

**CRR-1810-2016 (O&M)****1****247****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-1810-2016 (O&M)****Date of Decision: 26.03.2025****MADAN LAL AND OTHERS****...PETITIONERS****Versus****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Kamal Narula, Advocate
for the petitioners.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. The present revision petition is preferred against the judgment dated 05.03.2016 passed by learned Additional Sessions Judge, Fazilka whereby the judgment of conviction dated 16.02.2015 passed by learned Chief Judicial Magistrate, Fazilka was upheld and order of sentence dated 16.02.2015 was modified to grant the concession of probation to the accused persons-private respondents.

2. Present FIR was registered on the statement of Ram Saroop resident of village Nihal Khera, who stated that he is an agriculturist. They are four brothers. On 24.11.2008, at about 4.00 P.M., the complainant along with his brother Madan Lal and his nephew Sandeep Kumar son of Madan Lal was watering his fields when Satish Kumar armed with Spade, Ram Rakh armed with Kasia, Lal Chand armed with *dang*, Krishan Kumar armed with *dang*, Surinder Kumar armed with iron pipe, Mohinder Kumar armed with *dang*, Mohan Lal armed with *dang*, along with 5-7 unidentified persons came to their fields. Krishan Lal raised a *Lalkara* to teach a lesson to Ram Saroop for watering the fields forcibly, then Mohinder Kumar gave a *dang* blow to Sandeep

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Kumar on his head. Then Surinder Kumar gave, two constant blows of iron pipe on Madan Lal, which hit on his right leg and below his left knee. Then the complainant came forward for their rescue. Then Krishan Kumar gave two *dang* blows on the complainant which hit him on the upper side of his left arm and the other blow hit below the left arm. Then Lal Chand gave two *dang* blows to complainant, which hit him on his left leg below his knee. Mohan Lal gave a *dang* blow to complainant, which hit him on his right leg. Then Satish Kumar gave a spade blow, which hit on the upper side of his left elbow. Accused Ram Rakh gave two *Kasia* blow to the complainant, which hit him on the finger of his right hand and on his right arm from its blunt side. Satish Kumar and Ram Rakh etc. gave several injuries to brother of complainant and his nephew Sandeep Kumar. They raised hue and cry, which attracted Prem Kumar son of Ratti and his brother Manphool and other people working in the fields reached at the spot and on seeing them private respondents with other accused fled away from the spot along with their respective weapons. Then Manphool, brother of complainant got admitted the complainant as well as his brother Madan and his nephew Sandeep Kumar in Civil Hospital. On the basis of aforesaid allegations, FIR(supra) was lodged.

3. On assessing all the material available on the record, the learned trial Court vide judgment dated 16.02.2015 and order of sentence of even date convicted the private respondents-accused for offence under Sections 325, 324, 323 read with Section 149 Indian Penal Code and Section 148 of Indian Penal Code and awarded them substantive sentence of rigorous imprisonment for a period of two years and further directed them to pay total fine of Rs. 6,000/- each with default mechanism. Aggrieved by the same, the private respondents-accused preferred an appeal before the learned lower Appellate Court wherein



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the judgment of conviction was upheld but the order of sentence was modified to extend the concession of probation to the private respondents-accused vide judgment dated 05.03.2016.

4. Learned counsel for the petitioners contends that the learned lower Appellate Court fell into error by releasing the private respondents on probation as the same is based on untenable grounds. The charges against the respondents No. 2 to 8 stand duly proven by all the prosecution witnesses and as such, the learned lower Appellate Court ought not to have granted the benefit of probation to them. Learned counsel further contends that learned lower Appellate Court while granting the benefit of probation to private respondents, the provisions under Section 5 of Probation of Offenders Act were not invoked and it is a trite law that while granting the benefit of Sections 3 and 4 of Probation of Offenders Act, the provision of Section 5 of the aforesaid Act shall also be made applicable as the petitioners have also suffered the agony of trial.

5. Learned State counsel supports the impugned judgment and submits that the respondents No. 2 to 8 were correctly granted the benefit of probation for their good conduct on furnishing probation bonds which serves the ends of justice.

6. Having heard the learned counsel for the parties and after perusing the record of the case, the present case is taken up for final disposal. This Court is of the considered opinion that the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR in the present case was lodged on 25.11.2008 and the private respondents have been suffering the agony of trial since the last more than 16 years. It also appears that the private respondents-accused do not have any criminal antecedents.



7. The theory of reformation and rehabilitation aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilised society like ours, it would be truly unfortunate if an offender is not given the opportunity to realise and fully fathom his mistake and channel that awareness into making fruitful contributions in society.

8. In *Deo Narain Mandal vs. State of UP (2004) 7 SCC 257*, the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

9. Further, the Hon'ble Supreme Court in *Ravada Sasikala vs. State of AP AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.



10. In view of the discussion above, this Court does not find any reason to interfere with the judgment dated 05.03.2016 passed by learned Additional Sessions Judge, Fazilka. Consequently, the present petition is dismissed.

11. However, the plight of the petitioners and the loss suffered by them cannot be overlooked. Significantly, the petitioners had suffered injuries substantial enough to attract offences punishable under Sections 325, 324, 323 read with Section 149 of Indian Penal Code and Section 148 of Indian Penal Code. The petitioners-injured have as much of a right to a free, fair and speedy trial, as does an accused. Keeping in mind the same, the legislature, in its wisdom, has provided for a compensatory mechanism in the form of Section 5 of the Probation of Offenders Act, 1958, 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.

(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.

To balance the rights of the petitioners with the benefit of probation extended to the private respondents, this Court deems it expedient to direct the private respondents No. 2 to 8 to pay compensation of Rs. 20,000/- to the petitioners within two months from the date of receipt of this order. While compensation can never fully redress the suffering endured by the petitioners, it is a step toward acknowledging the hardship faced by them, with an aim to meaningfully contribute towards their rehabilitation.



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12. Pending miscellaneous application(s), if any, shall also stand disposed of.

13. A copy of this order be sent to learned trial Court/Illaq Magistrate through fax for compliance.

(HARPREET SINGH BRAR)
JUDGE

26.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No