

Before Mehinder Singh Sullar, J.

AMAR SINGH & ORS.—*Appellants*

versus

STATE OF PUNJAB—*Respondent*

CrI.A No.971-SB of 2000

19th November, 2012

Code of Criminal Procedure, 1973 - Ss. 360 & 361 - Probation of Offenders Act, 1958 - S.4 - Release of offenders on probation - Appellants convicted under Ss.452, 325 read with S.34, S.323 read with S.34 and S.325 of Indian Penal Code, 1860 - Filed appeal - No legal infirmity or major contradictions found in testimonies of witnesses - Conviction upheld - However, Appellants released on probation - Held, object of Probation of Offenders Act, 1958 and Ss.360 and 361 Cr.P.C. is that first offenders be not sent to jail for less serious offences - Sole intention is to give person a chance of reformation.

Held, that the object underlying the provisions of sections 4 and 6 of the Probation of Offenders Act, 1958 (for brevity "the Probation Act") and sections 360 & 361 Cr.PC, broadly speaking, is that first offenders be not sent to jail for the commission of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly make more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole.

(Para 22)

Further held, that the sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation laws are those who are not hardened or dangerous criminals, but those who have committed

offences under some momentary weakness of character or some tempting situation. By placing the offender on probation, the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. Even, it helps in eliminating overcrowding in jails by keeping many offenders away from the prison.

(Para 23)

Further held, that similarly, Section 4 of the Probation 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 the 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.

(Para 27)

Further held, that therefore, taking into consideration the period of agony of protracted trial & appeal, antecedents of appellant-convicts, nature of offences, totality of other facts & circumstances emanating from the record, as discussed here-in-above, to my mind, no useful purpose would be served in again sending them to jail to serve out the remaining period of sentence and instead of sending them to prison, they be released on probation under the present set of circumstances.

(Para 29)

G.S. Bal, Advocate, *for the appellants*.

Amarjit Kaur Khurana, Addl. AG Punjab for the State.

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The matrix of the facts and evidence, unfolded during the course of trial, culminating in the commencement, relevant for disposal of the instant criminal appeal & emanating from the record, is that, initially, in the wake

of complaint of Harjinder Singh son of Rachan Singh, a criminal case was registered against Surmukh Singh s/o Surjan Singh, his son Harinder Singh, Avtar Singh son of Lachhman Singh and Sohan Singh son of Ujagar Singh, vide FIR No.82 dated 11.11.1994, for the commission of offence punishable under section 308 read with section 34 IPC by the police of Police Station Morinda, Distt.Ropar.

(2) Scquelly, the prosecution claimed that during the course of same very incident/occurrence, complainant Ranjit Kaur (PW3) and her daughter Jasbir Kaur (PW4) also sustained injuries at the hands of appellant-convicts. Therefore, on the statement (Ex.PO) of complainant Ranjit Kaur, the present cross case was also registered against appellantconvicts Amar Singh, Mohinder Singh, Bhag Singh, Harpit Singh, Major Singh & main accused Harjinder Singh (proclaimed offender).

(3) In the instant cross case, the prosecution claimed that on 3.11.1994, the appellant-convicts, having consumed liquor, came on the roof of house of complainant Ranjit Kaur (PW3) and started throwing brick bats in her court-yard. Thereafter, they came down in her court yard. Accused Harjinder Singh (proclaimed offender) armed and gave a sword blow on her (Ranjit Kaur) right elbow. As soon as, her daughter Jasbir Kaur (PW4) came to rescue her, in the meantime, Harjinder Singh gave another sword blow on her left hand. Appellant Harpreet Singh alias Pinki, Major Singh and Mohinder Singh were stated to have caused injuries to Ranjit Kaur with their respective lathis. Thereafter, Harjinder Singh (PO) gave another sword blow on the front side of left leg of Ranjit Kaur. Appellants Amar Singh and Bhag Singh were claimed to have continued giving lathi blows on the person of Ranjit Kaur and her daughter Jasbir Kaur PWs. In the meantime, PW7 Harinder Singh, son of complainant, came on the tractor from the fields. Appellant Harpreet Singh alias Pinki was stated to have given a lathi blow on his back as well. All the injured raised alarm. Thereafter, the appellants decamped from the place of occurrence with their respective weapons. The injured were removed to the hospital, where they were medico legally examined. In the background of these allegations, the present cross case was registered against the appellant-convicts, by virtue of same very FIR No.82 dated 11.11.1994, on accusation of having committed the offences punishable under sections 148, 323, 325 and 452 read with section 149 IPC by the same police of Police Station Morinda, Distt.Ropar in the manner depicted here-in-above.

(4) After completion of the investigation, the police submitted the final police report (challan). Accordingly, the appellant-convicts were charge-sheeted for the commission of the offences punishable under sections 148, 323, 325 and 452 read with section 149 IPC by the trial Court.

(5) Likewise, the complainant party was also separately charge-sheeted under section 308 read with section 34 IPC in cross-case by the trial court and the case was slated for evidence of the prosecution, which ultimately ended in acquittal.

(6) In the instant cross case, the prosecution, in order to substantiate the charges framed against the appellant-convicts, examined PW1 Dr. Sanjeev Kumar, PW2-Dharam Singh, PW3 complainant Ranjit Kaur, PW4 Jasbir Kaur, PW5 Sumukh Singh, PW6 C. Taranjit Singh, PW7 Harinder Singh and PW8 SI Balbir Singh in the oral evidence. The prosecution has also placed reliance on the application of police (Ex.PA), writing of doctor (Ex.PB), information (Ex.PC), MLR of Jasbir Kaur (Ex.PD), x-ray report (Ex.PF), MLR of Ranjit Kaur (Ex.PG), x-ray report of Ranjit Kaur (Ex.PI), MLR of Harinder Singh (Ex.PJ), rapat No.21 (Ex.PM), Rapat roznamcha (Ex.PN), ruqqa (Ex.PO), endorsement (Ex.PO/1), FIR (Ex.PO/2) and rough site plan (Ex.PP) in the documentary evidence.

(7) Having concluded the prosecution evidence, the statements of the appellant-convicts were recorded. The entire incriminating evidence was put to enable them to explain any circumstance appearing against them in the evidence, as contemplated under Section 313 Cr.P.C. They have stoutly denied the prosecution evidence in its entirety and pleaded false implication on account of enmity. The appellants have examined DW1 Dr. Gurdarshan Singh, DW2 SI Balbir Singh & DW3 Balbir Singh son of Kaka Singh in defence evidence.

(8) Having completed all the codal formalities and taking into consideration the inadequacy of evidence, the trial Court acquitted complainant party Surmukh Singh etc. in main cross case, vide judgment of acquittal dated 16.9.2000 (Annexure A1).

(9) However, in the present cross case, while acquitting accused Mohinder Singh, the trial Court convicted & sentenced the appellant-convicts to undergo rigorous imprisonment for a period of one year, to pay a fine

of Rs.500/- each and in default of payment of fine, to further undergo RI for a period of six month each under Section 452 IPC, to undergo RI for a period of one year & six months, to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo RI for a period of six months each, for the commission of offences punishable under Section 325/34 IPC and to undergo RI for a period of six months under Section 323/34 IPC. Appellant-convict Harpreet Singh alias Pinki was sentenced to undergo RI for a period of one year and six months, to pay a fine of Rs.500/- and in default of payment of fine, to further undergo RI for a period of six months, for the commission of offence punishable under Section 325 IPC. However, all the sentences were ordered to run concurrently by the trial Court, by means of impugned judgment of conviction and order of sentence dated 16.09.2000.

(10) The appellant-convicts did not feel satisfied and preferred the present criminal appeal, to challenge the impugned judgment of conviction and order of sentence of the trial Court. That is how, I am seized of the matter.

(11) After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant appeal, as regards the conviction of appellant-convicts is concerned.

(12) Ex facie, the argument of learned counsel that since the evidence brought on record by the prosecution falls short as is required to prove a criminal case, so, the appellant-convicts are entitled to acquittal, lacks merit.

(13) As is evident from the record that PW3 Ranjit Kaur complainant, her daughter PW4 Jasbir Kaur and son PW7 Harinder Singh are the eye/injured witnesses and they have, inter-alia stated, on oath and reiterated the individual participation of the appellant-convicts in the commission of pointed crime. Instead of reproducing their statements in toto and in order to avoid repetition, suffice it to say that they have fully corroborated the prosecution version contained in the statement (Ex.PO) of the complainant on all vital counts. They were cross-examined at length, but nothing substantial material could be elicited in their crossexamination to dislodge their testimony. They are injured/stamped eye witnesses. Their evidence is natural and reliable. Moreover, the presence of the appellant-convicts at the spot is duly proved.

(14) Not only that, the ocular version of the prosecution finds further corroboration from the medical evidence of PW1 Dr. Sanjeev Kumar, who proved his writing (Ex. PB), information (Ex. PC), MLR of PW4 Jasbir Kaur (Ex. PD), x-ray report (Ex. PF), MLR (Ex. PG) of PW3 Ranjit Kaur, her x-ray report (Ex. PI) and MLR of PW7 Harinder Singh (Ex. PJ),

(15) Similarly, PW8 SI Balbir Singh (Investigating Officer) has testified the investigation and recoveries. The learned counsel for appellant-convicts did not point out any legal infirmity or major contradictions in the statements of PWs to discard the prosecution version, which is otherwise proved by reliable, trustworthy, natural, oral as well as documentary and medical evidence, as discussed here-in-above. Moreover, all the other points, now sought to be urged on behalf of appellant-convicts, have already been duly considered in the right perspective and negated by the trial Court. Therefore, if the entire indicated evidence on record as depicted here-in-above, is put together and perused, then, to me, the conclusion is inescapable that the prosecution has been duly able to prove the indicated charges against the appellant-convicts in this relevant connection.

(16) Faced with the grave situation, the learned counsel for the appellants has fairly acknowledged that in view of the pointed cogent evidence on record, he will not be in a position to contest the conviction of the appellant-convicts any more. He has no other argument/material/ground, much less cogent, to assail the prosecution version. In this manner, as no other legal infirmity has been pointed out by him, therefore, the impugned judgment of conviction and order of sentence of fine are hereby maintained as such.

(17) However, the learned counsel then contended with some amount of vehemence that the appellant-convicts are first offenders and the trial Court did not record any cogent reasons to negate their plea to release them on probation. He prayed that the appellant-convicts are entitled to the benefit of probation.

(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 versus State of Bihar (1)**. 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 **Isher Das versus State of Punjab (2)**, the same view was again reiterated by Hon'ble Supreme Court in case **Arvind Mohan Sinha versus Amulya Kumar Biswas and others (3)**, 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

(1) 1972 AIR (SC) 2522
(2) AIR 1972 SC 1295
(3) 1974 AIR (SC) 1818

attached to convicts often render the remedy worse than the disease and the very 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 stick. 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) Above being the legal position and material on record, now the short & significant question, though important, that arises for determination is, as to whether the appellant-convicts are entitled to the benefit of probation or not ?

(21) Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the affirmative.

(22) What cannot possibly be disputed here is that the object underlying the provisions of sections 4 and 6 of the Probation of Offenders Act, 1958 (for brevity "the Probation Act") and sections 360 & 361 Cr.PC, broadly speaking, is that first offenders be not sent to jail for the commission

of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly make more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. Perhaps that was the reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6 of the Probation Act. This mandate is inspired by the desire to keep the young delinquent/first offenders away from the possibility of association or close contact with hardened criminals and their evil influence. Therefore, these beneficial provisions have to be liberally construed.

(23) The sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation laws are those who are not hardened or dangerous criminals, but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation, the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. Even, it helps in eliminating overcrowding in jails by keeping many offenders away from the prison.

(24) As is amply clear that Section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, whereas Section 361 Cr.P.C. posits that "where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so."

(25) Therefore, the conjoint and meaningful reading of the beneficial provisions of the Probation Act would reveal that 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.

(26) Meaning thereby, the Court has the ample power to release the first offender of minor offences on probation, keeping into focus the nature & manner of the crime, age of the offender, other antecedents and attending circumstances of the offence instead of committing him to jail.

(27) Similarly, Section 4 of the Probation 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 the 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. The learned State counsel has acknowledged the factual matrix of the case and legal position.

(28) Having regard to the nature, manner of the crime, age of the offenders, antecedents and other following relatable factors, to me, it would be expedient in the interest and justice would be sub-served, if the benefit of probation is granted to the appellant-convicts, *inter alia* on the following grounds:

- (i) *What cannot possibly be disputed here is that the occurrence in this case is stated to be of 3.11.1994. In this manner, appellant-convicts have already faced the pangs and suffered the agony of protracted trial & appeal for the last more than 18 years.*
- (ii) *They are first offenders and there is no history of their previous conviction.*
- (iii) *The grievous injury is attributed to main accused Harjinder Singh (PO). Only lathis injuries on non-vital parts are attributed to the appellant-convicts.*
- (iv) *They also sustained multiple injuries including the grievous hurt at the hands of members of complainant party, who have already been acquitted on account of inadequacy of evidence, vide judgment of acquittal (Annexure A1).*

- (v) *The antecedent and credentials of the appellant-convicts are such that they have not been found involved in any other case.*
- (vi) *They are ready to pay the adequate compensation to complainant Ranjit Kaur.*
- (vii) *There is no legal impediment to release them on probation.*
- (viii) *Even the modern trend of penology also leans towards the reformation of the offenders, so as to make them a useful citizen of the society. No useful purpose was going to be achieved by again sending the appellant-convicts to jail.*

(29) Therefore, taking into consideration the period of agony of protracted trial & appeal, antecedents of appellant-convicts, nature of offences, totality of other facts & circumstances emanating from the record, as discussed here-in-above, to my mind, no useful purpose would be served in again sending them to jail to serve out the remaining period of sentence and instead of sending them to prison, they be released on probation under the present set of circumstances. Consequently, it is directed that appellant-convicts be released on probation on their furnishing personal bonds (within two months) in the sum of Rs.25,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that they would keep the peace and be of good behaviour, for a period of two years from the date of passing of this order. At the same time, the appellant-convicts are also directed to pay a sum of Rs. 5,000/- as compensation to complainant Ranjit Kaur. Needless to mention that in case, they are found to be indulged in any illegal activities and did not pay the compensation, the sentence awarded to them by the trial Court shall stand revived. The remaining sentence of fine imposed on the appellant-convicts by the trial Court is hereby maintained.

(30) In the light of aforesaid reasons, the instant appeal is hereby dismissed on merits and the impugned judgment of conviction & order of sentence of fine are maintained. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above.

(31) Needless to mention that natural consequences & compliance will follow accordingly.