respondent-accused, Rachna Ram and party for commission of an offence as punishable under Sections 148 IPC and 325 read with Section 149 IPC is concerned, as is clear from the evidence led by the complainant party of this case, there is no medical evidence on record to prove that the appellant-complainant Kashmiri Lal has suffered a grievous hurt injury. First of all, doctor, who conducted the medico-legal examination of the complainant party of this case, has not come forward to prove the nature of injuries suffered by the complainant party of this case.*

30. *Apart from the photocopy of the MLR placed on record, there is no opinion of any medical officer to show that there was any injury caused by sharp edged weapon on the person of the complainant party and thus, this story was rightly disbelieved and the fact remains that since it is a case of free fight, where both the parties caused injuries to each other and only injury found on the person of the members of Kashmiri Lal and party was simple injury, learned trial Court rightly convicted the appellant-accused, Rachna Ram and party for the commission of an offence as punishable under Sections 323 read with Section 149 of IPC as well as 148 of IPC as observed earlier. As such, there is no merit in the cross-appeal filed by complainant Kashmiri Lal, which is liable to be dismissed.”*

7. Having perused the appellate court order, I am of the view *that same* is founded on cogent reasoning after appreciating the evidence on record in its right perspective. Findings rendered therein are based on a correct evaluation of the evidence and do not suffer from any flaws or illegality. No interference is thus warranted by this court on the said findings.

8. Adverting to the release of respondent Nos.1 to 5 on probation of good conduct, impugned herein, learned Appellate Court has given following reasoning:

*“31. Apprehending this situation, it was also argued by the learned counsel for both the parties that apart from the present dispute, no further dispute took place between the parties after this litigation and as such, keeping in view the fact that all the appellant-accused are the first offenders and they have already faced the unprotracted trial for last more than six years, it is a fit case, where the benefit of probation can be granted to them, which has been declined by the learned trial Court. without assigning any reasons.*

*32. Accordingly, after considering the contentions of both the parties and records, it comes out that since it is proved that both the parties caused injuries to each other in a free fight but after this incident, no further dispute took place between the parties and they were also facing this prosecution against each other for the last more than six years and even counsel for Kashmiri Lal and party' have sought probation for them, it is a fit case, where the benefit of probation would have been given to the accused persons keeping in view the peculiar nature of this dispute and cause of dispute and fact that there was no dispute between the parties. As such, declining of the probation by the learned trial Court without assigning any reasons what to talk of special reasons results into mis-carriage of justice and thus, the sentence awarded by the learned trial Court is liable to be modified and accordingly, it is a fit case, where both the parties in both the cases are required to be released on probation for their good conduct, subject to furnishing bonds by them.*

*33. No other point was argued or survives for consideration.*

*34. As a sequel to above discussion, both the judgments of conviction of both the appellant-accused party are affirmed but the Order of sentence of imprisonment passed by learned Trial Court in both the judgments is set aside and the sentence of imprisonment is modified and it is ordered that let both the appellant-accused of both the cases be released on probation for good conduct under the provisions of Section 4 of Probations of Offenders Act, on furnishing personal bonds in the sum of 15,000/- with one surety of the like amount each, subject to the condition that they shall keep peace and be of good behaviour for a period of two years. These bonds be furnished before the learned trial Court within one month from*

*today. It is further ordered that the fine deposited by the appellants will be treated as costs of proceedings. In case of default of aforesaid directions, the appeal shall stand dismissed and the appellants shall undergo sentence as awarded by the learned trial Court. The appeals mentioned at serial No.I and II stand disposed of accordingly with the above modifications, whereas the third appeal filed by appellant-complainant Kashmiri Lal and party stands dismissed. Let a copy of this judgment along with trial Court record be sent back for necessary action. Similarly, a copy of this judgment be also placed in two other connected files and then all the appeal files be consigned to the record room after due compliance”*

9. 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.

10. I need not labor all over again on the issue involved herein, as the same has already been dealt in another earlier judgment rendered by me in a case bearing CRM-A-38-MA-2017-2023 titled Nasri Vs. State of Haryana. For ready reference, relevant of the said 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.”

11. 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 in 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.”*

11.1. 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 potentials 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.

11.2. 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.

12. Keeping the aforesaid in mind, I am thus of the view that the release of the convict/respondent Nos.1 to 5 herein 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.

13. In the premise, instant revision petition is hereby dismissed.

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

(ARUN MONGA)  
JUDGE

September 13, 2023  
*Ajay*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No