

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CRM-38994 of 2014 in/and
CRA-S-2744-SB of 2013**

Date of decision : March 19, 2015

Feroz Khan and others

... Appellants

vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Liaqat Ali, Advocate
for the appellants with Ruldu Khan (appellant No.3)

Mr. Arshwinder Singh, Addl. A.G. Punjab.

Mr. Harsh Manocha, Advocate
for the complainant with complainant Bhola Nath in person.

S.S. Saron, J

Heard learned counsel for the parties.

Criminal miscellaneous application No.38994 of 2014 has been
filed for disposal of the appeal on the basis of compromise, Annexure A-1,
which is on record.

The appeal is on the board at Sr. No. 741. With the consent of
learned counsel for the parties, it is taken up for hearing today.

The appellants Feroz Khan son of Ruldu Khan, Shinda Khan
alias Sairajdin son of Ruldhu Khan and Ruldu Khan son of Nath Khan have
filed this appeal against the judgment and order dated 26.7.2013 passed by
the learned Additional Sessions Judge, Sangrur, whereby the appellants
have been convicted and sentenced as under :-

<i>Sr. No.</i>	<i>Name of accused</i>	<i>Under Section</i>	<i>R.I. for</i>	<i>Fine</i>	<i>R.I. in default of payment of fine.</i>
1	Feroz Khan	308 IPC	07 years	Rs.12,000/-	Six months
	Shinda Khan	308/34 IPC	07 years	Rs.12,000/-	Six months
	Ruldu Khan	308/34 IPC	07 years	Rs.12,000/-	Six months
2	Ruldu Khan	325 IPC	05 years	Rs.5,000/-	Three months
	Feroz Khan	325/34 IPC	05 years	Rs.5,000/-	Three months
	Shinda Khan	325/34 IPC	05 years	Rs.5,000/-	Three months
3	Shinda Khan	323 IPC	01 year	Rs.1,000/-	One month
	Feroz Khan	323 IPC	01 year	Rs.1,000/-	One month
	Ruldu Khan	323 IPC	01 year	Rs.1,000/-	One month
4	Shinda Khan	323 IPC	01 year	Rs.1,000/-	One month
	Feroz Khan	323/34 IPC	01 year	Rs.1,000/-	One month
	Ruldu Khan	323/34 IPC	01 year	Rs.1,000/-	One month
5	Feroz Khan	323 IPC	01 year	Rs.1,000/-	One month
	Shinda Khan	323/34 IPC	01 year	Rs.1,000/-	One month
	Ruldu Khan	323/34 IPC	01 year	Rs.1,000/-	One month
6	Shinda Khan	341 IPC	S.I., 1 month	Rs.500/-	15 days
	Ruldu Khan	341 IPC	S.I., 1 month	Rs.500/-	15 days
	Feroz Khan	341 IPC	S.I., 1 month	Rs.500/-	15 days
7	Shinda Khan	506 IPC	02 years	Rs.2,000/-	One month
	Ruldu Khan	506 IPC	02 years	Rs.2,000/-	One month
	Feroz Khan	506 IPC	02 years	Rs.2,000/-	One month

The sentences that have been imposed, have not been ordered to run concurrently.

The complainant Bhola Khan son of Nath Khan is the brother of Ruldu Khan (appellant No.3). He got his statement recorded while admitted in Civil Hospital, Sunam stating that he was aged about 45 years and a driver by profession. On the date of the incident i.e. 22.7.2000, at about 6.30 a.m. the complainant Bhola Khan was about to start his motor cycle, then at that time his brother Ruldu Khan (appellant No.3), his nephew Feroz Khan (appellant No.1) and Shinda Khan (appellant No.2) armed with *gandas* came there and encircled him. Ruldu Khan (appellant No.3) raised a *lalkara* that the complainant be taught a lesson for throwing the

plastic sheet '*palli*' affixed on the toilet of the house. Ruldu Khan (appellant No.3) then inflicted a *gandasa* blow on the right shoulder of the complainant Bhola Khan. He inflicted another blow on the complainant but the complainant raised his left hand and the *gandasa* blow hit his finger from its blunt side. Shinda Khan (appellant No.2) inflicted a blow with his *gandasa* from its reverse side which landed on the chest of the complainant. When the complainant was about to get down from the motor cycle, Feroz Khan (appellant No.1) inflicted a *gandasa* blow from its reverse side on the back of the complainant which landed on his left shoulder. The complainant fell down and he raised an alarm "*mar ta mar ta*". On hearing his alarm, Gurmeet wife of complainant Bhola Khan and his son Gulab Khan came out of the house. The accused also inflicted injuries on the head of Gurmeet wife of complainant Bhola Khan and also on her left arm, right hand, back, legs and on her left thigh as also on the head of Gulab Khan. Meanwhile, daughter-in-law of complainant-Sarbjit Kaur and his neighbour Nirmal Singh son of Ginder Singh also came at the place of occurrence. Thereafter, all the assailants fled away from the scene of occurrence along with their weapons while leaving they held out threats to the complainant side. Sarabjit Kaur daughter in law of the complainant arranged a vehicle and got them admitted in Civil Hospital, Sunam from where Gulab Khan son of the complainant was referred to Rajendera Hospital, Patiala. The motive for the occurrence was that the plastic sheet '*palli*' affixed on the door of complainant's toilet had gone to the house of the accused with blow of the wind, however, they suspected that the complainant had intentionally thrown the plastic sheet in their house.

On the basis of the said allegations, the FIR was registered for the offence under Sections 341/323/506 read with Section 34 IPC. Investigation was conducted and the accused were arrested. The statement of Gulab Khan was recorded and opinion with regard to the injuries on his person was obtained. After completing the investigation, police report (challan) was filed and thereafter the case was fixed for evidence.

During trial, Gulab Khan injured, on 24.8.2010, submitted an application to the Deputy Commissioner, Patiala for getting his injuries examined by a Medical Board. According to the order of the Deputy Commissioner, Patiala, the Civil Surgeon, Patiala constituted a Board of Doctors and Gulab Khan was examined. Report was submitted, which was received in the office of Senior Superintendent of Police, Patiala through Police Station Cheema. Injury No.1 on the person of Gulab Khan was observed to be "dangerous to life". Gulab Khan moved an application and on the basis of the opinion of the Board of Doctors, offence under Section 308 IPC was found to be made out. Accordingly, supplementary police report 'challan' was filed against the appellants alleging commission of offences under Sections 308/341/323/325/506 read with Section 34 IPC.

On going through the evidence and the material on record, the learned Additional Sessions Judge, Sangrur convicted and sentenced the appellants in the manner as mentioned above.

Aggrieved against the same, the appellants filed the present appeal.

During pendency of the appeal, the parties, who are closely related to each other, have entered into a compromise on 20.9.2014

(Annexure A-1). The compromise, duly attested by the Notary Public, Sangrur, is signed by Bhola Khan, his son Gulab Khan and his wife Gurmeet Kaur. The complainant Bhola Khan has mentioned that he got the FIR in the present case registered against his brother Ruldu Khan, his sons Feroz Khan and Shinda Khan, in which they have been convicted and the appeal against the same is fixed before this Court. Now with the intervention of the relatives and the respectable persons, the matter has been compromised by the complainant, his son namely Gulab Khan, his wife Gurmeet Kaur with his brother Ruldu Khan and his sons. They have removed the misunderstanding between them. Now the complainant, his son Gulab Khan and Gurmeet Kaur do not want to take any action against Ruldu Khan and his sons. They are ready to give any kind of statement in this Court.

Mr. Harsh Manocha, Advocate is present along with Bhola Khan complainant and on instructions from him, has stated that the complainant has compromised the matter with the appellants and the compromise has been entered into by him on his own will and desire and without any pressure or undue influence from any one.

Mr. Liaqat Ali, Advocate appearing for the appellants submits that in view of the compromise between the parties, the appellants may be sentenced to the period already undergone by them. Besides, it is submitted that the learned Additional Sessions Judge, Sangrur has inadvertently not ordered the sentences to run concurrently although these were liable to run concurrently. It is submitted by Mr. Liaqat Ali, Advocate, on the instructions from Ruldu Khan (appellant No.3), who is present in court that

the compromise has been entered into of his own free will so that peace and harmony is maintained in the family as both the parties are brothers.

Learned counsel appearing for the complainant has no objection to the same.

Learned State counsel has, however, submitted that the manner in which the injuries were inflicted on the person of Gulab Khan, which was found to be dangerous to life, the compromise is not liable to be entertained.

After giving our thoughtful consideration to the matter, we are of the view that where there is a dispute between the brothers and their families and the matter has been compromised, therefore, a quietus should be put to the litigation although where a finding of guilt is recorded by the trial court, the FIR and the proceedings are not normally to be dropped. However, the fact that the parties have entered into a compromise in the appeal, findings of the trial court may be upheld but keeping in view of the compromise, the sentence of imprisonment may be reduced to the period already undergone.

As per affidavit, of Mr. Sher Singh Sodhi, Deputy Superintendent, District Jail, Sangrur, filed by the learned State counsel, on the last date of hearing, Feroz Khan (appellant No.1) has undergone actual sentence of one year, one month and thirteen days as on 7.11.2014, Shinda Khan @ Sirajdin (appellant No.2) has undergone actual sentence of one year, two months and nine days as on 7.11.2014 and Ruldu Khan (appellant No.3) has undergone actual sentence of one year one month and thirteen days as on 7.11.2014. There is no other case registered against any of them.

In ***Ishwar Singh v. State of Madhya Pradesh, 2009 (1) RCR (Crl.) 1***, the Supreme Court considered the case where a compromise had been effected by the parties therein in respect of offence under Section 307 IPC. The sentence awarded to the convicts in the said case was reduced to the period already undergone by them. Reliance was placed on the case of ***Jetha Ram v. State of Rajashtan, (2006) 9 SCC 255***, ***Murugesan v. Ganapathy Vedar, (2001) 10 SCC 504*** and ***Ishwarlal v. State of M.P. JT 1988 (3) SC 366 (1)***. It was held while taking into account the fact of compromise between the parties, the sentence of imprisonment imposed was reduced to that already undergone though the offences were not compoundable.

This Court in the case of ***Joginder Ram and others v. State of Punjab and another, 2009 (1) RCR (Crl.) 495*** held that in a case during appeal where the parties had entered into a compromise and filed a petition before this Court for quashing the proceedings on the basis of a compromise, then the parties ought to first approach the first Appellate Court, which was 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 order was still made against them. Reliance was placed on the case of ***Ramachandra Singh and others v. State of Bihar and another (2003) 10 SCC 234***. In the said case, the petitioner therein was convicted for offences under Sections 498-A and 323 IPC. During pendency of the appeal, the parties had entered into a compromise. On the basis of the compromise, the appellant therein was acquitted of the offence under Section 323 IPC. In the said case, the

complainant-wife had filed an affidavit clearly stating that she had no wish to pursue the case. Besides, she had also re-married by then. Though the conviction under Section 498-A IPC was directed to be maintained but the sentence of imprisonment of one year was ordered to be reduced to the period already undergone. One of the appellants therein was also released on probation under the Probation of Offenders Act so as to ensure that his job may not be put to jeopardy.

Therefore, in the case of a compromise during the pendency of an appeal, the proceedings are not normally to be quashed and the fact that the parties have compromised their dispute is a factor which is to be taken into consideration for the purpose of sentencing in case a finding of guilt is recorded and the appellants are convicted for the offences that are attributed to them.

In the aforesaid circumstances as already noticed, the appellants have been convicted in the manner as mentioned above. Feroz Khan (appellant No.1) has been convicted and sentenced under Section 308 IPC while Shinda Khan @ Sirajdin (appellant No.2) and Ruldu Khan (appellant No.3) have been convicted for the said offence under Section 308 read with Section 34 IPC.

The maximum imprisonment that has been imposed is seven years. However, the sentences that have been imposed are liable to be ordered to run concurrently. Section 308 IPC relates to an attempt to commit culpable homicide not amounting to murder. It is provided that whosoever does any act with such an intention or knowledge and under such circumstances that, if he, by that act, caused death, he would be guilty

of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both; and, if hurt is caused to any person by such act act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or both. Therefore, keeping in view the compromise, the sentences of imprisonment are liable to be reduced to that already undergone.

Learned counsel counsel for the complainant submits that he does not claim any compensation in view of the compromise. Under the circumstances, the appeal is disposed of by upholding the judgment and order of the trial court insofar as the conviction of the appellants is concerned. However, the sentences imposed are modified in the manner that the sentences shall run concurrently and shall stand reduced to the period already undergone.

The appellants are on bail in terms of order dated 4.11.2014 and their bail bonds shall stand discharged.

(S.S. Saron)
Judge

March 19, 2015
deepak

(Surinder Gupta)
Judge