

246**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRR-116-2018 (O&M)****Date of decision:01.08.2023**

Dayanand Gulia

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Chanderhas Yadav, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Present petition has been filed by complainant challenging judgment dated 31.10.2017 passed by learned Additional Sessions Judge, Jhajjar as well as order dated 20.09.2016 passed by learned ACJM, Jhajjar, vide which respondent no.2/accused has been released on probation.

2. Succinct facts of the case, as noted by learned trial Court in the impugned judgment, are as under:-

“2. Brief facts behind the prosecution case are that complaint has been filed by Dayanand that on 21.04.2013, when he was present at around 4:30 PM at Bhagalpuri Chowk at that time accused Manoj Kumar (Kala) came and gave him a boxing blow on his face as a result of which his teeth were broken. Accused Manoj Kumar was drunk at that time and kick and fists blows were given to the complainant to such an extent that he kept on bleeding from his nose till 6.00 PM in the evening. Complainant is aged 57 years and accused Manoj Kumar is aged 25 years and without any reason the accused had given him the blows and he should be punished for the same. Upon this complaint, case under Sections 323, 325 of IPC was registered against the accused. Site-plan was prepared. Statements of witnesses were recorded. After completion of all the necessary investigation, challan was presented before the Court.”

3. Impugned order dated 20.09.2016 passed by learned trial Court on the quantum of sentence assailed herein, is premised, *inter alia*, on the following reasoning:-

“16. This order of mine shall form part of judgment pronounced by this court, on dated 17.09.2016. Heard on the point of quantum of sentence to be awarded to the convict above, whereby, the convict has pleaded for mercy on the ground that he has been first time offender; has two small children and convict is the sole-bread earner of his family and he is an employee of DTC Delhi and has prayed for being released on probation and an application has also been filed to this effect.

XXXX XXXXX

19. Since, no other act of criminal nature is attributed to the convict, and also keeping in view the fact that the convict is first time offender the ends of justice would be met if the benefit of probation is extended to the convict. Accordingly, the convict person, be released on probation of good conduct for a period of three years under the supervision of District Probation Officer, Jhajjar. The convict be released on probation subject to his furnishing personal bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of this Court. The convict, shall keep peace and be of good behaviour to all including the State and shall undertake to appear in the court to receive sentence as and when called upon to do so during the aforesaid period of probation. It is accordingly ordered. Copy of this order be sent to District Probation Officer, Jhajjar for ensuring compliance of the order. Requisite personal bonds furnished. File be consigned to record-room after due compliance.”

4. Respondent-State through complainant Dayanand Gulia preferred an appeal against the order of learned ACJM, Jhajjar, before learned Additional Sessions Judge, Jhajjar, which was dismissed vide judgement dated 31.10.2017. The relevant para is reproduced hereinbelow:-

“9. After hearing the submissions of both the counsels, now the first plea comes before this court as to whether the statement of PW4 Dayanand is reliable or not? It is clear in this case that place of occurrence is away from the residence of the complainant. It is clear that PW3 while appeared in the witness box deposed that he had not gone at the place of occurrence and inquired from the shop-keepers regarding the present occurrence. When he inquired from shop-keepers, they disclosed that no such incident had ever taken place at the place of occurrence. He has submitted that it was a transaction on credit basis between the parties but no such occurrence has taken place. PW3 has also deposed that the lower portion of jaw was found swelling at the time of police report. PW3 has also deposed that complainant failed to get recovered the broken teeth. It is also clear that PW1 deposed that only one teeth was found missing. Hence, after the statements of PW1 and PW2, it is clear that one teeth was found missing. However, the complaint Ex.PW4/A as well as statement of complainant is showing missing of two teeth. This statement of complainant is not corroborated with the medical evidence. Hence, occurrence seems to be doubtful. Moreover, complainant while appeared in the witness box deposed that he had gone at the place of occurrence for fetching Rs.70,000/- from

Manish Kumar but in cross-examination he deposed that he had gone for fetching Rs.75,000/-. He had given money on credit basis to Shri Om as well as Manish Kumar but both these witnesses have not been cited in the list of witnesses. Hence, the presence of complainant at the place of occurrence is doubtful. It is settled law that once the presence at the place of occurrence is doubtful, the benefit will go to the accused party. The prosecution is duty bound to prove the guilt of the accused beyond the shadows of reasonable doubt. The complainant Dayanand while appeared in the witness box also deposed that he could not mention in his complaint that Manoj Kumar came at the place of occurrence in his own car. So, these contradictions are not minor contradictions. Admittedly minor contradictions are likely to occur after passage of time but these contradictions are fatal to the case of prosecution and not minor enough. The statement of complainant itself is doubtful at the very face of it. He has also deposed that he failed to mention in his complaint that they were in three-wheeler and accused was in the car. He has failed to recover the broken teeth also. Hence, this plea is decided against the appellant in favour of the respondent.”

5. I have heard learned counsel for the petitioner and perused the case file.

6. Learned counsel for the petitioner argues that approach of Courts below in releasing respondent no.2 on probation is illegal and arbitrary and the relevant facts were not taken into consideration by both Courts below. He further argues that under Section 325 of the IPC there is a provision of imprisonment upto 7 years and as such keeping in view the gravity of offence release of respondent no.2 on probation would send a wrong signal to the society at large and has also caused hardship to the petitioner and his whole family who remained in constant fear and threat.

7. I am unable to persuade myself with the arguments canvassed by learned counsel for the petitioner. Perusal of the orders passed by both the Courts below would show that same are based on cogent reasoning after appreciating the evidence on record in right perspective. Trial court's findings are based on a correct understanding of the evidence and do not suffer from any flaws or illegality, is just and valid based on the available evidence. No further interference in the findings of guilt under Section 323 or acquittal under other sections is/was warranted and learned Appellate Court thus rightly dismissed the appeal.

8. Adverting to the release on probation impugned herein it is pertinent to note that Probation of Offenders Act, 1958 (for short “Act”) was enacted in order to save offenders from being habitual offenders by treating them amicably and 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.

9. Objectives and principle of criminal law contained in the aforesaid provision are, that apart from deterrent to commit crime against civil society focus has to

be on the reformation of offenders and the concept of probation is inherent thereto. In this context, reference may also be had to one of my earlier judgment in “**Nasri vs. State of Haryana and others**” (CRM-A-38-MA-2017, decided on 17.07.2023) wherein concept of probation has been more elaborately discussed and dealt with.

It was *inter alia* discussed that modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crimes. The goals of criminal law extend 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 for 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 serve their sentences 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 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.

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

9.2. Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system.

10. I am thus of the view, suspension of sentence under probation, as in the present case, can indeed serve the dual purpose of deterrence and reformation. By

allowing the offenders to avoid imprisonment through probation, the aim herein is to deter their future criminal conduct, while also providing an opportunity for rehabilitation.

- 11. Instant petition is hereby dismissed with costs of Rs.10,000/-.
- 12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.08.2023
'D'Vir/R

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