

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

CRA-S-691-SB of 2001(O&M)

Date of Decision : 21.10.2015

Satbir Singh and ors.

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Manoj Taya, Advocate
for the appellants.

Mr. Vijesh Sharma, DAG, Haryana.

None for the complainant.

GURMIT RAM, J.

This appeal is preferred by above-said appellants Satbir Singh and others against the judgment dated 14.6.2001 and order of sentence dated 15.6.2001 passed by the Court of learned Additional Sessions Judge, Jind vide which they were held guilty for the offences punishable under Sections 307/34, 326/34 and 323/34 of the IPC and sentenced them thereunder in criminal case bearing FIR No.123 dated 18.5.1997, Police Station Pillu Khera, District Jind.

2. The case of prosecution precisely stated as put forth before the learned trial Court was that on 17.5.1997, a VT message was received in Police Station, Pillu Khera from Police Station City, Jind regarding admission of injured Inder Singh son of Maha Singh, resident of village

Bhambewa in Government Hospital, Jind. On this ASI Dharam Singh along with some other police officials reached at said hospital and sought the opinion of the doctor to record the statement of said injured, who was declared unfit to make the statement by the doctor. Thereafter, he went to village Bhambewa and recorded the statement of complainant Balbir Singh son of Jodha Ram which was as under:-

“Today at about 7:30 A.M., he was going to his fields and one Mahinder Singh son of Fateh Singh was following him at some distance. When he reached near the land of Sudhagiri, he saw his cousin Inder Singh son of Maha Singh standing near the tractor in his field. In the meanwhile, Satbir Singh, Mahinder Singh, Ram Kumar and Inder Singh sons of Manphool Singh of his village came running from the side heap of straw i.e. *turi*. Satbir Singh was armed with a *gandasi*, Mahinder Singh and Ram Kumar were armed with *lathies* and Inder Singh was armed with a *jelli*. Accused Satbir Singh raised a *lalkara* to teach a lesson to said Inder Singh son of Maha Singh for inflicting injuries and taking action against Ram Kumar. Further he gave a *gandasi* blow to said Inder Singh which hit on his head, who after receiving this injury fell down. Then accused Mahinder Singh and Ram Kumar gave him several *lathi* blows on his both the legs. Then accused Inder Singh son of Manphool Singh gave *jelli* blow to him which hit on his chest. Further accused Satbir Singh gave him kick which hit on his left cheek. Upon raising *raula* by the complainant and Mohinder Singh, above-said accused ran away from the spot along with their weapons. All the said accused caused injuries to Inder Singh in order to take revenge of earlier quarrel with common intention to kill him.”

After recording the above statement of complainant, it was

read over to him and he had signed the same in Hindi after admitting it to be correct. ASI Dharam Singh made his endorsement on the statement of complainant and sent ruqqa to police station, on the basis of which, the instant case was registered. Then statement of injured Inder Singh was also recorded later on after getting opinion of the doctor regarding his fitness to make the statement. Accused were arrested. Weapons of offence were taken into police possession. Statements of witnesses were recorded. On completion of investigation, challan in this case was presented in the Court of learned Illaqa Magistrate, who further committed the same to the Court of learned Sessions Judge, Jind for the trial after making compliance of the provisions of Section 207 of Cr.P.C.

3. Then the accused were charge-sheeted for the offences punishable under sections 307, 326 and 323 read with Section 34, IPC, by the learned trial Court, to which, they pleaded not guilty and claimed trial.

4. During trial of the case, thirteen witnesses were examined by the prosecution besides tendering report of FSL Ex.PZ and results of Serological Analysis of blood Ex.PZ/1, in order to prove its version against the accused.

5. Then the accused were duly examined as per the provisions of section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against them during trial of the case was put to them, which was denied by them entirely. Further they pleaded their innocence and false implication in this case due to some previous litigation.

In their defence, accused also examined Civil Ahlmad – Rakesh Kumar as DW1.

6. The learned trial Court on culmination of the trial heard counsel for both the parties, perused the record as well and held the accused guilty for the offences punishable under Sections 307/34, 326/34 and 323/34 of the IPC vide the impugned judgment by awarding them sentences as detailed below:-

Under Section 307 read with Section 34, IPC.	Each accused is sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.3,000/- each and in default of payment of fine, each accused shall suffer further rigorous imprisonment for a period of six months.
Under Section 326 read with Section 34, IPC.	Each accused is sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/- each and in default of payment of fine, each accused shall suffer further rigorous imprisonment for a period of six months.
Under Section 323 read with Section 34, IPC.	Each accused is sentenced to undergo rigorous imprisonment for a period of three months.

7. Appellants being dissatisfied with the impugned judgment and order of sentence came up in the instant appeal before this Court, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

8. I have heard the learned counsel for the appellants, learned State counsel and have also gone through the record with their able assistance.

9. Before proceeding on the rival contentions of both the parties, I deem it necessary to analyse the evidence which had come on the record during trial of the case and the same is as under:-

PW5 Balbir Singh was the complainant as well as eye-witness to the alleged occurrence. He made his statement Ex.PM before the police on 17.5.1997 with regard to this occurrence. Further he also proved memo Ex.PN vide which blood stained earth lifted from the spot,

after preparing its parcel, was taken into police possession.

PW3 Inder Singh son of Maha Singh was injured as well as eye-witness of this occurrence. As per his statement accused Satbir Singh was armed with a *gandasi*, accused Inder Singh son of Manphool Singh was armed with a *jelli* and whereas accused Ram Kumar and Mohinder were armed with *lathies* at the time of occurrence. Accused Satbir raised a *lalkara* that a lesson be taught to him for taking legal action against Ram Kumar. Thereafter, this accused gave him a *gandasi* blow which hit on his head. Accused Mahinder gave him a *lathi* blow on his left leg and accused Ram Kumar gave him a *lathi* blow on his right leg when he was lying on the ground. *Jelli* blow given by accused Inder Singh like lathi-wise hit him on his chest. Accused Satbir further gave him a push blow with his *gandasi* on his mouth. He was taken to hospital where he was medically examined and treated. His statement was recorded in this case on 19.5.1997. Further he proved memo Ex.PD vide which his shirt and *pajama* after converting the same into a sealed parcel were taken into police possession.

PW4 Dr.V.K. Satija had medico-legally examined injured Inder Singh son of Maha Singh on 17.5.1997. He proved the carbon copy of his MLR Ex.PE depicting eight injuries on his person which were found during his medical examination. Further on receipt of x-ray report Ex.PA, he opined on 19.5.1997 that there was fracture of left parieto temporal bone and as such injury No.1 was declared dangerous to life.

PW1 Dr. Suraj Kamboj also proved the said x-ray report Ex.PA as well as the x-ray films of injured Inder Singh as Ex.P1 to Ex.P3.

PW12 SI Dharam Singh was Investigating Officer of this case. On the relevant date, he was posted as ASI at Police Station Pillu Khera. On receipt of information regarding admission of injured Inder Singh in Government Hospital, Jind, he went to said hospital wherein the doctor declared the injured unfit to make statement on his application Ex.PG. Further he also proved the statement Ex.PM made before him by complainant Balbir Singh, upon which he made his endorsement Ex.PM/3. Further he prepared the rough site-plan of the place of occurrence Ex.PY and also lifted blood stained earth from the spot, the parcel of which was prepared and the same was taken into police possession vide recovery memo Ex.PN. Then he recorded the statement of injured Inder Singh on 19.5.1997 when he was declared fit by the doctor to make statement. Then he also proved the memo Ex.PD vide which the parcel containing blood stained clothes of injured Inder Singh was taken into police possession. Further he stated about the arrest of accused as well as of the recovery of the weapons of offence. He also recorded the statements of witnesses and on completion of investigation, challan was presented in the Court.

PW11 SI Hoshiar Singh proved the FIR Ex.PM/1 which he recorded on receipt of ruqqa Ex.PM.

Statements of remaining prosecution witnesses were formal in nature and there is no need to discuss the same as now the parties are *ad idem* with regard to the alleged occurrence, since the matter was compromised by them during the pendency of this appeal.

10. This appeal was earlier dealt with and disposed of by another

Hon'ble Bench of this Court vide order dated 10.1.2013. The operative part of the same is as under:-

“Keeping in mind the entire conspectus of facts, I am satisfied that the injuries on the leg were inflicted by one person and out of Mohinder Singh and Ram Kumar only Mohinder Singh was present at the spot. Resultantly, Ram Kumar – appellant No.3 is acquitted. As regards appellant No.2, he has caused five simple injuries on the legs of the injured person. Keeping in mind the totality of the circumstances, I deem it appropriate to acquit him of the charge under Section 307 IPC and convict him under Section 324 IPC and sentence him two years imprisonment. As regard appellant No.4, he is also acquitted of the charge under Section 307 IPC and convicted under Section 324 IPC. However, since he gave a blow on the chest of the injured, he has to be given differential treatment and his sentence would be of three years imprisonment. As regards appellant No.1, there is no mitigating circumstance in this case. Consequently, appeal qua him is dismissed.”

11. Against this order of Hon'ble Single Bench of this Court, appellants Mahinder Singh and Inder Singh approached the Hon'ble Apex Court vide criminal appeal No.713 and whereas appellant Satbir Singh approached the Hon'ble Apex Court vide criminal appeal No.714, both of the year 2014 in which leave was granted. The Hon'ble Apex Court vide order dated 31.3.2014 accepted both these appeals and the above-said

order of Single Bench of this Court was set aside and the matter was remanded to this Court for re-consideration and to decide the instant appeal afresh. Thereafter, this appeal is put up before this Bench. During pendency of this appeal, the counsel for the appellants filed CRM-7132 of 2015 for acquitting the appellants in view of compromise Annexure A-1 dated 9.2.2015, notice of which was given to the complainant. It was admitted that during the pendency of the appeal, the compromise Annexure A-1 has been effected between the parties with free consent and without any pressure on the intervention of the respectables. This compromise in original Annexure A-1 and its typed copy in English version is also brought on the record which is found to be signed by Anil son of Satbir Singh, Ajit son of Inder Singh, Ram Kumar son of Manphool Singh and Mahender son of Manphool Singh from the side of the appellants and Balbir Singh son of Jodha Ram and Inder Singh son of Maha Singh from the side of the complainant – respondent. Then this compromise is also endorsed by Sarpanch, Gram Panchayat Bhambewa and other respectables of the village. Alongwith this CRM, the affidavits Annexure A-2 of Balbir Singh -complainant, Annexure A-3 of Inder Singh son of Maha Singh are also annexed in order to establish that the alleged compromise Annexure A-1 is genuine one.

Even on 14.10.2015, injured Inder Singh and all the appellants except appellant Satbir Singh appeared in the Court in person. The matter regarding the compromise was inquired from them and they supported the fact that this compromise was effected between them with their own free consent and that they have no objection if this appeal be

disposed of accordingly.

12. But it is a fact that as per the schedule under Section 320, Cr.P.C., the offence under Section 307 IPC is not compoundable and as such the permission to compound this offence cannot be granted since that would be against the provisions of the statute. But now it is also settled law that if any compromise is effected between the parties in any case involving non-compoundable offence during the pendency of proceedings then this compromise if found to be genuine one, may be considered as a mitigating circumstances with regard to the quantum of sentence. Herein the principles as laid down by the Hon'ble Apex Court in *Ram Lal Versus State of Jammu & Kashmir, 2000(1) R.C.R.(Criminal) 92* and *Ishwar Singh Versus State of Madhya Pradesh, 2009(1) R.C.R.(Criminal) 1* are followed.

13. Then in the case in hand, it is also mentioned that both the parties to this appeal are belonging to same family and now they have no grouse or misunderstanding against each other. They want to live peacefully. The compromise Annexure A-1 is effected keeping in view the welfare of the families of both the parties.

14. So in these circumstances compromise Annexure A-1 is taken on record. Then as per the custody certificate produced by the learned State counsel, appellant Satbir Singh has undergone two years, nine months and eight days of sentence of imprisonment and has earned remission of one year, six months and sixteen days and availed parole of 3 months and 22 days and as such he has undergone four years and two days of actual sentence as on 29.9.2015. Similarly appellant Inder Singh

has undergone two years, two months and ten days and has earned remission of nine months and twenty days and as such his actual sentence comes to be three years as on 29.9.2015. Appellant Mohinder Singh has undergone the sentence of one year, six months and twenty three days and earned remission of five months and seven days. So his actual sentence including remission also comes to be two years as on 29.9.2015. Appellant Ram Kumar has undergone a total sentence of twenty three days as on 29.9.2015 Then as per the record the attribution against this appellant was that he gave *daang* blow on one of the legs of injured and as such his individual criminal liability, if any, remained upto the offence under Section 323, IPC.

15. In the light of the above discussion, this appeal stands partly accepted qua the quantum of sentence and the sentence of imprisonment of the appellants is reduced to the extent they have already undergone. However, the sentence of fine shall remain undisturbed. The same be deposited within twenty one days from today, if not deposited earlier. Appellant Satbir Singh is stated to be in custody in this case, so he is ordered to be released immediately, if not required in any other case.

16. In view of the above, CRM No.7132 of 2015 and this CRA-S-691-SB of 2001 stand disposed of.

Intimation be sent to the quarter concerned for strict compliance.

21.10.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes