

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

**Criminal Appeal S-470-SB of 2004
Date of Decision: January 11, 2017**

Kalu and others		Appellants
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Sandeep Kumar, Advocate for
Mr. Vikram Singh, Advocate
for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

Mr. Dinesh Saini, Advocate
for the complainant.

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

The appellants were tried for committing offences punishable under Sections 323/307 read with Section 34 IPC. Vide judgment and order dated 12.2.2004, learned Additional Sessions Judge, Panipat, acquitted them of the charge under Section 307 IPC. Instead, they were convicted under Section 325 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and six months and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. They were also convicted under Section 323 read with Section 34 IPC and

sentenced to undergo rigorous imprisonment for six months. Both the substantive sentences were ordered to run concurrently. The entire amount of fine, on its deposit by them was ordered to be paid to the complainant/injured as compensation under Section 357 of the Code of Criminal Procedure. The period of detention already undergone by them during the investigation and trial was ordered to be set off against the period of sentence awarded to them.

Aggrieved of their conviction and sentences, the appellants preferred the present appeal. Simultaneously, complainant Sher Singh filed Criminal Revision 985 of 2004 under Section 401 Cr.P.C. with the prayer that the sentences of imprisonment and fine awarded to the appellants be enhanced. As the appeal and the revision arise out of the same judgment of conviction, they are being disposed of by a common judgment.

According to the prosecution, on 17.2.1999, complainant Sher Singh was present in the street in Deshraj Colony, Panipat. In the meantime, Kalu and Jai Pal appellants while accompanied by 2/3 persons came there and started beating him. His neighbour Sushil was also beaten. When he raised cries, Surrender son of Deep Chand came and rescued him from the clutches of the appellants. He was, thereafter, taken to General Hospital, Panipat for treatment. On his statement, which was recorded by Assistant Sub-Inspector Bharat Bhushan, FIR

Criminal Appeal S-470-SB of 2004

-:3:-

No. 68 dated 19.2.1999 under Sections 323/307 read with Section 34 IPC was registered against the appellants at Police Station City, Panipat.

During the investigation of the case, the police had also recorded the statement of Kalu appellant, who had stated that when he and his brother Bhopal Singh were going to the Court to attend a hearing, Sanjiv came on a cycle and hit them with the handle of his cycle. Kalu abused Sanjiv, who narrated the occurrence to his relative. Kalu further reported that when after attending the hearing, he reached his house, he found Sushil and Sanjiv there alongwith 2/3 persons who proclaimed that they would teach him a lesson. They caused injuries to him and his brother Jai Pal with lathies.

Learned counsel for the appellants has not challenged the impugned judgment of conviction passed by the learned trial Court. He, however, submits that the appellants are facing the agony of criminal prosecution for the last about eighteen years. All of them are first offenders. He further states that Kalu appellant is aged about 52 years and having one school going son and two unmarried daughters. About 3/4 years back, he had suffered paralysis; Jai Pal appellant is 40 years of age and having one son, aged three years and two minor daughters; Bhopal appellant is aged 48 years and having one son, aged fourteen years and two daughters, aged nineteen years and eight years,

respectively, while Babbal appellant is 41 years of age and having two minor sons. It is also submitted that all the appellants are on bail since March/April, 1999. Further, the offences under Sections 325 and 323 IPC are punishable with sentence upto seven years. Even according to the prosecution, there was no serious enmity between the parties and the motive of the occurrence was said to be an altercation between them. Prayer has, accordingly, been made for extending the benefit of probation to the appellants.

Learned State counsel as well as learned counsel for the complainant have submitted that none of the appellants deserves to be granted the benefit of probation as they had caused injuries including an injury on the forehead of complainant Sher Singh. Learned State counsel has also produced the custody certificates, as per which, Kalu and Jai Pal appellants have undergone an actual sentence of twenty three days whereas Bhopal and Babbal appellants have undergone sixteen days. None of them is shown to be either involved or convicted in any other criminal case.

Having heard learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing the remaining sentences of imprisonment imposed upon them. Ends of justice will be suitably met, if they are

Criminal Appeal S-470-SB of 2004

-:5:-

released on probation. At the same time, they can be directed to further compensate complainant/injured Sher Singh in addition to the amount already awarded by the trial Court to him by way of compensation.

Resultantly, the conviction of the appellants, as recorded by the trial Court, is upheld. Their substantive sentences of imprisonment are set-aside. Instead, they are ordered to be released on probation subject to their furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Panipat with an undertaking to maintain peace and be of good behaviour for a period of one year and to receive the sentence as and when called upon to do so. The fine of Rs.5,000/- imposed upon each of the appellants by the learned trial Court has already been directed to be paid to complainant Sher Singh. In addition to the same, the appellants shall deposit an amount of Rs.10,000/- each and the same, on its deposit, be disbursed to complainant Sher Singh as compensation.

Criminal Appeal S-470-SB of 2004 filed by the appellants and Criminal Revision 985 of 2004 filed by the complainant are disposed of, accordingly.

January 11, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No