

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.A No.330 of 2007**

**Date of decision : June 30, 2009**

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<b>State of H.P.</b>	<b>Versus</b>	<b>...Appellant.</b>
<b>Balvinder Singh and others</b>		<b>...Respondents.</b>

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the Appellant : Mr. Ramesh Thakur, Assistant Advocate General.**

**For the Respondents : Mr. Tarlok Chauhan, Advocate.**

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**Surjit Singh, J** (oral)

This appeal by the State is directed against the judgment, dated 16<sup>th</sup> May, 2007, of learned Additional Sessions Judge, whereby conviction and sentence of the respondents, for offences, under Sections 323 and 506 read with Section 34 of the Indian Penal Code, ordered by the trial Magistrate, vide judgment dated 15<sup>th</sup> May, 2002, have been set aside and they have been acquitted.

**2.** Respondents were prosecuted for offences, under Sections 451, 323 and 506, read with Section 34 of the Indian Penal Code, on police report instituted at the instance of PW-1 Narvada Devi, who reported to the police that on 19<sup>th</sup> October, 1998, around 3.30 p.m., when she was mud-plastering her house, respondent Balvinder Singh came there, pulled her chain and ran away with the same. She further reported that when she was chasing respondent Balvinder Singh, respondent Hira Devi, mother of Balvinder and his sister Pushpa came there.

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Whether reporters of the local papers may be allowed to see the judgment?

Balvinder Singh also came with them. He was having a *Drat* and Hira Devi was having a *Danda* and she was given beatings, by means of *Danda* by Hira Devi. It was further reported by her that in the meanwhile, Bhag Mal, accompanied by his son respondent Vijay Kumar, also came there and they threatened to kill her. Respondents were charged with offences, under Sections 451, 323, 506 (second part), read with Section 34 of the Indian Penal Code and on their pleading not guilty were put on trial.

**3.** Learned trial Court concluded that charge of house trespass, punishable under Section 451 of the Indian Penal Code, was not proved. However, all the respondents were held guilty of offences, under Sections 323 and 506, read with Section 34 of the Indian Penal Code, and sentenced to undergo simple imprisonment for one month and fine of Rs.200/-, for offence, under Sections 323, read with Section 34 of the Indian Penal Code and simple imprisonment for two months and fine of Rs.500/- for offence, under Section 506, read with Section 34 of the Indian Penal Code. Respondents appealed against their conviction and sentence to the Sessions Court. Learned Sessions Judge, vide impugned judgment, has accepted the appeal and acquitted all the respondents.

**4.** I have heard the learned Assistant Advocate General, as also the learned counsel for the respondents and perused the record.

**5.** Conviction for offence, under Section 506, read with Section 34 of the Indian Penal Code, by the trial Court was bad,

on the face of it, because while lodging the FIR, PW-1 Narvada Devi complained that threat was administered, by respondents Bhag Mal and Vijay Singh, to kill her but while in the witness-box, she stated that the threat was that her husband and father-in-law would be killed. The two versions being contradictory, neither of them could have been believed.

**6.** As regards charge, under Section 323, read with Section 34 of the Indian Penal Code, evidence adduced by the prosecution is also contradictory. While, according to PW-1 Narvada Devi herself, she was given *Danda* blows, when respondent Balvinder Singh and Pushpa Devi had caught hold of her by her arms, but other witnesses, namely PW-3 Ashok Kumar and PW-4 Savitri Devi did not say, even a word, about Narvada Devi having been caught hold by Balvinder Singh and his sister. Story that respondent Balvinder Singh came armed with a *Drat* was found to be false by the Investigating Officer, as the investigation revealed that *Drat* was not with Balvinder Singh but with a servant of Narvada Devi, named PW-3 Ashok Kumar, and that Balvinder Singh had simply snatched it from him and thrown it away so that it was not used.

**7.** Evidence on record suggests that the incident had taken place, because of a cow of respondent Hira Devi having strayed into the fields of Narvada Devi, over which the parties quarreled and had a minor scuffle.

In view of the abovestated position, I see no merit in the present appeal. The same is, therefore, dismissed.

**June 30, 2009**<sub>(sd)</sub>

**( Surjit Singh ), J**