

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl.Appeal No.S-2177-SB-2003

Date of decision : 24.2.2015

Bakhtawar Singh and others

.....Appellant(s)

Versus

State of Haryana

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. J.S. Thind, Advocate, learned counsel for the appellants.

Mr. Mukesh Kaushik, learned DAG, Haryana.

Mr. Dilraj Singh Dhillon, Advocate, learned counsel for the complainant.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 6.11.2003 vide which all the three appellants were held guilty and convicted for the offences punishable under Section 307, 323 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC') and the order of sentence of the even dated vide which the appellants were sentenced to

undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.20,000/- each, in default of payment of fine to further undergo rigorous imprisonment for a period of two years under Section 307 IPC. They were further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each, in default of payment of fine to further undergo rigorous imprisonment for a period of one year each under Section 323 IPC.

2. Brief facts of the case giving rise to this prosecution are that on 6.8.1999 at about 9 P.M, complainant-Kala Singh along with Mohinder Singh and Harnam Singh was standing in front of house of Sumer son of Kartar Singh situated at village Kuta Budh. Accused Dilawar Singh along with 3-4 persons was seen coming towards that side riding on a jeep. They were having guns. Dilawar Singh and his companions started beating up Santa Singh with the butts of their guns. All of them carried Santa Singh to the house of accused appellant-Diwan Singh. Santa Singh was raising an alarm. After some time, they heard the sound of the gun shot from near the house of Diwan Singh. The jeep in question carrying Dilawar Singh and other persons were seen coming back from the house of Diwan Singh. When the complainant and his companions attempted to stop the said jeep, accused Dilawar Singh and his companions opened fired at complainant and his companions as a result of which complainant-Kala Singh, Mohinder Singh and Harnam Singh suffered the fire arm injuries. After some days, accused Dilawar Singh and his companions managed to escape from the spot. On the statement of complainant-Kala Singh Ex.PO, the formal FIR Ex.PO/B

was registered and investigation was started.

3. The Investigating Officer took into possession the clothes of the injured vide memo Ex.PR. He visited the spot on 7.8.1999 and prepared the rough site plan of the place of occurrence Ex.PS. He also took into possession the blood stained earth from the spot vide memo Ex.PT after preparing the sealed parcel. He recorded the statements of other injured witnesses. Accused were arrested on 24.8.1999. In pursuance of the disclosure statement of accused appellant-Dilawar Singh, the pistol was recovered which was taken into possession vide memo Ex.PU after preparing its sketch and the sealed parcel. The articles of the case property was sent to the Forensic Science Laboratory for examination.

4. On completion of the formalities of investigation, the report under Section 173 Cr.P.C was prepared and presented in the Court.

5. All the accused appellants were charge-sheeted for the offences punishable under Sections 307, 323 and 34 IPC to which accused appellants pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as 12 witnesses.

7. When examined under Section 313 Cr.P.C, accused pleaded that on the date of occurrence, some dacoits visited the village in a jeep and fired upon the witnesses when they tried to stop them. The witnesses suffered the injuries due to fire by some dacoits. They further pleaded their false implication.

8. No evidence was adduced by the appellants in their

defence.

9. On appreciating the evidence on record and contentions raised by the learned counsel for the parties, the learned trial Court held guilty and convicted all the three accused appellants for the offences punishable under Sections 307/323/34 IPC and they were awarded the sentence as mentioned in the upper part of the judgment.

10. I have heard Mr. J.S. Thind, Advocate, learned counsel for the appellants, Mr. Mukesh Kaushik, learned DAG, Haryana, Mr. Dilraj Singh Dhillon, Advocate, learned counsel for the complainant and have meticulously gone through the record.

11. Initiating the arguments, learned counsel for the appellants contended that he does not challenge the conviction of the appellants. However, the appellants and injured relates to the same village and belongs to the same community. During the pendency of the present appeal, the matter has been amicably settled between them and now they are residing peacefully. He pleaded that in view of the compromise between the parties, the sentence awarded to the appellants may be reduced. They have already undergone sufficient sentence.

12. Mr. Dilraj Singh Dhillon, Advocate, learned counsel for the complainant has also corroborated the plea of learned counsel for the appellants with respect to the amicable settlement between the parties.

13. On the other hand, the learned State counsel contended that the accused appellants have caused the fire arm injuries to the

prosecution witnesses. In view of the act committed by them, the sentence awarded to them by the learned trial Court is justified and does not call for any reduction.

14. I have duly considered the aforesaid contentions.

15. Though learned counsel for the appellants has not challenged the conviction of the appellants recorded by the learned trial Court and has only pleaded for reduction in the matter of sentence on the basis of compromise between the parties during the pendency of the present appeal, yet this Court is required to evaluate the legality of the conviction of the appellants recorded by the learned trial Court.

16. Complainant-Kala Singh has stepped into the witness box as PW-6. He categorically deposed that on 6.8.1999 at about 9 P.M, he along with Mohinder Singh and Harnam Singh was standing in front of the house of Shamsheer Singh in village Kuta Budh. They heard the cries for help raised by Santa Singh that he was being beaten. They reached there to rescue him. Dilawar Singh present in the Court fired shots from his pistol at them, as a result of which, he, Mohinder and Harnam suffered the injuries. He received the pellet injuries on his chest. Shamsheer Singh thereafter came out from his house. On seeing him, the accused persons ran away. They were shifted to the hospital by Hardit Singh. Accused Diwan Singh was armed with a gandasi whereas accused Bakhtawar was armed with a lathi and Dilawar Singh was armed with a pistol. Santa Singh had a dispute with Diwan Singh accused.

17. The statement of complainant-Kala Singh on the point of

occurrence stands fully corroborated by PW-7 Mohinder Singh, an injured witness, PW-9 Harnam Singh, other injured witness and PW-10 Santa Singh, also an injured witness. This ocular evidence is also corroborated from the medical evidence. PW-2 Dr. N.K. Mittal, Medical Officer, General Hospital, Sirsa, has medico legally examined all the four injured and proved their medico legal reports. He has also given opinion that the injuries suffered by Mohinder Singh, Kala Singh and Harnam Singh (the name of this injured has been wrongly described in the medico legal report as Gurnam Singh) were caused with the fire-arm. As per the statement of PW-11 Inspector Ram Avtar, on 24.8.1999, accused appellant Dilawar Singh suffered the disclosure statement and in pursuance thereof, he got recovered the pistol used in the present occurrence.

18. Thus, from the ocular evidence adduced by the prosecution which is fully corroborated from the medical evidence, it is established that the appellants have caused the injuries to complainant-Kala Singh, injured Mohinder Singh, Harnam Singh and Santa Singh. So, no fault can be found with the conviction of the appellants recorded by the learned trial Court.

19. This fact is not disputed that the appellants as well as all the injured belong to the same village. During the pendency of the present appeal, an amicable settlement has taken place between the parties. Complainant-Kala Singh, injured Harnam Singh, Santa Singh and Mohinder Singh were present in person before this Court along with their counsel Shri Dilraj Singh Dhillon, Advocate, on 10.2.2015. They had placed on record the photocopy of their

identity proof duly attested by Balbir Singh, Panch, Ward No.11, Kuta Budh. The complainant as well as all the three injured have also filed their affidavits wherein they have mentioned that they have compromised with the accused persons with the intervention of the respectables and now there remains no grievance. They have no objection if the appellants are discharged by the Court. The aforesaid affidavits filed by the complainant and injured witnesses shows that during the pendency of the present appeal, an amicable settlement has been reached between the parties and now they have no grievance against the appellants.

20. The appellants have been convicted for the offences punishable under Sections 307/323/34 IPC. Section 307 IPC is non-compoundable offence. So, the compromise between the parties cannot be taken into consideration for the composition of the offence. But at the same time, the amicable settlement between the parties can certainly be taken into consideration to determine the quantum of sentence.

21. 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 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 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, 2009 (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 Indian Penal Code is non-compoundable.

22. The custody certificates of all the appellants have been

placed on record by the learned State counsel which show that appellant-Dilawar Singh has already undergone the actual sentence of 3 years 8 months and 6 days. Accused appellant-Diwan Singh has undergone the actual sentence of 2 years 8 months and 17 days. Accused appellant Bakhtawar Singh has also undergone actual sentence of 2 years 8 months and 28 days. So, the appellants have already undergone sufficient sentence. None of the injured has suffered any grievous injury which is evident from the statement of PW-1 Dr. S.L. Aggarwal who had radiologically examined injured Harnam Singh, Mohinder Singh and Santa Singh. So, it is a fit case where substantive sentence awarded to the appellants can be reduced to the period already undergone by them as mentioned in their custody certificates.

23. The sentence awarded by the learned trial Court in default of payment of fine for the offence punishable under Section 323 IPC is violative of Section 65 IPC which provides that the imprisonment for non payment of fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence. Section 323 IPC is punishable with maximum punishment for a period of one year. The learned trial Court has awarded rigorous imprisonment for a period of one year with a fine of Rs.1,000/- under Section 323 IPC. In default of payment of fine, the accused were directed to undergo rigorous imprisonment for a period of one year which is equal to the maximum sentence awarded by the learned trial Court and could not be more than three months.

23. Thus, keeping in view my aforesaid discussion, the

appeal filed by the appellants against conviction stands dismissed. However, the order on the quantum of sentence is hereby modified. Their substantive sentence is reduced to the actual sentence already undergone by them as mentioned in their custody certificates. The fine imposed upon the appellants shall remain the same and the default clause for the offence punishable under Section 307 IPC shall also remain the same. However, for the offence punishable under Section 323 IPC in default of payment of fine of Rs.1,000/-, the appellants shall undergo rigorous imprisonment for a period of three months. If the fine, imposed by the learned trial Court, not already deposited by the appellants, they will deposit the fine within one month from the date of this judgment failing which they will undergo the sentence in default of payment of fine as mentioned above.

February 24, 2015
ps

(DARSHAN SINGH)
JUDGE

