

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

(1) CRA-S-3070-SB of 2012(O&M)  
Date of decision: 27.11.2015  
Fakruddin and ors. ...Appellants

Versus

State of Haryana ...Respondent

(2) CRA-S-3444-SB of 2012(O&M)  
Date of decision: 27.11.2015  
Aslam and ors. ...Appellants

Versus

State of Haryana ...Respondent

**CORAM:- HON'BLE MR. JUSTICE GURMIT RAM**

**Present:** Mr. Gurpal Sandhu, Advocate for  
Mr. S.P.S. Sidhu, Advocate  
for the appellants in  
CRA-S-3070-SB of 2012.

Mr. Anil Ghanghas, Advocate for  
Mr. Sunil Panwar, Advocate  
for the appellants in  
CRA-S-3444-SB of 2012.

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

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**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-3070-SB of 2012 has been preferred  
by the appellants (accused) - Fakruddin and others and CRA-S-3444-SB

of 2012 has been preferred by the appellants (accused) – Aslam 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, 323, 506 and 307 of IPC, P.S. Nuh, vide which they were held guilty for the offences punishable under sections 148, 323 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 10.4.2005 on receipt of medical ruqqa regarding admission of Rukmuddin, ASI Dharambir Singh along with other police officials went to C.H.C, Nuh where he recorded the statement of Rukmuddin son of Jamalu resident of Jaisingh Pur which was as under:-

“That his father Jamalu was contesting the election of Sarpanch. On 9.4.2005, voting was going on peacefully. At about 4:15 p.m., he went to cast his vote. One Juber son of Hamida, who was also contesting the election of Sarpanch snatched the ballot paper from him and further tore the same on the plea that he was casting the vote wrongly. For this reason there occurred some exchange of hot words between them and on the advice of residents of village, Juber went outside and started conversation with his party-men. In the meantime, Aslam, Israil, Fakru, Hakku, Jafru, Hidayat, Azam residents of his village along with Rashid, Sattar, Jamil and Asru residents of village Chillawali while armed with *lathies* and *farsas* came there after consultation with a common intention. Juber was saying that they were to

capture the polling booth and to throw out the party-men of Jamalul after beating them. Accused Jafaru made fire with his country-made pistol towards him, pellets of which hit on his right foot. Then accused Azam gave him a *lathi* blow which hit on his head and then he fell down. He raised *raula* upon which his father Jamalul, uncle Istak, Arshad, Mahmooda, Khanu, Ajjar and Habib were attracted to that spot. When one Noor Mohd. of his village tried to lift him, then Aslam, Israil and Javed started beating him with *lathies* which they were wielding in their respective hands. They also started beating his family members.”

After recording his above-said statement, ASI Dharambir made his endorsement on it, on the basis of which the instant case was registered. Site-plan of the place of occurrence was prepared. Weapons of offence were got recovered. Statements of witnesses were recorded. Accused were arrested. 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, 307, 323, 506 read with Section 149, 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 ten 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 and further they pleaded their innocence and false implication.

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

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 (accused) guilty for the offences punishable under Sections 148, 323 read with Section 149, 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 evidence led by the prosecution during trial of the case in nutshell was as under:-

PWs 1 and 2 were the eye-witnesses of the alleged occurrence and they supported the version of prosecution. PW9 was the injured as well as eye-witness to alleged occurrence. He stated about this occurrence in detail and proved his statement Ex.PA.

PW8 Dr. Sajal Saini medico-legally examined Noor Mohammad on 19.4.2005 and he tendered in his statement his duly sworn affidavit Ex.PW8/A, besides proving his dental opinion Ex.PW8/B.

PW10 Dr.T.R. Parashar tendered into evidence his duly

sworn affidavit Ex.PW10/A since he had medico-legally examined injured Rukumuddin. Further he proved the copy of MLR of said Rukumuddin as Ex.PW10/B and also proved ruqqa Ex.PW10/C which he sent to the police station.

PW4 SI Dharambir Singh recorded the statement Ex.PA of injured/complainant Rukmuddin, upon which he made his endorsement Ex.PA/1 on the basis of which formal FIR Ex.PA/2 was recorded in this case. Further he recorded the statements of witnesses and conducted investigation of this case.

Then in the defence, accused also examined DW1 Constable Raj Kumar, who proved photocopy of one FIR No.175 dated 30.7.2001, under sections 148, 149, 323, IPC, P.S. Nuh as Ex.D1. Further he also proved the copy of another FIR No.172 dated 19.3.2000 under Sections 148, 149, 307 of the IPC and Section 25 of the Arms Act, Police Station Nuh as Ex.D2.

DW2 Dr.Subhash Sindhu tendered in his statement his duly sworn affidavit Ex.DW2/A, who medico-legally examined Jafruddin son of Assar Khan on 9.4.2005 and proved his MLR as Ex.DW2/B.

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 time

of arguments.

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

14. But it is a fact that as per the Table prepared 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 affected 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 already produced on record by learned State counsel, all the appellants have undergone almost a sentence of more than three months each.

16. Then in the compromise Annexure P-1 filed in CRM No.31163 of 2013 in CRA-S-3043-SB of 2012, 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 the 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. In the light of above, 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. So in these circumstances, the impugned judgment of conviction of all the appellants in both the appeals is upheld, but their sentence is reduced to the extent they have already undergone. Sentence of fine 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 payment of fine. So these appeals qua the impugned judgment of conviction stand dismissed and disposed of with above modifications in sentence.

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**  
**Brij**

1. Whether to be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes