

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

Crl. Appeal S-1769-SB of 2003
Date of Decision : September 12, 2018

Amar Kanta and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Sudhir Sharma, Advocate
for the appellants.

Mr. Vikrant Pamboo, Deputy A.G., Haryana.

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

The appellants, namely, Amar Kanta, Pankaj and Manoj besides Mohinder and Anil Kumar were tried for committing the offences punishable under Sections 323, 325, 307 read with Section 34 IPC. Vide impugned judgment dated 28.8.2003, learned Additional Sessions Judge (Adhoc), Hisar acquitted Mohinder and Anil Kumar of the charges against them. The appellants were also acquitted of the charges under Sections 325 and 307 IPC. However, they were convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for nine months and to pay a fine of Rs. 1,500/- each and in default of

payment of fine, to suffer further rigorous imprisonment for two months. The fine amount was deposited by them there and then.

According to the prosecution, Aditi, daughter of Satyadev Arya made statement before SI Ramesh Kumar on 20.7.1997, on the basis of which FIR No. 426 dated 20.7.1997 was registered against the appellants and their co-accused at Police Station Civil Lines, Hisar under Section 307 IPC. The said statement is re-produced here-below:-

“I am Aditi daughter of Satyadev, Caste Kumhar resident of House No.110/5 Prem Nagar, Hisar and I am aged about 18 or 19 years. On the back of our house there is house of Mahender Singh, Advocate and the back doors of our house and the house of Mahender Singh opens in the street. We have a civil case going on in the Civil Court in respect of the back gate having been opened by Mahender Singh in his house in the street. It was at about 8.00 p.m., yesterday that my brother Arun and I went near the back gate of our house. We saw wife of Mahender Singh breaking the corner of the slab in front of our house (she is referring to the pucca ramp portion in front of her back gate). My brother Arun asked her as to why she was breaking our ramp. Arun asked her not to break the ramp, whereupon Mahender Singh, Advocate came out of his house and he started beating my brother Arun. In the meanwhile, my Mummy and Papa also came there and within no

time Kanta wife of Mahender picked a rota (brick bat) and gave the blow to me and it landed on left side of my forehead (Kanpatti). My father intervened, whereupon Kanta called her sons Manoj and Pankaj asking them to bring lathi. On the call of Kanta, Manoj, Pankaj and their tenant came there with lathi and Pankaj gave a blow of lathi aiming at my head but my father tried to ward it off and it landed on his left forearm. The tenant of Mahender Singh gave a lathi blow to my father in the abdomen and Manoj gave a lathi blow to my father on the head. My father fell down and they all gave kicks to my father when he was lying on the ground. Pankaj gave a lathi blow to my father and to save my father, I laid myself on my father to save him. Manoj gave a lathi blow to me and it was with much difficulty that we could save our father and brought him inside the house. My mother called Ashok Gupta, a family friend on telephone and Ashok Gupta came there in his car after a short time. My father and myself were taken to General Hospital, Hisar where we both were admitted. My father had received serious injuries and due to this we took him to private hospital while I was brought to my house. My father is still unconscious. My statement has been recorded.”

During the investigation of the case, Pankaj, Anil Kumar and Manoj were arrested on 24.7.1997 and a lathi each was recovered from them. After completion of the investigation and presentation of the challan, the case was committed to the

Court of Sessions where the appellants and their co-accused were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution had examined as many as nine witnesses.

When examined under Section 313 Cr.P.C., the appellants and their co-accused denied the allegations of the prosecution and claimed that they were innocent. In defence, they examined three witnesses.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court acquitted Mohinder and Anil Kumar of all the charges against them whereas the appellants were held guilty under Section 323 IPC and sentenced to undergo imprisonment for nine months and to pay a fine of Rs. 1,500/- each.

This Court has heard learned counsel for the parties and examined the evidence with their able assistance.

In order to prove the ocular account of the occurrence, the prosecution examined Aditi as PW7 and her mother Shakuntla Devi as PW8. Both of them deposed about the manner in which the occurrence had taken place. Despite being subjected to thorough cross-examination, the defence could not bring any material on record from which it could be said that the

appellants had been falsely implicated in the case. The medical evidence by way of the testimonies of PW1 Dr. V.K.Kavatra, PW2 Dr. V.K.Gupta and PW6 Dr. Rajender Singh also corroborated the ocular account of the occurrence. The investigation part of the case was proved by PW3 DSP Narender Singh, PW4 Constable Ram Bhagat, PW5 DSP Dayanand and PW9 SI Ramesh Kumar.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of convicting the appellants under Section 323 IPC.

Coming to the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than twenty one years. The offence under Section 323 IPC for which the appellants stand convicted is punishable with sentence of imprisonment upto one year or with fine or both. The appellants belong to a respectable family. There is no material on the record from which it could be made out that the appellants were either involved or convicted in any other case apart from the present case.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellants, instead of being required to undergo the sentence of imprisonment imposed upon them, can be extended the benefit of probation.

Resultantly, the conviction of the appellants under Section 323 IPC is upheld. Their sentences of imprisonment is set-aside. Instead, they are ordered to be released on probation on their furnishing bonds in the sum of Rs. 10,000/- each for a period of six months with an undertaking to keep peace and be of good behavior and to appear and receive the sentence as and when called upon to do so. The sentence of fine is, however, converted to costs of proceeding.

The appeal is, accordingly, disposed of.

Suffice it to mention here that the appellants shall not suffer any disqualification attaching to their conviction in view of Section 12 of the Probation of Offenders Act, 1958.

September 12, 2018
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No