



**CRR-2518-2019 (O&M) &
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-2518-2019 (O&M)
Reserved on: 13.11.2024
Date of Pronouncement: 12.12.2024**

JAI BHAGWAN AND OTHERS	-PETITIONERS
V/S	
STATE OF HARYANA	-RESPONDENT

CRR-2881-2019 (O&M)

NARENDER ALIAS KOHLI	-PETITIONER
V/S	
JAI BHAGWAN AND OTHERS	-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ashit Malik, Advocate
for the petitioner in CRR-2518-2019.

Mr. Rahul Vats, Advocate,
for the petitioner in CRR-2881-2019 and
for the complainant in CRR-2518-2019.

Mr. Rajesh Gaur, Addl.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Both the petitions are amenable to be decided together, as illegality of a common judgment of conviction and order of sentence, passed by courts below has been challenged.

2. CRR-2518-2019, has been preferred by nine persons (hereinafter referred to as 'petitioners/accused'), out of the total 10, who have been convicted for the commission of offences punishable under Sections 323, 342 and 365 read with Section 149 of the IPC, vide judgment dated 21.01.2015, and vide order of sentence dated

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22.01.2015, passed by the Court of learned Additional Chief Judicial Magistrate, Bhiwani (hereinafter referred to as 'the learned trial court concerned'), they have been sentenced to undergo following sentence:-

Under Sections	Sentence
323 read with Section 149 IPC	Rigorous imprisonment of one year and a fine of Rs.500/- each. In default simple imprisonment for one month.
342 read with Section 149 IPC	Rigorous imprisonment of one year and a fine of Rs.500/- each. In default simple imprisonment for one month
365 read with Section 149 IPC	Rigorous imprisonment for three years and a fine of Rs.5,000/- each. In default simple imprisonment for three months

However, they were acquitted of the charges framed under Sections 148, 325 and 506 read with Section 149 IPC.

It is apt to note that vide judgement of even date, one convict-Om Parkash, was ordered to be released on probation for two years, as he was suffering from cancer.

3. CRR-2881-2019, has been preferred by the complainant/victim (hereinafter referred to as 'petitioner/complainant/victim'), wherethrough, he has challenged the illegality in the judgment of conviction and order of sentence (*supra*), and a prayer is made for enhancement of sentence as imposed upon the petitioners/accused in CRR-2518-2019, and also for imposing adequate compensation upon them in view Section 357(3) Cr.P.C., to be paid to him.

4. Besides, in both the revision petitions, challenge is also thrown to common judgment passed by the court of learned Additional Sessions Judge, Bhiwani (hereinafter referred to as 'learned appellate



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court concerned'), dated 16.09.2019, whereby, the separate appeals filed by both, the petitioners and the complainant, against the verdict of conviction/order of sentence (*supra*), have been dismissed.

5. During the pendency of the instant revision petition, petitioner no.8-Baljeet, had died on 08.09.2023, therefore, the proceedings against him is ordered to be abetted.

6. For the convenience of disposal of both the petitions, the facts are extracted from the CRR-2518-2019.

7. The story of the prosecution, as culled out from the judgement of conviction (*supra*) passed by the learned trial court concerned, is extracted hereinafter:-

“Brief facts of the prosecution case are that on 8.12.2008, a telephonic information regarding commission of offence was received from village Pur, upon which, Investigating Officer ASI Jai Parkash alongwith co-officials reached Bus Stand of village Pur, where complainant Narender @ Kohli and Rajender son of Jagmal Singh met him and Narender alias Kohli got recorded his statement submitting that he is a resident of village Pur and is studying in BA final year. On 8.12.2008, at around 8.30 P.M., he had gone to his plot to feed the dogs and when he reached the gate, he met Jai Bhagwan son of Pehlad and in the meantime, an Alto Car bearing Registration No.HR-14C-4970 stopped near him. Accused Bali, Rajesh, Dharam Chand alias Baljeet, Daya Nand alias Nania alighted from the car and they forcibly put him inside the car and took him to the fields of Amar Chand, where Raj Kumar, Kapura, Parkash, Amar Singh and Dalbir were present alongwith a vehicle Chhota Hathi having Registration No.HR-61-7316. He was taken out of the Alto car and accused Bali caused injury upon his right eye. Accused Raj Kumar caused injury on his left eye and accused Dalbir caused injury on his nose. Thereafter, all the accused persons gave slap and fist blows to him and gave lathi blows on his hips. Thereafter, he was put in the other vehicle (Chhota Hathi having No.HR-61-7316) and was taken to the vacant house of Mahender Numberdar, where he was put on the ground. Accused Dalbir caught hold of his left hand. Accused Rajesh caught hold of his right hand. Accused Raj Kumar caught hold of his left foot and accused Bali caught hold of his right foot whereas accused Jai Bhagwan sat on his back and they inserted a wooden stick in his anus. Thereafter, he was again put in the Alto car and was left at the



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Bus stand. There his uncle Rajender came in search of the complainant and he narrated the whole incident to his uncle. He narrated to his uncle that he was beaten by the accused persons and was also tied down with a rope. Accused Baljeet has also taken his mobile phone. He prayed for appropriate action against the accused persons.”

8. The statement (*supra*) became the bedrock for registration of the FIR bearing No.227, dated 09.12.2008, under Sections 147, 148, 323, 325, 342, 365 and 506 IPC, at Police Station Bhiwani Khera. After completion of the investigation a final report was filed, and 10 persons was sent by the prosecution agency to face the trial, for the commission of offences under Sections 147, 148, 323, 325, 342, 365 and 506 of the IPC.

9. The charges were framed against the petitioners/accused under Sections 148, 323, 325, 342, 365 and 506 read with Section 149 of the IPC, to which they plead not guilty, and claimed trial.

10. The prosecution in order to substantiate the allegations against the petitioners/accused, examined as many as 11 witnesses, and led documentary evidence.

11. The petitioners/accused did not led any evidence in their defence, except tendering a copy of the judgement dated 18.12.2010 as Ex.D1. The learned trial court concerned, after concluding the trial, convicted the petitioners/accused for the commission of offences punishable under Sections 323, 342 and 365 read with Section 149 of the IPC, vide its judgment dated 21.01.2015, whereas, they were acquitted of charges under Sections 148, 325 and 506 read with Section 149 IPC, and vide order dated 22.01.2015, the petitioners/accused were sentenced as



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extracted hereinabove.

12. Fetching grievance from the above judgment of conviction and order of sentence, the petitioners/accused preferred a statutory appeal. On the other hand, the complainant/victim, also preferred a separate appeal seeking enhancement of the sentenced, as imposed by the learned trial court concerned, upon the petitioners/accused. The learned appellate court concerned, finding no merit in both the appeals, dismissed the same, vide its common judgment dated 16.09.2019. Hence, the instant revision petitions have been filed, one of them is by the petitioners/accused, and the other is preferred by the complainant/victim.

13. Learned counsel for the petitioners/accused (in CRR-2518-2019) submits that all the petitioners/accused have rightly been acquitted from the offences under Sections 148, 325 and 506 read with Section 149 of the IPC, as no fracture, were found on the victim/injured.

14. He further submits that all the injuries, as suffered by the complainant/victim are simple in nature. He also submits that the provisions of Section 365 IPC, is not attracted, in case the allegations as alleged in the instant FIR, are taken to be as a gospel truth. While elaborating the arguments on this point, he submitted that the complainant/victim, was not abducted, with intention to wrongfully confine him, rather it was alleged that the complainant/victim was forcibly taken to a farm house, but it is an admitted fact that he was left back to the place from where he was abducted.

15. He in addition, submitted that at the most, from the



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allegations, though not admitted, only offence under Section 342 read with Section 149 IPC, is made out against the petitioners/accused.

16. He over and above, submitted that the complainant/victim never stated in the FIR (*supra*), that it was petitioner/accused no.4- Kapoor Singh, who inserted a stick in his anus, rather while stepping into the witness box, the complainant/victim first time alleged a specific attribution to said Kapoor Singh, which is purely a material contradiction, which ought to have been considered by the courts below, however the same has not been taken into consideration.

17. On the other hand, learned State counsel as well learned counsel for the complainant/victim (petitioner in CRR-2881-2019), opposed the asked for relief to the petitioners/accused, while drawing attention of this Court towards injury no.10, as suffered by the complainant/victim and submitted that the petitioners/accused does not deserve any leniency, rather they should have been punished, with the maximum sentence, as prescribed under the provisions of the IPC, and claims for the maximum punishment under which they have been convicted, and further adequate amount of compensation be awarded to the complainant/victim.

18. This court has considered the submissions made by learned counsel for the petitioners/accused, and has examined the judgments passed by the courts below, and do not find any perversity or illegality, which requires any interference in the verdict of holding the petitioners/accused guilty.



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19. All these issues which have been raised before this Court have already been considered by both the courts below in detail, vide its judgements (*supra*).

20. At this stage, learned counsel for the petitioners/accused made a request for extending the relief of probation to the petitioners/accused. He further submits that all the petitioners/accused are facing the agony of the protracted trial, since the year 2008.

21. He to a greater extent submits that most of the petitioners/accused have suffered incarceration for about 2 years, out of the total 3 years of sentence as imposed upon them, and they are not previously convict and are not involved in any other criminal case.

22. He, finally, submits that the petitioners/accused are ready and willing adequately compensate the complainant/victim (petitioner in CRR-2881-2019).

23. After considering the arguments advanced by the parties concerned, and after perusal of the material available on record, this court finds that except the merits of the case, so far as the prayer of learned counsel for the petitioners/accused for providing benefits of release on [probation](#), is concerned, it is essential to discuss Sections 3 and 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as 'Act of 1958') which empowers the court to release a convict on probation on good conduct. Similarly, Sections 360 and 361 Cr.P.C., also empowers a court release on probation on good conduct.

24. For better understanding Sections 3 and 4 of the Act of 1958,



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are extracted hereinafter:-

3. Power of Court to release certain offenders after admonition

- When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition. Explanation. - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

“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



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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.”

25. In view of Section 4, if any person is found guilty of having committed an offence not punishable with the death or imprisonment of life, the court by which a person is found guilty, can release the offender of probation of good conduct after having regard to the circumstances of the case including the nature of offence and character of the offender. Further Section 11 of the *ibid* Act, empowers the High Court to exercise the powers of Section 4, while exercising its powers in revision. Section 11 is extracted hereinafter:-

“11. Courts competent to make order under this Act, appeal and revision and powers of Courts in appeal and revision

- (1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the Court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu

thereof pass sentence on such offender according to law:Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was found guilty.”

26. The petitioners/accused in this case have been convicted for the commission of offences punishable under Sections Sections 323, 342 and 365 read with Section 149 of the IPC, and the maximum sentence as prescribed under the IPC, is mentioned hereinafter:-

Under Sections	Maximum Sentence as per the IPC
323 read with Section 149 IPC	mprisonment for 1 year or fine of 1,000 rupees, or both.
342 read with Section 149 IPC	Imprisonment for 1 year, or fine of 1,000 rupees, or both.
365 read with Section 149 IPC	Imprisonment for 7 years and fine.

27. It is clear from the above, that in none of the above offences punishment of life or death is prescribed, therefore, this Court can consider the case of the present petitioner/convict for extending the relief of probation under Section 4 of the Act, 1958. For exercising the powers which are essentially discretionary in nature, the court has to consider the circumstances of the case, nature of the offence and the character of the offender.

28. The court is also required to consider the rights of the victim.

29. The Supreme Court in its judgement “**Sita Ram Paswan and another vs. State of Bihar**”, (Crl.Appeal No.1214 of 2005, decided on 19.09.2005), has held as under

“8. Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of Offenders Act, 1958 reads thus:-



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Section 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."

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.

9. The fact as emerged in this case. It is apparent that the incident occurred at the spur of the moment and is traverse in nature. There is no material on record to indicate that the appellants have any previous conviction. In the absence of such evidence, we treat appellants as first offenders. A-1, namely, Sitaram Paswan has made the assault using Danda and the fists and caused simple injuries to Krishna Devi, Paltoo Paswan and Vijay Kumar, PW-2, PW-5 and PW-4 respectively. He has been convicted with the aid of Section 34, under Section 324 and under Section 323 Indian Penal Code whereas the case of A-2 Raj Kumar is different. He has caused injuries to Paltoo Paswan and Vijay Kumar using the sword. Injury found on Paltoo Paswan is sharp cuts on left side of the head and on Vijay Kumar, cut injury on the left side of the head."

30. A co-ordinate bench of this Court in its judgment **“Mohan**



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Singh v. State of Punjab”, 2006 (1) RCR (CrI.) 872, after considering the fact that the accused persons have undergone a part of sentence and have never misused the concession of bail and faced the agony of protracted litigation for more than 14 years, found the case fit for invoking its power under Section 4 of the Act of 1958.

“8. After hearing Learned Counsel for the parties and having regard to the fact that the petitioners are first time offenders and have already undergone a part of the sentence; have not misused the concession of bail and after permitting them to avail the concession of bail for more than 14 years, it will be too inequitable to subject them to actual sentence, apart from the fact that it is not likely to serve the cause of administration of criminal justice, I find it a fit case for invoking powers under Section 4 of the Probation of Offenders Act to release the petitioners on probation.

9. Consequently, this petition is partly allowed to the extent that the petitioners, instead of undergoing the remainder of the actual sentence as awarded to them by the learned Additional Sessions Judge, Amritsar vide the impugned judgment dated 10.4.1991, are directed to be released on probation on furnishing fresh surety bonds in the sum of Rs. 25,000/- each with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Amritsar and subject to further condition that fine imposed upon them shall be paid, if already not paid, within a period of one month, and in default thereof, the order releasing the petitioners on probation, shall automatically stand vacated and they shall be required to undergo the actual sentence of imprisonment apart from the period of imprisonment already imposed on this count. They are also directed to give an undertaking to keep peace and to be of good behaviour for one year and to appear and undergo sentence as and when called for.”

FINAL ORDER

31. In the light of the above, this Court has also examined the facts and circumstances of the instant case, and it is not under dispute that the complainant/victim (petitioner in CRR-2881-2019) has not suffered any grievous injury. On the other hand, the petitioners/accused (in CRR-2518-2019) have suffered agony of protracted trial for the last more than 15 years. The petitioners/accused were granted the relief of suspension of sentence by this Court vide orders dated 10.11.2021 and



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14.02.2022, and they never misutilised or violated any terms and conditions for granting such relief.

32. Further, the petitioners/accused have undergone the major part of their sentence, as imposed upon them, i.e. about 2 years out of the total 03 years. Sending the petitioners/accused behind the bars after such a long duration will not ripe any fruit, specifically, when the petitioners/accused, have already settled back in the society and now earning bread and butter for their family.

33. In view of the above, all the eight petitioners/accused, be released on probation on the ground of good conduct for their remaining period of sentence, as the case of their case falls within the parameters as enshrined under Section 4 of the Act of 1958, however, on the following condition:-

- i. They shall individually execute a bond for good behaviour with two solvent sureties in the sum of Rs.50,000/-, which shall be executed before the learned trial court concerned, within a period of 02 months, from today.
- ii. They are also directed to give an undertaking to keep peace and to be of good behaviour and to appear and undergo sentence as and when called for.
- iii. The said bond shall remain in force for the remaining period of sentence.
- iv. They shall, subject to the conditions laid down in the Probation of Offenders Act, 1958, remain under the Supervision of Probation Officer.
- v. The present petitioners/accused are ordered to be deposited Rs.25,000/-each, with the learned trial Court



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concerned, as an amount of compensation, and thereupon, the latter concerned, shall release the said amount to the complainant/victim.

34. It is clarified that, in case, there is any breach of the aforesaid conditions, the petitioners/accused shall forthwith be taken into custody and shall have to undergo the remaining part of their actual sentence, as awarded to them by the learned trial court concerned.

35. So far as the petitioner/complainant/victim in CRR-2881-2019, is concerned, he has been adequately compensated by this Court, as directed above, for his grievance.

36. In view of the above, both the petitions are **disposed of** accordingly.

37. All pending application(s), if any, also stand **disposed of** accordingly.

December 12, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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