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**(2020) 03 P&H CK 0074**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 2866, 2868 Of 2017

Kalu Ram

APPELLANT

Vs

Gopi Ram And Others

RESPONDENT

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**Date of Decision:** March 5, 2020

**Acts Referred:**

- Probation Of Offenders Act, 1958 - Section 4(1)
- Code Of Criminal Procedure 1973 - Section 313
- Indian Penal Code, 1860 - Section 34, 323, 324, 506

**Hon'ble Judges:** Vivek Puri, J

**Bench:** Single Bench

**Advocate:** Kameshwar Gumber, Sakshi Bakshi

**Final Decision:** Dismissed

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**Judgement**

Vivek Puri, J

[1] This order shall dispose of the above-mentioned two revision petitions as the same are preferred against the common judgment.

[2] For brevity, the facts are being extracted from Criminal Revision No.2866 of 2017.

[3] The aforesaid revision petitions have been preferred by the complainant against the judgment dated 29.03.2017 passed by the learned Additional

Sessions Judge, Fazilka vide which the findings of acquittal as recorded by the learned Chief Judicial Magistrate, Fazilka with regard to respondent

Nos.1 & 3, i.e. Gopi Ram and Guddi Devi were upheld and the conviction of respondent No.2 Faqir Chand was also upheld but he was released on

probation of good conduct under Section 4(1) of the Probation of Offenders Act, 1958.

[4] Briefly, the facts of the case are like that, Kalu Ram-complainant had filed a complaint against the respondents-accused alleging that on 09.3.2011

at about 12.30 p.m., he had come to his house to consume meals. In the meanwhile, Gopi Ram armed with dang, Faqir Chand armed with Kappa and

Guddi Devi armed with dang arrived at the spot. They raised lalkara that the complainant should come out of the house and he will be taught a lesson

for attending the date of hearing in the Court. When the complainant came out of the house, Faqir Chand gave first blow with Kappa from reverse

side on the left hand of the complainant and another blow on the left wrist of the complainant. Gopi Ram inflicted dang blow on the forehead of the

complainant. Guddi Devi inflicted dang blow on the right hip of the complainant. A lalkara was raised which attracted Banwari Lal and Om Parkash at

the spot who rescued the complainant from the clutches of the accused. On seeing the people assembling at the spot, the accused persons slipped

away with their respective weapons. The complainant was admitted in Civil Hospital at Fazilka. The motive was that the complainant filed a civil suit

titled as Kalu Ram versus Gopi Ram etc. in the Court of learned Civil Judge, Fazilka, on account of a dispute with regard to the gate of his house.

[5] The complainant led the preliminary evidence and the accused were summoned under Sections 323 read with Section 34 of Cr.P.C.. The

complainant had himself stepped into witness box as CW-1 and also examined four other witnesses, namely, CW-2 Banwari Lal, CW-3 Om Parkash,

CW-4 Rashdip and CW-4 Dr.Hans Raj. Statements of the accused under Section 313 Cr.P.C. were recorded and they have produced a copy of the

judgment dated 10.09.2013 exhibit D-1, titled as Kalu Ram versus Gopi Ram etc., passed by the Court of learned Civil Judge, Junior Division, Fazilka,

[6] Learned Additional Chief Judicial Magistrate, had convicted the accused Faqir Chand under Section 323 IPC and sentenced him to undergo simple

imprisonment for a period of one month, whereas, the accused Gopi Ram and Guddi Devi have been acquitted vide judgment dated 30.11.2016.

[7] Aggrieved by the aforesaid judgment, Kalu Ram-complainant as well as accused Faqir Chand had filed separate appeals before the learned

Additional Sessions Judge, Fazilka. Faqir Chand sought acquittal whereas, Kalu Ram sought conviction of Gopi Ram and Guddi Devi. Both the appeals

were disposed of vide judgment dated 29.03.2016. The acquittal of Gopi Ram and Guddi Rani was upheld and Faqir Chand was ordered to be released

on probation on good conduct and he was also directed to deposit an amount of Rs.5000/- as compensation to be paid to the complainant Kalu Ram.

[8] Aggrieved by the aforesaid judgment of the appellate Court, Kalu Ram-complainant has preferred the present revision petitions. In Criminal

Revision No.2866 of 2017, he is seeking conviction of the accused under Section 323/324/506 read with Section 34 IPC and in Criminal Revision

No.2868, the complainant Kalu Ram is seeking for setting-aside of the judgment with regard to release of Faqir Chand on probation on good conduct.

[9] As both the revision petitions have arisen out of the common judgment of the Courts below, the same are being disposed of by this judgment.

[10] At the very outset, it may be mentioned here that Gopi Ram and Guddi Devi were acquitted by the learned Additional Chief Judicial Magistrate,

Fazilka and their acquittal has even been upheld by the learned Additional Sessions Judge, Fazilka. They are the family members of accused Faqir

Chand. Consequently, the possibility cannot be ruled out that they have been sought to be implicated on account of enmity between the parties. A Civil

Suit between the parties is also pending in the Court. Moreso, there is a categoric observation of the Courts below that there was discrepancy with

regard to the injury attributed to Gopi Ram and Guddi Devi. In the preliminary evidence, Kalu Ram complainant had not specified the name of Gopi

Ram. However, after summoning of the accused, he had attributed the injury on his forehead to Gopi Ram. It has also been observed by the Courts

below that Kalu Ram-complainant has testified to the effect that Guddi Devi had inflicted injury on his right hand with dang but there was no such

injury as per the MLR. Consequently, it was concluded that injuries attributed to Gopi Ram and Guddi Devi appear to be doubtful and consequently,

they were extended the benefit of reasonable doubt.

[11] The finding of acquittal recorded by the Courts below bolsters the presumption of innocence in their favour. It may be mentioned here that in an

appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting-

aside the acquittal merely because other view is also possible. The Appellate Court cannot substitute its reasons or possible view, if the view of the learned trial Court while acquitting the accused was a possible view. Furthermore, the acquittal of the accused bolsters the presumption of innocence in favour of the accused. Moreover, no illegality, irregularity or perversity is made out in the judgments passed by the Courts below so far as the finding of acquittal has been recorded with regard to Gopi Ram and Guddi Devi.

[12] With regard to the quantum of sentence qua Faqir Chand, it may be recapitulated that he was sentenced to undergo simple imprisonment for a period of one month by the learned trial Court. However, in appeal, the sentence was modified by the learned Additional Sessions Judge, Fazilka and

he was ordered to be released on probation on good conduct and also directed to pay a fine of Rs.5000/- as compensation to the complainant Kalu

Ram. The learned Appellate Court has assigned sufficient and valid reason for extending the benefit of release of Faqir Chand on good conduct. The

occurrence took place as back as on 09.03.2011 and the injury attributed to Faqir Chand is on the hand of the complainant by blunt side of the Kappa.

It has been observed by the Court below that he should be given an opportunity to reform himself to join the main stream of the nation rather than

sending him to jail to mix up with the hardened criminals. Faqir Chand was aged about 25 years at the time of occurrence and no criminal antecedents

have been put forth against him. Consequently, keeping in view the entire circumstances including the gravity of the offence, the learned Appellate

Court has recorded valid reasons for extending the benefit of release on probation on good conduct to Faqir Chand accused. Furthermore, the interest

of the complainant has also been taken care of and Faqir Chand was directed to pay a sum of Rs.5,000/- as compensation to the complainant-Kalu

Ram and the said amount was also deposited by him. In such circumstances, the discretion exercised by the Courts below in releasing Faqir Chand on

probation on good conduct is on the basis of well assigned reasons and do not call for any interference by this Court.

[13] For the aforesaid reasons, both the revision petitions being devoid of any merit are dismissed.