
(2013) 07 P&H CK 0791

In the Punjab And Haryana At Chandigarh

Case No : CRA No. 1169-SB of 2001 and CRR No. 452 of 2002

Balbir Singh and Another

APPELLANT

Vs

The State of Punjab
 Kirpal Singh Vs Karnail Singh and
Others

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360, 361
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34
Probation of Offenders Act, 1958 — Section 4

Citation : (2014) 1 Crimes 482 : (2013) 3 RCR(Criminal) 953

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : R.D. Bawa,s in CRA No. 1169-SB of 2001 and Ms. Amandeep Kaur, for Mr. P.S. Kang, for the petitioner-complainant in CRR No. 452 of 2002, for the Appellant; R.D. Bawa, Advocate for respondents in CRR No. 452 of 2002 and Mr. Jaspreet Singh, A.A.G. Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—As identical questions of law & facts are involved, therefore, I propose to decide the above indicated criminal appeal & criminal revision, arising out of the same impugned decision of conviction & order of sentence, by virtue of this judgment, in order to avoid the repetition. The crux of the facts & evidence, unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant appeal & revision petition and emanating from the record, as claimed by the prosecution, is that on 29.8.1998, complainant Kirpal Singh (PW1) (for brevity "the complainant"), his brother Baldev Singh (PW2) and their father Niranjana Singh (PW3) were going towards their village on the tractor, bearing registration No. PB-12-4380. Baldev Singh was driving the tractor. At about 7.30 P.M. as soon as, they reached near the Government tubewell (place of occurrence), in the meantime, accused Baljinder Singh (since deceased) son of Karnail Singh raised a lalkara that they be taught

a lesson for leveling the false allegations of theft of motor against them. Thereafter, accused Karnail Singh son of Mansha Singh armed with a wooden scraper (Phohra), appellant Balbir Singh alias Fauji son of Jasmer Singh armed with a gandasi, his brother appellant Harbans Singh armed with a pitchfork (Salanga) reached there.

2. The case of prosecution further proceeds that thereafter accused Karnail Singh placed a wooden scraper (Phohra) blow on the head of Baldev Singh, whereas appellant Harbans Singh gave a pitchfork (Salanga) blow, which hit in his (Baldev Singh) stomach. Appellant Balbir Singh gave a gandasi blow on the forehead of complainant. They raised a noise, which attracted Didar Singh and other villagers. On seeing them, all the accused fled away from the place of occurrence with their respective weapons. The injured PWs were removed to Civil Hospital, Kurali, where they were medico legally examined. In the background of these allegations and in the wake of statement (Ex. PA) of the complainant, the present criminal case was registered against the appellants and their other co-accused, vide FIR No. 56 dated 10.9.1998 (Ex. PA/1), on accusation of having committed the offences punishable under Sections 307, 323 and 324 read with Section 34 IPC by the police of Police Station Morinda, District Ropar in the manner depicted here-in-above.

3. After completion of the investigation, the final police report (challan) was submitted by the police against the appellants and their other co-accused to face the trial for the indicated offences.

4. Having completed all the codal formalities, the appellants and their other co-accused were charged for the commission of offences punishable under sections 307 & 324 read with section 34 IPC, by way of charge sheet dated 27.5.1999 by the trial Judge. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution.

5. The prosecution, in order to substantiate the charges framed against the accused, examined complainant Kirpal Singh as PW1, his brother Baldev Singh as PW2 and their father Niranjana Singh as PW3, the injured eye witnesses, who have, inter-alia, stated that on 29.8.1998, as soon as, they were returning to their home on the tractor and reached near the Government tubewell, in the meantime, all the accused came there and caused injuries to them with their respective weapons. Instead of reproducing the statements of PW1 to PW3 in toto and in order to avoid repetition, suffice it to say that they have duly corroborated the initial prosecution version on all vital counts. Sequently, PW4 Dr. Raminderbir Singh medico legally examined the complainant injured Kirpal Singh and found four simple injuries on his person, vide MLR (Ex. PB/1). He has also medico legally examined Baldev Singh (PW2) and found one incised wound on his person, by virtue of MLR (Ex. PD/1).

6. Likewise, Dr. Gauri Joshi (PW5) and Dr. Tyagi operated upon injured Baldev Singh and opined the injury on his person to be dangerous to life. PW6 HC

Nirmal Singh has recorded the formal FIR (Ex. PA/1) on 31.8.1998 after receipt of statement (Ex. PA) of the complainant. After completion of the investigation, PW7 SI Dilbag Rai has submitted the final police report. PW8 B.L. Sharma has produced the medical record of Baldev Singh injured (PW2) in the Court. PW9 Daljit Singh prepared the scaled site plan (Ex. PW9/A) of the place of occurrence with its correct marginal notes.

7. After the close of the prosecution evidence, the statements of the appellants and their other co-accused were recorded. The entire incriminating material/evidence was put to enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.PC. However, appellant Karnail Singh has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:-

There is party faction in the village due to panchayat elections. Kirpal Singh brother of Baldev Singh had contested the Panchayat election against one Sher Singh and Sher Singh was elected Sarpanch. As the accused were helping Sher Singh the complainant had grudge against the accused. On 29.8.98 the complainant started giving beating to one Ranjit Singh as a result villagers were attracted to the place of occurrence. In this crowd some people had sustained injuries. However, the accused have been falsely implicated in this case due to grudge of Panchayat Election. We are innocent.

8. The same line of defence was adopted by other accused. The appellants, in order to prove the line of defence, have examined Ranjit Singh son of Ram Singh as DW1 and Amar Singh Bath son of Tara Singh as DW2. This is the entire evidence brought on record by the parties.

9. During the course of trial, accused Baljinder Singh had died. Taking into consideration the entire evidence on record, all the accused were acquitted of the charge framed against them u/s. 307 IPC. At the same time, both the appellants were convicted & sentenced to undergo rigorous imprisonment (for short "RI") for a period of six months, to pay a fine of Rs. 500/- each & in default thereof, to further undergo RI for a period of one month each for the commission of an offence punishable u/s. 324/34 IPC and to further undergo RI for a period of six months u/s. 323/34 IPC each. However, accused Karnail Singh was released on probation, by means of impugned judgment of conviction & order of sentence dated 14.9.2001 by the trial Judge.

10. Appellants Balbir Singh & Harbans Singh did not feel satisfied and preferred the instant appeal (CRA No. 1169-SB of 2001) to challenge the impugned judgment of conviction & order of sentence. Similarly, complainant-petitioner Kirpal Singh has also filed CRR No. 452 of 2002 for enhancement of the sentence. That is how I am seized of the matter.

11. After hearing the learned counsel for the parties, going through the evidence on record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the present appeal and revision petition in this

context as regards the conviction of the appellants is concerned.

12. Ex facie, the argument of learned counsel that the evidence brought on record by the prosecution falls short as is required to prove a criminal charge against the appellants, is not only devoid of merit but misplaced as well.

13. As is evident from the record that the prosecution has examined complainant Kirpal Singh as PW1, his brother Baldev Singh as PW2 and their father Niranjana Singh as PW3 eye and injured witnesses, who have duly corroborated the initial version of the prosecution on all vital counts. They have fully proved the complicity of the appellants. They were cross-examined at length, but no substantial material could be elicited in their cross examination to dislodge their testimony and impeach their credibility. No motive could possibly be attributed to the PWs as to why they would falsely implicate the appellants in this case. They gave a vivid, consistent and cogent version of the occurrence and supported the prosecution story on all aspects.

14. Not only that, the ocular version of injured witnesses further finds corroboration from the medical evidence of doctors (PW4 & PW5). The Investigating Officer has duly testified the investigation. The learned counsel for appellants did not point out any legal infirmity or major contradictions in the evidence to lodge the prosecution version in this case, which is otherwise duly proved by the prosecution as discussed here-in-above. The mere denial of defence version deserves to be outrightly rejected. The trial Court has examined and appreciated the evidence in the right perspective and correctly convicted the appellants u/ss 324 and 323/34 IPC in the manner indicated here-in-above.

15. Faced with the situation, the learned counsel has fairly acknowledged that in view of the cogent evidence on record, he will not be in a position to contest the conviction of the appellants any more. He has no other argument/material/ground, much less cogent, to assail the prosecution version in this relevant connection.

16. At the same time, the learned counsel for complainant-petitioner also could not point out any substantial and compelling ground to interfere with the acquittal of appellants u/s. 307 IPC and impugned judgment of conviction u/ss 324 and 323/34 IPC or to enhance the sentence awarded by the trial Court. Hence, there is no merit in the revision petition as well, which deserves to be and is hereby dismissed under the present set of circumstances. In this manner, as no other legal infirmity has been pointed out by the learned counsel for the parties, therefore, the impugned judgment of conviction and order of sentence of fine are hereby maintained as such.

17. Be that as it may, however, the contentions of learned counsel that there are sufficient grounds to and the trial Judge did not assign any valid reasons, to negate the plea of the appellants to release them on probation or the benefit as envisaged under sections 360 and 361 Cr.PC., have considerable force.

18. At the very outset, it is not a matter of dispute that the aims and object of the Probation Act came to be decided by Hon''ble Apex Court in case Jugal Kishore Prasad Vs. State of Bihar, Having considered the scope of the Probation Act, it was, inter-alia, ruled as under (para 6):-

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 consequence 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 recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic 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.

19. Likewise, relying upon the principle laid down in case Ishar Das Vs. The State of Punjab, the same view was again reiterated by Hon''ble Supreme Court in case Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others, as under (para 11):-

The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attached to convicts often render the remedy worse than the disease and the year purposes of punishment stands in the danger of being frustrated. In recalcitrant cases punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud. Winifred A Sikin describes probation as a system which provides a means of re-education without the necessity of breaking up the offender''s normal life and removing him from the natural surroundings of his home. (English Juvenile Courts (1938) page 162) Edwin R. Sutherland raises it to

a status of a convicted offender. (Principles of Criminology, 4th Edn. (1947) page 383).

20. Although, learned State counsel and counsel for petitioner-complainant have neither disputed the factual matrix nor the legal position enumerated in the aforesaid judgments, still, they cosmetically urged that the appellants are not entitled to the benefit of probation in this respect.

21. As is clear that section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, while Section 361 Cr.P.C. posits that where in any case, the Court could have dealt with an accused person u/s 360 or under the provisions of the Probation of Offenders Act, but has not done so, it shall record in its judgment the special reasons for not having done so. Meaning thereby, the Court while not granting the benefit of Probation of Offenders Act, has to record special reasons. In the instant case, the trial Judge did not assign any such cogent reasons and just ignored the mandatory provisions on unsustainable grounds in this behalf.

22. Sequelly, section 4 of the Probation of Offenders Act, 1958 (hereinafter to be referred as "the Act"), postulates that 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.

23. What cannot possibly be disputed here is that the epitome of the law laid down in the pointed judgments ruled that the non obstante clause contained in Section 4 points to the conclusions that the provisions of this Section would have overriding effect, shall prevail if the conditions depicted therein are fulfilled and the benefit of probation should be granted to the appellants under such circumstances.

24. Having regard to the rival contentions of the learned counsel for the parties, having gone through the peculiar facts & special circumstances emitting from the record and after deep consideration over the entire matter, to me, there is no legal impediment, if the appellants are granted the benefit of probation, inter alia, on the following grounds:-

i) The incident in this case is of 29.8.1998. Appellants have already faced the pangs and suffered the agony of protracted trial & appeal for the last about 15 years.

- ii) They were young men of 37/39 years of age at the time of conviction.
- iii) They were first offenders and there is no history of their previous conviction.
- iv) The antecedent and credentials of the appellants are such that they have not been found involved in any other case.
- v) They have been leading a life of honest peaceful citizen in the village.
- vi) The appellants and the injured are the residents of the same village and may live in peace in future.
- vii) The appellants are ready to pay adequate compensation to the injured/PWs.
- viii) There is no legal impediment to release the appellants on probation.
- ix) Even the modern trend of penology also leans towards the reformation of the offender, so as to make him a useful citizen of the society. No useful purpose was going to be achieved by again sending the appellants to jail.

25. Such, thus, being the legal position & material on record and taking into consideration the law laid down in the aforesaid judgments, the period of agony of protracted trial & appeal, ages, antecedents of the appellants and totality of other facts & circumstances, emanating from the record, as indicated here-in-above, to my mind, it would be expedient in the interest and justice would be squarely met & sub-served, if a lenient view in the matter of sentence is taken against the appellants, inasmuch as, no useful purpose would be served in sending them again to jail to serve out the remaining period of sentence and instead of sending them to prison, they be released on probation in the obtaining circumstances of the case. In the light of aforesaid reasons, the impugned judgment of conviction and order of sentence of fine are hereby maintained. However, the appellants are directed to be released on probation on their furnishing personal bonds (within two months) in the sum of Rs. 25,000/- with one surety of the like amount each to the satisfaction of the trial Court, subject to the condition that they would keep peace and be of good behaviour, for a period of two years from the date of passing of this judgment. At the same time, the appellants are also directed to pay a sum of Rs. 15,000/- (Rs. 5000/- each) as compensation to PW1 to PW3, injured/eye witnesses within a period of three months from today, failing which, the sentence of imprisonment imposed on them by the trial Court would be deemed to have been automatically revived. The impugned order of sentence is accordingly modified to the extent and in the manner discussed here-in-above. Thus, as there is no merit, therefore, the instant criminal appeal and revision petition are dismissed.

Needless to say, the necessary compliance and procedural consequences would follow.