

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

106

CRA-S-2103-SB-2004
Date of decision: 31.01.2024

Rajpal and another

.....Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Raghubir Singh, Advocate for
Mr. G.S. Ghuman, Advocate
for appellant No.1.

Appeal qua appellant No.2 stands abated
vide order dated 14.07.2023.

Mr. Jagdish Manchanda, Addl. A.G., Haryana.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 13.10.2004, passed by the learned Additional Sessions Judge, Hisar, whereby the appellants were convicted and sentenced as follows:

Offence u/s	Imprisonment	Fine	Default sentence
411 IPC	RI for two years	Rs.1,000/-	RI for one month

2. Succinct facts at first. Vijay Singh-complainant made a statement to the police that he was a driver in the pick-up van and on 25.01.2003 at about 09:00 A.M., when he reached the canal bridge near Rampur in the said vehicle with currency notes of Rs.1,80,000/-, the accused-appellants dragged him and thrashed him with a knife and iron rod. They decamped with the jeep and currency notes. He was admitted to the hospital. Ruqa was sent to the police station on the basis of

which, an FIR came to be registered against the accused-appellants.

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused-appellants and the case of the accused-appellants was committed to the Court of Sessions. On finding a prima facie case, charges under Sections 392, 397 and 412 IPC were framed against them, to which they pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the accused, the prosecution examined as many as 9 witnesses. On closure of the prosecution evidence, statements of the accused-appellants were recorded under Section 313 Cr.P.C. They denied all the incriminating circumstances that appeared against them in the prosecution case while pleading innocence and false implication. No evidence was led in defence by them.

5. The trial Court came to the conclusion that prosecution has proved its case, and accordingly convicted and sentenced as mentioned in para No.1 above.

6. Aggrieved accused-appellants are before this Court.

7. Learned counsel for the accused, at the outset, gives up the challenge to the appeal on merits and prays for extending the benefit of probation in view of the fact that he is the sole breadwinner of the family; first time offender; never misused the concession of bail granted to him and has suffered the pangs of trial since 2003.

8. Learned State counsel submits that after appreciating the evidence led by the prosecution, the trial Court has rightly convicted the accused-appellant. Thus, he prays for the dismissal of the present appeal. He, however, affirms the factum of non-involvement of the appellants and misused the concession of bail granted to them.

9. Heard the learned counsel on either side and perused the record.
10. Evidently, PW1 to PW3 and PW10- Vijay Singh, Man Singh, Bhuru and Dharambir, who were an injured eye witness, became hostile but from their testimonies it was well established that the pick up van was forcibly taken away from possession of PW-1, later on, which was recovered by the police from the accused person on 29.01.2003. They had no explanation regarding the possession of the said vehicle. On going through the evidence on record, the prosecution case is found to be well established and accused were convicted under Section 411 IPC. Thus, there is no scope for interference in the findings recorded and conclusion arrived at by the trial Court. As such, the conviction of the appellant is affirmed.
11. As regards the prayer made on behalf of the appellant is concerned, it would be apposite to make a reference 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.”

12. A judgment in **Ratan Lal vs. State of Punjab**, AIR 1965 SC 444 can be profitably referred to, 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.”

13. Hon’ble the Supreme Court in **Sitaram Paswan and Anr. vs. State of Bihar**, AIR 2005 SC 3534, observed that benefit of probation can be extended at the appellate or revisional stage as well, and held that, “For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that

having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.”

14. In the case of **B.S. Narayanan vs. State of A.P.** 1987 SCC (Cri)791, the accused was convicted under Section 353 and sentenced to rigorous imprisonment of six months, the Hon’ble Supreme Court observing that the incident pertains to the year 1975, ordered to release him on probation.

15. In **Usman vs. State of Haryana**, CRR No. 2055 of 2002, decided on 5.8.2015, the accused was convicted and sentenced under Section 411 IPC, this Court considering that he was a first time offender and facing the agony of trial for 17 years, ordered to release him on probation. Further this Court in **Krishan Singh vs. State of Punjab**, Criminal Revision No. 2406 of 2002, decided on 15.12.2009, release the accused on probation, who was convicted and sentenced under Section 411 IPC, after facing the agony of trial for the last 14 years.

16. In **Satish vs. State of U.P.**, (2021) 14 SCC 580, Hon’ble the Supreme Court had observed that, “Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future. [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981

SCC (Cri) 112]”.

17. Humanistically viewing, the appellant having suffered the ignominy of trial since long; successfully warded off his crime-proneness-an evident learning of a lesson; his socio-economic circumstances, this Court finds extenuation to be implicit. Thus, to strike a balance and serve the interest of justice, the appellant deserves to be granted an opportunity to assure the authorities of his reformation. He be released on probation for a period of one year, on the following conditions as enshrined under Section of the Probation of Offenders Act, 1958:

- (1) He shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.10,000/- which shall be executed before the trial Court within a period of one month from today.
- (2) The said bond shall be in force for a period of one year.
- (3) He shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

18. It is clarified that in case there is any breach of the aforesaid conditions, the appellant will forthwith be taken into custody and shall have to undergo the sentence awarded to him by the trial Court.

19. Appeal stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

31.01.2024
Hemant

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