

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1270-SB of 2003

Date of Decision : January 07, 2015

Jagtar Singh and othersAppellants

VERSUS

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. A.S. Kalra, Advocate
for the appellants.

Mr. R.S. Randhawa, Additional A.G., Punjab.

Mr. S.S. Sodhi, Advocate
for the complainant.

T.P.S. MANN, J. (Oral)

The appellants have filed the present appeal against the judgment and order dated 4.6.2003 passed by the Additional Sessions Judge (*ad hoc*), Amritsar, whereby they were convicted under Sections 308/34 IPC and sentenced to undergo rigorous imprisonment for two years each. They were also convicted under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for one year each. Both the sentences were ordered to run concurrently.

As per the prosecution, on 9.4.2001 at about 5.00/6.00 p.m., complainant Kirpal Singh went to the house of Onkar Singh, husband of sister of his father. When he was standing outside the house of Onkar Singh, accused Jagtar Singh, armed with a *dang*, while Jatinder Singh, Dharminder Singh and Sucha Singh, who were empty handed, came there and started hurling abuses at him. Sucha Singh raised a *lalkara* exhorting his co-accused to catch hold of Kirpal Singh and not

to allow him to escape. Jagtar Singh gave *dang* blow on the head of Kirpal Singh as a result of which he fell down. Jatinder Singh and Dharminder Singh gave kick blows, while Sucha Singh gave fist blow to Kirpal Singh. Dharminder Singh then gave one more kick blow. This was followed by Jagtar Singh giving *dang* blow on the left hand and Jatinder Singh giving a kick blow on the left arm of Kirpal Singh. When Satnam Singh came out of his house and tried to intervene, Jagtar Singh gave two *dang* blows on his leg. When Kirpal Singh tried to intervene, Jagtar Singh gave *dang* blow on his left hand. An alarm was raised, which attracted Onkar Singh to the spot. On seeing him, all the four accused ran away. The motive for the accused to open the attack and cause injuries to Kirpal Singh and Satnam Singh was a quarrel which had taken place between the parties a few days earlier.

It is the further case of the prosecution that on 10.4.2001, both Kirpal Singh and Satnam Singh were admitted in Guru Nanak Dev Hospital. ASI Tarsem Singh reached there and came to know that Satnam Singh was not fit to make a statement, whereas Kirpal Singh was not found available on his bed. On 14.4.2001, Kirpal Singh got recorded his statement about causing of injuries to him and Satnam Singh by the accused. As his statement did not disclose any cognizable offence, DDR No.15 was recorded at Police Station Raja Sansi. Subsequent to receipt of x-ray report, injury No.1 on the person of Satnam Singh was declared to be dangerous to life and, accordingly, FIR came to be registered at Police Station Raja Sansi on 4.6.2001. The accused were arrested and the statements of the witnesses were recorded. Upon completion of the investigation, challan was presented in the Court and the case was committed to the Court of Sessions. In the meantime, Kashmir Kaur w/o Onkar Singh instituted a private criminal

complaint against Jagtar Singh, Jatinder Singh, Dharminder Singh and Avtar Singh on 2.5.2001, wherein it was averred that on 9.4.2001 at about 7.00 p.m. her nephew Kirpal Singh came back after seeing off his relatives at bus stand. When he was present outside her house he was challenged by Jagtar Singh accused by raising a *lalkara*. Dharminder Singh gave blow from the reverse side of the *khukhri* on the head of Kirpal Singh. Avtar Singh gave a number of blows with *dang* on his left shoulder, left thumb, fore-arm and left side of the neck. Jatinder Singh accused gave two *dang* blows on his back and right elbow. Kashmir Kaur and her son Satnam Singh came out of the house on hearing the noise, whereupon Jagtar Singh raised a *lalkara* that Satnam Singh be also killed. He was caught hold by Jagtar Singh. This was followed by Jatinder Singh giving *dang* blow on his head, Dharminder Singh giving *khukhri* blow from its reverse side on his right wrist, whereas Avtar Singh gave fist blow on the right side of his fore-arm. On receipt of the injury, Satnam Singh fell down and the accused ran away from the spot. She further alleged that earlier to the occurrence, the complainant party contested Panchayat elections and the accused, who were Akali workers had a grudge against them. She also stated that the matter was reported to the police but no action was taken. Even the injury found on the head of Satnam Singh was found dangerous to life but the police did not register any case. Left with no other option, she had to file the criminal complaint in question. In the said complaint the learned Magistrate recorded preliminary evidence and, thereafter, summoned the accused for committing offences punishable under Sections 307/325/323/34 IPC. The said case was also committed to the Court of Sessions alongwith the State case.

After hearing learned counsel for the parties and

going through the material collected by the prosecution as well as referred to by the complainant, the accused were charge sheeted under Sections 308/323/34 IPC in the State case, whereas they were charged under Sections 307/325/324/323/34 IPC in the complaint case. Both the cases were, later on, merged.

In order to prove its case, the prosecution relied upon the testimonies of PW3 Satnam Singh, PW4 Kashmir Kaur and PW7 Kirpal Singh, who deposed about the actual occurrence. The prosecution also relied upon the testimonies of PW1 Dr. Ramesh Chander, PW2 Dr. Vishal Sharma, PW6 Dr. Sukhwinder Singh, PW9 Dr. Gur Iqbal Singh and PW11 Dr. J. Rajiv Boparai in support of the medical evidence, whereas the investigation part of the case was deposed to by PW5 ASI Harjit Singh, PW8 Inspector Prabhdev Singh and PW10 ASI Tarsem Singh.

When examined under Section 313 Cr.P.C., all the accused denied the prosecution allegations. However, they did not examine any evidence in their defence.

After hearing learned counsel for the parties and going through the evidence brought on the record, Sucha Singh, who was one of the accused in the State case and Avtar Singh, who was also one of the accused in the complaint case were acquitted of the charges against them. Only the three appellants were convicted and sentenced for the offences under Sections 308/34 and 323/34 IPC.

Learned counsel for the appellants states that his clients do not challenge the impugned judgment of conviction passed by the trial Court as during the pendency of the appeal, good sense has prevailed upon the parties to resolve their differences amicably. They both reside in the same village and

are neighbours as well. In this regard he has produced the compromise deed, which is signed by Kirpal Singh and Satnam Singh, the two injured persons on the one hand and the three appellants on the other. The compromise deed is duly witnessed by the Municipal Counsellor and the President of Nagar Panchayat, Raja Sansi, District Amritsar besides Tarlok Singh, Lamberdar of village Raja Sansi. He has further submitted that out of the sentence of two years imposed upon them, Jagtar Singh appellant has undergone an actual period of about five months, whereas Jatinder Singh and Dharminder Singh appellants have undergone an actual period of 26 days and 13 days, respectively. All the three appellants have been facing the agony of criminal prosecution for the last about 14 years. There is no material on the record to show that during the time the appellants have remained on bail, they have misused the concession. Prayer has, accordingly, been made for taking a lenient view in the matter of sentence of imprisonment of the appellants.

Learned State counsel has opposed the prayer made on behalf of the appellants by submitting that all the appellants had taken active part in the commission of the crime and caused injuries to Kirpal Singh and Satnam Singh. One of the injuries found on the person of Satnam Singh was declared to be dangerous to life. Therefore, no leniency be shown to the appellants in the matter of sentence of imprisonment.

Learned counsel for the complainant has placed on record the power of attorney and confirmed the factum of compromise having been arrived at between the parties. He has also placed on record the affidavit executed by Kirpal Singh, who had lodged the FIR and had also received injuries in the occurrence. In the said affidavit, it has been stated by Kirpal Singh that he had no grudge against the appellants as the

matter stood amicably settled and, therefore, he would have no objection if the appellants are acquitted of the charges against them.

From a perusal of the records, it is made out that Jagtar Singh appellant was initially arrested on 22.6.2001 and was, later on, released on bail on 7.11.2001. Therefore, he has already undergone an actual period of 4 months and 16 days. Furthermore, both Jatinder Singh and Dharminder Singh appellant were arrested on 22.6.2001. While Dharminder Singh appellant was released on bail on 4.7.2001, Jatinder Singh was released on 17.7.2001. Therefore, it is made out that Dharminder Singh appellant has undergone a period of 13 days while Jatinder Singh appellant has undergone a period of 26 days out of the sentence of two years imposed upon them.

The offence under Section 308 IPC is not lawfully compoundable. However, the factum of compromise arrived at between the parties can be taken into consideration to take a lenient view in the matter of sentence of imprisonment as the parties have already resolved their differences amicably by entering into a compromise and are living as peaceful citizens since the time they were released on bail by the trial Court.

Resultantly, the conviction of the appellants for the offences under Sections 308/34 and 323/34 IPC is maintained. However, the substantive sentences of imprisonment imposed upon each of them on both the counts are reduced to the one already undergone by them.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

January 07, 2015