

his neighbours i.e., respondents 2 and 3 (along with 2 others persons who have been acquitted by the learned Trial Court) entered the house of the petitioner. Respondents 2 and 3 were armed with '*dangs*'. Respondent no. 2 struck the complainant with the *dang* on his left shoulder and also hit the father of the petitioner. Then, respondent no. 3 dealt multiple blows on the petitioner and his mother using the same weapon. On hearing the commotion, people assembled at the spot and on seeing them, respondents No. 2 and 3 fled away with their respective weapons. The FIR was registered on the basis of the statement of the complainant on 18.01.2005. After completion of the investigation, the challan was presented against respondents 2 and 3 along with two other persons. Finding a prima facie case charge under Sections 323, 325, 452, 506 read with Section 34 of the IPC was framed against the accused to which they pleaded not guilty and claimed trial.

3. After assessing all the material on record, the learned trial Court convicted respondent no. 2 and 3 vide judgment dated 31.03.2016 but released them on probation and acquitted Satya Devi and Paramjit @ Pammi. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 23.07.2019.

4. Learned counsel for the petitioner assails the judgment of the lower Appellate Court on the ground that it has mechanically decided the appeal of the petitioner and has upheld the observations of the of the learned trial Court without due application of mind. This is evident from the fact that the Court has failed to consider that the occurrence took place in the house of the petitioner, and as such, respondents 2 and 3 should have been convicted under Section 452 of the IPC.

5. Learned counsel further submits that the MLRs of the petitioner

and his aged parents are self-explanatory and it is patently discernible that the mother of the petitioner suffered grievous injuries. Moreover it is an established fact that respondents No. 2 and 3-accused used dangs in the commission of the crime. Hence, by granting the benefit of probation to respondents 2 and 3, the Courts below have failed to appreciate the gravity of the offence. The learned Courts below, by taking recourse to probation, have failed to deliver justice to the petitioner and his family members, who were victims of uncalled aggression of respondents No. 2 and 3-accused.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgements of the courts below to indicate perversity or misreading of evidence in their judgements. With respect to the offence under section 452 of IPC, there is no evidence to substantiate that the occurrence took place within the four walls of the house of the petitioner. As per the statement of the Investigating Officer, the place of incident was found to be a street outside the house of the petitioner. Further, it is the prosecution case that upon hearing the pandemonium, many people assembled, and on seeing them the accused ran away. However, no statement of any independent or public witness has been recorded by the investigating team to substantiate the prosecution's claim. Since it cannot be ascertained for certain that the petitioner and his family were assaulted inside their house, offence under Section 452 cannot be made out.

7. Upon appreciating all the material on record, the learned trial Court convicted respondents 2 and 3 and granted them the benefit of probation. It may be apposite at this stage to mention that Sections 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good

conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

8. In the instant case, both the respondents-accused had no criminal antecedents. They were first time offenders. Further, both of them have completed their probation period successfully without violating any provisions/conditions laid down by the learned trial Court. Additionally, they have been held guilty for offences punishable under Sections 323 and 325 of IPC for which no minimum punishment has been prescribed. With regard to the

gravity of the offence, it must be stated that the injuries were inflicted on the non-vital parts of the bodies of the victims with a blunt weapon. Lastly, respondents No. 2 and 3 had faced the agony of a protracted trial, which lasted for more than a decade before they were granted probation. Taking all the facts and circumstances into account, the learned trial Court was justified in granting the benefit of releasing them on probation of good conduct.

9. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court or the learned trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

01.03.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No