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IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRA-S-1159-SB-2003 (O&M)
Date of Decision: 06.05.2024

HAKAM SINGH AND OTHERS

...Appellants

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Jammu, Advocate
for the appellant.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This appeal has been preferred against the judgment of conviction and order of quantum of sentence dated 02.06.2003 passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur in FIR No. 112 dated 20.07.1995 registered at Police Station Dharamkot vide which the appellants was sentenced as under:

Sr No.	Name of Appellant(s)	Conviction under Sections	Sentence awarded	Fine imposed
1.	Hakam Singh	(i) 458 of IPC	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for six months
		(ii) 323 of IPC	Rigorous imprisonment for six months	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for two months

2.	Resham Singh	(i) 458 of IPC	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for six months
		(ii) 323 of IPC	Rigorous imprisonment for six months	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for two months
3.	Jagdev Singh	(i) 458 of IPC	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for six months
		(ii) 323 of IPC	Rigorous imprisonment for six months	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for two months
4.	Chamkaur Singh	(i) 458 of IPC	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for six months
		(ii) 323 of IPC	Rigorous imprisonment for six months	Rs. 500/- and in default of payment of fine further awarded rigorous imprisonment for two months

2. Shortly put forth, the facts of the prosecution are that Harbans Kaur wife of Mohar Singh, Jat resident of Varreh, Police Station Dharam Kot made statement to the police of P.S. Dharamkot that she is resident of village Varreh and they are engaged in pursuit of agriculture. In their village Chhinder Kaur daughter of Pokhar Singh had a land which was being cultivated by them (complainant side) alongwith Hakam Singh (appellant

No. 1) on 'Patta'. Out of this, 3-1/2 killas of land was purchased by Jagtar Singh Sarpanch resident of the same village who had given the land so purchased to them (complainant side) earlier on 'Patta' then he sold out it to them. Hakam Singh was not ready to surrender the possession of this land. He had a grudge as to why Jagtar Singh Sarpanch had not sold out this land to Hakam Singh. But they (complainant side) obtained possession of this 3-1/2 killas of land with the help of Police and thereafter they had shown green fodder and Maize crop in the said land which had grown up to 1-1/2 feet. Hakam Singh destroyed the said crop alongwith other accused with the help of a Ford Tractor owned by Chamkaur Singh (appellant No. 4) son of Jora Singh resident of Varreh and Inter-national Tractor owned by Raja Singh son of Sarwan Singh resident of Rajji Wala. On the same night i.e. 19/20.7.1995, they came to her house scaling the main gate to cause injuries to her husband. The complainant alongwith her two daughters Birpal Kaur and Surjit Kaur was sleeping in the court yard where electric bulb was on. It was about 10.30 p.m. Accused Hakam Singh was armed with a kirpan, Resham Singh son of Bikar Singh resident of village Varreh, Chamkaur Singh son of Jora Singh, Jagdev Singh son of Sadhu Singh had gandasa each, Bhupinder Singh alias Bhinda son of Megha Singh was armed with Dattar, Raja Singh son of Sarwan Singh resident of Rajjiwala was armed with 12 DBBL rifle, Rattan Singh son of Mela Singh resident of Lahora was armed with 12 bore DBBL gun. Near about 13/14 persons were standing outside the house and were raising lalkaras that on that day Mohar Singh should be taught a lesson for taking possession of the land from Hakam Singh. Thereafter, Hakam Singh abused Mohar Singh by names and asked the complainant to send Mohar Singh out so that he should be taught

a lesson for taking land from him. When complainant told accused Hakam Singh that Mohar Singh was not in the house and had gone with Jagtar Singh, accused Hakam Singh gave kirpan blows on her head and right shoulder from its blunt side. Resham Singh gave a gandas blow from its blunt side on left side of her posterior. Accused Chamkaur Singh gave gandas blows from its blunt side on her waist whereas accused Raja Singh put the barrel of his gun in his mouth and asked her where Mohar Singh was. Thereafter, he gave butt blow on her right hip. Jagdev Singh gave a gandas blow on her back and also on the right side of her neck. He gave another blow of gandas from reverse side on both sides of her hip. Bhupinder Singh gave a dattar blow from blunt side on her left arm and left knee while accused Rattan Singh kept standing in the door with his 12 bore gun giving lalkara that the complainant party should be taught a lesson for taking possession of the land. On her raising hue and cry alongwith her daughters reached there and accused went away telling that they were going to Jagtar Singh for teaching him a lesson and if Mohar Singh became available he would also be taught a lesson and would be killed. Before leaving, the accused broke away the wooden windows of the Baithak and the glass of the almirah. The complainant did not go anywhere during the night due to fear. In the next morning they were got admitted in Civil Hospital by Jagtar Singh. On the basis of her statement as aforesaid a Criminal case was registered against the accused. During investigation of this case names of accused Chamkaur Singh and Jagdev Singh were put in column No.2 of the challan. After completion of formal investigation, challan against the accused Hakam Singh, Resham Singh, Bhupinder Singh, Raja Singh and Rattan Singh was presented before the Illaqa Magistrate.

3. The appellants were convicted vide judgement dated 02.06.2003 by the learned trial Court.

4. Learned counsel for the appellants contends that appellant No. 3-Jagdev Singh has already died during the pendency of present appeal and he is not assailing the impugned judgment of conviction dated 02.06.2003 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the appellants No. 1 and 2 as they have already undergone a period of 03 months and 03 days and 01 month and 28 days respectively and are not involved in any other criminal activity and he further restricts his prayer to modification of the order of quantum of sentence to that of the release of the appellant No. 4-Chamkaur Singh on probation of good conduct. Lastly, the counsel urged the Court to take a lenient view of the matter as the appellants have reformed and intend to live their lives as law-abiding citizens.

5. Per contra, learned State counsel opposes the prayer of the appellant as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, appellants No. 1 and 2 does not deserve any leniency. However, learned State counsel has no objection to the restricted prayer of learned counsel for the appellants qua the appellant No. 4-Chamkaur Singh.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. In **Deo Narain Mandal v. State State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sen-

tence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Moreover, learned counsel for the appellants has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

9. The FIR in the present case was lodged on 20.07.1995 and the appellants have been suffering the agony of trial since the last 29 years. Since their conviction, the appellants have grown into law-abiding citizens and desire to live a peaceful life. As per custody certificate of appellants No.

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1 and 2, they are not involved in any other case and have undergone actual sentence of 03 months and 03 days and 01 month and 28 days respectively out of substantive sentence of 2 year in the instant case.

10. On the other hand, Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be

subserved.”

11. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment dated 02.06.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur is modified to the extent that the sentence of rigorous imprisonment for 02 year along with default mechanism awarded to appellants No. 1 and 2 namely Hakam Singh and Resham Singh respectively is reduced to the period of sentence already undergone by them. The sentence of fine of Rs. 1000/- each, imposed upon appellants No. 1 and 2 by the trial Court is increased to Rs. 10000/- each and appellants No. 1 and 2 are directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, appellants No. 1 and 2 shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

(ii) Further, the judgment passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur awarding a substantive sentence of 2 years under Sections 458 and 323 of IPC qua appellants No. 4 is upheld, however, having regard to the fact that the appellant No. 4-Chamkaur Singh has no criminal antecedents and was declared innocent during investigation and placed in column No. 2 of the final report under Section 173 of Cr.P.C., this court is inclined to give him the benefit of probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellant No. 4, he is granted the benefit of probation for good conduct on furnishing a personal bond of Rs. 20,000/- with a surety each of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of one year, to the satisfaction of the concerned trial court. The appellant No. 4 shall remain under the supervision of the concerned Probation Officer(s) during the aforesaid period. It is further directed that if the aforesaid appellant fail to comply with the said directions or commit breach of the undertaking given by him, he shall be called upon to undergo the

sentence imposed upon him by the learned Additional Sessions Judge, Ferozepur.

12. In view of the fact that appellant No. 3-Jagdev Singh has already died during the pendency of present appeal, therefore, the appeal stands abated qua appellant No. 3.

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

06.05.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

AJAY GOSWAMI
2024.05.07 16:54
I attest to the accuracy and
authenticity of this order/judgment