

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR No. 2956 of 2016****DATE OF DECISION :- March 27, 2018****Prem Kumar****...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MR. JUSTICE H.S. MADAAN****Present:-** Mr. Raman Goklaney, Advocate for the petitioner.*******

Accused Harbans Lal, Rakesh Kumar, Jagdish Chander, Satnam Chand, Mohinder Pal, Harbans Lal, Chhinderpal and Ramesh Kumar faced trial by Judicial Magistrate Ist Class, Fazilka who vide judgment dated 9.1.2014 convicted the accused for offences under Sections 452, 326, 324, 323, 427, 148, 149 IPC and vide order of even date, sentenced them as follows :-

<u>Under Section</u>	<u>Sentence</u>
Under Section 452/149 IPC	R.I. for a period of two years each and also sentenced to pay a fine of Rs.2000/- each and in default of fine to further undergo sentence R.I. For six months each.
Under Section 326/149 IPC	R.I. for a period of two years each and also sentenced to pay fine of Rs.2000/- each and in default of fine to further undergo sentence R.I. For six months each.
Under Section 324/149 IPC	R.I. for a period of one year each and also sentenced to pay fine of Rs.1000/- each and in default of fine to further undergo sentence R.I. For three months each.
Under Section 427/149 IPC	R.I. for a period of one year each and also sentenced to pay fine of Rs.1000/- each and in default of fine to further undergo sentence R.I. For three months each.

<u>Under Section</u>	<u>Sentence</u>
Under Section 323/149 IPC	R.I. for a period of six months each and also sentenced to pay fine of Rs.500/- each and in default of fine to further undergo sentence R.I. For two months each.
Under Section 148 IPC	R.I. for a period of one year and also sentenced to pay fine of Rs.1000/- each and in default of fine to further undergo sentence R.I. For three months each.

All the substantive sentences were ordered to run concurrently.

Briefly stated the facts of the case as per prosecution story are that on 24.10.2006 MLRs with regard to injured Kaushalya Bai, Milakh Raj, Tilak Raj and Prem Kumar were received at police station Sadar Fazilka. As such ASI Narinder Pal Singh along with some other police officials from that police station went to Civil Hospital, Fazilka and after taking opinion regarding fitness of the injured to make statements from doctor, ASI Narinder Pal Singh asked from them regarding the incident but they stated that talks for compromise were going on between the parties with the intervention of some respectable persons, therefore, did not get their statements recorded with the police. ASI Narinder Pal Singh along with other police officials again went to Civil Hospital, Fazilka on the next day i.e. 25.10.2006 where he recorded statement of complainant injured Prem Kumar, wherein he stated that they are three brothers and one sister and they are all married. Lachhman Dass son of Chamba Ram had given his plot and transferred the possession in favour of Buta Ram and adjoining to that plot there exist 11 feet passage leading to their house. On 24.10.2006, Harbans Lal, Rakesh Kumar, Ramesh Kumar, Satnam Chand, Jawahra Ram, Jagdish Chander, Mohinder Pal, Harbans Lal and Chhinderpal were going to raise construction on the passage to house of the complainant.

The tractor of the complainant was standing there. At about 1.30

P.M., mother of the complainant stopped the accused from raising construction of wall. At that time the complainant and his brother Tilak Raj were present at home. Rakesh Kumar son of Boota Singh started the tractor and struck it against the gate of their house, as a result of which one supporting pillar of the gate and wall got damaged.

Harbans Lal raised a lalkara that they be taught a lesson for raising the wall. Kaushalya Bai also came there. Harbans Lal armed with a gandasi, Rakesh armed with a Kapa, Ramesh Kumart armed with a gandasi, Satnam Chand armed with a Kapa, Jagdish Chander armed with a gandasi, Mohinder Pal armed with a gandasi and accused Chhinderpal armed with a dang formed an unlawful assembly and trespassed in the house of the complainant and thereby started causing injuries with their respective weapons. Accused Harbans Lal had given a gandasi blow from reverse side to complainant- Prem Kumar, which hit him on his forehead, Mohinder Pal gave a dang blow hitting Prem Kumar on his forehead, Rakesh Kumar gave a Kapa blow hitting complainant on the middle finger of his right hand. When Milakh Raj and Tilak Raj and Kaushalya Bai-mother of complainant came forward to rescue him then accused Ramesh Kumar gave a gandasi blow from its sharp side to Tilak Raj hitting him on his forehead. Chhinderpal gave a dang blow to the complainant hitting him on his right cheek. Satnam Chand gave a Kapa blow from its reverse side hitting Milakh Raj on his forehead. Jagdish Chander gave a gandasi blow from its reverse side hitting Milakh Raj, Chhinderpal gave a dang blow to Milakh Raj hitting him on his left leg. Ramesh Kumar gave a gandasi blow from reverse side to Milakh Raj hitting him on his right foot. Harbans Lal gave a blow of gandasi upon his mother which hit on her forehead. Ramesh Kumar gave a gandasi blow from its reverse side upon her mother which hit on her nose. Satnam Chand gave a Kapa blow from its

reverse side upon his mother which hit on her right leg.

On hearing noises, Ved Parkash along with some other persons came to the spot. Then the assailants ran away from the spot with their respective weapons.

The injured were taken to Civil Hospital, Fazilka by Ved Parkash where they were admitted and medico legally examined. The statement was signed by complainant Prem Kumar. ASI Narinder Pal Singh appended his endorsement below the said statement and sent ruqa to Police Station on the basis of which formal F.I.R. was registered.

The accused were arrested in this case. Thereafter on 31.10.2006 the offence under Section 452 IPC was added. On 11.10.2006, on receipt of X-ray reports, offence under Section 326 IPC was added.

Statements of witnesses were recorded. After completion of investigation and other formalities, challan against the accused was presented. On presentation of challan, they were supplied copies of documents relying upon therein free of cost as provided under Section 207 Cr.P.C. Finding a prima facie case, charge for offences under Sections 452, 326, 323, 427, 148, 149 IPC was framed against the accused. They pleaded not guilty and claimed trial. Case was fixed for evidence of prosecution.

During its evidence, the prosecution examined Prem Kumar complainant as PW1, injured and eye witness Tilak Raj as PW2, Krishan Lal, Mechanic as PW3, Sushil Kumar, Photographer as PW4, Kaushalya Bai the mother of the complainant as PW5, Milkh Raj as PW6, Dr. Rajesh Kumar Sharma as PW7, Narinder Pal Singh, ASI (retired) as PW8. Statements of accused were recorded under Section 313 Cr.P.C. The accused led evidence in defence.

After hearing arguments, the accused were convicted and sentenced as mentioned above.

Feeling aggrieved by the said judgment of their conviction and sentence they filed appeal in the Court of Sessions which was assigned to Additional Sessions Judge, Fazilka who vide judgment dated 2.6.2016 allowed the appeal partly acquitting all the accused for offences under Sections 326, 452 and 148 IPC, all the accused except Rakesh Kumar and Ramesh Kumar were acquitted of the charge framed against them for offences under Sections 324 and 427 read with Section 149 IPC; Ramesh Kumar was acquitted of offence under Section 427 read with Section 149 IPC. However, conviction of accused Harbans Lal son of Boota Ram, Jagdish Chander, Satnam Chand, Mohinder Pal, Harbans Lal son of Bhagwan Dass, Mohinder Pal for an offence under Section 323 IPC was maintained, conviction of accused Rakesh Kumar for offences under Sections 323, 324 and 427 IPC was maintained, conviction of accused Ramesh Kumar for offences under Sections 323, 324 IPC was also maintained. However, convicts Harbans Lal son of Boota Ram, Rakesh Kumar, Jagdish Chander, Satnam Chand, Mohinder Pal, Harbans Lal son of Bhagwan Dass, Chhinder Pal and Ramesh Kumar were ordered to be released on probation on their furnishing of personal probation bonds in the sum of Rs. 50,000/- for a period of six months and they were burdened with the cost also.

Prem Kumar complainant is aggrieved by the said judgment and he has filed the Criminal Revision Petition praying that the same be accepted and respondents no. 2 to 9 be convicted for offences which they had been charged and judgment of conviction and sentenced passed by the trial Magistrate be upheld.

I have heard learned counsel for the petitioner and I find that there is no merit in the petition. The impugned judgment passed by Additional

Sessions Judge is based on proper appraisal, appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein much less apparent on the face of it. The judgment certainly cannot be termed as perverse. The Additional Sessions Judge is not shown to have committed any mistake while coming to the conclusion that offences under Sections 326, 452 and 148 IPC were not made out against all the accused, therefore acquitting them for those offences.

A criminal is treated like a patient whose rehabilitation in the society is called for by granting benefit of probation; and he is kept under scrutiny and observation and if he indulges in any criminal act then he can be taken into custody and made to undergo the sentence.

Keeping in view the offence for which the accused had been convicted, considering their previous antecedents and other facts and circumstances they were rightly granted benefit of probation and no fault can be found with the same. Accordingly, the petition stands dismissed.

(H.S. MADAAN)
JUDGE

March 27, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No