

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

(1) CRA-S-3029-SB of 2012(O&M)
Date of decision: 27.11.2015
Sahun
...Appellant

Versus

State of Haryana
...Respondent

(2) CRA-S-3043-SB of 2012(O&M)
Date of decision: 27.11.2015
Deenu and ors.
...Appellants

Versus

State of Haryana
...Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Sarfaraj Hussain, Advocate
for the appellant in
CRA-S-3029-SB of 2012.

Mr. Gautam Dutt, Advocate
for the appellants in
CRA-S-3043-SB of 2012.

Mr. Vijesh Sharma, D.A.G., Haryana.

GURMIT RAM, J.

Vide this order, I am going to dispose of the above-said both appeals together since these pertain to one and the same occurrence as well as judgment for the sake of convenience and in order to avoid conflict of judgments.

2. The above noted CRA-S-3029-SB of 2012 has been preferred by the appellant (accused) - Sahun and CRA-S-3043-SB of 2012 has been preferred by the appellants (accused) – Deenu and others against the

impugned judgment of conviction and order of sentence dated 27.9.2012 and 5.10.2012, respectively, passed by the Court of learned Additional Sessions Judge, Nuh, District Mewat in criminal case bearing FIR No.164 dated 10.4.2005, under Sections 148, 149, 307, 323, 325 and 506 of IPC, P.S. Nuh vide which they were held guilty for the offences punishable under sections 148, 323 read with section 149, IPC, 325 read with section 149, IPC, 307 read with section 149, IPC and 506, IPC.

3. Briefly stated, the case of the prosecution before the learned trial Court was that on 13.4.2005, ASI Dharambir Singh received MLR of injured Jafruddin in which four fire arm injuries were mentioned. Then he along with other police officials reached at Safdarjung Hospital, New Delhi and recorded the statement of injured Jafruddin son of Assar Khan after getting the opinion of the doctor which was as under:-

“That the election of the Gram Panchayat of his village Jaisingh Pur was scheduled to be held on 9.4.2005. His family was supporting Juber who was contesting for the Sarpanch of village Jaisingh Pur. Party of Jamalul was on the opposite side. On 7.4.2005, he and Sahabuddin went to *Miyans* of his village with a prayer to cast vote in favour of Juber. In the meantime, the party-men of Jamalul also reached there. There occurred exchange of hot words between them. They gave them abuses and left from there after causing threat to kill them on 9.4.2005. On 9.4.2005 at about 3:00 p.m., he was casting his vote and at that time there came Jamalul, Arshad, Istak, Rukmuddin, residents of his village and intruded into the booth. Further they told him that they would cast his vote. When he protested then Jamalul took out a

country-made pistol and dragged him out. He succeeded to get himself freed and started running towards the pond and he was chased by said Jamalu etc. When he crossed the pond then Jamalu made a fire at him with a country-made pistol which hit on his left foot. Second fire made by Arshad also hit on his left foot. The third fire was made by Istak with his country-made pistol which hit on the lower part of his left leg. On receiving these injuries, he fell down. Even then one fire was made towards him by accused Rukku, but it did not hit him. On his raising alarm, Jan Mohd. and others were attracted to that spot. The assailants ran away from the spot with their respective weapons. He became unconscious.”

After recording his above-said statement, ASI Dharambir Singh made his endorsement on it and that a cross version case was already registered in the instant case vide FIR No.164 dated 10.4.2005, P.S. Nuh on the statement of Rukmuddin son of Jamalu. Site-plan of the place of occurrence was prepared. Weapons of offence were got recovered. 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 this case to the Court of learned Sessions Judge, Gurgaon for trial after making compliance of the provisions of Section 207 of Cr.P.C.

4. Finding a prima-facie case under sections 148, 323/325/307 read with Section 149, IPC and 506, IPC, the accused were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

5. During the trial of the case, the prosecution examined as

many as fifteen witnesses in total in order to prove its version.

6. Then the accused were duly examined as required under section 313 of Cr.P.C. Entire incriminating evidence and other circumstances as brought on the file during the trial of the case against them were put to them, which they denied. Further they pleaded their innocence and false implication in this case.

7. In their defence, accused also examined two witnesses.

8. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well held the present appellants guilty for the offences punishable under sections 148, 323 read with Section 149, IPC, 325 read with section 149, IPC, 307 read with Section 149, IPC and 506, IPC.

9. The accused/appellants being not satisfied with the impugned judgment of conviction and order of sentence recorded by the learned trial Court have come up in the instant appeals, notice of which was given to the respondent - State. Record of the learned trial Court was also requisitioned.

10. Learned counsel for the parties were heard and record was also examined with their able assistance.

11. The main evidence led by the prosecution during trial of the case in nutshell was as under:-

PW2 Jafruddin was the injured as well as complainant in this case. His statement Ex.PA was recorded by the police in which he narrated in detail about this occurrence.

PW1 Jan Mohd. was cited as an eye witness to the alleged

occurrence. PW3 Smt.Jaida wife of Shabuddin was the injured as well as eye-witness to the alleged occurrence. Both these PWs supported the version of prosecution.

PW11 Dr. T.R. Prashar was posted as Medical Officer in C.H.C. Nuh, District Mewat on the relevant date. He medico-legally examined the injured and tendered his duly sworn affidavit Ex.PW11/A as a part of his statement. Further he also proved the MLRs of Jahida, Alijaan and Juber as Ex.PD/1, Ex.PD/2 and Ex.PD/3, respectively.

PW9 Dr. Lal Singh conducted x-ray examination of injured Jahida. He tendered his affidavit Ex.PC as a part of his statement and proved the x-ray report Ex.PC/1 and her x-ray film Ex.PC/2.

PW12 Dr. Sanjeev Kalra of National Heart Institute, New Delhi produced the medical record with regard to injured Jafruddin who was admitted in their hospital with history of gun shot injury. He tendered his duly sworn affidavit Ex.PW12/A as a part of his statement and proved the copy of case sheet Ex.PW12/B.

PW10 Dharambir Singh, SI recorded the statement Ex.PA of complainant/injured Jafruddin on 13.4.2005 after getting necessary opinion of the doctor, upon which he made his endorsement Ex.PA/1 on the basis of which a DDR was recorded in Police Station City, Nuh.

12. Then at the very outset, the learned counsel for the appellants has contended that during the pendency of the appeal, the matter has been settled amicably by both the parties. Now they do not want to continue with this matter any more. Further they also filed one CRM No.31163 of 2013 in CRA-S-3043-SB of 2012 along with true copy of the alleged

compromise Annexure P-1 with the prayer to dispose of this matter in view of this compromise, original of which was also produced at the relevant time.

13. Vide the impugned judgment, the appellants were held guilty and convicted, *inter alia*, for the offences punishable under section 307 etc., IPC.

14. But it is a fact that as per the Table drawn 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 relevant circumstance to determine 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.

15. As per the custody certificates of the appellants as produced by learned State counsel, all the appellants have undergone almost a sentence of about five months approximately each.

16. Then in the compromise Annexure P-1, it has been recorded that both the parties to the compromise are neighbours and this compromise has been arrived at without any fear and pressure of any kind. After the alleged incident now they are living peacefully and have

no ill-will against each other. Now they do not want to proceed with their case any further which in fact was got registered due to some misunderstanding and party faction in the village. In order to ensure the genuineness of this compromise, even report from CJM, Mewat was also requisitioned.

17. Then the learned counsel for the appellants has contended that after the alleged occurrence, appellant No.2 Tayyub son of Alladin, appellant No.5 Hassan son of Deenu and appellant No.11 Arshad son of Deen Mohd. of CRA-S-3043-SB-2012 have joined the Government service. Further he has prayed for the grant of benefit of probation of good conduct to these three appellants on the plea that otherwise they will lose their Government service. Further it will maroon their family life and their children as well. Further as per the record, there is no specific allegation against Tayyub and Hassan nor their names are mentioned in the statement Ex.PA of complainant made by him before police on dated 13.4.2005.

18. Then it is also a fact that the matter has been amicably settled between the parties and now they are not at issue qua this. The alleged occurrence took place on 9.4.2005 and since then they had to face protracted litigation/proceedings of the trial as well as the appeal.

19. So in the light of above circumstances, the impugned judgment of conviction of all the appellants in both the appeals is upheld. So these appeals to this extent are dismissed.

But the above-said appellant No.2 Tayyub son of Alladin, appellant No.5 Hassan son of Deenu and appellant No.11 Arshad son of

Deen Mohd. of CRA-S-3043-SB-2012 are granted the benefit of probation of good conduct and they are ordered to be released on probation of good conduct under Section 4(1) of The Probation of Offenders Act, 1958 with the direction to furnish personal bonds in the sum of ₹50,000/- each with one surety each in the like amount for a period of two years with the undertaking to keep peace and be of good behaviour during this period to the satisfaction of Chief Judicial Magistrate, Mewat, failing which to undergo the sentence as imposed upon them by learned trial Court vide impugned judgment and order of sentence. Needful be done within one month from today.

20. So far as the sentence of remaining appellants of both the appeals are concerned, in view of the above discussed facts and circumstances, the same is reduced to the extent they have already undergone. Sentence of fine of these appellants is anyhow kept intact. The same is ordered to be deposited within one month from today, if not deposited earlier, otherwise to undergo the sentence as imposed upon them by the learned trial Court in default of non-payment of fine. So these appeals with above modifications in sentence stand disposed of accordingly.

Since the main appeals have been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

Copy of this order be sent to the quarter concerned for strict compliance.

(GURMIT RAM)
JUDGE

27.11.2015
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