

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110

CRA-S-275-SB-2005
Date of decision: 23.01.2024

Malkiat Singh and others

Versus

....Appellants

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. C.S. Jattana, Advocate for the appellants.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 12.01.2005, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, whereby the appellants were convicted and sentenced as follows:

Offence u/s	Imprisonment	Fine	Default sentence
323 IPC	RI for 06 months	-	-
323/149 IPC	RI for 06 months	-	-
148 IPC	RI for one year	-	-

All the sentences were ordered to run concurrently.

2. Succinctly, the facts are that on 02.02.2002 at about 8/9 am when complainant Chand Singh tried to rescue his wife from the clutches of the accused who were giving beatings her, accused Malkiat Singh, Jai Kaur, Bhajan Kaur, Mohinder Singh, Paramjit Kaur and Manjit Singh inflicted injuries to him as well. On raising the alarm, villagers gathered and rescued them. An FIR was 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. On finding a prima facie case, charges under Sections 308/323/148/149 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 6 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 false implication by the police. In defence, they examined two witnesses.

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 appellants are before this Court.

7. Learned counsel for the appellants, at the outset, gives up the challenge to the appeal on merits and prays for extending the benefit of probation in view of the mitigating circumstances being that the incident pertains to the year 2002, they are first time offenders and never misused the concession of bail granted to them. Reliance is placed on the judgments of the Hon'ble Supreme Court of India in **Om Prakash and others vs. State of M.P.** 1982 AIR (SC) 783; **Sita Ram Paswan and another vs. State of Bihar** 2005 AIR (SC) 3534 and **Rajbir vs. State of Haryana** 1985 AIR (SC) 1278. He further places reliance on the judgment of this Court in **Nasri vs. State of Haryana and others** 2023(3) Law Herald 2203.

8. Learned State counsel submits that after appreciating the evidence led by the prosecution, the trial Court has rightly convicted the accused-appellants.

Thus, he prays for the dismissal of the present appeal.

9. Heard the learned counsel for the parties and perused the record.

10. Appeal qua appellant No.2-Jai Kaur already stands abated vide order dated 03.05.2017.

11. The deposition of PW1-complainant Chand Singh and PW-2 Nasib Kaur having received the injuries at the hands of the accused is fully corroborated with the medical evidence, proved by PW5 Dr.Roop Dass Bawa. On going through the evidence on record, the prosecution case is found to be well established. Thus, there is no scope for interference in the findings recorded by the trial Court and conclusion arrived at. As such, the conviction of the appellants is upheld.

12. As regards the prayer for releasing on probation made on behalf of the appellants 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.”

13. A profitable reference can also be made to **Ratan Lal vs. State of Punjab**, AIR 1965 SC 444, 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.”

14. 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.”

15. The accused persons convicted under Section 323 IPC were ordered to be released on probation by Hon’ble the Supreme Court in **Om Prakash** (supra), by holding that the same would meet ends of justice.

16. In the case of **Nasri** (supra), wherein the accused were released by the trial Court on probation by considering the fact that they were poor persons and first time offenders, the complainant had challenged the same in appeal before this Court, which was dismissed by observing that probation is an alternative form of punishment envisaged within the criminal justice system.

17. This Court considering the mitigating circumstances and the judgments referred to above, finds that the ends of justice would be adequately met if the appellants is granted the benefit of probation of good conduct.

18. As a consequence to the above, the present criminal appeal is hereby disposed of with a direction to grant probation to the appellants for a period of one year, on the following conditions as enshrined under Section of the Probation of Offenders Act, 1958:

(1) They shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.10,000/- each 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) They shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

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

(AMAN CHAUDHARY)
JUDGE

23.01.2024
Hemant

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