

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

**Criminal Revision 349 of 2012
Date of Decision : May 4, 2016**

Umed and another		Petitioners
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Tapan Kumar Yadav, Advocate
for the petitioners.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S.MANN, J. (Oral)

The petitioners, namely, Umed and Pawan, alongwith Chameli were tried for committing offences punishable under Sections 324/325/326/34 IPC. Vide judgment and order dated 22/23.7.2010, learned Judicial Magistrate 1st Class, Gurgaon, acquitted them of the charges under Sections 325 and 326 IPC. They were, however, convicted under Sections 324/34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for fifteen days. The fine imposed was deposited by them.

Aggrieved of their conviction and sentences, the petitioners and their co-convict Chameli preferred an appeal. The State also filed an appeal for challenging their acquittal for

offences under Sections 325 and 326 IPC. Vide judgment dated 18.1.2012, learned Additional Sessions Judge, Gurgaon, found no merit in the State appeal and, accordingly, dismissed the same. The conviction of the petitioners and Chameli under Sections 324/34 IPC was maintained. However, sentence of imprisonment of Chameli was set aside. Instead, she was granted the benefit of probation. The amount of fine imposed upon her was treated as costs of proceedings. An amount of Rs. 5,000/- was also imposed upon her so as to be paid as compensation to the injured. At the same time, the sentences of imprisonment and fine of the petitioners were maintained. Hence, the present revision.

The case of the prosecution has been noticed by the learned lower appellate Court in para 2 of its judgment, which is reproduced hereinbelow:-

“The portrayal of the facts unfolded during the trial before the trial Court, that Kamal Singh, son of Sube Singh, resident of Chandu, District Gurgaon, got his statement recorded with the police, Ex.PW4/A, allegedly, on 21.05.2002, at around 06.00 a.m., he had gone to answer the call of nature in the fields and was returning at around 6.30 a.m. His sister Sunita was searching

something in the sand. On his asking, she disclosed that the daughters of his uncle (Tau) have repeated the taunting today as well. When they were asked, they got scuffled with her, her ear ring has been lost. When he went to his grand father Rampat, to object, instantly his uncle (Tau) Umed, his wife Chameli, came out from behind of the door. His uncle (Tau) caught hold him from behind. His Aunt (Tai) caught hold from his hands. Their son Pawan came armed with 'Kulhari' and landed blow on back side of his head. As a result, the handle of the Kulhari, broken down. Meantime, Suresh, son of Bir Singh, resident of Jharsa, currently tent house at Chandu and Daya Kishan, son of Het Ram, resident of Chandu, rescued him from their clutches, otherwise, they might have beaten him more. After this, his father also reached there and rushed him to GH, Gurgaon, where he was referred to Safdarjung Hospital, Delhi. However, he was got admitted by his wife in Kalyani Hospital, Gurgaon and prayed to book the accused on record. On the basis of

this statement, a formal FIR has been registered.

Investigation was launched ”.

At the trial of the case, the prosecution examined Suresh Kumar as PW1, Dr. Rakesh Nathani, Neuro Surgeon as PW2, Dr. R.K.Sachdev as PW3, Kamal Singh as PW4, DSP Ramesh Pal as PW5 and Charan Singh as PW6.

When examined under Section 313 Cr.P.C. the petitioners and their co-convict Chameli pleaded false implication due to enmity. In defence, petitioner Umed himself appeared as DW1.

Having heard learned counsel for the parties and on going through the impugned judgments passed by the Courts below, this Court is of the considered view that the prosecution has been successful in proving the guilt of the petitioners. Kamal Singh, who had received the injury at the hands of Pawan while stepping into the witness box as PW4, testified that on 21.5.2002 at about 6.30 a.m., he was returning after answering the call of nature whereas his sister Sunita was searching for something in the sand. On his asking, she disclosed that daughters of her uncle Umed had taunted her on that day, once again, and had a scuffle with her. When Kamal Singh went to his grand-father Rampat to lodge a protest, his uncle Umed and his wife Chameli came out from behind the door. Umed caught hold of him from

behind whereas Chameli caught hold of him from his hands. In the meantime, Pawan came armed with 'Kulhari' and gave a blow with the same on the back side of his head. As a result, the handle of the 'Kulhari' was broken. The occurrence was witnessed by PW1 Suresh Kumar. Merely because, Suresh Kumar had reached the spot after the infliction of injury is no ground to disbelieve his testimony. Further, after the registration of the FIR, the investigation was taken over by ASI Sukhbir Singh, who could not be examined as a prosecution witness, as he had died in the meantime. Even otherwise, the prosecution is relying upon the testimony of PW5 DSP Ramesh Pal, who proved the various steps taken during the investigation of the case.

The ocular account is duly corroborated by the testimonies of PW3 Dr. R.K. Sachdev, who had medico-legally examined injured Kamal Singh and PW2 Dr. Rakesh Nathani, who had declared the injury on the person of Kamal Singh to be grievous in nature.

Merely because the 'Kulhari' used by accused Pawan was not deposited in the Malkhana is not sufficient to discard the prosecution case as the prosecution is relying upon the testimony of Kamal Singh, who had received injury on his head, at the hands of accused Pawan.

In view of the above, no case is made out for any

interference in the conviction of the petitioners for the offences under Sections 324/34 IPC.

According to learned counsel for the petitioners, accused Umed used to work as a driver with the PWD (B&R). He has since retired from service. On account of his conviction in the present case, his retiral benefits were withheld. At the time of occurrence, Umed was empty handed and attributed holding the injured from behind. Chameli wife of Umed, who had caught hold of the injured from his hands and was similarly convicted as Umed has already been granted the relief of probation.

Having heard learned counsel for the parties, this Court is of the considered view that petitioner Umed also deserves to be extended the benefit of probation. However, petitioner Pawan is not entitled for the same relief inspite of the fact that he stands convicted under Sections 324/34 IPC, as it was he, who had wielded the 'Kulhari' in giving a blow on the head of Kamal Singh. Merely because, the prosecution has not been able to establish that injury caused by Pawan was grievous in nature is no ground to grant him the benefit of probation. However, taking into consideration the fact that Pawan is undergoing the agony of criminal prosecution for the last about fourteen years and had not repeated the blow, this Court is of the considered view that the sentence of imprisonment of three years

imposed upon him is on the higher side. Ends of justice would be amply met, if his substantive sentence of imprisonment is reduced.

Resultantly, the conviction of the petitioners under Sections 324/34 IPC is upheld. The substantive sentence of Umed is set aside. Instead, he is ordered to be released on probation subject to furnishing bonds and undertaking to keep peace and be of good behaviour for a period of one and half years and to receive sentence as and when called upon to do so. The fine of Rs.1,000/- is hereby converted to be treated as costs of proceedings. He shall also pay an amount of Rs.5,000/- to the complainant/injured, as compensation. The substantive sentence of imprisonment of Pawan is reduced from three years to rigorous imprisonment for one and half years. The fine of Rs.1,000/- imposed upon him is, however, enhanced to Rs.5,000/- and in default of the same, he shall undergo simple imprisonment for thirty days. The enhanced amount of fine, when deposited by Pawan, be paid to the complainant/injured, as compensation.

The revision is, accordingly, disposed of.

May 4, 2016
amit rana

(T.P.S. MANN)
JUDGE