

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRA-S-650-SB-2003 (O&M)

Date of Decision: January 28, 2015

Jagbir @ Poto and others

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Aditya Singh, Advocate, and
Ms. Supriya Garg, Advocate,
for appellants No. 1 and 2.

Mr. Gurdas Singh, DAG, Haryana,
for the respondent.

NARESH KUMAR SANGHI, J (Oral)

1. Present appeal was filed by Jagbir @ Poto, Sher Singh and Balwan, challenging the judgment of conviction and the order of sentence, dated 18.3.2003, passed by learned Additional Sessions Judge, Rohtak, whereby they were held guilty for the offences punishable under Sections 323 and 325 read with Section 34, IPC, in a case arising out of FIR No. 114, dated 1.8.2002, registered at Police Station, Kalanaur, District Rohtak, and each one of them was ordered to undergo the

following sentences:-

Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
323/34, IPC	6 months	1,000/-	1 month
325/34, IPC	3 years	5,000/-	6 months

Both the sentences were ordered to run concurrently.

2. On 16.1.2015, when the case came up for consideration, learned counsel for the appellants had pointed out that appellant No. 3, Balwan, son of Jai Narain had died after filing of the appeal, therefore, the present appeal qua him had abated. Learned counsel for the State had sought time to verify the said fact.

3. During resumed hearing, learned counsel for the State on instructions from ASI Narender of Police Station, Kalanaur, District Rohtak, states at the bar that appellant No. 3, Balwan has since died after filing of the appeal. He has also produced a copy of the death certificate, dated 27.1.2015, issued by the Sub Registrar, Birth and Death, Municipal Corporation, Rohtak, which is taken on record. Perusal of the said certificate reveals that Balwan had died on 30.12.2009, i.e. after filing of the present appeal.

4. In view of above, the present appeal qua appellant No.3, Balwan, abates.

5. Ordered accordingly.

6. At the very outset, Mr. Aditya Singh, Advocate, assisted by Ms. Supriya Garg, Advocate, very fairly submits that in view of the depositions of PW2 Jagdish and the injured PW3 Mange Ram (since deceased during the pendency of the present appeal) as well as the medical evidence, he does not challenge the conviction of appellant Nos. 1 and 2, namely, Jagbir @ Poto and Sher Singh. However, he submits that in view of the fact that the occurrence had taken place on 31.7.2002, in which both the private factions had received injuries; the complainant side of the present case was also prosecuted (though acquitted); the appellants, who are rustic persons, are not involved in any other case; the appellants are facing the agony of trial and appeal for the last more than 13 years; and that the maximum substantive sentence prescribed for the offences punishable under Sections 323 and 325, IPC, are not more than seven years, therefore, as per the provisions contained in Section 360, Cr.P.C., they can be released on probation. In support of his submissions, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court delivered in the case of **Hansa Singh v. State of Punjab**, (1976) 4 SCC 255 and a Division Bench judgment of this Court in the case of **Dev Singh and others v. State of Punjab**,

2000 Cr1.L.J. 347.

7. Learned counsel for the State has not opposed the submission of the learned counsel for the appellants with regard to the conviction. However, with regard to release of the appellants on probation, he submits that though the occurrence is of the year 2002, but the appellants had caused grievous injuries on the person of Mange Ram and, as such, they should not be released on probation.

8. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

9. Depositions of PW2, Jagdish (complainant) and PW3 Mange Ram (injured) would conclusively prove that Mange Ram had received simple and grievous injuries at the hands of Jagbir @ Poto (appellant No. 1), Sher Singh (appellant No. 2) and Balwan (appellant No. 3, since deceased) by means of *Lathi* and fist blows. The medical evidence further supports the ocular version of the injured and that of the complainant. The investigating officer, ASI Lekh Ram (PW4) has also proved the factum of receipt of the injuries by Mange Ram (PW3) at the hands of the appellants and, as such, the learned Trial court has rightly convicted the appellants for the offences punishable

under Sections 323 and 325 read with Section 34, IPC. Thus, learned counsel for the appellants has rightly opted not to challenge the conviction of the appellants.

10. However, there appears to be substance in the submissions of learned counsel for the appellants when he submits that in view of the fact that the appellants are rustic persons; the present case has arisen out of a version and cross-version; both the private factions had received injuries; the appellants have already suffered agony of trial and appeal for approximately 13 years; the injuries alleged to have been received by Mange Ram (PW3) had healed before his death and he was leading a normal life; and that the appellants are first offenders.

11. In view of totality of the facts and circumstances of the case and taking into consideration the ratio of the judgment delivered by Hon'ble the Supreme Court in the matter of **Hansa Singh (supra)** and a Division Bench judgment of this Court in the matter of **Dev Singh and others (supra)**, this Court is of the considered opinion that appellant Nos. 1 and 2, namely, Jagbir @ Poto and Sher Singh, respectively, can be released on probation.

12. As a sequel to the above discussion, this appeal is partly allowed. The impugned order of sentence is modified and

appellant Nos. 1 and 2, namely, Jagbir @ Poto and Sher Singh, are ordered to be released on probation for a period of two years from the date they furnish the necessary bonds to the satisfaction of the learned Trial Court. Separate undertaking by each one of them shall also be furnished to the effect that they shall undergo remaining part of their substantive sentences if called for to do so by a Court of competent jurisdiction during the period of their probation, if they violate the terms and conditions of the bonds to be furnished by them.

13. It is further ordered that during the period of probation, appellant Nos. 1 and 2 shall not commit any other offence and be of good behaviour. Appellant Nos. 1 and 2 have agreed to pay a sum of Rs. 10,000/- each (Rs.10,000/- + Rs.10,000/- = Rs. 20,000/-) as compensation to the legal representatives of the injured, Mange Ram (since deceased). The said amount shall be deposited with the learned Trial Court within one month of passing of this order. On deposit of the amount by appellant Nos. 1 and 2, learned Trial Court shall issue a notice to the legal representatives of the injured, Mange Ram (since deceased) to move appropriate application for withdrawal of the said amount as per norms. In case appellant Nos. 1 and 2 do not comply with the order with regard to payment of

compensation, then the order of sentence passed by the learned Trial Court shall enure. The amount of fine imposed by the learned Court below shall be converted into costs of litigation. Necessary bonds shall be furnished by the appellants within a month of passing of this order.

14. Appellant Nos. 1 and 2 be set at liberty at once subject to above conditions, if not required to be in custody in any other case.

(NARESH KUMAR SANGHI)
JUDGE

January 28, 2015
Pkapoor