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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 22.07.2025

1. CRA-S-1792-SB-2004 (O&M)
Hoshiar Singh and others

... Appellants

Vs.

State of Punjab

... Respondent

2. CRR-2265-2004 (O&M)
Bakhshish Singh

... Petitioner

Vs.

Hoshiar Singh and others

... Respondents

3. CRR-502-2005 (O&M)
Hoshiar Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

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CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Himmat Singh Sidhu, Advocate,
Mr. Gurpreet Singh Brar, Advocate,
Mr. Gurneet Singh Budhiraja, Advocate
Mr. Chandan Singh, Advocate (*Amicus Curiae*)
for the appellants (in CRA-S-1792-SB-2004),
for the petitioner (in CRR-502-2005) and
for the respondents (in CRR-2265-2004).

None for the petitioner (in CRR-2265-2004).

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Praagbir Singh Dhindsa, Advocate
for the complainant (in CRA-S-1792-SB-2004) and
for respondents No.2 & 3 (in CRR-502-2005).

HARPREET SINGH BRAR, J. (ORAL)

1. This judgment shall dispose of aforementioned three cases i.e. CRA-S-1792-SB-2004, CRR-2265-2004 and CRR-502-2025 arising out of the same factual matrix, as these are version and cross-version cases.

2. **CRA-S-1792-SB-2004** has been preferred by the appellants-accused against the judgment of conviction and the order of sentence dated 31.08.2004 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, in FIR No.141 dated 13.12.1998 under Sections 307, 452, 325, 324, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Sahnewal, vide which the appellants were convicted under Sections 323, 324, 325, 452 read with Section 34 of IPC and were sentenced

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to undergo rigorous imprisonment for a maximum period of two years and to pay a fine of Rs.1,500/- each along with default mechanism.

3. **CRR-2265-2004** has been filed by petitioner-complainant Bakhshish Singh, in FIR (*supra*), for enhancement of the sentence awarded by learned trial Court to the respondents-accused and also for their conviction under Section 307 of IPC.

4. **CRR-502-2005** has been preferred by petitioner-complainant Hoshiar Singh, in the complaint filed under Sections 323, 324, 506, 34 of IPC, for convicting the respondents-accused and to punish them adequately.

5. In nutshell, the facts are that as per the complaint (*supra*) lodged on the statement of complainant Hoshiar Singh, on 12.12.1998 at about 06.00 a.m., when he was returning to his home from village Gurudwara, Bakhshish Singh was having his dog with him and on being coughed by the complainant, he took the dog towards latrine. However, the dog attacked the complainant, due to which he fell on the *roori* and asked Bakhshish Singh to set the dog on fire. Upon which, Bakhshish Singh started abusing him. Meanwhile, Karnail Singh came out of his house and enquired about the matter, on which the complainant told him that his dog would have bitten him and further asked to keep the dog in chain. On this, Karnail Singh slapped him, due to which he lost senses and fell down. In the meantime, Bakhshish Singh brought soti and kirpan. Thereafter, Karnail Singh gave kirpan blows on both arms of the

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complainant and Bakhshish Singh also gave soti blow on his back. On raising the alarm by the complainant, Hakam Singh reached there and on seeing him, both the accused persons along with their respective weapons ran away from the spot. Thereafter, the complainant was taken to Civil Hospital, Kumb Kalan by one Swarn Singh. It is further stated that Bakhshish Singh and Karnail Singh were nursing a grudge due to some land dispute.

6. As per the version in the FIR (*supra*) registered at the instance of Bakhshish Singh, on 12.12.1998 at about 06.30 a.m., when he was returning home from village Gurudwara and reached near the gate of his house, Hoshiar Singh was present there armed with gandasa and he raised lalkara extorting his co-accused Hakam Singh to catch hold of Bakhshish Singh and not to spare him. Upon this, he rushed to the house of his nephew Karnail Singh and Hoshiar Singh and his sons Hakam Singh armed with gandasa and Kimat Singh armed with kirpan and one Paramjit Singh while armed with gandasa followed him. Hakam Singh and Paramjit Singh gave gandasa blows on his head one after another, due to which he fell down on the ground. Thereafter, Hoshiar Singh gave gandasa blow on his left arm and left hand. Paramjit Singh gave another gandasa blow, which hit on his right arm. Hakam Singh gave gandasa blow with reverse side on his chest. Kimat Singh gave kick blows on the persons of Bakhshish Singh while he was lying down. On raising the alarm, Karnail Singh and Jagir Singh reached at the spot and when

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Karnail Singh tried to rescue Bakhshish Singh, the assailants also caused injuries to him. After inflicting the injuries, the assailants along with their respective weapons left the spot. Thereafter, Bakhshish Singh was admitted to Civil Hospital, Kumb Kalan by Jagir Singh. According to the complainant, the motive behind the occurrence was that the accused wanted to usurp his property, regarding which they have forged Power of Attorney and sale deed.

7. After assessing all the material available on record, learned trial Court, in the case arising out of FIR (*supra*), convicted and sentenced appellants Hoshiar Singh, Kimat Singh and Paramjit Singh vide judgment of conviction and the order of sentence dated 31.08.2004. However, in complaint case, the accused were acquitted of the charges levelled against them. Hence, the appeal as well as revision petitions.

8. Learned senior counsel for the appellants, in CRA-S-1792-SB-2004, at the very outset, submits that appellant No.1 Hoshiar Singh had died, as such, proceedings qua him may be abated.

9. Ordered accordingly.

10. Learned senior counsel on behalf of appellants No.2 & 3, in CRA-S-1792-SB-2004, assisted by learned *Amicus Curiae*, submits that it is a case of version and cross-version, in which the complainant party was the aggressor. The alleged occurrence took place on 12.12.1998 and the FIR (*supra*) was registered on 13.12.1998. Further, appellant No.2 Kimat Singh is

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a physically handicapped person and is unable to walk, as his legs were weakened due to polio and further, his disability is 60%. The version of the prosecution is false and fabricated to the extent that appellant No.2 gave kick blows to Bakhshish Singh. Therefore, case of the prosecution suffers from serious infirmities and inconsistencies. Furthermore, the judgment of conviction dated 31.08.2004 passed by learned trial Court is based on conjectures and surmises. It is further submitted that appellants No.2 & 3 have undergone actual custody of more than 10 months and they don't have any criminal antecedents. They are facing the agony of trial for the last more than 26 years and as such, learned trial Court ought to have considered their case for releasing them on probation under Section 361 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 402 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] read with Sections 3 & 4 of the Probation of Offenders Act, 1958 (for short 'PO Act').

11. Learned senior counsel for the petitioner, in CRR-502-2005, contends that learned trial Court failed to appreciate the fact that the petitioner himself suffered injuries and this version was corroborated by PW Swaran Singh. Further, the accused assaulted the petitioner due to a land dispute. As such, learned trial Court has wrongly acquitted the accused of the charges levelled against them.

12. *Per contra*, learned State counsel, assisted by learned counsel for

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the complainant, affirms the factum regarding death of appellant No.1 Hoshiar Singh. He further submits that complainant Bakhshish Singh had also died. However, he supports the judgment passed by learned trial Court, while contending that appellants No.2 & 3 had rightly been convicted and sentenced by learned Court below, as they misused and abused the process of law.

13. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

14. Sections 3 & 4 of PO Act empower the Courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 & 361 of Cr.P.C. (*now Sections 401 & 402 of BNSS*) 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....”

15. 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.”

16. Further still, a two Judge Bench of the Hon’ble Supreme Court in ***Lakahnal @ Lakahn Singh Vs. State of Madhya Pradesh, (2021) 6 SCC 100*** has opined as follows:

“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.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”



17. The Hon'ble Supreme Court in ***Bishnu Deo Shah Vs. State of West Banal, AIR 1979 SC 964*** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of Cr.P.C. (*now Section 401 of BNSS*), if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Sections 4 & 6 of PO Act and Sections 360 & 361 of Cr.P.C. (*now Sections 401 & 402 of BNSS*) is to provide an opportunity to the first time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.

18. Coming to the revision petition filed by the petitioner-complainant Hoshiar Singh against acquittal of the accused person(s), the power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view, which favours the accused, should prevail over the other pointing towards his guilt. Furthermore, learned trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram Vs. State of H.P.,*

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1973 (2) SCC 808, Hari Ram Vs. State of Rajasthan, 2000 (9) SCC 136 and Chandrappa and others Vs. State of Karnataka, (2007) 4 SCC 415). A Division Bench of this Court in the judgment of *State of Haryana Vs. Ankit and others, passed in CRM-A No.3 of 2022, decided on 06.07.2023* has held that presumption of innocence further gets entrenched on the acquittal of accused by learned Court below.

19. However, the plight of the complainant in FIR (*supra*) and the loss suffered by him cannot be overlooked. Significantly, the complainant had suffered injuries substantial enough to attract offences punishable under Sections 323 & 324 of IPC. The complainant has, as much of, a right to a free, fair and speedy trial, as does an accused. Keeping the same in mind, the legislature, in its wisdom, has provided for a compensatory mechanism in the form of Section 5 of PO Act, which is reproduced below:

“Section 5. Power of court to require released offenders to pay compensation and costs.—

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

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(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”

20. To balance the rights of the complainant with the benefit of probation extended to appellants No.2 & 3, this Court deems it expedient to direct them to pay compensation of Rs.30,000/- to legal heir(s) of complainant Bakhshish Singh (since deceased) within a period of one month. While compensation can never fully redress the suffering endured by complainant/his legal heirs, it is a step toward acknowledging the hardship faced by them, with an aim to meaningfully contribute towards their rehabilitation.

21. In view of the aforesaid facts and circumstances of the case, the appeal i.e. CRA-S-1792-SB-2004 and CRR-2265-2004 are disposed of, in the following terms:-

- (i) The impugned judgment of conviction dated 31.08.2004 passed in Sessions Case No.168, convicting appellants No.2 & 3 as well as the judgment of even date passed in Sessions Case No.169, by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana are upheld.

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- (ii) The order of sentence of even date i.e. 31.08.2004 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana in Sessions Case No.169 is modified to the extent of granting the concession of probation to appellants No.2 & 3 for good conduct.
- (iii) Appellants No.2 & 3 will be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- each with a surety for the same amount, after furnishing an undertaking to keep the peace and good behaviour for a period of one year to the satisfaction of concerned trial Court within a period of four weeks.
- (iv) Appellants No.2 & 3 will remain under the supervision of concerned Probation Officer during the aforesaid period. If appellants No.2 & 3 failed to comply with the said directions or commit breach of the undertaking rendered by them, they will be called upon to undergo the sentence imposed upon them by learned trial Court.

22. However, this Court finds that learned counsel for the petitioner-complainant Hoshiar Singh has failed to point out any perversity or illegality in findings recorded by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, which warrants interference by this Court. As such,

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there is no merit in CRR-502-2005 and hence, the same is dismissed.

23. All the pending miscellaneous application(s), if any, shall stand disposed of.

24. Photocopy of this order be placed on the files of connected cases.

[HARPREET SINGH BRAR]
JUDGE

22.07.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No