

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

CRA No.S-37-SB of 2004

Date of decision: 07.12.2015

Raj Kumar

..... Appellant

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. L.M. Gulati, Advocate for the appellant.

Mr. Ashok Muthreja, Deputy Advocate General for
respondent-State of Haryana.

Mr. Jasneet Mehra, Advocate for complainant.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 27.11.2003, passed by learned Additional Sessions Judge, Kaithal, vide which appellant Raj Kumar was held guilty and convicted for the offences punishable under sections 308, 323 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and the

order of sentence dated 29.11.2003, vide which the appellant was sentenced as under:-

Offence u/s	Sentence	In default of payment of fine
308 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹2000/-.	To further undergo rigorous imprisonment for a period of six months.
323 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of ₹500/-.	To further undergo rigorous imprisonment for a period of one month.
506 IPC	To undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1000/-.	To further undergo rigorous imprisonment for a period of three months.

- 2- All the sentences were ordered to be run concurrently.
- 3- In brief, the case of the prosecution is that on 13.04.1999 at about 04:00 P.M., complainant Sat Narain and his brother Hari Narain loaded their cart after cutting the berseem from their fields on Barot-Keorak Road. They were also supervising the labourers harvesting the wheat crop. Rajiv son of Arjun Dev was also cutting the berseem in the adjoining field. Appellant Raj Kumar was grazing his cattle. Some cattle entered in berseem field of the complainant and one of the buffalo started grazing the berseem loaded in the cart. Injured Hari Narain asked the appellant to take away his cattle. At this, the appellant started abusing him. Hari Narain took away the cattle of Raj Kumar from their berseem field as well as the cart. At this appellant Raj Kumar gave lathi blow on the head, leg and back of Hari Narain. He raised alarm 'Mar Diya - Mar Diya'. Hearing which, complainant and Rajiv reached at the spot. At this, the appellant ran away from the spot along with his lathi. While leaving the spot, he threatened that Hari Narain has been saved and he will kill

him in future as and when he find the opportunity. The injured was got admitted in General Hospital, Kaithal, where he was medico legally examined. On receiving the information from the hospital, Head Constable Balbir Singh reached the General Hospital, Kaithal but the injured was declared unfit to make the statement. Complainant Sat Narain made his statement Ex.PF to Head Constable Balbir Singh on 14.04.1999, on the basis of which FIR Ex.PD was registered and investigating was started.

4- The Investigating Officer visited the spot and prepared the rough site plan of the place of occurrence Ex.PJ. He also recorded the statement of the complainant Hari Narain under Section 161 (hereinafter referred to as 'Cr.P.C.') . The injury on the person of injured Hari Narain was declared as dangerous to life and offence under Section 308 IPC was added. Accused was arrested in this case on 19.04.1999. He produced the lathi i.e. the weapon of offence, which was taken into possession vide memo Ex.PA. On completion of the investigation, the report under Section 173 Cr.P.C. was presented in the Court.

5- On commitment of the case to the Court of Sessions for trail, the appellant was charge-sheeted for the offences punishable under sections 308, 323 and 506 IPC by the learned trial Court vide order dated 04.12.1999, to which the appellant pleaded not guilty and claimed trial.

6- In order to substantiate its case, the prosecution examined as many as 10 witnesses.

7- When examined under Section 313 Cr.P.C., the appellant

pleaded that he did not cause any injury to Hari Narain. Actually prior to the occurrence, father of Hari Narain had been residing with Jagdish Katri. The family members of Hari Narain were having a doubt upon him that he had instigated his father to live separate from them. The complainant party started having grouse against him on that count, the appellant has been falsely implicated in this case.

8- The appellant did not adduce any evidence in his defence.

9- On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant along for the offences punishable under sections 308, 323 and 506 IPC and was sentenced to undergo the imprisonment as detailed in the upper part of the judgment.

10- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11- I have heard Mr. L.M. Gulati, Advocate, learned counsel for the appellant, Mr. Ashok Muthreja, learned Deputy Advocate General for the respondent-State of Haryana, Mr. Jasneet Mehra, Advocate, learned counsel for the complainant and have meticulously examined the record of the case.

12- Mr. L.M. Gulati, Advocate, learned counsel for the appellant contended that he does not challenge the conviction of the appellant, however, he contended that the parties are residing in the same locality since long. They have entered into compromise. Now they are living peacefully and there is no grudge between them. The appellant has

already undergone more than 1½ year of sentence. He is also ready to reasonably compensate the injured. He has also faced the protracted trial. More than 16 years have passed since the date of occurrence. Thus, he pleaded that the sentence should be reduced to the imprisonment already undergone by the appellant.

13- On the other hand, learned State counsel contended that the appellant has caused a head injury to Hari Narain. So, the punishment awarded by learned trial Court is just and appropriate.

14- Mr. Jasneet Mehra, Advocate, learned counsel for the complainant has also supported the contentions raised by learned counsel for the appellant that the compromise has been effected between the parties and now they are living peacefully. The injured and complainant have no objection if the sentence of the appellant is reduced to that of already undergone.

15- I have duly considered the aforesaid contentions.

16- Learned counsel for the appellant has contested the present appeal only on the quantum of sentence. He has not challenged the conviction of the appellant recorded by the learned trial Court. Even otherwise also, the prosecution has adduced sufficient evidence to bring home the charges. Injured Hari Narain has stepped into witness box as PW8 and categorically deposed that on 13.04.1999 at 04:00 P.M., he was present in his fields and was supervising the labourers engaged for harvesting the crops. Accused Raj Kumar brought his buffalo in his fields of berseem . He asked Raj Kumar to take away his buffalo but he started

abusing him. When he was pushing the buffalo out of his berseem field, accused Raj Kumar attacked him from back side with lathi and gave the lathi blow on his head, legs and back. He raised noise, which attracted Rajiv and his brother Sat Narain, who were also present in the nearby fields. On seeing them, the accused ran away from the spot with his weapon after holding threat to kill him in future. This version of injured Hari Narain is fully corroborated by PW6 complainant Sat Narain, the witness of occurrence.

17- The aforesaid oral evidence is also corroborated from the medical evidence. PW3 Dr. Jasmer Singh has medico legally examined injured Hari Narain and proved his medico legal report Ex.PC. He also proved the X-ray report Ex.PC/2. PW7 Dr. Sanjay Aggarwal, Senior Resident, Neurosurgery, PGI Chandigarh has deposed about injury and treatment of Hari Narain on the basis of his treatment record. He deposed that injured was having left temporo parietal E.D.H. He was operated upon and left temporo parietal trephine was made and haemotoma was evacuated on the same day. The bone was replaced. He deposed that the nature of injury of the patient was dangerous to life. He proved the case summary Ex.PG. PW10 Dr. Tilak Ram, Former Senior Medical Officer PGI also deposed that he had given opinion that the injury suffered by Hari Narain could have been life threatening.

18- Thus, from the aforesaid oral as well as medical evidence, it comes out that appellant Raj Kumar has given the lathi blow on the head of injured Hari Narain who suffered the head injury. The

injuries suffered by him was opined to be dangerous to life/life threatening. So, no fault can be found with respect to the conviction as recorded by learned trial Court.

19- However, I found substance in the contentions raised by learned counsel for the appellant for reduction of sentence. The injured and complainant had moved CRM-39110 of 2015, which is accompanied with the affidavits of complainant Sat Narain and injured Hari Narain, wherein it has been mentioned that during the pendency of appeal, a compromise has been effected between the parties on 28.09.2015 and as per the compromise, both the parties have settled their dispute. There is no ill will between them and now both the parties are living peacefully in the village since 2004. Both the parties are neighbourer and they are even on visiting terms in the family functions. The appellant has also filed CRM-34294 of 2015 for placing on file the copy of the affidavits of injured Hari Narain and complainant Sat Narain in the shape of compromise.

20- Learned counsel for the complainant has also categorically stated that the compromise has been in fact effected between the parties and now they are living peacefully having no grudge against each other.

21- There is no dispute with the proposition of law that the lenient view can be taken in the matter of sentence on the basis of compromise between the parties. The Hon'ble Supreme Court in case ***Ram Pujan and others Vs. State of Uttar Pradesh AIR 1973 Supreme***

Court 2418 has laid down that the fact of compromise could be taken into account in determining the quantum of sentence even if the offence for which the accused was sentenced is non-compoundable. Case ***Santokh Singh Vs. The State of Punjab 1978 CLR 124*** was a case under Section 307, 326 of Indian Penal Code. This Court held that although offences in question are not compoundable but the circumstances of the compromise between the parties who are closely related to each other can be taken into consideration while determining the quantum of sentence in the interest of amity between the parties. In case ***Vir Singh Vs. The State of Punjab 1981 PLR 135***, the appellant was convicted for the offence punishable under Section 307 IPC. The compromise had taken place between the parties. This Court reiterated the legal position that although the offence under Section 307 IPC is non-compoundable but the factum of compromise can be taken into consideration for determining the question of sentence. The same legal position has been reiterated in cases ***Angrez Singh Vs. State of Haryana 1983(2) Recent Criminal Reports 441***, ***Lachhman Singh and others Vs. State of Punjab 1985(2) RCR (Criminal) 464***, ***State of Haryana Vs. Jahangir Singh and another 1985(2) RCR 491***, ***Sukhdev Singh and others Vs. State of Punjab 1993(3) RCR (Criminal) 102***, ***Ishwar Singh Vs. State of Madhya Pradesh 2009(1) RCR (Criminal) 1 (SC)***, ***Hari Singh and others Vs. The State of Haryana 1988(2) RCR (Criminal) 610***, ***Ram Tirath Vs. State of Haryana 1993(3) RCR (Criminal) 409*** and ***Dimpey Gujral Vs. Union Territory through Administrator, U.T. Chandigarh and others***

2013(1) RCR (Criminal) 745 (SC). Thus, in view of the consistent rule of law laid down in the cases referred above the factum of compromise between the parties can be taken into consideration even though the offence punishable under Section 308 IPC is non-compoundable.

22- Thus, keeping in view the fact that the parties are resident of the same locality, they have entered into a compromise, now they have no grudge against each other and are living peacefully, they have also established their social contacts and are attending the family functions of each other, the occurrence has taken place on 13.04.1999 and more than 16 ½ years have passed since the date of occurrence, even the lenient view will suffice the ends of justice. As per the custody certificate appellant Raj Kumar has already undergone 01 year, 06 months and 03 days of sentence including remission, which is quite sufficient period.

23- As a result of my aforesaid discussion, the conviction of appellant as recorded by learned trial Court for the offences punishable under sections 308, 323 and 506 IPC is well founded and is hereby maintained and affirmed. However, the sentence awarded to the appellant is hereby modified. He is sentenced to the imprisonment already undergone by him i.e. 01 year, 06 months and 03 days including remission. The appellant is further directed to pay a fine of ₹ 30,000/- for the offence punishable under Section 308 IPC in addition to the fine already imposed by the learned trial Court. The amount of entire fine be deposited with the learned trial Court within one month from the date of this judgment, failing which, the appellant shall be liable to undergo

sentence as awarded by the learned trial Court in default of payment of fine. Out of the fine so realised, ₹25,000/- shall be paid as compensation to injured Hari Narain.

24- With the above said modification in the order on quantum of sentence, the present appeal fails and is hereby dismissed.

Dated: 07.12.2015.

sunil yadav

**(DARSHAN SINGH)
JUDGE**