

2024:PHHC:106110



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

**CRR No. 2619-2018
DECIDED ON:02.04.2024**

POONAM

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sukesh K. Jindal, Advocate
for the petitioner.

Mr. B.S. Virk, Sr. DAG, Haryana.

Mr. Parveen Kaushik, Advocate
for respondents No.2 to 4.

SANDEEP MOUDGIL. J.

1. The challenge in the present criminal revision petition is to the judgment/order dated 28.02.2018 passed by Additional Sessions Judge, Jhajjar whereby, though the appeal filed against the judgment dated 11.03.2016 and order of sentence dated 15.03.2016 passed by Judicial Magistrate Ist Class, Bahadurgarh has been dismissed but the accused-persons have been released on probation on good conduct.

2. The factual matrix of the case is that the complainant/petitioner got registered a DDR No. 20, on 04.07.2012 alleging that at about 3.30 PM on the same day, she was resting in the room after completing routine household chores. Suddenly, accused Ashok (brother-in-law) entered into the room in an inebriated condition and abused her but when she resisted, all

the accused persons gave slaps and fist blows to her, which resulted into causing injuries.

3. It has been contended by learned counsel for the petitioner that the Appellate Court affirmed the finding of guilt of the accused-persons by a reasoned order but committed a legal error in releasing them on probation on the basis of conjectures and surmises. She was badly assaulted physically by none other than her mother-in-law, her son and his wife, when she was alone. It has been further contended that the accused-persons had contested their conviction tooth and nail and it was only when they failed, prayer for probation was made by them, which shows that they had no remorse for what they had done. Hence, they did not deserve the benefit of probation. The Appellate Court has released the accused-persons on probation on the ground that it would reduce enmity between parties but this was not a defense presented by the accused. The Probation of Offenders Act, 1958, is not intended for cases like this, where the offence is serious (assault under Section 452 IPC, punishable by up to 7 years imprisonment and fine). Looking into the manner in which the petitioner has been assaulted, the accused did not deserve probation. Moreover, as per MLR, the petitioner received seven injuries on her person.

4. Learned State counsel has contended that the guilt of the accused-persons had been established beyond all shadows of reasonable doubt by the testimony of the witnesses examined by the prosecution in its evidence and nothing left for the prosecution to prove on record. Hence, the guilt of the accused persons had been fully established and proven by the evidence led by prosecution.

5. Learned counsel for respondents No.2 to 4 has been contended that the testimony of prosecution witnesses are contradictory, which makes

the entire case doubtful. Moreover, the prosecution has failed to prove that the accused attacked the complainant with a common intention, resulting in injuries. Since the complainant and accused were residing in the same house, no case of house trespass is made out. It is argued that the complainant and accused are family members, and the case was filed to settle personal scores.

6. Heard learned counsel for the respective parties.

7. It is an admitted fact that the complainant-petitioner and accused persons are family members with potential household disputes. However, this does not justify physical assault. The complainant-petitioner has suffered seven injuries, as confirmed by Dr. Gian Parkash PW-5. Therefore, this Court finds it unlikely that the complainant fabricated the allegations of being injured by the accused. This Court does not find any force in the argument raised by learned counsel for respondents No.2 to 4 that no case of house trespass is made out. In the case in hand, the complainant-petitioner was living in the upper stairs room, meaning thereby, she had exclusive possession and was using it as her dwelling. Therefore, the entry of respondents No.2 to 4 in the room without her permission constitutes an offence under Section 452 IPC.

8. The main limb of contention of learned counsel for the petitioner is that the Appellate Court has released the accused-persons on probation simply on the ground that it will increase the enmity between them.

9. There is no gain saying that the relevant statutory provisions and the principles underlying and pertaining to release of offenders on probation, instead of straightaway sentencing them, need to be kept in mind by the Courts while passing sentencing orders.

10 Probation of Offenders Act, 1958 (for short “Act”) was enacted in order to save offenders in appropriate cases from being habitual offenders

by 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.”

11. Objectives and principles of criminal law as envisioned in the provision *ibid*, apart from deterrence against committing crime against society, are *inter-alia* focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends 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 potentials of 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 remain 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 and 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 re-offending. Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach

of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society.

12. Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. An assessment of offender's ties to the community, such as family, employment, and stable housing ought to be carried out. Strong community ties can indicate a support system that can help prevent further criminal activity. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety.

13 Admittedly, in the present case the accused-persons and complainant-petitioner are family members and in order to maintain domestic tranquility and harmony, family members are enjoined to engage in respectful and courteous communication, actively listening to one another's perspectives and accommodating their differences. Grudges and grievances should be relinquished through forgiveness and understanding. Open and honest discourse, tempered by empathy and gentleness, is essential. Shared responsibilities and collaborative efforts foster a sense of unity and cooperation. Furthermore, quality time spent together, punctuated by joy and laughter, strengthens familial bonds. Ultimately, a spirit of gratitude and appreciation for one another's presence and contributions is indispensable to preserving peaceful and harmonious family relations.

14. Keeping the aforesaid in mind, I am thus of the view that the release of the convicts on probation, as in the present case, can indeed serve the dual purpose of deterrence and reformation. By allowing release on probation, the aim herein is to deter their future criminal conduct, while also providing an opportunity for reform and rehabilitation.

15. In view of afore-said factual aspects and the discussions made hereinabove, this Court does not find any merit in the present petition and the same is dismissed.

02.04.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No