

CRR-1529-2018 (O&M)

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

**CRR-1529-2018 (O&M).
Decided on: May 9, 2019.**

Mahender Singh and others

.. Petitioners

VERSUS

State of Haryana and another

.. Respondents

*** * ***

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

*** * ***

**PRESENT Mr.Hardeep Singh Kason, Advocate,
 for the petitioners.**

Mr.Manish Bansal, D.A.G. Haryana.

MAHABIR SINGH SINDHU, J.

The present revision petition has been filed under Section 401 of the Code of Criminal Procedure (for short 'Cr.P.C.') against the impugned judgment dated 17.4.2018 passed by the learned Additional Sessions Judge, Fatehabad, whereby the appeal preferred by the petitioners has been dismissed and the judgment of conviction dated 18.9.2015 as well as order of sentence dated 19.9.2015, under Sections 323 and 325 of the Indian Penal Code, (for short 'IPC') of learned Additional Chief Judicial

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Magistrate, Fatehabad, (for short 'ACJM'), has been upheld.

Briefly stated, facts of the prosecution case are that FIR in the present case was registered on the statement Ex.PW1/A given by complainant Joginder Singh son of Faqir Chand, resident of Jhalnia to the police, inter alia, on the allegations that he is labourer by profession. The wall of his house as well as house of his brother Mahender Singh is common in which ventilators were left. Amitabh, son of his brother, after playing obscene songs in his mobile, used to keep the same in the ventilator and went away from the house. They resisted about the act of Amitabh and panchayat got the matter patched up between both the parties and the ventilator was closed. On 27.3.2013, Amitabh again opened the ventilator and thereafter, he and his father were going towards the house of Mahender Singh to make them understand, but in the way at about 2:30/3:00 PM, Mahender Singh, his son Amitabh and his wife Rani met them and all of them were having iron pipes in their hands. Mahender Singh and his son were under the influence of liquor. Mahender Singh gave a pipe blow to the complainant as a result thereof his right hand was injured. Amitabh gave a pipe blow on his right leg and wife of Mahender gave a pipe blow on his back. On hearing their noise, his wife Nihal Kaur came on the spot, but Mahender Singh also gave pipe blow on left arm of his wife. Amitabh gave pipe blow on the head of his wife and Rani also gave 2-3 pipe blows on the back of Nihal Kaur. They raised alarm '*Maar-diya Maar-Diya*' upon which several persons gathered on the spot and rescued them from the clutches of

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the assailants. They telephonically called Gurdeep Singh, who got them admitted in Govt. Hospital where they were medically examined.

On the basis of statement (Ex.PW1/A) an FIR No.166 dated 06.04.2013 under Sections 323, 325 and 34 of the IPC was registered at Police Station, Sadar, Fatehabad.

After investigation, report under Section 173 Cr.P.C. was submitted before the Court of competent jurisdiction, and copies of the same as envisaged under Section 207 Cr.P.C., were supplied to all the accused.

Learned trial Court, finding a prima-facie case against the petitioners, charge-sheeted them under Sections 323 and 325 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of the prosecution case, oral as well as documentary evidence was led and the same was put to the accused under Section 313 Cr.P.C., wherein they claimed innocence while raising the plea of false implication.

After considering the entire material available on record, and hearing both sides, learned trial Court, convicted and sentenced the petitioners under Sections 323 and 325 read with Section 34 IPC, for causing injuries and imposed the sentence in the following manner:-

Under Section	Sentence
323/34 IPC	Rigorous imprisonment for a period of six months each and to pay a fine of Rs.200/- each. In case of non-payment of fine, the convicts shall further undergo simple imprisonment for a period of seven days.

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Under Section	Sentence
325/34 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- each. In case of non-payment of fine, the convicts shall further undergo simple imprisonment for a period of ten days.

Both the substantive sentences were ordered to run concurrently.

Aggrieved against the aforementioned conviction and sentence imposed by learned trial Court, petitioners preferred an appeal before the Court of Sessions, but the same was dismissed by learned Additional Sessions Judge, Fatehabad, vide judgment dated 17.4.2018. Hence, the present revision petition.

As per order dated 01.05.2018, passed by this Court, petitioners confined their prayer only regarding quantum of sentence, in this case.

Learned counsel for the petitioners contends that they are poor persons with no criminal antecedents except the present one. Also contends that petitioners are facing the agony of criminal proceedings since 2013 and have never indulged in any other criminal activity; thus prays that they be released on probation keeping in view the provisions of Section 4 of the Probation of Offenders Act, 1958, for short 'the Act' as well as Section 360 Cr.P.C.

On the other hand, learned State counsel, has opposed the contentions made on behalf of the petitioners and submitted that both the Courts have already taken a lenient view while awarding the sentence on

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lesser side, therefore, no ground is made out to release them on probation.

Heard both sides and perused the paper book.

A perusal of order of sentence dated 19.09.2015 passed by learned ACJM, reveals that benefit of probation was denied to the petitioners only on the ground that they have committed the offence in furtherance of their common intention, whereas learned Additional Sessions Judge has not considered this aspect of the matter at all despite the fact that plea was raised in ground No.6 of the appeal.

Be that as it may, Section 11 (1) of the Act as well as Section 360 (4) Cr.P.C. empower this Court to invoke the provisions of Section 4 of the Act, if the case falls within the parameters laid down therein.

Undisputedly, all the petitioners are the first offenders and they have been convicted and sentenced under Sections 323 and 325 with the aid of Section 34 IPC with sentence of two years, as mentioned above. Petitioners are facing the criminal proceedings for the last more than six years and there is no recurrence brought to the notice of this Court on their part for any criminal activity. Thus, there is no doubt that case of the petitioners is falling within the parameters laid down under Section 4 of the Act keeping in view their conviction and sentence recorded by both the Courts below.

In view of the above, the present revision petition is partly allowed. Conviction of the petitioners under Sections 323 and 325

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read with Section 34 IPC, is upheld and they are ordered to be released on probation for a period of one year on their furnishing personal bonds in the sum of Rs.25,000/- each with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Fetehabad, with an undertaking that during the period of one year, they shall not commit the similar offence and shall maintain peace and harmony and be of good behaviour.

Pending miscellaneous applications, if any shall also stand disposed off.

May 9, 2019.
raj arora

(MAHABIR SINGH SINDHU)
JUDGE

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