

**CRA-S-1190-SB-2009(O&M)****1**

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

R-302**CRA-S-1190-SB-2009 (O&M)****Date of Decision: 04.11.2025****Sham Kumar****.....Appellant****Versus****State of Haryana****..... Respondent****CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH****Present:** Mr. Reetesh Kumar, Advocate for the appellant.

Mr. Vijay Kumar, Asst. A.G., Haryana.

SURYA PARTAP SINGH, J. (Oral):

This appeal has been preferred by the appellant against the judgment of conviction dated 17.04.2009 and order of sentence dated 18.04.2009 passed by the learned Sessions Judge, Rohtak, hereinafter referred as 'Trial Court'.

2. It has been averred by the appellant that without proper appreciation of fact as well as law, the judgment of conviction and order of sentence has been rendered by the learned Trial Court. According to appellant, the learned Trial Court has failed to appreciate that it is bounden duty of prosecution to prove its case beyond the shadow of all reasonable doubts and that in the case in hand, the prosecution had miserably failed to discharge its duty. While alleging that the impugned



judgment of conviction and order of sentence are an outcome of presumption & assumption, and that the findings have been returned by the learned Trial Court on the basis of conjectures and surmises, the appellant has sought indulgence and interference of appellate jurisdiction of this Court. According to appellant by accepting the instant appeal, the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted.

3. In nutshell, the facts emerging from record are that the appellant was prosecuted for the commission of offence punishable under Sections 323/324/307 r/w Section 34 IPC and the FIR against him was lodged on the statement of Jagjit Kaur who stated that on 26.06.2005 at about 6:00 PM when she was going to throw cow dung in the manure pit, Davender Kumar and Sham Kumar hurled abuses to her and when she opposed to their above mentioned conduct, accused Sham attacked her with the help of lathi. The above named complainant further stated that the accused Davender was carrying a screw-driver and he inflicted injury on her face, chest and abdomen with the above mentioned screw-driver. According to complainant when she screamed for help, Nanda and other villagers arrived on the spot and rescued her from the clutches of accused.

4. It is the case of the prosecution that on the basis of above-mentioned statement, formal FIR was registered and the investigation taken up. The prosecution has alleged that pursuant to above mentioned



investigation, when the final report was submitted before the Court, under Section 173 Cr.P.C., and the appellant was sent to the Court for trial, the above mentioned trial culminated into conviction of the appellant.

5. Heard.

6. It has been contended on behalf of appellant that the appellant is innocent and that on the basis of procured evidence, they have been falsely implicated in the present case. As per learned counsel for the appellant, the evidence produced by the investigating agency was not properly appreciated by the learned Trial Court and that the same was not good enough to meet the prescribed standard. However, the learned counsel for the appellant has taken a stand that the appellant do not want to press instant appeal with regard to judgment of conviction. As per learned counsel for the appellant, the appellant has clean antecedents and he has not been prosecuted for any other offence, either before the filing of instant appeal qua above said FIR or thereafter.

7. According to learned counsel for the appellant, although charge for the commission of offence under Sections 323 and 307 was framed against the appellant, but he has been held guilty for the commission of offence under Section 323 of IPC only. The learned counsel for the appellant has further contended that since the offence for which the appeal has been filed is triable by the Court of Judicial Magistrate and the



maximum imprisonment is upto two years only, the appellant is entitled for the benefit of probation.

8. In view of above mentioned arguments, the learned counsel for the appellant has urged that the appeal with regard to judgment of conviction may be dismissed, and while upholding the judgment of conviction of the appellant, by setting aside the order of quantum of sentence, the benefit of probation be afforded to the appellant.

9. *Per contra*, the learned State counsel has argued that the sentence awarded to the appellant is already on lower side as against the maximum imprisonment prescribed for the commission of offence is two years, but the sentence for a period of one year only has been awarded to the appellant.

10. The record has been perused carefully.

11. In view of the fact that instant appeal with regard to judgment of conviction has not been pressed by the appellant, it is hereby held that with regard to judgment of conviction, the appeal deserves dismissal. Hence, the instant appeal with regard to above mentioned verdict is hereby dismissed and the impugned judgment of conviction is hereby upheld.

12. As far as the order of quantum of sentence is concerned, in view of the fact that the complainant and the appellant are residents of same village and that either before the filing of the FIR or in the next more than 20 years after the filing of FIR, the appellant has not been found involved in



any criminal activities, it is hereby held that instant case, wherein the appellant has been held guilty for the commission of offence punishable for maximum imprisonment of two years, is a fit case for extending the benefit of probation to the appellant.

13. In view of above mentioned observations, the present appeal with regard to order of quantum of sentence is hereby allowed and by setting aside the order passed by learned Trial Court on the point of quantum of sentence, it is hereby ordered that the benefit of probation of good conduct be accorded to the appellant, subject to the condition of furnishing requisite bonds by him before the learned Trial Court within a period of one month from today.

14. Accordingly, the present appeal stands allowed partly.

(SURYA PARTAP SINGH)
JUDGE

04.11.2025

Kapil

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