

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

241

2025:PHHC:120657



CRR-3282-2018 (O&M)
Date of decision: 04.09.2025.

SUKHVIR KAUR

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Manpreet Singh, Advocate, for
Mr. Arnav Sood, Advocate,
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Manas Bhatia, Advocate, (Legal-aid-counsel)
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (Oral)

Aggrieved of the judgment dated 22.05.2018 passed by the Additional Sessions Judge, Hoshiarpur, in Criminal Appeal No.315 dated 22.09.2017 titled as 'Davinder Singh Vs. State of Punjab' whereby the respondent-accused has been extended the benefit of probation for the commission of offences under Sections 323 read with Section 34 and 452 of the Indian Penal Code, 1860, the present revision petition has been filed.

2 The case of the prosecution, briefly stated, is that on

19.06.2013, three medico-legal reports (MLR No. PM-104/2013 pertaining to Davinder Singh s/o Amar Singh, MLR No. PM-102/2013 pertaining to Manjit Singh s/o Amar Singh, and MLR No. PM-103/2013 pertaining to Sukhbir Kaur w/o Gurdev Singh) were received at Police Station Tanda and handed over to ASI Davinder Singh. Thereupon, ASI Davinder Singh along with the police party reached Civil Hospital, Tanda, and moved an application before the doctor for recording the statement of the injured. However, the doctor declared all the injured unfit to make statements.

3 Subsequently, Kulwinder Kaur w/o Davinder Singh of Village Kandhala Jattan moved an application before DSP Tanda for recording her statement through some other officer. Consequently, the MLRs were entrusted to ASI Dilbagh Singh, who along with other police officials again visited Civil Hospital, Tanda. On 21.06.2013, he moved an application before the doctor, whereupon injured Davinder Singh was declared fit to make a statement, while Sukhbir Kaur and Manjit Singh were not present in the hospital at that time. On the basis of the statement of Davinder Singh, ASI Dilbagh Singh registered FIR No.152 dated 21.06.2013 under Sections 323, 324, 342, 34 IPC at Police Station Tanda.

4 During the course of investigation, ASI Dilbagh Singh along with other police officials visited Civil Hospital, Tanda to meet the other injured but could not trace them. Thereafter, they proceeded to Village Kandhala Jattan where they met Sukhbir Kaur. She got her statement recorded before the police, stating that she is a housewife and, on 19.06.2013 at about 8:15 p.m., while she along with her daughter Rajdeep Kaur was present in the house of her devar Manjit Singh s/o Amar Singh,

she had gone upstairs to pay obeisance and, while descending the stairs, Davinder Singh and Kulwinder Kaur obstructed her. Davinder Singh allegedly caught hold of her from behind, dragged her, tore her clothes, and molested her by rubbing her breast and abdomen, causing her to fall on the stairs. On her raising alarm, her brother-in-law Manjit Singh came to rescue her, whereupon Kulwinder Kaur inflicted a dang blow on Manjit Singh, hitting him on the head. Davinder Singh allegedly threw stones, one of which struck Manjit Singh on the head.

5 It is further alleged that Davinder Singh was apprehended at the spot along with the dang, and the police was informed telephonically. Photographs were also clicked and an ambulance (No.108) was called, which removed the injured to Civil Hospital, Tanda. On these allegations, a cross-case was registered vide DDR Entry No.32 dated 21.06.2013 in FIR No.152 dated 21.06.2013. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, FIR under Sections 323, 354, 452, 34 IPC was registered against the accused, who were arrested and, upon conclusion of investigation, challan was presented before the Court.

6 On presentation of challan and on appearance of accused before the court, all relevant copies of documents, as relied upon by prosecution were supplied to the accused free of costs

7 On finding a prima facie case for the offences punishable under Sections 452, 323, 354, 343 and 34 of the Indian Penal Code, the accused were charge-sheeted but they pleaded not guilty and claimed trial.

8 To prove its case, the prosecution examined Sukhvir Kaur as

PW-1, Dr. Preet Mohinder, Medical Officer, as PW-2, Manjit Singh as PW-3, and ASI Dilbag Singh as PW-4 (though inadvertently recorded as PW-3).

9 After closing evidence of prosecution, the statements of the accused were recorded under Section 313 Cr.P.C., wherein all incriminating circumstances appearing against them were put, to which they asserted that the witnesses had falsely deposed against them. They claimed to be innocent and contended that the present case had been registered with a view to pressurize them into accepting the alleged relationship between Sukhvir Kaur and Manjit Singh, as Sukhvir Kaur had deserted her husband and was residing with Manjit Singh, who in turn had also deserted his wife and son. They further stated that they had not inflicted any injury upon the complainant.

10 Opportunity was given to accused to lead its defence evidence, however on behalf of accused documents Ex D2, D2/1 TO D2/6, D2/9 have been tendered.

11 Upon consideration of the evidence, the trial Court vide judgment dated 07.09.2017 convicted the respondent No.2 for the commission of offence under Sections 354, 452 and 323 read with Section 34 and respondent No.3 under Sections 323 read with Section 34 and Section 452 of the Indian Penal Code, 1860. They were sentenced as under: -

Name of accused	Offence under Section	Sentence of imprisonment awarded
Davinder Singh	452 of IPC	Accused to undergo of 30 Months RI and to pay fine of 1000/- in default of payment of fine further to undergo sentence for 30 days RI.
	354 of IPC	Accused to undergo of 2 years RI and to pay fine of 1000/- in default of payment

		of fine further to undergo sentence for 30 days RI.
	323 read with Section 34 of IPC	Accused to undergo probation on furnishing of probation bonds in the sum of Rs.10,000 with one surety for period of one year along with litigation expenses of Rs.1500/-.

Name of accused	Offence under Section	Sentence of imprisonment awarded
Kulwinder Kaur	323 read with Section 34 of IPC	Accused to undergo probation on furnishing of probation bonds in the sum of Rs.10,000 with one surety for period of one year along with litigation expenses of Rs.1500/-.
	452	Accused to undergo probation on furnishing of probation bonds in the sum of Rs.10,000 with one surety for period of one year along with litigation expenses of Rs.1500/-.

12 Aggrieved thereby, the respondents-accused preferred criminal appeals before the Court of Sessions, Hoshiarpur. Vide judgment dated 22.05.2018, the Appellate Court dismissed the appeals preferred by the petitioner seeking enhancement of the sentence of imprisonment, whereas the appeal preferred by the respondents was partly allowed. The sentence imposed upon Davinder Singh - respondent No.2 was modified to the extent that he was ordered to be released on probation for the commission of the aforesaid offences, subject to furnishing a probation bond to the satisfaction of the trial Court. It is in these circumstances that the present revision petition has been instituted.

13 Learned counsel appearing on behalf of the petitioner has strenuously argued that the acts attributed to the accused persons, on the face of the record, disclosed the commission of offences for which charges had

been established. He contends that the allegations were duly proved during trial, which thus resulted in conviction of the respondents-accused persons. He contends that in the backdrop of such proved charges, it was necessary that a deterrent punishment ought to have been imposed upon respondents-accused instead of extending the concession of probation.

14 He contends that once all the charges stood fully established, the ends of justice would have been well served by imposing a substantive sentence of imprisonment upon the respondents, rather than granting them the benefit of probation.

15 State counsel, on the other hand, submits that the judgment under challenge does not suffer from any prima facie error. He contends that, although no formal notice was issued, the imposition of sentence is guided by the recognized principles of deterrence, retribution, and reform. After noticing that there were no circumstances as would show the criminal antecedents of the respondent-accused, hence, the Courts have exercised their judicial discretion to adopt a reformatory approach, thereby directing the release of the respondent-accused persons. There is also no subsequent complaint of any nature against the respondents for having indulged in any other such or similar act or having violated the terms of the probation bond.

16 Despite absence of formal notice to the respondents, this Court deemed it expedient to seek assistance by nominating a legal-aid-counsel for an on behalf of respondents-accused. Accordingly, Mr. Manas Bhatia, Advocate, (PH-6203-2025) who is present in the Court, is nominated as legal-aid-counsel to represent respondents No.2 and 3 accused to assist this Court. He has gone through the paper book after obtaining the same from the

State counsel and contends that practice for award of sentence are to be left to the discretion of the sentencing Courts. He contends that the very fact that a judgment has been recorded by both the Courts establishes that the credibility of the testimony of the petitioner is not impeached. The parameters prescribed for the grant of concession of probation have been examined by the Courts and on finding that the respondents-accused fulfilled the said parameters, the benefit of probation has been extended.

17 No other argument has been advanced by the counsel for the respective parties.

18 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition with their able assistance.

19 Both the trial Court and the Appellate Court have duly considered the contentions advanced by the respective parties. The trial Court, while recording its findings, took note of the mitigating circumstances, namely that the respondents-accused were first-time offenders, belonged to modest means, and were the sole breadwinners of their respective families. The Court also considered the quantum of punishment prescribed, namely, thirty months' imprisonment in respect of the offence under Section 452 IPC and two years' imprisonment for the offences under Sections 354 and 323/34 IPC, particularly in relation to respondent Davinder Singh, while granting probation to respondent Kulwinder Kaur. Aggrieved by the sentence imposed, respondent Davinder Singh preferred a criminal appeal before the Sessions Court challenging the sentence of thirty months' rigorous imprisonment for the offence under

Section 452 IPC and two years' imprisonment for the offences under Sections 354 and 323/34 IPC.

20 On consideration of the evidence of the respective parties and the arguments advanced on behalf of rival parties, the appellate Court recorded as under: -

“16. Complainant Sukhvir Kaur has alleged attack on her person by Davinder Singh, who purportedly tore her clothes and gave nail blows on her breast and abdomen. Later Kulwinder Kaur also allegedly reached the spot and slapped complainant Sukhvir Kaur and attacked Manjit Singh. The learned trial court has convicted appellant Davinder Singh for the offences under Section 452, 354, 323/34 IPC and Kulwinder Kaur for the offence 323/34 IPC and 452 IPC.

17. A careful perusal of testimony of Sukhvir Kaur complainant reveals that as per her MLR, she suffered two injuries in the nature of complaint of pain and four injuries in the nature of abrasions, one on right side of breast, one on right knee, one on the back of chest and one on the anterior aspect of abdomen. It has come in the testimony of Sukhvir Kaur that after she was attacked by accused, she fell down on the stairs and on hearing raulla, her brother in law Manjit Singh came to rescue her. While recording her testimony in the Court, a new version regarding throwing of stove on the head of Manjit Singh also came up for the first time. However when complainant was re-examined, after amendment of charge, she remained silent about any such attack by stove on the person of Manjit Singh by Davinder Singh. Regarding the injury on her breast, though in her earlier examination-in-chief she stated that Davinder Singh scratched her breast with his nails, in her re-examination, she stated that Davinder Singh rubbed her breast and abdomen. However, as per Dr. Preet Mohinder Singh, injury no.3 on the

breast of Sukhvir Kaur could not be result of nail marks nor injury no.6 is parallel to injury no.3, which would have been so if it were the result of nail marks. The Doctor further added that possibility of injuries no.3 to 6 on the person of Sukhvir Kaur by fall on a hard surface could not be ruled out.

18. The matter does not end here. PW3 Manjit Singh, who is the brother in law of Sukhvir Kaur, has stated that he saw nail marks on the breast of Sukhvir Kaur, which version cannot be believed in view of the modesty of complainant and the relationship between Sukhvir Kaur and Manjit Singh. Not only this, in her cross examination, Sukhvir Kaur has stated that she suffered injuries on her back along with injuries of nails by falling on stairs.

19. Another thing which strikes the court is that had there been actual assault on the modesty of complainant, the same would have been first and foremost in the mind of complainant and she would not have wasted two days before recording her statement nor would have waited for Davinder Singh, accused, to get recorded his statement first. A grave suspicion arises in the mind of the Court about the possibility of complainant Sukhvir Kaur having moulded her statement to make the offence against Davinder Singh and Kulwinder Kaur more serious. The unexplained delay in lodging of FIR, more particularly, when both the parties are related to each other and have been at loggerheads with each other due to strained relationship, makes the version of complainant regarding attack on her modesty by accused Davinder Singh suspicious. It is apparent that there was extreme ill-will in the mind of both the sides, due to the unacceptability of relationship of complainant with her brother in law Manjit Singh. Apparently, the incident took place when both the sides came face to face when complainant had gone to light guggal dhup on the terrace of house of Manjit Singh. As

per complainant, she fell on the stairs after accused Davinder Singh attacked her. As per the Doctor, injuries on the person of complainant could be result of fall on hard surface. In this backdrop, the learned trial court is found to have committed grave error by ignoring the matter of delay in giving of her statement to police by the complainant. The entire occurrence comes across as free fight between both the sides on account of underlying tension and enmity between the two sides due to mishandling of their respective relationship and due to grudge being nursed by present accused against complainant Sukhvir Kaur and her devar Manjit Singh, who, allegedly, has deserted his own wife and, as per defense version, is residing with Sukhvir Kaur, who is the wife of his elder brother. The allegations pertaining to offence under Section 354 not only fail to inspire confidence, the same stand belied by the suspicious circumstances discussed above and appellant Devinder Singh is, therefore, acquitted of the offence under Section 354 IPC.

20. So far the offence under Section 323 IPC is concerned, on account of the fact that scuffle/free fight between the parties stands established from the version in the FIR as well as the cross-version and, as a result of scuffle, complainant suffered injuries, even though as a result of fall on the stairs, no interference is warranted in the finding of learned trial court regarding the offences under Section 452 IPC and 323/34 IPC viz-aviz accused Davinder Singh and Kulwinder Kaur.

21. The learned trial court has extended the benefit of probation to Davinder Singh for the offence under Section 323/34 IPC. Surprisingly, however, the said benefit has been withheld qua the offence u/s 452 IPC. Once the convict has been found entitled to benefit of probation, on account of being first offender or in view of the mitigating circumstances, there is no reason to withhold the said concession for the other offences.

The approach adopted by the learned trial court is unknown to law, whereby the convict-appellant has been sentenced to imprisonment for one offence and has been extended the benefit of probation for the other offence. The sentence imposed upon convict Davinder Singh, by learned trial court, for the offence under Section 452 IPC is moulded to the effect that convict Davinder Singh is ordered to be released on probation for the offence under Section 452 IPC as well, on furnishing probation bonds to the satisfaction of learned trial court within 15 days from today, along with costs of Rs.5000/-.”

21 It is evident from a perusal of the above that so far as the allegation with respect to the commission of offence under Section 354 IPC is concerned, the appellate Court accepted the contentions advanced by the respondents and disbelieved the said allegations. It was recorded by the Additional Sessions Judge that there have been material improvements in the testimony of Sukhveer Kaur i.e. the petitioner herein. With respect to the injuries on her breast, there have been material alteration with respect to the mode and manner in which such injuries have been sustained. In support of the injuries sustained on her breast, Sukhveer Kaur had examined PW-3, Manjit Singh, her brother-in-law. The Additional Sessions Judge specifically recorded that the testimony of Manjit Singh regarding the alleged nail marks on the petitioner's breast could not be believed and that such a finding was neither perverse nor susceptible to being faulted. Furthermore, the Appellate Court noted circumstances that gave rise to grave suspicion regarding the probability of the complainant-petitioner having moulded her statement so as to exaggerate the offences against the respondents-accused.

22 I find that the reasons assigned by the Additional Sessions

Judge while acquitting the respondent Davinder Singh for the commission of offence under Section 354 IPC cannot be said to be perverse or misplaced. The finding thus recorded by the Additional Sessions Judge, dropping the charge and conviction against respondent Davinder Singh for commission of offence under Section 354 IPC are plausible and thus accepted.

23 For the remainder of the offences, the Additional Sessions Judge, has extended the benefit of probation.

24 As per the settled principles governing the law of sentencing, the discretion vests with the sentencing Court to evaluate the totality of the attending circumstances and thereafter determine the nature of punishment to be imposed. It is within the province of the Court to assess whether, in a given case, the ends of justice would be adequately met by imposing a deterrent or retributive sentence, or whether the circumstances justify extending to the accused the benefit of a reformatory punishment.

25 Hon'ble Division Bench of the Delhi High Court in **State (GNCT of Delhi) v. Mukesh, 2011 (3) R.C.R. (Criminal) 777**, observed that the discretion exercised by the Trial Court in awarding sentence is a judicial function and, as a rule, ought not to be interfered with in appeal. Nonetheless, such discretion is not absolute and interference can be made in those cases where the sentence awarded is evidently inadequate, glaringly disproportionate, or of such a character as to shock the conscience of the Court. Considering the contours of judicial interference in matters pertaining to sentencing, the court observed as under:

“12. Penology and sentencing in our country has remained an underdeveloped concept. In several jurisdictions across the world, sentencing choices are guided not only by the subjective

“facts of the case” but a whole variety of factors, such as social investigation of the offender, his family background, his social environment, behaviour, tendencies, etc. These are apart from the more “traditional” factors such as the history of previous offences or convictions, subjective facts pertaining to the offender, such as age, gender, gravity of the offence, circumstances leading to the offence, etc. More often than not, these are factored into a set of codified rules or regulations, which in some cases, prescribe great details, and even mandate separate hearings, where the judge is obliged to consider evidence presented in that regard. Sadly, courts in this country do not have the benefit of such specialized assistance. As a result, courts have to fall back on judicially evolved standards and ad-hoc notions of penology and theories while exercising discretion in relation to offences where sentencing choices span a wide spectrum of penalties and prison terms. Here, the courts have to strike a balance between the need to impose an “adequate” sentence even while keeping in mind that the choice has to ultimately sub serve a larger public purpose, and not be one merely given for the ritualistic satisfaction of notions like public justice. An offender found to have committed a crime has to suffer conviction, and also a punishment. However, if sentencing choices are dominated by notions like popular justice or popularity demanded sentences or punishments, it is ultimately the cause of justice, and rule of law which suffers.”

26 I have also taken into consideration the fact that the incident in question is stated to have taken place in the year 2013 and already a period of 13 years has elapsed since then. There are no instances of the respondents-accused persons having indulged in any other such or similar offence or having misused the concession of probation extended or committed breach of the terms and conditions of the probation bond.

27 Under the given circumstances, I do not find that there exist any sufficient circumstances for interfering in the order granting probation to the respondents-Davinder Singh and Kulwinder Kaur. There is no perversity, impropriety or illegality in the judgments that have been passed by the Courts. Consequently, the revision petition is dismissed and the findings are affirmed.

September 04, 2025.	(VINOD S. BHARDWAJ)
raj arora	JUDGE
<i>Whether speaking/reasoned</i>	: <i>Yes/No</i>
<i>Whether reportable</i>	: <i>Yes/No</i>