

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

CRR No. 204 of 2018

Date of decision: 13th September, 2023

Sukhwinder Singh

Petitioner

Versus

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Ahluwalia and Mr. H. S. Randhawa, Advocates
for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of release of respondents No. 2 to 5 (hereinafter referred to as 'the respondents') on probation by the appellate court.

2. The brief facts are that FIR No.104 dated 17.7.2007, under Sections 324, 326, 34 IPC was registered at Police Station Julkan, District Patiala at the instance of the petitioner. It was alleged that on 15.7.2007, Piara Singh @ Ghona, Randhir Singh @ Dhira, Prithi Chand @ Lotta and Baljit Singh had caused injuries to Sukhwinder Singh and Satinder Singh with *gandasi*. The accused vide judgment dated 31.10.2014 were convicted under Sections 323 read with Section 34 IPC and vide order of even date were sentenced as under:

Name of the accused	Section	Sentence
Randhir Singh @ Dhira	323/34 IPC	To undergo imprisonment for a period of one year along with a fine of Rs.1000/- and simple imprisonment for one month in default of payment of fine.
Prithi Chand @ Lotta	323/34 IPC	To undergo imprisonment for a period of one year along with a fine of Rs.1000/- and simple imprisonment for one month in default of payment of fine.
Piara Singh @ Ghona	323/34 IPC	To undergo imprisonment for a period of six months along with a fine of Rs.500/-/- and simple imprisonment for fifteen days in default of payment of fine.
Baljit Singh	323/34 IPC	To undergo imprisonment for a period of six months along with a fine of Rs.500/-/- and simple imprisonment for fifteen days in default of payment of fine.

3. In the appeal filed, the respondents only made a prayer vis-a-vis the quantum of sentence. The prayer was accepted. Vide order dated 5.9.2017, they were ordered to be released on probation on furnishing probation bonds in the sum of Rs.5,000/- each.

4. Learned counsel for the petitioner submits that the offence under Section 324 IPC was made out and the respondents were wrongly convicted under Section 323 IPC. It is further argued that no compensation has been awarded to the injured.

5. It would not be out of place to mention that judgment of conviction and order on quantum of sentence was not challenged in appeal by the complainant. There is a typographical mistake in para No. 13 of the appellate order stating that the respondents were convicted under Section 324 IPC, whereas in fact they were convicted under Section 323 IPC.

6. The Supreme Court in **Chandreshwar Sharma v. State of Bihar**, (2000) 9 SCC 245, while considering such mandate, held as under:

“3. The appellant herein was convicted under Sections 379 and 411 IPC and was sentenced to rigorous imprisonment for one year as 3.5 Kg. of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the CrPC. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the CrPC. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under Section 360

and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

7. The appellate court upheld the conviction however having conspectus of the facts and considering that the respondents were first time offenders, having small children and only bread earners for their respective families and had suffered agony of trial for ten years, exercised its discretion and interfered in the quantum of sentence.

8. The scope of interference in revision is limited. Supreme Court in ***New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey, 2020(1) Ori. Law Rev. 246*** held as under:-

“8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C., 1973 is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisionsal power is to set right a patent defect or an error of jurisdiction or law.”

9. It would be appropriate to note that respondents were released on probation in September, 2017 and there are no allegations that they have not mended their ways and were involved in a criminal case thereafter. In other words the steps for reformation of accused were successful.

10. The conclusion arrived at by the Appellate Court suffers from no factual or legal error and it was in consonance with the provisions of the Probation of Offender Act, 1958 and Section 360 Cr.P.C.
11. No ground is made for interference in the impugned judgment.
12. The revision petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

13th September, 2023

mk

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No