

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

**CRA-S-1166-SB of 2000 (O & M)
Date of decision : 13.2.2015**

Kuldip Singh **.....Appellant**

v.

State of Punjab **.....Respondent**

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mrs. Baljit Kaur Mann, Advocate, for the appellant

Ms. Minakshi Goyal, AAG, Punjab

Mr. Gaurav Gurcharan Singh Rai, Advocate, for the complainant

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Raj Rahul Garg, J.

Appellant Kuldip Singh son of Harbhajan Singh called in question legality of the judgment dated 18.11.2000 and order on sentence of even date recorded by the learned trial Court. He further called in question the correctness of the conviction recorded vide which Kuldip Singh and co-accused Pritpal Singh were sentenced as under :

<u>Name of the appellant</u>	<u>under Section</u>	<u>Imprisonment RI</u>	<u>Fine (₹)</u>
1. Kuldip Singh	459 IPC	5 years	2000/-
	326 IPC	4 years	2000/-
	452 IPC	3 years	1000/-
2. Pritpal Singh	460 IPC	5 years	1000/-
	326/34 IPC	3 years	1000/-
	452 IPC	3 years	1000/-

(Both the accused were sentenced with default stipulation and all the substantive sentences were ordered to run concurrently).

In brief, facts of the prosecution case are like this; that on 26.6.1997 complainant Arjinder Singh (PW2) was lying on a cot in his factory situated at Gurdev Nagar, Ludhiana. At about 10.30 P.M. accused Pritpal Singh @ Marshal and Kuldip Singh @ Paramvir came on a motor cycle bearing Registration No. PB 10W 615 and entered into the factory after scaling over the gate. Accused Pritpal Singh was armed with iron pipe and accused Kuldip Singh with datar. Kuldip Singh remarked that he was staring at them and that they would teach lesson to him for doing so. Accused Pritpal Singh gave iron pipe blows to him on his right arm, left arm near elbow, right leg and back of his head. Kuldip Singh gave datar blows on his forehead and left leg. Accused Pritpal Singh then picked up the keys of almirah, lying underneath the pillow, and committed robbery of Rs.9500/-. When Zora Singh and Hoshiar Singh, employees in the factory, came there, both the accused ran away from the spot along with money and their respective weapons. Thereafter, his father Baldev Singh reached the factory, who brought him to Civil Hospital where he remained admitted for about 9 days. On 27.6.1997 ASI Jagroop Singh, on wireless message received in Police Station Division No.5 from Police Station Division No.2, reached Civil Hospital and vide Ex.PW7/A obtained opinion of the doctor regarding fitness of the injured to make statement. Statement of complainant Ex.PB was recorded which was signed by him. Ruka Ex. PB/1 was sent to the police station, on the basis of which FIR Ex.PB/2 was recorded by ASI Devinder Singh. Thereafter, the Investigating Officer went to the place of occurrence and prepared rough site plan. On 2.7.1997 both the accused were

arrested from their houses. Motor cycle was taken into police possession vide memo Ex.PW7/C. On the disclosure statement Ex.PW7/D of accused Pritpal Singh, pipe in question was recovered from the bushes near Sunet Canal and taken into police possession vide memo Ex.PW7/E. Rough site plan of the place of recovery Ex.PW7/F was prepared. On 26.6.1997 Dr. Manjit Singh Bajwa conducted the medical examination of the complainant and only one injury was decalred as grievous. Statements of the witnesses were recorded and after completion of the necessary investigation, challan was put in Court against the accused-appellants.

Finding prima-facie case against the accused-appellants for committing offence punishable under Sections 452, 397, 459/460 and 326 read with section 34 IPC, they were charge sheeted accordingly, to which they pleaded not guilty and claimed trial.

After taking prosecution evidence, statements of accused under Section 313 Cr.P.C. recorded. Each and every incriminating allegation was put to the appellants to which they denied each allegation and pleaded their innocence. Their plea in defence is that mother of the complainant contested election of Municipal Corporation against Bibi Gopal Kaur, who was supported by them and she won the election.

In defence, accused have also examined Smt. Gopal Kaur as DW 1 and Narinder Singh as DW 2.

After hearing learned counsel for both the parties and appraisal of entire evidence and material coming on record, the learned trial Court has convicted the accused-appellants and sentenced them as stated above.

Against the impugned judgment dated 18.11.2000 and order on sentence of even date, both the accused have filed their appeals separately. The

present appeal is filed by Kudlip Singh son of Harbhajan Singh.

I have heard Mrs. Baljit Kaur Mann, counsel for the appellant, Ms. Minakshi Goyal, AAG, Punjab for the State and Mr. Gaurav Gurcharan Singh Rai, counsel for the complainant and have appraised the entire material coming on record.

When the appeal was fixed for hearing of arguments, learned counsel for the appellant contended that she does not contest the findings of the learned trial Court recorded on conviction, however, in the matter of awarding sentence, leniency may be shown to the accused/appellant. The case is more than 14 years old. Parties have also compromised this case. Compromise deed has been placed on file as Annexure A-1 and affidavit of Arjinder Singh complainant as Annexure A-2. As the above said offences are not compoundable, therefore, permission to compound cannot be granted to the appellant being against statute.

Under these circumstances, learned counsel for the appellant has cited the following judgments :-

1. **Chhota Singh v. State of Punjab 1998(1) RCR (Criminal) P & H 467;**
2. **Jai Pal v. State of Haryana 2003 (4) RCR (Criminal) P & H 860**
3. **Sardara Singh and others v. State of Punjab 2004 (3) RCR (Criminal) P & H 265**
4. **Bankat v. State of Maharashtra 2005 (1) RCR (Criminal) SC 306;**
5. **Badrilal v. State of Madhya Pradesh 2005 (7) SCC 55;**
6. **Gulab Das and others v. State of MP 2012 (1) RCR (Criminal) SC220**
7. **Narinder Singh and others v. State of Punjab and another 2014 (2) RCR (Criminal) SC 483.**

In the above cited cases, the offences are non compoundable. Thus, taking into

consideration the factum of registration of the case more than 10 years old and further the fact that parties have settled the dispute, no untoward incident has happened while the accused were on bail etc., the sentence of the accused were reduced to already undergone.

In the case in hand as well, the FIR was registered on 27.6.1997. Thus, the offence was allegedly committed more than 17 years ago. Now the parties have settled the dispute. They want to live in peace. Even complainant Arjinder Singh deposed by way of his affidavit Annexure A-2 that he has no objection if the conviction of Kuldip Singh is set aside and he is acquitted of the charges levelled against him. In Compromise deed Annexure A-1, it also finds mention that the complainant/injured has no objection if the conviction is set aside and the appellant is acquitted of the charges levelled against him. As per custody certificate, appellant Kuldip Singh has already undergone, with remissions, one year, 10 months and 7 days' sentence.

In such circumstances, while maintaining the conviction recorded under Sections 452, 326, 459 and 460 IPC against appellant Kuldip Singh son of Harbhajan Singh, his sentence is reduced to one year and ten months already undergone. However, the sentence of fine imposed stands maintained. All the substantive sentences shall run concurrently.

In view of the above discussion, this appeal is dismissed with the above modification.

(RAJ RAHUL GARG)
JUDGE

13.2.2015
Ashwani