

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

245

CRR-3617-2017 (O&M)

Date of decision: 13.09.2023

Malkiat Singh

...Petitioner

Versus

Hamir Singh and Ors

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Zenith Dogra, Advocate for
Mr. Ankur Malik, Advocate for the petitioner

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY, J.

1. The present revision petition has been preferred against the judgment/quantum of sentence dated 14.05.2015 passed by Judicial Magistrate 1st Class, Sangrur and judgment of Additional Sessions Judge, Sangrur dated 15.12.2016.

2. For the sake of convenience, the facts in a nutshell are that on 30.05.2011 at about 7-8 P.M., accused-respondents committed house trespass and causing hurt to the complainant-petitioner and Jaswinder Singh with their weapons and thereafter, the assailants fled the scene of occurrence. FIR was registered for offences under sections 324/323/34 IPC and after investigation, final report under Section 173 CrPC was presented in the Court.

3. From the perusal of the challan and after hearing the arguments on charges, wherein Section 452 IPC was also added, the trial Court served the accused-respondents with the chargesheet to which they pleaded not guilty and

claimed trial.

4. In order to prove the case against the accused, the prosecution examined 5 witnesses and thereafter closed its evidence. The statements of the accused under Section 313 Cr.PC were recorded, wherein, all the incriminating evidence was put to them, which they denied and pleaded innocence. In defence, the accused did not lead any evidence.

5. The trial Court after carefully examining the evidence on record and hearing the learned counsel for the parties came to the conclusion that accused-respondents herein were guilty and thus convicted under Sections 323 and 34 IPC, though released them on probation.

6. Feeling aggrieved, the complainant-petitioner filed an appeal against the aforesaid judgment before the Additional Sessions Judge, Sangrur, which also came to be dismissed vide judgment dated 15.12.2016.

7. Hence the present revision petition.

8. Learned counsel for the petitioner submits that the offence against the respondent was duly proved by leading cogent evidence, however, the Courts below have committed grave error by releasing them on probation by ignoring that the offence committed by them was of serious nature.

9. Learned State counsel submits that the impugned judgments have been rightly passed by the Courts below and suffer from no illegality or perversity, which would warrant interference by this Court.

10. Heard the learned counsel for the parties and have perused the case file.

11. Before proceeding to consider the present case, it is necessary to

make a reference to the judgment of the trial Court, dated 14.05.2015, wherein while releasing the accused-respondents on probation, it has been observed thus:

“13.But from the evidence adduced by the prosecution, it has not been established that the alleged occurrence took place after entering into the house of the complainant. So, the ingredients of Section 452 IPC are not made out.

14. So far as the ingredients of Section 324 IPC is concerned which have not been fulfilled as the ocular evidence is different from medical evidence. From perusal of the MLRs reveals that the kind of weapon used was blunt for all. So, the ingredients of Section 324 IPC are not made out.

15. So, from the evidence adduced by the prosecution, it has fully proved that accused have caused simple injuries to Malkiat Singh, Manjinder Singh, Jaswinder Kaur and Hardeep Singh. So, the offence under section 323/34 IPC is made out.

16. In view of the above discussion, the point as set up for determination regarding section 452/324 IPC as mentioned above is resolved against the prosecution and in favour of the accused. Therefore, accused are acquitted from the charge framed against them under section 452/324 IPC. However, the point as set up for determination regarding Section 323 read with section 34 IPC as mentioned above is resolved in favour of the prosecution and against the accused and the accused are hereby held guilty for committing offence under section 323/34 IPC...

Quantum of Sentence

....Keeping in view the nature of the offence and the antecedent of the convicts, the ends of justice would be met if convicts are released on probation on their furnishing personal probation bonds in the sum of Rs.10,000/- each for a period of one year. The convicts are burdened with Rs.500/- each as the cost of litigation. In the meanwhile, the convicts are directed to keep peace and be of good behaviour and to appear before the Court as and when called by the Court...”

12. The lower Appellate Court in the appeal filed by the complainant-petitioner, had recorded the following findings:

“19. However, on perusal of the evidence on record, this Court does not find any merit in the contention of the learned counsel for the appellant so far as the site of the alleged occurrence is concerned. The learned counsel for the appellant has emphatically contended that the occurrence had taken place inside the house of the complainant Malkiat Singh (PW-1). However, the evidence on record shows totally different

picture. In his cross-examination Malkiat Singh (PW-1) (dated 26.11.2014) has clearly admitted that after suffering the injuries they had gone to their house. Meaning thereby, that the alleged injuries were not inflicted inside the house, rather some where outside. Similarly other material witness Hardeep Singh (PW-2) who is injured/eye witness in his cross-examination (dated 26.11.2014) has narrated the same fact that after the brawl in question he had gone to the house. Moreover, Hardeep Singh (PW-2) has not minced any word while admitting that he had not suffered any injury from use of sharp edged weapon by the accused and even other injured had not suffered any injury by any sharp edged weapon. It clearly implies that the alleged injuries that have been suffered by the complainant and other injured in the brawl in question, have been simple injuries and the kind of weapons used in causing the injuries is blunt. Even the medical evidence i.e. MLR of injured Hardeep Singh Ex.PW3/B, and of Jaswinder Kaur Ex.PW3/C and Malkiat Singh Ex.PW3/E clearly mention the kind of weapon used as blunt for injuries of all these persons. So far as the MLR of injured Manjinder Singh Ex.PW3/D is concerned one of the injury i.e. vertical abrasion of red colour on the left interior arm is shown to have been inflicted by the use of sharp edged weapon. But said Manjinder Singh has not been examined by the prosecution in this case so as to substantiate the alleged infliction of grievous injury by the accused in the brawl dated 30.5.2011. Investigating officer Rajinder Kumar ASI (PW-5) in his cross-examination dated 30.3.2015 has clearly admitted that as per the investigation carried out by him, the injured had received the injuries in the street. This clearly implies that the occurrence in question has not taken place in the house of the complainant Malkiat Singh, rather it has taken place in the open street. This fact has found corroboration from the cross-examination of complainant Malkiat Singh (PW-1) and injured/eye witness Hardeep Singh (PW-2) as discussed herein before.

20. As a result of preceding discussion and careful evaluation of the oral and documentary evidence on record, this Court is of the considered opinion that offences under Sections 452/324 IPC as charged against the accused are not made out. Therefore, findings of the learned trial Court are correct and based upon well founded reasons and appreciation of evidence. So the appeal filed by the appellant challenging the judgment of acquittal under Sections 324 and 452 of IPC does not have any merit in it.

21. The learned counsel for the appellant has also assailed the impugned order, whereby, the respondents/convicts have been released on probation on their furnishing personal probation bonds in the sum of Rs.10,000/- each for a period of one year.

The convicts have been burdened with Rs.500/- each as costs of litigation. It is submitted by the learned counsel for the appellant that the learned trial court has omitted to take into consideration that multiple injuries which were suffered by the complainant and his family members as well as other persons in the occurrence without their fault at the hands of accused/respondents and they have to wait for a long period before getting justice.

24. Now the fact of the matter is that Probation of Offenders Act is beneficial piece of legislation. The learned trial Court has come to the conclusion that the convicts are entitled for the benefit of release on probation on their furnishing personal probation bonds and they have also been burdened with costs of litigation of Rs.500/- each. In my considered opinion this beneficial piece of legislation has two pronged aspects. On the one hand the trial court has rightly taken into consideration the age, character, previous history, antecedents as well as family obligations of the convicts, but at the same time, it ought to have taken into consideration other aspect which relates to suffering of the victim in the incident. The learned trial Court has omitted, to take into consideration the second aspect relating to the victims of the crime. In these peculiar facts and circumstances and my detailed discussion the impugned judgment of acquittal is upheld. However, so far as the question of sentence and release on probation of the respondents/convicts is concerned the same is modified only to the extent that the respondents/accused no.1 to 4 are, in addition, directed to deposit Rs.3000/- (Rupees three thousands) each with the trial Court within 10 days, which shall be paid by the trial Court to all the injured as compensation after due notice to them. In case the respondents/convicts fail to comply with the directions, they shall surrender before the trial Court for serving the sentence. The appeal is partly allowed accordingly. Record of the trial Court be returned. Appeal file be consigned to the record room.”

13. This Court considers it necessary to remind itself of the limited scope of revisional jurisdiction. In **Ram Partap vs. Rajesh Kumar**, 2014 SCC OnLine P&H 8659 relied upon the dictum of **Jagannath Choudhary vs. Ramayan Singh**, (2002) 5 SCC 659, wherein while expounding on the scope of revisional jurisdiction of the High Court, Hon’ble The Supreme Court had held that, “Incidentally object of revisional jurisdiction of the High Court as envisaged

under Section 401 CrPC, is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, aimed at correcting miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which result, on the one hand, in some injury to the due maintenance of law and order, or, on the other, in some undeserved hardship to individuals.”

14. Hon’ble The Supreme Court in the case of **Hydrus vs. State of Kerala**, (2004) 13 SCC 374, discussed the ambit of powers of revisional Court in revision against acquittal by a private party and held the same to be very limited. It was observed that interference can only occur if there is any procedural irregularity or material evidence has been overlooked or misread by the trial Court.

15. A gainful reference made to the judgment of Hon’ble Supreme Court in **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke**, (2015) 3 SCC 123, which reads thus:

"14..... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court Under Sections 397 to 401 Code of Criminal Procedure is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised

arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

16. Further, as regards the release of accused on probation, it would be appropriate to refer to Section 4 of the Probation of Offenders Act, 1958, which reads thus:

“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.”

17. It would be worthwhile to refer to the judgment of **Ratan Lal vs. State of Punjab** AIR 1965 SC 444, whereby Hon’ble The Supreme Court, regarding the purpose and object of ‘The Probation of Offenders Act, 1958’ had observed and held that, “The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. 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. Broadly stated the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the condition laid down in the appropriate provision of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Ss. 3 and 4 of the Act.”

18. In **Nasri vs. State of Haryana**, CRM-A-38-MA-2017 decided on 17.07.2023, an appeal was filed against release of accused/convicts on probation, wherein charges were framed under Sections 148, 323, 316, 452, 506 IPC read with Section 149 IPC, but only under Section 323 IPC, they were convicted. This Court, while upholding the judgment of the Sessions Court, laid down several principles such as the nature of the offence, criminal history, rehabilitation potential, preventing recidivism, reformation, etc.

19. The Courts below meticulously examined the evidence and arrived at the right conclusion as the prosecution could not establish the guilt of the accused-respondents under Sections 324 and 452 IPC, on account of the statements of eye witnesses that the accused entered the house of the complaint after the alleged occurrence as also from the cross-examination and medical reports of the injured, it had been duly proved that the injuries were given by a blunt weapon. Thus, clearly making out a case only under Section 323 IPC. No glaring defect in the procedure or any patent error has shown to be committed, which may have resulted in flagrant miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to their conviction under Section 324/452 IPC and a perusal of the judgments show that no other view is possible. Considering the nature of injuries, respondents being the sole breadwinners of their families, consisting of wife and children and there being nothing brought out that they were previously convicted or had indulged in any criminal activity, were released on probation on furnishing probation bonds in the sum of Rs.10,000/- each for a period of one year as also Rs.500/- each as the costs of litigation and the lower Appellate Court by correctly applying the provisions of

the beneficial Legislation of Probation of Offenders Act awarded compensation of Rs.3000/- each, to be granted to them.

20. Applying the principles laid down in the foregoing judicial pronouncements to the facts of the present case, wherein the trial Court examined all aspects threadbare, this Court finds that the impugned judgments cannot be characterised as perverse requiring any interference. Consequently, the revision petition *sans* merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

September 13, 2023
M.Kamra

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