

868

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1490-2017 (O&M)
Reserved on: 20.09.2024
Pronounced on 25.09.2024

Satender @ Kalu

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Amandeep Kaur, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. The present revision is preferred against the judgment dated 10.04.2017 passed by the learned Additional Sessions Court, Rewari whereby the judgment of conviction and order of sentence dated 25.05.2015 passed by the learned Judicial Magistrate Ist Class, Rewari, has been upheld. The petitioner was sentenced as mentioned below:

Offence under	Sentence
Section 354 IPC	Rigorous imprisonment of 2 years and a fine of Rs. 5,000/- (The fine was directed to be paid to the victim as compensation)

2. Briefly, the facts of the case are that on 23.12.10, the victim was going to the house of one Balram to use the washroom. The petitioner arrived at the spot and caught hold of the victim's hand. The grandmother of the victim namely Babuli came to the spot causing the petitioner to run away. The grandfather of the victim-the complainant raised the matter before Data Ram,



father of the petitioner but instead of addressing their issues, he abused the complainant.

3. The learned trial Court, after assessing the material on record, convicted the petitioner vide judgement dated 25.05.2015. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 10.04.2017. Thereafter, the petitioner moved the present revision petition before this Court wherein his sentence was suspended vide order dated 26.04.2017.

4. Learned counsel for the petitioner contended that there is a delay of 2 days in registering the FIR(supra), which has not been adequately explained by the prosecution. Moreover, PW3-prosecutrix has categorically admitted that she has a toilet in her own house, therefore, it is unclear as to why she was at Balram's house. The prosecution case is built on the testimonies of interested witnesses as all of them are family members of the prosecutrix. No independent witness was joined in the investigation either, in spite of the fact that the house of the complainant is situated in the village *abadi*. Furthermore, the ingredients of the offence under Section 354 IPC are not made out against the accused as the sole allegation is that the petitioner held the prosecutrix's hand. The petitioner is a college student, with good moral character, as testified by DW1-Ranbir, who has been unfairly implicated in the present case.

5. *Per contra*, learned State counsel submitted that the petitioner has been convicted by the learned trial Court based on correct appreciation of the facts and the law. Moreover, the conviction has been upheld by the learned lower Appellate Court, as such interference by this Court is not warranted. He further submitted that the petitioner has undergone 20 days of custody.



6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it appears that the 2 day delay in registering the FIR(supra) has been adequately explained as the complainant party had approached the father of the petitioner-accused to resolve the matter. The FIR(supra) was only registered on failure of the said attempt. The prosecution version has also been corroborated by PW3- Babuli, who is the eye-witness. The petitioner-accused had also claimed that he has been implicated due to previous animosity between the parties, however the same has not been corroborated by any evidence.

7. This Court is of the considered opinion that the guilt of the petitioner has been adequately proved and the judgment of conviction does not warrant any interference. However, the petitioner has been facing the agony of trial for the last 14 years. Therefore, in view of his clean antecedents and young age, this Court finds the matter at hand to be a fit case for grant of probation. 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.”

8. The Hon’ble Supreme Court in ***Lakhanlal @ Lakhan Singh vs. State of Madhya Pradesh (2021) 6 SCC 100***, has held as follow:

“14. At this stage, it may be noticed that a two Judge Bench of this Court in Sanjay Dutt v. The State of Maharashtra 2013 SCC online SC 252 considering the provisions of Section 360 of the Code and Sections 3 and 4 of 1958 Act held that the coexistence of such provisions would lead to enormous results. It was further held that the intention to retain the provisions of Section 360 of the Code and 1958 Act at the same time in a given area cannot be gathered from the provisions of Section 360 or any provision of the Code, when the Court held as under:-

"81) section 360 of the Code of Criminal Procedure, 1973 does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation of Offenders Act does make such a provision. While section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under section 3 or 4 of the Probation of Offenders Act, shall not suffer disqualification, if any, attached to

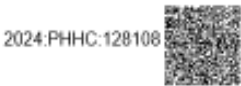


the conviction of an offence under any law. The Code of Criminal Procedure does not contain parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the Probation of Offenders Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provisions of the Code."

15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law."

Reliance can also be placed upon the judgments rendered by the Hon'ble Supreme Court in ***Chhanni vs. State of Uttar Pradesh (2006) 5 SCC 396*** and ***State of Haryana vs. Prem Chand (1997) 7 SCC 756***.

9. Accordingly, the judgment dated 10.04.2017 passed by the learned Additional Sessions Judge, Fatehabad is upheld. However, in view of the discussion above, the petitioner is directed to be released on probation on furnishing a personal bond of Rs. 20,000/- each with a surety each of the like amount. The petitioner is also directed to furnish an undertaking to keep the peace and good behaviour for a period of two years, to the satisfaction of the concerned trial court within a period of two weeks. The petitioners shall remain under the supervision of the concerned Probation Officer during the aforesaid period. It is further directed that if the petitioner fail to comply with the said directions or commit breach of the undertaking given by them, they shall be called upon to undergo the sentence imposed upon him, as mentioned above.



10. With the aforesaid directions, the present petition is disposed of.
Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

25.09.2024
Neha

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