

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.600 of 2015 in/and
Criminal Appeal No.S-2289-SB of 2013,
Criminal Appeal No.D-935-DB of 2013,
Criminal Appeal No.S-2177-SB of 2013 and
Criminal Appeal No.S-2130-SB of 2013
Date of decision: 08.01.2015

Criminal Misc. No.600 of 2015 in/and
Criminal Appeal No.S-2289-SB of 2013

Manoj alias Takla Versus State of Haryana

Criminal Appeal No.D-935-DB of 2013

Jaswant Singh Versus State of Haryana and others

Criminal Appeal No.S-2177-SB of 2013

Binder and another Versus State of Haryana

Criminal Appeal No.S-2130-SB of 2013

Sunil and another Versus State of Haryana

CORAM: HON'BLE MR. JUSTICE S.S. SARON
 HON'BLE MR. JUSTICE GURMIT RAM

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Present: Mr. Manish Soni, Advocate for the appellants in
 Criminal Appeals No.S-2289-SB of 2013, S-2177-SB of 2013
 and CRA No.S-2130-SB of 2013 and for respondents No.
 2 to 7 in CRA No.D-935-DB of 2013.

Mr. Baljinder Singh, DAG, Haryana for the State.

Mr. Jatinder Sehrawat, Advocate for the appellant (in
Criminal Appeal No.D-935-DB of 2013)/ complainant with
Jaswant Singh-complainant in person.

S.S. SARON, J.

Criminal Misc. No.600 of 2015 in Criminal Appeal No.S-
2289-SB of 2013 has been filed by the appellant to consider the

compromise/affidavits (Annexure A-1 to A-3) between the parties and to decide the main appeal in view of the compromise/affidavits (Annexure A-1 to A-3).

Notice of criminal miscellaneous application to the Advocate General, Haryana.

On the asking of Court, Mr. Baljinder Singh, DAG, Haryana accepts notice.

Mr. Jatinder Sehrawat, Advocate for the complainant, who is present in Court also accepts notice.

With the consent of the learned counsel, the appeals i.e. Criminal Appeal No.S-2289-SB of 2013 titled as "Manoj alias Takla versus State of Haryana", Criminal Appeal No.D-935-DB of 2013 titled as "Jaswant Singh versus State of Haryana and others" and Criminal Appeal No.S-2130-SB of 2013, titled as "Sunil and another versus State of Haryana" which are on the regular board of this Bench are taken up for hearing.

The FIR in the case was registered on the statement of complainant Jaswant Singh son of Moti Lal. According to the complainant during the intervening night of 14/15.01.2012 at about 12 o' clock midnight, he along with his children was sleeping in his house. He heard a noise as somebody had kicked the door of his house. The complainant on hearing the noise along with his wife Lata and his sons Rajender and Kuldeep woke up. When he came out, he saw Golu alias Bhupender, Binder, Manoj alias Takla, Sunil, Sanjay as also Anil and Arun (the latter two were not sent up for trial) had entered house of the complainant by breaking open the door. The complainant objected to their entering the house, then Golu alias Bhupender fired a shot with his country made pistol. Manoj alias Takla

fired another shot with his country made pistol by pointing it towards the complainant with an intention to kill him. The complainant had a narrow escape and the bullet hit the stair case of his house. Binder caught hold of the complainant and Sunil inflicted a sword blow on his head followed by another sword blow on the wrist of his left hand. Sanjay inflicted an iron rod blow from its sharp pointed side on the nose of the complainant. Anil and Arun (who were not sent up for trial) also beat the wife and sons of the complainant. The complainant and his family raised an alarm of 'Bachao-Bachao' and then all the assailants fled away leaving behind the iron rod. According to the complainant Jaswant Singh when the assailants were beating them inside their house, there were 4-5 co-accused standing outside the gate, whom he could not identify. It is alleged that the said accused also committed a similar nature of incident by entering the house of one Narayan son of Mangat Ram. The cause of the incident was that 4-5 days earlier, they had beaten his nephew namely Montu son of Ashok in collusion with Vicky alias Babbu. A criminal case was lodged against them at Police Station Rampura. Because of the said grudge that the accused nursed against the complainant side, the aforesaid persons were roaming about here and there to beat them again. The complainant then dialed police telephone number 100 and two police 'Gypsy' vehicles reached there immediately. The injured were taken to General Hospital, Rewari from where, they were shifted to H-way hospital. On receipt of memo (ruqa) from H-way hospital, ASI Prithvi Raj along with other police officials reached there. On reaching H-way hospital, ASI Prithvi Raj after obtaining medical opinion of the doctor recorded the above statement of Jaswant Singh (complainant), who was injured.

According to the medico legal report of Jaswant Singh, he suffered three injuries with blunt weapon. From the statement of the complainant Jaswant Singh and the medico legal report, a prima-facie case for the offences punishable under Sections 307, 450, 325, 427 and 120-B of the Indian Penal Code ('I.P.C.' for short), besides Section 25 of the Arms Act, 1959 were made out. Constable Sunil was sent with the ruqa (memo) to Police Station Rampura for lodging the FIR.

Investigation in the case was conducted by ASI Prithvi Raj, who reached the place of occurrence and prepared site plan (Ex.PS). A fired empty cartridge and a lead were recovered from the place of occurrence. The iron rods were taken in possession by the police vide memo Ex.PD. After preparing a parcel, these were sent to the Forensic Science Laboratory for chemical examination. A detailed site plan (Ex.PB) was also got prepared. The accused Golu alias Bhupender, Manoj alias Takla, Binder, Sanjay, Sunil and Bhagat Singh were arrested on 19.01.2012. A country made pistol (Ex.PE) was recovered from Golu alias Bhupender. It was taken in possession vide memo Ex.PE. Another country made pistol (Ex.PF) was recovered from Manoj alias Takla. Rough sketches (Ex.PE/1 and Ex.PF/1) of the country made pistols that were recovered from Golu alias Bhupender and Manoj alias Takla were prepared. The photographs of the broken door of the house of the complainant were also taken. After completing all the necessary investigations, police report (challan) was filed in the Court of the learned Judicial Magistrate Ist Class, Rewari, who vide order dated 23.04.2012 committed the case to the Court of Session for trial.

The learned Additional Sessions Judge, Rewari to whom the case was assigned found a prima-facie case to be made out against the accused for the offences punishable under Sections 148, 323, 325,

307, 450 and 120-B read with Section 149 I.P.C., besides Section 25 of the Arms Act. Accordingly, charges were framed against the accused by the learned Additional Sessions Judge, Rewari vide order dated 03.05.2012 to which they pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as 19 witnesses, besides, tendered documents in evidence. The incriminating evidence appearing against the accused were put to them and their statements in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C. for short) were recorded. They pleaded innocence and also stated that the prosecution case was false and witnesses had deposed falsely. No evidence, however, was led in the defence.

The learned Additional Sessions Judge, Rewari after considering the evidence and material on record convicted Manoj alias Takla, Golu alias Bhupender, Binder, Sanjay and Sunil vide judgment and order dated 30.05.2013. Manoj alias Takla was sentenced to rigorous imprisonment for seven years, besides, pay a fine of ₹3000/- and in default thereof to undergo simple imprisonment for one year for the offence under Section 307 read with Section 149 I.P.C. He was also sentenced to rigorous imprisonment for one year separately for each of the offences under Sections 148 I.P.C. and Section 323 read with Section 149 I.P.C. He was also sentenced to rigorous imprisonment for two years, besides, pay a fine of ₹1000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 325 read with Section 149 I.P.C. He was also sentenced to three years rigorous imprisonment, besides, pay a fine of ₹2000/- and in default thereof undergo six months simple imprisonment for the offence under Section 450 read with Section 149 I.P.C. and he was sentenced to

imprisonment for two years, besides, pay a fine of ₹1000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 25 of the Arms Act.

Golu alias Bhupender was sentenced to rigorous imprisonment for three years, besides, pay a fine of ₹2000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 450 read with Section 149 I.P.C. He was sentenced to one year imprisonment separately for each of the offences under Section 148 I.P.C. and Section 323 read with Section 149 I.P.C. He was also sentenced to rigorous imprisonment for two years, besides, pay a fine of ₹1000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 325 read with Section 149 I.P.C. He was also sentenced to imprisonment for two years and pay a fine of ₹2000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 25 of the Arms Act.

Binder, Sanjay and Sunil were sentenced to rigorous imprisonment for three years, besides, pay a fine of ₹2000/- each and in default thereof undergo simple imprisonment for six months for the offence under Section 450 read with Section 149 I.P.C. They were separately sentenced to one year imprisonment for each of the offences under Section 148 I.P.C. and Section 323 read with Section 149 I.P.C. They were also sentenced to two years rigorous imprisonment, besides, pay a fine of ₹1000/- and in default thereof undergo simple imprisonment for six months for the offence under Section 325 read with Section 149 I.P.C. The sentences of imprisonment of all the accused were ordered to run concurrently.

Aggrieved against the order of conviction and sentence, Manoj alias Takla filed Criminal Appeal No.S-2289-SB of 2013 in this Court. Binder and Golu alias Bhupender filed Criminal Appeal No.S-2177-SB of 2013. Sunil and Sanjay filed Criminal Appeal No.S-2130-SB of 2013, besides Jaswant Singh complainant filed Criminal Appeal No.D-935-DB of 2013 assailing the acquittal of Bhagat Singh (respondent No.7).

During the pendency of the appeal, the complainant Jaswant Singh and the convicted appellants have entered into a compromise. Criminal Misc. No.600 of 2015 in CRA No.S-2289-SB of 2013 has been filed for disposing of the appeal in accordance with the compromise. The criminal miscellaneous application is supported by affidavit (Annexure A-1) of the complainant Jaswant Singh, affidavit (Annexure A-2) of Reena daughter of Narayan Dass, who is injured in the case as also affidavit (Annexure A-3) of Kanta wife of Narayan Dass, who is also an injured in the case.

According to the affidavits that have been deposed, it is inter-alia stated that the complainant side has amicably settled the matter and they want to withdraw all the cases, which have been filed by them against Manoj alias Takla and others including FIR No.10, dated 15.01.2012 registered at Police Station Rampura, out of which the present appeals arise.

The complainant Jaswant Singh is present in Court and is identified by his counsel. He has stated that the compromise has been entered into by him of his own free will and desire and without any kind of pressure or undue influence of anyone. It is also stated by him that he may be permitted to withdraw the appeal i.e. Criminal Appeal No.D-935-DB of 2013 filed by him.

Learned counsel for the appellants submits that in view of the compromise, the appeals may be disposed of by remitting the remaining sentence of imprisonment. Learned counsel for the complainant has no objection to the same. However, the learned counsel for the State has submitted that the learned trial Court has recorded a finding of guilt as also sentenced the convicts/appellants on the basis of cogent and convincing evidence and in the circumstances, the sentences of imprisonments are not liable to be reduced.

We have given our thoughtful consideration to the matter. As has already been noticed, the matter between the parties has been amicably settled and the complainant side namely Jaswant Singh (complainant) son of Moti Lal as also the injured Reena daughter of Sh. Narayan Dass and Kanta wife of Narayan Dass have deposed affidavits dated 03.01.2015 inter-alia stating that they had compromised the matter. The parties are all residents of Subhash Basti, Kutubpur, Rewari, Tehsil and District Rewari. They are neighbours and they want to settle their dispute. However, the learned trial Court had recorded a finding of conviction against them.

In a case where the compromise had been reached at between the parties, it has been held by the Hon'ble Supreme Court in Ishwar Singh v. State of Madhya Pradesh, 2009 (1) RCR (Criminal) 1 that by keeping aside the statutory provisions i.e. Section 320 Cr.P.C., it would not be appropriate to order compounding of an offence which is not compoundable. However, while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance, which the Court may keep in mind. The sentence awarded to the convict in the said case was reduced to that already undergone. Reliance was placed on the cases of Jetha Ram v. State of

Rajasthan, (2006) 9 SCC 255, Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal v. State of M.P., JT 1988 (3) SC 366 (1). Taking the fact of compromise entered into between the parties, the Supreme Court reduced the sentence imposed on the appellant convict in the said case to that already undergone.

This Court in Joginder Ram and others v. State of Punjab and another, 2009 (1) RCR (Criminal) 495 held that in a case of non compoundable offences during appeal where parties had entered into a compromise and filed a petition before this Court for quashing the proceedings on the basis of compromise, then the parties ought to first approach the appellate court which is competent to grant any relief including release of accused on probation on the basis of compromise. Besides, the petitioners would have a legal right to approach this Court, if any adverse orders is still made against them. Reliance was placed on the case of Ramchandra Singh and others v. State of Bihar and another, (2003) 10 SCC 234. In Ramchandra Singh's case (supra), the petitioner therein was convicted for the offences under Sections 498-A and 323 I.P.C. The parties entered into a compromise during the pendency of the appeal. On the basis of the compromise, the appellant therein was acquitted of the offence under Section 323 I.P.C. The complainant-wife in the said case had filed an affidavit stating that she did not wish to pursue the case; besides, she had also remarried by then. The conviction for the offence under Section 498-A I.P.C. was directed to be maintained, but the sentence of imprisonment (one year in the case) was ordered to be reduced to the period already undergone. One of the appellants was released on probation under the Probation of Offenders Act, 1958 so as to ensure that his job may not be put to jeopardy.

The Supreme Court in Gulab Dass and others v. State of M.P., 2012 (1) RCR (Criminal) 220 held that after conviction of accused under Section 307 I.P.C., the parties are not to be allowed to compound that offence as offence under Section 307 I.P.C. is not compoundable; the sentences, however, were reduced to that already undergone.

Learned counsel for the State has filed affidavit of Sh. Satyawan, Deputy Superintendent, District Jail, Jhajjar. According to which, the appellant Manoj alias Takla, who has been convicted and sentenced for the offence under Section 307 read with Section 149 I.P.C. and sentenced to seven years imprisonment. He has undergone actual imprisonment of 02 years, 07 months and 13 days as on 25.11.2014. The total sentence with remissions undergone by Manoj alias Takla is 03 years, 04 months and 17 days as on 25.11.2014. There was another case pending against him in which he has been acquitted by the learned Additional Sessions Judge, Rewari on 22.04.2014. Manoj alias Takla at present is in custody and has undergone a period of about another one month and thirteen days. The other convicts namely Golu alias Bhupender, Binder, Sanjay and Sunil are on bail. The maximum sentence that has been imposed on Golu alias Bhupender is three years rigorous imprisonment for the offence under Section 450 read with Section 141 I.P.C. He has not been convicted for the offence under Section 307 I.P.C. The maximum sentences imposed on Binder, Sanjay and Sunil are rigorous imprisonment for three years for the offences under Section 450 read with Section 149 I.P.C. They have also not been convicted for the offence under Section 307 read with Section 149 I.P.C.

Therefore, in the facts and circumstances, it would be just and expedient that in view of the compromise reached at between the parties that the appeals are disposed of by maintaining the conviction but reducing the sentences of imprisonments undergone by the appellants to that already undergone and also dispensing with the payment of fine.

Accordingly, Criminal Appeal No.D-935-DB of 2013 is dismissed as withdrawn and Criminal Appeals No.S-2289-SB of 2013, S-2177-SB of 2013 and S-2130-SB of 2013 are partly allowed. The judgment of conviction dated 30.05.2013 passed by the learned Additional Sessions Judge, Rewari is upheld. However, the order of sentence dated 31.05.2013 is modified and the appellants in the said criminal appeals are sentenced to the period already undergone. The appellants in Criminal Appeal No. S-2177-SB of 2013 namely Binder and Golu alias Bhupender and appellants in Criminal Appeal No.S-2130-SB of 2013 namely Sunil and Sanjay are already on bail. Their bail bonds shall stand discharged. Appellant Manoj alias Takla in Criminal Appeal No.S-2289-SB of 2013 is in custody. He be released forthwith, if not wanted in any other case.

(S. S. Saron)
Judge

(Gurmit Ram)
Judge

08.01.2015
G. Bhardwaj