

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

CRR-1147-2007

Date of decision: 4.2.2016

Kamal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.CB Goel, Advocate for the petitioner

Mr. Sandeep Vashisht, Deputy Advocate General, Haryana

None for respondent No.2.

SNEH PRASHAR, J.

The present revision petition has been filed by the petitioner challenging the judgment dated 10.7.2007 passed by learned Additional Sessions Judge, Gurgaon whereby the appeal filed by him against the judgment of conviction and order of sentence dated 7.10.2006 vide which learned trial Court convicted and sentenced him to undergo simple imprisonment for a period of two years and to pay fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of five days under Section 325 read with Section 34 of the Indian Penal Code (for short 'IPC'), was dismissed. Kiran wife of Kamal was also convicted under Section 325 read with Section 34 IPC by learned trial Court, but she was given the

benefit of being released on probation.

The facts extracted from the record are as under:-

FIR No.321 dated 26.10.2002, under Section 325 read with Section 34 IPC was registered at Police Station Udyog Vihar on the statement of injured Manoj Kumar wherein he deposed that on 6.10.2002 at about 1.30 PM when he was cleaning the drain pipe of his house, accused Kamal, standing in front of his house objected to it and started abusing him and on resistance by him, he brought a 'Farsa' from his house and gave a blow with the same which caused injury on the fingers of his left hand. In the meantime, wife of Kamal also came there and as she caught hold of him, Kamal gave another 'Farsa' blow hitting on calf of his left leg. Third blow from reverse side of 'Farsa' was given on his head. Hearing his shouts, his younger brother Vinod and tenant Ramesh came and rescued him. They then brought him to Government Hospital, Gurgaon for treatment.

The matter was investigated and the accused were arrested. On completion of investigation, final report under Section 173 of the Code of Criminal Procedure was filed in the Court.

Both the accused were charged under Section 325 read with Section 34 IPC to which, they pleaded not guilty and claimed trial.

To prove its allegations, prosecution examined as many as four witnesses. After closure of evidence of the prosecution,

statements of the accused as envisaged under Section 313 Cr.P.C. were recorded. They denied the incriminating evidence put to them and pleaded false implication.

Considering the submissions made by learned Assistant Public Prosecutor for the State as well as counsel representing the accused- petitioner and evaluating the evidence brought on record, learned trial Court convicted and sentenced petitioner Kamal and his wife Kiran as indicated above. Kiran was released on probation.

Feeling dissatisfied, the petitioner preferred an appeal, which was dismissed by learned Additional Sessions Judge, Gurgaon vide judgment dated 10.7.2007. Being aggrieved, the petitioner filed the present criminal revision.

The submissions made by learned counsel for the parties have been heard and record perused.

At the very outset, learned counsel for the petitioner submits that he does not want to challenge the concurrent findings recorded by both the courts below regarding conviction of the petitioner and only confines his prayer to release the petitioner on probation because the petitioner is a poor person and is to look after a big family, having six children, out of which four are daughters. He is a first offender and has never been involved in any other case.

Perusal of the record shows that complainant Manoj Kumar and the eye witness Vinod, unequivocally deposed that Kiran

wife of Kamal had caught hold of Manoj Kumar and Kamal had given 'Farsa' blows to him. Their deposition was corroborated by medical evidence. PW4 Dr.BB Aggarwal, who conducted x-ray examination of the injured on 8.10.2002, deposed that as per MLR No.40/NKA/GGN/02, injuries available on the body of the complainant was mild dislocation and fracture in left hand and left leg of the complainant. In view of the said evidence, there appears no scope to discard the findings recorded by learned trial Court convicting the petitioner and that of learned First Appellate Court affirming the same and accordingly the conviction of the petitioner is maintained.

However, considering the submissions made on behalf of the petitioner and the fact that the petitioner is not a previous convict and belongs to poor strata of society and has been facing a protracted trial for the last more than eleven years, to my mind, the interest of justice would be best served, if he is given a chance to reform himself. Thus, the sentence awarded to the petitioner is set aside and he is ordered to be released on probation on executing probation bonds in the sum of Rs.20,000/- with one surety in the like amount under Section 4(1) of the Probation of Offenders Act, 1958 to the satisfaction of learned Chief Judicial Magistrate, Gurgaon with an undertaking to maintain peace and be of good behaviour and to appear in the Court to receive sentence as and when called upon to do so during the period

of one year. If he violates any condition of probation bond, the present petition shall be deemed to be dismissed. The petitioner is further directed to deposit a sum of Rs.5000/- as litigation expenses. The fine amount deposited by the petitioner is also converted into litigation expenses and the said amount alongwith the litigation expenses imposed by this Court will be paid to injured Manoj as compensation.

The present petition stands disposed of accordingly.

4.2.2016
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No