

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

**Date of Decision :02.03.2015
CRA-S-955-SB-2007**

KuldipAppellant
Versus

State of PunjabRespondent

AND

CRA-S-990-SB-2007

SodhiAppellant

Versus

State of PunjabRespondent

CRA-S-991-SB-2007

AND

Sabi @ Mohinder SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present : Mrs. Jatinder Jit Kaur, Advocate
for the appellant.

Mr. P.S. Paul, learned Deputy Advocate General,
for the State of Punjab.

Mr. Puneet Singla, Advocate
for respondent No.2/complainant.

DARSHAN SINGH, J.

1. This judgment shall dispose of all the three appeals mentioned above arising out of the same judgment of conviction dated 09.04.2007 vide which all the three appellants have been sentenced and convicted for the offences punishable under Sections 307, 323 read with Section 34 Indian Penal Code (hereinafter called 'IPC') and order on the quantum of sentence of the even dated vide which the appellants have been sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of ₹ 5,000/- each, in default of payment of fine to further undergo rigorous imprisonment for a period of one year each for the offence punishable under Section 307 IPC. They were further sentenced to undergo rigorous imprisonment for a period of 3 months and to pay a fine of ₹ 500/- each, in default of payment of fine to undergo rigorous imprisonment for a period of 15 days for the offence punishable under Section 323 read with Section 34 IPC.

2. The brief facts giving rise to this prosecution are that complainant-Gurdeep Ram made his statement Ex.PD to PW-7 ASI Satpal Singh alleging therein that his brother Baljit was admitted in Civil Hospital, Nakodar on 01.10.2005 on account of suffering the injuries. On 03.10.2005 at about 7.00 P.M he was going from the hospital to his village Mahuwal for bring the food for his brother Baljit. His cousin Gora Lal told him that Kuldeep was also to go Nakodar and he should accompany him on his motorcycle for carrying the food for Baljit. Complainant was standing outside of his house. At that very time appellant-Kuldeep came on his motorcycle and asked him that the daughter-

in-law of his Aunt (Bua) is ill and after visiting her they will go to Civil Hospital, Nakodar. The complainant boarded the motorcycle of Kuldip and started towards village Ramuwal. When they reached on the bridge of canal ahead of village Mehma, it was about 7.30 P.M., Kuldip stopped the motorcycle on the bridge and asked that he is to answer the call of nature. While saying so Kuldip went on the payment of the canal and also asked him to follow him. Complainant also followed him and they had hardly covered 20-25 yards, then Kuldip took out an Iron Sabbal (thick iron rod) and asked that he will not be spared today. In the meanwhile, appellant-Sabi @ Mohinder Singh armed with Datar and appellant-Sodhi armed with a Gandasi, who were already hiding there in the bushes came out and gave Lalkara that complainant should be killed today. Thereafter, all the three appellants encircled the complainant. Sodhi removed the Safa from the head of the complainant and put it in his neck. Kuldip and Sodhi dragged the complainant by holding the Safa. Thereafter Sabi @ Mohinder Singh gave two Datar blows slightly above the forehead of the complainant. He fell down on the ground. Thereafter, Sodhi gave two Gandasi blows on his forehead. Kuldip caused injuries with Iron Sabbal on his private parts. He raised alarm, hearing which his uncle Satpal was attracted. He also witness the occurrence. On seeing him all the three appellants fled away from the spot alongwith their weapons. On the statement of complainant Gurdeep Ram Ex.PD, FIR Ex.PD/2 was registered and the investigation was started.

3. PW-7 ASI Satpal inspected the spot and prepared the rough site plan of the place of occurrence Ex.PE. He also lift the blood stained

earth from the spot vide memo Ex.PF. On 06.10.2005 all the three appellants were arrested. Appellant-Kuldip produced the motorcycle which was taken into possession vide memo Ex.PG. On 16.10.2005 on receipt of x-ray report Section 307 IPC was added. Thereafter, the appellants were again arrested for the offence punishable under Section 307 IPC. They suffered the disclosure statements and got recovered the weapons of offence. The blood stained cloths of the complainant were also taken into possession. The crime articles were sent to Forensic Science Laboratory for examination. On completion of the formalities of the investigation the report under Section 173 Cr.P.C., was presented in the Court.

4. All the three appellants were charge-sheeted for the offences punishable under Section 307, 323 read with Section 34 IPC to which they not pleaded guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as 7 witnesses.

6. When examined under Section 313 Cr.P.C., the appellants pleaded false implication. In the defence evidence, they examined Teja Singh as DW-1 and Jaspal Singh as DW-2.

7. On appreciating the evidence on record and contentions raised by learned counsel for the parties, all the three appellants were held guilty for the offence punishable under Sections 307, 323 read with Section 34 IPC by the learned trial Court vide impugned judgment dated 09.04.2007 and they were awarded the sentence as mentioned in the upper part of the judgment.

8. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeals have been preferred.

9. I have heard Mrs. Jatinder Jit Kaur, Advocate, learned counsel for the appellants, Mr. P.S. Paul, learned Deputy Advocate General, for the State of Punjab, Mr. Puneet Singla, Advocate, learned counsel for respondent No.2/complainant and have carefully gone through the record of the case.

10. Learned counsel for the appellants initiating the arguments has not assailed the conviction of the appellants. She pleaded that the appellants belonged to the same village and to the same community. During the pendency of the present appeals, at the intervention of the respectables of the village, they have amicably resolved their dispute. The written compromise has already been placed on record. She contended that the appellants have already undergone sufficient sentence. In view of the compromise the lenient view be taken in the matter of sentence and their sentence be reduced to the period already undergone by them.

11. Mr. Puneet Singla, Advocate learned counsel for the complainant has also supported the contentions of learned counsel for the appellants that the parties have voluntarily entered into a compromise during the pendency of the appeals and now they have no grudge against each other.

12. On the other hand, learned State counsel pleaded that serious injuries were caused to complainant-Gurdeep Ram by the appellants on the vital part of his body. They do not deserve any leniency in the matter of sentence. The sentence awarded by the trial Court is just and

appropriate.

13. I have duly considered the aforesaid contentions. At the time of arguments, the conviction of the appellants recorded by the learned trial Court has not been assailed. Learned counsel for the appellants has only pressed for the reduction of sentence in view of the compromise between the parties.

14. Even otherwise, there is no legal infirmity in the conviction of the appellants recorded by the learned trial Court. Complainant-Gurdeep Ram has stepped into the witness box as PW-4 and deposed in detail about the occurrence. He has categorically deposed that accused-appellant Kuldip was armed with iron Sabbal, Sabi @ Mohinder Singh was armed with Datar and Sodhi was armed with Gandasi. They all caused injuries to him. Sodhi removed his Safa from his head and put it around his neck. Sodhi and Kuldip started pulling him with Safa. Sabi @ Mohinder Singh took out Datar from his dub and gave two Datar blows on his head. He fell down on the ground. Sodhi took out Gandasi from his dub and gave two blows on his forehead. Kuldip gave 4-5 blows with his Iron Sabbal on his private parts. He also identified all the appellants presented in the Court. The testimony of the complainant on material aspects has been corroborated by the witness of the occurrence PW-7 Satpal.

15. This ocular evidence is further corroborated from the medical evidence. The complainant was medico-legally examined by PW-2 Dr. Ajay Sahni, Senior Medical Officer, Civil Hospital, Nakodar and he has found the following injuries on his person:-

- 1. Lacerated wound 3" x ½" above the right eye brow on forehead advised x-ray;*
- 2. Incised wound 2" x ½" on the centre of the forehead advised x-ray;*
- 3. Lacerated wound 5" x ½" on the centre of forehead above injury No.2 advised x-ray;*
- 4. Lacerated wound 2" x ½" on the centre of the forehead adjacent to injury No.2 advised x-ray skull.*
- 5. Lacerated wound 2" x ½" on the centre of the penis. Under observation;*
- 6. Lacerated wound 2" x ½" on the route of the penis;*
- 7. Lacerated wound 2" x ½" at the route of the penis on the right side of the penis on the suprapubic region.*
- 8. Lacerated wound 1" x ½" on the right side of scrotum. Under observation.*

16. As per the statement of PW-1 Dr. Tarsem Singh, Medical Officer, Civil Hospital, Nakodar x-ray report Ex.PA showed the fracture frontal bone of skull.

17. Thus, from the aforesaid ocular as well as the medical evidence the conviction of the appellants is well founded.

18. However, this fact is not disputed that during the pendency of present appeal the compromise has taken place between the parties. Complainant Gurdeep Ram has appeared in this Court alongwith his counsel on 18.02.2015 and the original compromise was placed on record alongwith the attested photocopy of his Adhar Card. The compromise

placed on file shows that the parties have amicably settled the dispute in the presence of the Panchayat and now they do not want any action against each other. This compromise is signed by the complainant-injured Gurdeep Ram, appellant-Kuldip, Sodhi and has been attested by the Sarpanch and members Panchayat of village Mahuwal, Nakodar.

19. No doubt, the offence punishable under Section 307 IPC is non-compoundable. But, still the factum of the compromise between the parties can be taken into consideration to determine the quantum of sentence and to take the lenient view.

20. The Hon'ble Supreme Court in case **Ram Pujan and others Versus 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 Versus The State of Punjab 1978 CLR 124** was 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 Versus 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 Versus State of Haryana 1983 (2) Recent Criminal Reports 441, Lachhman Singh and others Versus State of Punjab 1985 (2) RCR (Criminal) 464, State of Haryana Versus Jahangir Singh and another 1985 (2) RCR 491, Sukhdev Singh and others Versus State of Punjab 1993 (3) RCR (Criminal) 102, Ishwar Singh Versus State of Madhya Pradesh, 209 (1) RCR (Criminal) 1 (SC), Hari Singh and others Versus The State of Haryana 1988 (2) RCR (Criminal) 610, Ram Tirath Versus State of Haryana 1993 (3) RCR (Criminal) 409 and Dimpey Gujral Versus 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 307 IPC is non-compoundable.

21. The custody certificate of appellant-Kuldip shows that he has already undergone the actual sentence of 2 years 1 month and 14 days. Appellant Sabi @ Mohinder Singh has already undergone the actual sentence of 2 years 5 months and 25 days. Similarly, appellant-Sodhi has undergone the actual sentence of 2 years and 5 months out of the sentence awarded by the learned trial Court which is quite sufficient period in view of the compromise between the parties. So, the reduction of the sentence of the appellants by taking a lenient view on the basis of the compromise between the parties will suffice the ends of the justice.

22. Thus, keeping in view my aforesaid discussion, the appeals

filed by the appellants against conviction are hereby dismissed. However, the order of quantum of sentence is modified. The appellants are sentenced to the substantive sentence already undergone by them as mentioned in their custody certificates placed on record. The sentence regarding fine and the default clause shall remain intact. If the fine is not deposited already, the appellants shall deposit the fine before the learned trial Court within one month from today, failing which, they shall have to undergo the sentence awarded in default of payment of fine.

02.03.2015

Naveen

**(DARSHAN SINGH)
JUDGE**