

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

Crl. A.No.S-3170-SB of 2012 (O&M)

Date of Decision:- 18.10.2019

Naresh Kumar

....Appellant

vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Rishi Pal Singh, Advocate,
for the appellant.

Mr. R.T. Rehdu, DAG, Haryana.

SUDHIR MITTAL, J. (Oral)

The case of the prosecution in brief is that on 5.7.2011 complainant-Mukesh Kumar, went to drop one Kanwar Lal on his motorcycle and while returning, he was accosted by Naresh son of Jagdish and Jagdish son of Deep Chand. They were both armed with dandas and they stopped the motorcycle of the complainant. Thereafter, they gave him danda blows and illegally confined him at their house in the night. Next morning, he was released after being threatened. Deepak son of Roshan Lal and some other persons of the village were present when the complainant was thrown out of the house of the accused persons.

2. On the Statement of Complainant DDR No. 36 was recorded on 6.7.2011 and an enquiry was conducted. After completion of the enquiry,

FIR No. 77 dated 21.7.2011 was registered under Sections 323, 341, 342, 506, 34 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST, Act)

3. The trial Court acquitted the appellant of the offence under Section 3 of the SC/ST Act, but convicted him under Sections 323, 341, 342 and 506 IPC. The maximum sentence awarded to the appellant was 6 months along with fine.

4. Vide order dated 20.10.2012, the sentence was suspended and in the same order it is recorded that the fine has been paid.

5. The appeal was admitted by this Court vide order dated 5.11.2012 and the order of suspension of sentence was confirmed.

6. Learned counsel for the appellant submits that independent witnesses Deepak-PW1 and Karan Singh-PW2 did not support the case of the prosecution and were declared hostile. The case of the prosecution has only been supported by the complainant who appeared as PW-10 and his mother Tara Devi, who appeared as PW-11. The evidence of Tara Devi PW-11 cannot be relied upon as it is hearsay evidence. Thus, the appellant is entitled to be acquitted. In the alternative, he prays that the appellant may be released on probation of good conduct.

7. Learned State counsel submits that Tara Devi-PW-11 was present at the time when the complainant was released from unlawful custody and her statement to this extent is admissible in evidence. The fact that the complainant was released from the house of the appellant and his father necessarily leads to the inference that the complainant had been unlawfully confined in their house. The statement of Dr. Rajesh Kumar

PW-9 was that the complainant had suffered 8 injuries on his body and this evidence would lead to the inference that the injuries were inflicted by the appellant and his father. Thus, there is no error in the judgement of the trial Court and the appeal is liable to be dismissed.

8. Having heard learned counsel for the parties and having perused the record with their assistance, I am of the opinion that the conviction of the appellant by the trial court cannot be interfered with.

9. At this stage, learned counsel for the appellant submits that the appellant has been appointed as a Driver in the Haryana Roadways on 17.4.2018 on temporary basis. He is the sole breadwinner of the family and in case he loses his job on account of the conviction, his family would suffer immense hardship. The appellant is not a hardened criminal and no other criminal case has been registered against him either before the present case or thereafter. Thus, he may be released on probation in terms of the Probation of Offenders Act, 1958.

10. Learned State Counsel does not dispute the submission of learned counsel for the appellant that apart from the present case, there is no other criminal case pending or registered against the appellant.

11. In this view of the matter, the interest of justice would be adequately served if the conviction of the appellant is upheld but instead of sentencing him, he is released on probation of good conduct in exercise of powers conferred by the Probation of Offenders Act, 1958. It is so ordered. The order of sentence dated 20.10.2012 is thus modified and it is directed that the appellant shall undergo probation for a period of 6 months. For this purpose, he shall execute a bond with one surety before the concerned

Illaqua Magistrate and in the meanwhile, he shall keep the peace and be of

good behaviour.

13. The appeal is accordingly disposed of by upholding the judgement of conviction but modifying the order of sentence.

October 18, 2019

(SUDHIR MITTAL)

poonam

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No