

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

225

CRR-1937-2016(O&M)

Date of Decision: 02.03.2022

Kulbhushan @ Kalu and another

....Petitioners

Versus

Lakhanpal and others

....Respondents

CORAM:HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. NS. Swaitch, Advocate for the petitioners.

Mr. Lekh Raj Sharma, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

Present revision petition has been filed against the order dated 08.02.2016 of learned Sessions Judge, Palwal, whereby while convicting the respondents under Section 325 IPC, the Court has ordered they released on probation.

FIR No. 280 dated 21.09.2009, under Sections 323, 325, 506 and 34 IPC was registered at Police Station Hodal against the respondents on the complaint of one Murari Lal. In the said complaint it was alleged that the complainant and his younger son-Kulbhushan were running a grocery shop in the old grain market, Hodal. The shop of respondent No.1 was adjacent to their shop. Respondent No.1 had opened the gate of his shop towards the shop of the son of the complainant. In this regard Civil litigation was also going on between the complainant and respondent No.1 since the year, 1992.

On 21.09.2009 at about 4:15 p.m. respondent No.1

alongwith his sons Nitin and Sonu (respondent No.2 and 3) came in front of the shop of the son of the complainant. They started taking photographs of the shop. The complainant objected to this, thereafter, Sonu-respondent No.3 who was carrying a iron rod inflicted three blows on the head of the complainant. Respondents No. 1 and 2 gave fist blows, kicks and slaps to Kulbhushan the son of the complainant. Offence under Section 325 IPC was added as Kulbhushan had suffered a fracture in his left thumb.

Vide judgment and order dated 16.04.2015 of the learned Sub Divisional Judicial Magistrate, Hodal, the respondents were convicted for offences under Section 323 and 506 read with Section 34 IPC but acquitted of the charges under Section 325 read with Section 34 IPC. Two appeals were filed against the said judgment, one by the respondents challenging their conviction; the other by the petitioners seeking enhancement of sentence and for setting aside the judgment to the extent the accused has been acquitted of the charges under Section 325 IPC. The appeals were disposed of by learned Sessions Judge, Palwal vide impugned order dated 08.02.2016. The appeal of the accused-respondents was dismissed on the issue of conviction. The order of sentence however was modified. Criminal Appeal No. 23 of 2015 filed by the petitioners-complainant was partly allowed. The judgment of the learned Sub Divisional Judicial Magistrate, Hodal to the extent of acquitting the accused of the charge under Section 325 IPC. Instead of imprisonment the respondent-accused were ordered to be released on probation on submitting

probation bonds in the sum of Rs. 35,000/- with one surety in the like amount each, without supervision, for a period of two years and to keep and be of good behavior in the meantime. They were also directed to pay a compensation of Rs. 50,000 which was to be disbursed to Murari Lal and his injured son Kulbhushan in equal shares.

Learned counsel for the petitioner has assailed the order to the extent of directing the release of the respondent-accused on probation.

Having heard learned counsel for the parties.

I find no infirmity in the order of learned Sessions Judge, Palwal directing the release of the petitioner on probation. The relevant Section 360 Cr.P.C. which deals with release on probation is reproduced herein below:

“360. Order to release on probation of good conduct or after admonition.

(1)When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall

dispose of the case in the manner provided by sub- section (2).
*****”

As per Section 360 Cr.P.C. when any person not under 21 years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less and has not been previously convicted, the Court convicting him taking into account the age, character or antecedents of the offender and the circumstances in which the offence was committed may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during a period not exceeding three years as may be directed and meanwhile to keep peace and good behaviour.

Taking into account the circumstances of the case, the learned Sessions Judge, Palwal has instead of convicting the respondents ordered that they released on probation. No fault can be found therein.

The incident is of the year, 2009. The order for release of the respondents on probation is 08.02.2016. The period of probation of two years has already expired.

There is no ground to interfere with the impugned order
This petition is dismissed.

[HARINDER SINGH SIDHU]
JUDGE

March 02, 2022

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Whether speaking/reasoned	yes
Whether reportable?	no