



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

204

CRR-3582-2012 (O&M)

Date of decision : 05.02.2026

Sandeep Kumar

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present: Ms. Sarika Gupta, Advocate for the petitioner.

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

SURYA PARTAP SINGH, J. (oral)

1. For the commission of offence punishable under Sections 325, 324, 323, 34 of Indian Penal Code, the FIR No.138 dated 28.09.2006 was lodged in Police Station Dasuya, District Hoshiarpur. Once the FIR was lodged, the investigation was taken up by the police and as an outcome of abovesaid investigation the petitioner was sent to the Court of learned Judicial Magistrate First Class Dasuya, hereinafter being referred to as 'trial Court' only, to face trial for the commission of abovementioned offence.

2. The petitioner participated in the abovementioned trial, which by virtue of judgment dated 16.12.2010 culminated into his conviction and therefore, by virtue of order on quantum of sentence of the same date, the petitioner was sentenced as under:-



Name of convict	Offence under Sections	Sentence
Sandeep Kumar	324 of IPC	Rigorous imprisonment for a period of six months
	325 read with Section 34 IPC	Rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default thereof to further undergo simple imprisonment for a period of 15 days.

All the sentences were ordered to run concurrently.

3. Aggrieved of the abovementioned judgment of conviction and order of sentence, the petitioner preferred an appeal in the Court of Sessions. The abovementioned appeal has been decided by the Court of learned Additional Sessions Judge, hereinafter being referred to as ‘Appellate Court’ only. The appeal preferred by the petitioner did not find favour in the Appellate Court, and the same had been dismissed by virtue of judgment dated 06.10.2012.

4. Feeling aggrieved of the judgment of conviction and order of sentence dated 16.12.2010, passed by the learned trial Court, and also of the judgment dated 06.10.2012 passed by the learned Appellate Court, the present revision petition has been preferred.

5. In nut-shell, the facts as contained in the record are that the FIR of this case came into being at the instance of ‘Sanjiv Kumar’, hereinafter being referred to as ‘complainant’ only. It was stated by the above-named complainant that he was a private bus driver by profession and used to fetch transport children studying in Guru Gobind Singh Academy, Kalowal. According to complainant, on 26.09.2006, he was going on his cycle on the pavement of canal, and when he was near cremation ground of Village Dalmiwal, he observed that a bullet motorcycle bearing registration



No.PB07-N-2407 was parked on the pavement of canal, and the accused Sandip Kumar @Chotu (petitioner herein) armed with *gandasi* and Karamdeep Singh armed with spade along with one more unidentified person armed with spade were present there.

6. It was further alleged by the complainant that thereafter Sandip Kumar @Chotu assaulted him and gave a *gandasi* blow, which hit on his right side of the head. As per complainant thereafter, Karamdip Singh gave three consecutive blows with his spade, which hit on his right knee, right ankle and pinion of left leg and thereafter, Sandip Kumar @Chotu again hit *gandasi* from its reverse side, which hit on his elbow of left arm, above the elbow and below left arm. According to complainant, the unidentified person also gave a spade blow, which hit on his right shoulder. It was further stated by the complainant that thereafter, he screamed for help, upon which Amarjit Singh and his uncle Madan Lal came at the spot, and that on their arrival, the abovementioned assailants fled from the spot with their respective weapons, and he was rushed to hospital, where he was examined medico-legally.

7. It is the case of the prosecution that on the basis of abovementioned statement, formal FIR of this case was lodged and the investigation taken up. As per prosecution, during the course of investigation, the Investigating Officer inspected the spot, prepared rough site plan of the place of occurrence and completed other usual formalities of investigation. Thereafter, the final report under Section 173 of Cr.P.C. was filed.

8. To discharge its burden with regard to charge against the petitioner, the prosecution in the instant case had relied upon documentary



as well as oral evidence. The documents relied upon, and marked with exhibits, by the prosecution were as under:-

- Ex.PA - Statement of complainant.
- Ex.PB - Statement of complainant on 27.09.2006.
- Ex.PC - Application
- Ex.PD - Ruqa.
- Ex.PE - FIR.
- Ex.PF - Site plan.
- Ex.PG - Arrest memo.
- Ex.PH/P4 - Recovery memo of RC and driving licence.
- Ex.P3 - Recovery memo of kahi and gandasi
- Ex.PK - Khaka of gandasi
- Ex.P1 - Case property , i.e. Gandasi.
- Ex.P2 - Handle of kahi
- Ex.PL - Rapat regarding declaring injury No.3 as grievous
- Ex.PM - Application
- Ex.PN - Request.
- Ex.PQ/1 - X-ray report
- Ex.P1 to Ex.P9 - X-ray films
- Ex.PC/1 - Endorsement

9. To provide support and corroboration to the above-mentioned documentary evidence, as many as nine witnesses had been examined by the prosecution. Those witnesses were:-

- PW-1 - Sanjiv Kumar (complainant/alleged injured).
- PW-2 - Madan Lal, alleged eye-witness.
- PW-3 - HC Bhupinder Singh.
- PW-4 - HC Surinder Singh, IO.
- PW-5 - Dr. Salinder Singh, MO.



- PW-6 - HC Bhupinder Singh
- PW-7 - Dr. Vinod Sareen, Radiologist.
- PW-8 - Dr. Mohinder Singh.
- PW-9 - HC Onkar Singh.

10. Once the prosecution evidence was completed, the learned trial Court completed the essential formalities as enshrined under Section 313 CrPC. Thereafter, opportunity of defence evidence was afforded to the petitioner. In his defence evidence, the petitioner had examined as many as three witnesses. Those witnesses were:-

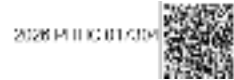
- DW-1 - Gopal Mohan.
- DW-2 - Baldev Raj, Panchayat Officer.
- DW-3 - Davinder Singh, Clerk.

11. The documents relied upon, and marked with exhibits, by the petitioner were as under:-

- DW-1/A - Complaint titled as Sanjiv Kumar V/s Sandeep Kumar.
- DW-2/B - Certified copy of the record regarding voter list for the year 1998-2002.

12. Once the evidence of both the parties was complete, the learned trial Court gave an opportunity to the petitioner, as well as the prosecution, to address arguments, and thereafter, wrote a judgment of conviction against the petitioner, which has been upheld by the learned Appellate Court.

13. The instant petition has been filed by the petitioner by alleging that the petitioner has been wrongly prosecuted and held guilty, despite the fact that there was no fault on his part. According to petitioner, the learned trial Court, vis-à-vis the learned Appellate Court, have failed to appreciate the evidence available on record, which was not sufficient and good enough



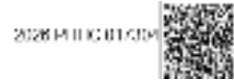
to meet the standard prescribed for proving a charge in a criminal case. As per petitioner, merely on the basis of conjectures and surmises, the learned trial Court, vis-à-vis the learned Appellate Court have observed that the charge against them with regard to commission of aforesaid offences had been proved.

14. It has been further pleaded by the petitioner that the evidence adduced by the prosecution was deficient and inconsistent, and that on the basis of abovementioned evidence, the finding of conviction should not have been returned. As per petitioner, the learned trial Court on the basis of presumptions and assumptions believed the evidence adduced by the prosecution and the erroneous view of learned trial Court has been affirmed by the learned Appellate Court. The petitioner has sought for intervention and indulgence of this Court in both the judgments.

15. Heard.

16. During the course of arguments, the learned counsel for the petitioner has come forward with a plea that the petitioner has already suffered a lot of agony, i.e. the agony of trial for the last more than 19 years.

17. The learned counsel for the petitioner has also argued that in view of abovementioned developments in the instant revision petition, the petitioner is not inclined to challenge the findings of conviction recorded by the learned trial Court, duly affirmed by the learned Appellate Court. The learned counsel for the petitioner has specifically contended that at this stage, by virtue of present petition, the petitioner is only challenging the order on the quantum of sentence. It has been further contended by learned

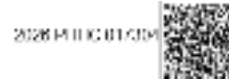


counsel for the petitioner that since the petitioner is around 44 years old, and he has clean record, he is entitled for the benefit of probation/admonition.

18. As per learned counsel for the petitioner, the petitioner is not a habitual offender, and that the instant prosecution is the only prosecution faced by the petitioner in his entire life. According to learned counsel for the petitioner, the instant case is a fit case, wherein in view of the nature of offence committed by the petitioner, he is entitled for the benefit of probation/admonition, firstly, because of his old-age, and secondly, because of his conduct subsequent to the present offence, as he has not indulged in any kind of criminal activity.

19. The abovementioned arguments have been controverted by the learned State Counsel. According to learned State Counsel, in the present case the allegations against the petitioner are with regard to commission of offence punishable under Sections 325, 324, 323 and 34 of IPC. As per learned State Counsel, the loss caused to the complainant cannot be compensated by any compensation etc. According to learned State Counsel, the sentence awarded to the petitioner, i.e. imprisonment for a period of six months, is already on lower side, and that the petitioner is not entitled for a sentence of imprisonment for a period of less than six months. The learned State Counsel has further contended that the gravity of offence committed by the petitioner renders him ineligible for any lenient view, and therefore, the petitioner is not entitled for the benefit of probation/admonition.

20. The arguments addressed on behalf of both the parties have been duly considered and the record has been perused carefully.



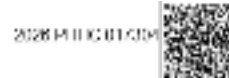
21. As far as the present revision petition is concerned, there are two points, which are supposed to be determined by this Court:

- i) Whether the finding recorded by the learned trial Court with regard to proving of charge against the petitioner, needs interference and indulgence of revisional jurisdiction of this Court.
- ii) If first point is answered against the petitioner, whether the petitioner is entitled for benefit of probation/admonition.

POINT NO.I

22. As far as this point is concerned, at the threshold it is relevant to mention here that the findings recorded by the learned trial Court with regard to judgment of conviction, have not been challenged by learned counsel for the petitioner during the course of arguments. Otherwise also, the record has been perused carefully and a perusal of evidence adduced by the prosecution before the learned trial Court shows that the abovementioned evidence is thoroughly consistent, reliable and good enough to bring home guilt of the petitioner, for the commission of offence punishable under Sections 325, 324, 323 and 34 of IPC. It is also relevant to mention here that the findings recorded by the learned trial Court, vis-à-vis the learned Appellate Court, are well-reasoned. Thus, it is hereby held that there is no scope for interference or indulgence in the finding recorded by the learned trial Court with regard to conviction of petitioner under Sections 325, 324, 323 and 34 of IPC, affirmed by the learned Appellate Court.

23. Accordingly, the abovementioned finding is hereby affirmed, and as an outcome of abovementioned observations, the point of determination No.1 framed in this petition is hereby answered against the petitioner.

**POINT NO.II**

24. As far as the benefit of probation is concerned, the relevant principles have been propounded by the Hon'ble Supreme Court of India in the case of 'Jugal Kishore Prasad v. State of Bihar' (1972) 2 SCC 633. The Hon'ble Supreme Court of India while considering the scope of the Probation Act held as under: -

“The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socioeconomic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the



language of Section 6 of the Act. Sub-section (1) of that section reads as under: -

“When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him 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 offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.”

25. The similar question was considered by the Hon’ble Supreme Court of India in a subsequent case, i.e. in the case of ‘Chellammal and Another v. State’ 2025 SCC OnlineSC 870. In the abovementioned case, the Hon’ble Supreme Court of India observed as under: -

“On consideration of the precedents and based on a comparative study of Section 360, Cr. P.C. and subsection (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in subsection gives overriding effect to sub-section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. P.C. itself, being a subsequent legislation, engrafts a provision that in any case



where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. P.C. is that if Section 360, Cr. P.C. were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”

26. Since facts and circumstances of the present case are squarely covered by the principles of law propounded in the abovementioned cases, it is hereby held that instant case, too, is a fit case, wherein the petitioner, who is almost 44 years old, having no history of other conviction of similar



offence, and facing agony of trial for the last almost 25 years, is entitled for the benefit of probation/admonition. As an outcome of abovementioned observations, the point of determination No.II framed in this petition is hereby answered accordingly, i.e. in favour of petitioner.

CONCLUSION:

27. As a sequel to abovementioned observations, the plea of the petitioner with regard to benefit of probation deserves to be accepted. Consequently, by partly accepting the present revision petition, the sentence awarded to the petitioner is hereby modified and the benefit of probation is accorded to the petitioner. The petitioner is directed to furnish the requisite bonds of good behaviour to the satisfaction of learned Chief Judicial Magistrate Hoshiarpur. Once the bonds are executed, the petitioner would be released on probation for a period specified by the learned Chief Judicial Magistrate Hoshiarpur. Obvious to say that in case of any offence committed by the petitioner during the period of probation, he shall have to undergo the sentence awarded in this case.

28. The revision petition stands disposed of, accordingly. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(SURYA PARTAP SINGH)
JUDGE

05.02.2026

Gaurav Thakur

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No