

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

CRR No.575 of 2014 (O&M)

Date of Decision: March 07, 2017

Kartar

....Petitioner

vs.

State of Haryana and others

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. S.K. Panwar, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J.

Vide judgment of conviction dated 10.06.2011 and order of sentence dated 11.06.2011, the Additional Chief Judicial Magistrate, Palwal, convicted Mamraj, Jeelu and Mahesh (private respondents No.4, 5 & 7 herein) under Section 323 IPC and sentenced them to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/-. Prem Raj @ Babli (respondent No.6 herein) was convicted under Section 325 IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/-. Accused Chander, Indraj, Smt. Giano, Smt. Phula and Bhinder were acquitted of the charges levelled against them.

2. Two appeals arose from the judgment of conviction and order of sentence passed by the trial Court. One at the hands of the complainant- Kartar against the acquittal of the afore noticed persons and the second appeal was filed by Mamraj, Jeelu, Prem Raj @ Babli & Mahesh against their conviction. Both the appeals stand decided vide common judgment dated 08.11.2013, passed by the learned Additional Sessions Judge, Palwal. Both the appeals were dismissed by the appellate Court. The judgment of conviction of Mamraj, Mahesh, Jeelu and Prem Raj @ Babli was upheld. However, the order of sentence dated 11.06.2011 was modified and the appellants (respondents No.4, 5, 6 & 7 herein) were ordered to be released on probation of good conduct on their furnishing bonds in the sum of Rs.25,000/- with one surety in the like amount each for a period of six months. Appellants Mamraj, Mahesh & Jeelu were further directed to pay a sum of Rs.5,000/- each and Prem Raj @ Babli was directed to pay a sum of Rs.10,000/- towards compensation to the complainant.

3. The instant revision petition has been preferred by complainant-Kartar against the judgment dated 08.11.2013, passed by the Lower Appellate Court. Petitioner Kartar Singh seeks enhancement of sentence awarded to private respondents No.4, 5, 6 & 7 and seeks conviction of respondents No.2, 3, 8, 9 &

10.

4. Brief prosecution version is that on 08.11.2002, information with regard to admission of Kartar S/o Ram Kishan at General Hospital, Palwal, having sustained injuries, in a scuffle, was received. ASI Rajender Singh visited the hospital and recorded the statement of Kartar Singh (complainant). Complainant asserted that he used to sell milk and Indraj borrowed Rs.2,200/- on account of ghee and fodder etc. and upon his father demanding such dues, Indraj responded by contending that nothing was due and on this count an altercation had taken place six days back. On the date of occurrence i.e. 08.11.2002, at about 3 P.M., complainant was accosted by Mahesh, Lallu, Mamraj and Mahender, armed with lathies and raised a lalkara to catch hold of him. Meanwhile, Bhamli, Chander, Indraj, Smt. Giano and Smt. Phula armed with lathies and ballam, also reached. Complainant attempted to escape by entering the shop of Ram Chander. However, Bhinder caught him and Mahesh gave him lathi blow on his right hand. Jeelu give a lathi blow on left hand. Mamraj and Bhamli gave blows on his head. Bhamli gave a gandas blow on his left knee. Complainant asserted that he lost consciousness but Chander, Indraj, Smt. Giano and Smt. Phulo also inflicted lathi blows upon him. Complainant's brother Chander Pal came on the spot and

rescued him. On the basis of such statement, FIR No.548 dated 08.11.2002 under Section 148, 323, 324, 325 & 506 read with Section 149 IPC was registered at Police Station Sadar Palwal. After completion of investigation, final report under Section 173 of the Code of Criminal Procedure was presented before the Court. Copies of challan were supplied to the accused as per mandate of Section 207 Cr.P.C. Except for Mahesh, Smt. Giano and Smt. Phula, the remaining accused were charge-sheeted under Sections 148, 323, 324, 325 & 506 read with Section 149 IPC as per order dated 02.04.2003, passed by the trial Court. Accused Mahesh, Smt. Giano, Smt. Phula, who had been found to be innocent during the course of investigation, were summoned to face trial vide order dated 02.02.2010 by the trial Court exercising power under Section 319 Cr.P.C. The accused pleaded not guilty and claimed trial.

5. Prosecution in order to prove its case examined PW-1 Dr. J.D. Singh, PW-2 ASI Attar Singh, PW-3 Dr. S.K. Gambhir, PW-4 Kartar (complainant) and PW-5 Chander Pal. Evidence of the prosecution was closed on 18.01.2011. Statements of accused were recorded under Section 313 Cr.P.C., in which, they denied all the accusations and pleaded innocence. In defence, DW-1, Davinder Singh was examined and who tendered Ex.PW1/A i.e. Medico Legal Report of accused Prem Raj @ Babli.

6. Trial has culminated in the passing of the judgment dated 10.06.2011, directing conviction of certain accused and acquittal of others and as has been noticed hereinabove. The appellate Court has rendered the impugned judgment dated 08.11.2013, upholding the conviction of Mamraj, Jeelu, Prem Raj @ Babli & Mahesh but has modified the order of sentence and granted benefit of probation. Acquittal of respondents No.2, 3, 8, 9 & 10 has been affirmed.

7. Counsel for the petitioner has been heard at length and the case paper book has been perused.

8. At the very outset, it may be noticed that even though, Mam Raj, Jeelu, Prem Raj @ Babli & Mahesh(respondents No.4, 5, 6 & 7) had filed appeal against that conviction, but, during the course of proceedings before the appellate Court, did not assail their conviction on merits, but prayed for their release on probation of good conduct. Appellate Court has observed that there was ample evidence on file to sustain their conviction. Be that as it may, benefit of probation on good conduct has been granted on the basis that Mahesh, Jeelu and Prem Raj @ Babli were less than 21 years of age on the date of occurrence whereas, Mam Raj was 30 years of age. Furthermore, afore-noticed appellants were not previous convicts and even during the course of trial, they have not indulged in any criminal activity.

Yet, another factor that is weighed with the appellate Court is that the appellants had faced agony of a protracted trial since the year 2002. Furthermore, Mam Raj, Mahesh and Jeelu were convicted under Section 323 IPC and were directed to pay a sum of Rs.5,000/- each and Prem Raj @ Babli was convicted under Section 325 IPC and was directed to pay a sum of Rs.10,000/- to the complainant as compensation. In the considered view of this Court, Mam Raj, Jeelu, Prem Raj @ Babli & Mahesh have rightfully been granted the benefit of probation.

9. Insofar as acquittal of respondents No.2, 3, 8, 9 & 10 is concerned, the Courts below have taken a concurrent view that the complainant had attributed specific injuries to accused Mam Raj, Jeelu, Prem Raj @ Babli & Mahesh. Complainant while appearing in the witness box as PW-4 had reiterated such version and the same was corroborated by PW-5 Chander Pal, who was an eye witness to the occurrence. Ocular testimony stands fortified by the medical evidence brought on record by Pw-1 Dr. J.D. Singh and PW-3 Dr. S.K. Gambhir. Such evidence has conclusively proved the case against Mam Raj, Jeelu, Prem Raj @ Babli & Mahesh. The Courts below have further concluded that private respondents No.2, 3, 8, 9 & 10 have not inflicted any injuries in pursuance to a common object and as such, they cannot be convicted vicariously for the criminal act

attributed to the accused who stand convicted. The complainant in any case had not specifically attributed any injury to respondents No.2, 3, 8, 9 & 10.

10. Acquittal of respondents No.2, 3, 8, 9 & 10 is on the basis of sound and cogent reason and based upon due appreciation of evidence adduced on record.

11. Even otherwise, it is by now well settled that in a case where two views are possible, the one which favours the accused, has to be adopted by the Court. Reference in this regard may be made to the decision of the Apex Court in Allarakhia K. Mansuri vs. State of Gujarat 2002(1) RCR(Criminal)748 and to a Division Bench judgment of this Court in State of Punjab vs. Hansa Singh 2001(1) RCR(Criminal)775.

12. In view of the reasons recorded above, no case is made out for interference against the impugned judgment by this Court in exercise of its revisional jurisdiction.

13. Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

07.03.2017
anju rani

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No