

CRR-3644-2016 (O&amp;M)

## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247

CRR-3644-2016 (O&amp;M)

Date of decision: 04.09.2023

Abdulla

....Petitioner

V/s

State of Punjab and another

....Respondents

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

Present: Ms. Amarjeet Kaur, Advocate for  
Mr. Mohd. Salim, Advocate for the petitioner.

\*\*\*\*\*

**ARUN MONGA, J. (Oral)****CRM-31429-2016**

For the reasons stated in application, same is allowed. Delay of 122 days in filing revision petition is condoned, subject to all just exceptions.

**Main case (O&M)**

Revision herein is for setting aside impugned order dated 08.02.2016 passed by learned Sessions Judge, Sangrur whereby, learned Sessions Judge, Sangrur partly allowed the appeal preferred by respondent No.2-accused against aforesaid judgment/order of learned Judicial Magistrate Ist Class, Malerkotla while *inter alia* setting aside judgment of conviction and order of sentence *qua* Section 325 IPC and acquitting him of the charge *ibid*. However, judgment/order *qua* Sections 323 and 341 IPC was upheld. He was ordered to be released on probation on furnishing personal bonds of peace and good behavior for a period of one year in the sum of Rs.10,000/- with one surety in like amount.

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

“2. The story of the prosecution is that on 28.07.2007 a medical ruqa regarding the admission of Abdula son of Wali Mohd. received at Police City Malerkotla. There upon ASI Surjeet Singh along with Police Party reached at Civil Hospital Malerkotla and made an

*application to the doctor to declare fit the complainant for making statement but the complainant was declare unfit to make the statement. Then on 29.07.2007 ASI Surjeet Singh along with Police Party again reached at Civil Hospital Malerkotla, where upon application the complainant was declared fit to make the statement. The complainant suffered a statement that he is residence of Mohalla Kasiea, Kila Rahmatgadh Malerkotla. That he is a milk man, on 27.07.2007 at about 10 p.m. he was coming back to his Home on his Motor-Cycle Rajdoot No.PCI-4707 after giving milk at the dairy of Billa. That when he reached near a Drain (Pattry) then four persons with muffled faces came from the front side, One person holding Sword in his hand and others holding sticks in their hand and fifth person was standing there with starting Scooter. One person gave a blow of stick hitting on his forehead and with the effect of that he fell down on the road then other unidentified person also inflict injuries in his person. The person who hold sword gave a blow of sword hitting on his right hand palm and other person inflict injury on his right elbow, two injuries on his right thigh and on his right leg. When a person who holding sword came near to him, his hand was touch on his face due to that his muffled was removed and he identified him as Babbu son of Salim. The accused Om Shanker was also with him because the accused Babbu speak his name during the occurrence. The above said persons also took away his watch Mark HMT, one gold ring and Rs. 20,000/- which he take from the Dairy of Hanif @ Billa. He become unconscious and Fafoor son of Ibrahim and Sadik son of Khair Deen took him to Civil Hospital Malerkotla. The statement of complainant was endorse by ASI Surjeet Singh, Ruqa was sent through PHG Sohan Singh on the basis of which present FIR was registered against the accused. Statements of the witnesses were recorded. Site plan was prepared and after completing the investigation, challan against the accused was present in the Court for Judicial Verdict”*

3. It is averred in the revision that on the basis of evidence led before the trial court, respondent No.2 was held guilty and accordingly convicted for having committed an offence punishable under Sections 323, 325, 341 read with Section 34 IPC.

3.1 Aggrieved, respondent No.2 preferred an appeal before the Sessions Court, Sangrur and vide impugned order dated 08.02.2016, it partly allowed the appeal while *inter alia* setting aside judgment of conviction and order of sentence *qua* Section 325 IPC and acquitting him of the charge *ibid*. However, judgment/order *qua* Sections 323 and 341 IPC was upheld and respondent No.2 was ordered to be released on probation on furnishing personal bonds of peace and

good behavior for a period of one year in the sum of Rs.10,000/- with one surety in like amount.

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

5. Judgment dated 08.02.2016 to the extent of upholding the conviction under Section 323 and 341 IPC and acquitting under Section 325 IPC is *inter alia*, premised on the following reasoning:

“13. So far as the question of delay in registration of the First Information Report of the case in hand is concerned, it has come in the evidence of the prosecution that occurrence took place on 27.07.2007 at about 10-00 p.m. and injured-complainant Abdulla was transported to Civil Hospital, Malerkotla on the same day at about 10.30 p.m. where he was medico legally examined at 11-30 p.m. as per copy of medico legal report, Exhibit PI/A. There is also evidence on record that injured- complainant Abdulla was declared unfit to make statement on 28.07.2007 on police request, Exhibit P2 and after injured-complainant Abdulla was declared fit to make statement on 29.07.2007, his statement, Exhibit P6, was recorded regarding the occurrence, which formed basis of registration of First Information Report, Exhibit PS. Therefore, delay in registration of the First Information Report in this case has been properly explained and thus, the same is not fatal to the case of the prosecution. If any authority is needed in this behalf, reference may be made to Ravinder Kumar & Anr, versus State of Punjab, 2001(7) SCC 690.

14. No doubt, in this case, there is solitary testimony of injured-complainant Abdulla (PW-2) but the question arises whether sworn testimony of injured-complainant Abdulla (PW-2) alone could be made basis of convicting the accused-appellant?. It may be apposite to refer to Section 134 of the Indian Evidence Act, 1872 which lays down that no particular number of witnesses are necessary for proof of a particular fact. It is well settled that the Court can place reliance on the evidence of a solitary witness provided it inspires confidence. If such evidence of a single witness is clear, cogent and consistent and there is no other infirmity, there is absolutely no impediment in placing reliance on such evidence and the Court need not search for corroboration. Moreover, where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare actual culprit in order to falsely implicate someone else. Convincing evidence is required to discredit an injured witness. If any authority is needed in this behalf, reference may be made to Mano Dutt versus State of U.P. (2012) 4 SCC 79.

15. The ocular version of PW-2 Abdulla, injured-complainant is further corroborated from the testimony of PW-3 Dr. Jamil Bhatti,

*who proved on record medico-legal report of injured-complainant, Exhibit P1. prepared by Dr. R.S.Bal, and as per medico-legal report, injured-complainant Abdulla was medico-legally examined on 27.07.2007 at 11-30 p.m.*

*16. Further, it needs to be stated that ocular version of the prosecution apart from being corroborated by medical evidence, was also supported and corroborated by the testimony of PW-1 ASI Surjit Singh and PW-3 Swaranjit Singh, retired Inspector and from the testimony of aforesaid witnesses, it has come on record that after recording statement of injured-complainant Abdulla, Exhibit P6, it was transmitted to the police Station on the basis of which First Information Report, Exhibit P8, of the case in hand was registered, rough site plan of spot, Exhibit P9, was prepared; and that accused-appellant was arrested vide memo, Exhibit P13.*

*17. So far as the offence under Section 325 of the Indian Penal Code is concerned, it needs to be mentioned here that addition of that offence was made after report of x-ray examination of the injury of complainant- injured vide which fracture was found and injury was declared as grievous in nature vide report, Exhibit PW5/A made by the doctor. However, it transpires that the complainant did not make a mention of injury on his right foot in his statement, Exhibit P6 nor the same finds mentioned in the initial MLR of injured, Exhibit P1 and complainant- injured only made complaint of said injury subsequently upon which doctor prepared supplementary MLR, Exhibit P10, of injured, in which, also it was specifically mentioned by the doctor that complainant-injured did not complaint of pain in his foot, when he was previously medico-legally examined. In this view of the matter, the said injury cannot be attributed, in any manner to the accused and conviction of accused under Section 325 of the Indian Penal Code cannot be sustained in the eyes of law.*

*18. In view of the above discussion, I am of the considered opinion that the prosecution has failed to prove its case against the accused-appellant for the commission of offence under Section 325 of the Indian Penal Code, beyond shadow of reasonable doubt and thus, the accused-appellant has become entitled to benefit of doubt and accordingly, impugned judgment of conviction and order of sentence dated 19.03.2014 qua Section 325 of the Indian Penal Code are set aside and the accused-appellant is acquitted of the charge under Section 325 of the Indian Penal Code. However, prosecution has able to prove its case against the accused for offences under Sections 323 and 341 of the Indian Penal Code beyond shadow of reasonable doubt and thus, conviction of accused-appellant Babbu by the learned trial Magistrate vide impugned judgment dated 19.03.2014 qua that is in perfect order.”*

6. Perusal of the aforesaid would show that the order *qua* upholding the conviction of respondent No.2 herein is based on cogent reasoning after appreciating the evidence on record in right perspective. Appellate court's findings are based on a correct evaluation of the evidence and do not suffer from any flaws

or illegality, is just and valid based on the available evidence. No interference in the findings of conviction is made out.

7. Adverting to the release of respondent No.2 on probation of good conduct, impugned herein, learned Appellate Court gave following reasoning:

*“19. Faced with the eventuality, the argument of learned counsel for the accused-appellant was that the appellant was first offender, who was in his prime youth and was having dependency of his family being bread winner of his family and that there was scope for reformation of the accused-appellant if lenient view was taken by releasing the accused- appellant on probation under Probation of Offenders Act, 1958.*

*20. I have anxiously considered the contentions in this behalf and find that though the accused-appellant was charged and convicted for offences punishable under Sections 323 and 341 of the Indian Penal Code but the accused-appellant since the presentation of challan in this case in January, 2008 had been attending the trial Court for a period of about six years for facing the trial and has also been appearing in the appeal on different dates for the last more than one and half years. The present day criminology suggests to bring about reformation against the convicts and not to send them to imprisonment at the first instance, because, it is bound to affect them adversely, as there are chances of the convicts mixing up with hardened criminals in the jail. The trend nowadays is tilting towards reformation of the convicts rather than condemnation. Even, the underlying object of the provisions of Sections 3 and 4 of the Probation of Offenders Act, 1958 obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. There has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self reliant member of society without subjecting him to the deleterious effects of jail life. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him because modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Taking in account the totality of the circumstances especially the fact that the accused-appellant is the first offender and is in his prima youth, we find that it is a fit case in which he can be extended the benefit of probation and accordingly, the accused-appellant is ordered to be released on probation under Section 4(1) of Probation of offenders Act, 1958 on his furnishing probation bonds in a sum of R10,000/- with one surety in like amount with undertaking to maintain peace and be of good behaviour for a period of one year and to receive the sentence, as and when called upon during said period of one year, in case he violates any of the conditions of probation; and order of sentence dated 19.03.2014 passed by the learned trial Magistrate is, accordingly, modified and the appeal in this behalf is, accordingly, allowed. The amount of fine already paid by the accused-appellant shall be treated as costs of proceedings.”*

8. There is no gain saying 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.

9. 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-2017-2023 titled Nasri Vs. State of Haryana. For ready reference, relevant 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.”*

10. 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.”*

10.2. 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.

10.3. 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.

11. Keeping the aforesaid in mind, I am thus of the view that the release of the convict/respondent No.2 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 his future criminal conduct, while also providing an opportunity for reform and rehabilitation.

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

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

(ARUN MONGA)  
JUDGE

September 04, 2023  
*Ajay*

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