

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

Criminal Revision 1435 of 2008

Date of Decision: April 18, 2017

Tarawati and others	Versus	Petitioners
State of Haryana and another		Respondents

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

Present : Ms. Manpreet Kaur, Advocate for
Mr. Rajesh Khandelwal, Advocate
for petitioners No. 2 and 3.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana
for respondent No.1-State.

None for respondent No. 2.

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

The petitioners were tried on a private criminal complaint for committing offences under Section 325/34 IPC. Vide judgment and order dated 4/5.4.2008, learned Judicial Magistrate 1st Class, Gurgaon, acquitted them of the charge under Section 325/34 IPC. Instead, they were convicted under Section 323/34 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a

fine of of Rs.500/- each, and, in default of payment of fine, to undergo rigorous imprisonment for one month. The fine imposed was deposited by them there and then.

Aggrieved of their conviction and sentence, the petitioners preferred an appeal. Vide judgment dated 31.7.2008, learned Additional Sessions Judge, Fast Track Court, Gurgaon, while observing that they have been rightly held guilty under Section 323 read with Section 34 IPC, found no merit in the appeal and, accordingly, dismissed the same. Still not satisfied, they preferred the present revision, which was admitted on 5.8.2008 and they were also ordered to be released on bail.

According to the prosecution, on 28.2.1996, Kamlesh wife of Madan Singh complainant was sweeping her plot. At that time, the petitioners alongwith Kashmiri and Bhagwati came there and started abusing her. They insisted upon her to leave the plot or else she would be killed. The complainant's wife, however, refused to vacate the plot. Urmila gave a fist blow on the person of complainant's wife who received injuries on the inner side of lips and her one tooth got broken. Sumitra bit the left hand of the complainant's wife. Tarawati gave a blow with Tasla on the right elbow of the complainant's wife, who raised an alarm

which attracted Lali Devi and Ram Dayal to the spot. The accused while leaving the spot extended threats to the complainant's wife. When the complainant's wife moved an application to the police, Head Constable Rajender Singh tore the same and slapped the complainant and asked him to leave or else he would be put behind the bars.

On 21.12.2016, when the revision was taken up for final hearing, learned counsel for the petitioners informed the Court that as per his instructions, Tarawati petitioner had already passed away. Learned State counsel prayed for an adjournment for obtaining verification of the aforementioned fact. On the adjourned date, learned State counsel placed on record short reply by way of affidavit of Shri Harinder Singh, Superintendent, District Jail, Gurugram, wherein, it stood mentioned that the factum of Tarawati petitioner expiring on 7.10.2012 stood duly verified. Alongwith the reply, attested copy of the death certificate was also appended.

Learned counsel for the petitioners submits that as Tarawati petitioner has since expired, the revision qua her may be disposed of as having abated. She also states that she does not challenge the conviction of Sumitra and Urmila petitioners under Section 323/34 IPC. However, she has stated that the surviving petitioners who are women, are

facing the agony of criminal prosecution for the last more than twenty years. Both of them are not previous offenders. They stand convicted for the offence under Section 323/34 IPC, which entails imprisonment upto one year only. Therefore, they be released on probation.

Learned State counsel has opposed the prayer by submitting that though the surviving petitioners are women and are first offenders yet they are not entitled to be released on probation as they had no respect for law and such like incidents in society are increasing day by day.

Custody certificates qua the surviving petitioners have already been placed on record by the learned State counsel, as per which, each one of them has undergone an actual sentence of eight days. However, they are not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that the surviving petitioners, namely, Urmila and Sumitra can be granted the benefit of probation instead of being asked to go behind the bars for undergoing the remaining sentence of imprisonment imposed upon them.

Resultantly, the revision filed by Tarawati petitioner is disposed of as having abated. The conviction of Urmila

and Sumitra petitioners under Section 323/34 IPC is upheld. However, their substantive sentence of imprisonment is set aside. Instead, they are ordered to be released on probation on their furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Gurgaon (now Gurugram), undertaking to keep peace and be of good behaviour for a period of one year and to receive sentence as and when called upon to do so. The surviving petitioners shall also pay an amount of Rs.2,500/- each, which shall be disbursed to complainant Madan Singh as compensation for the injuries received by his wife. The said amount be deposited by Urmila and Sumitra petitioners within a period of three months or else they shall undergo simple imprisonment for fifteen days. The sentence of fine imposed by the trial Court which stands deposited by the surviving petitioners, be treated as costs of proceedings.

The revision is, accordingly, disposed of.

April 18, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No