

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA S 2104 – SB of 2003 (O&M)
Date of decision : 15.12.2015

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Kulwant Singh and others
.....Appellants

vs.

State of Punjab
.....Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. G.K. Mann, Advocate for the appellants.

Mr. Vaibhav Sharma, Deputy Advocate General, Punjab.

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1. Whether Reporters of local papers may be allowed to see the judgment?

yes
2. To be referred to the Reporters or not?

yes
3. Whether the judgment should be reported in the Digest?

yes

P.B. Bajanthri, J.

Appellants in this appeal are the police personnels. On the allegations that they have harassed complainant and others, both mentally and physically, they were subjected to criminal proceedings which was ended in sentencing them as follows:-

<i>Sr.No.</i>	<i>Name</i>	<i>Offence u/s</i>	<i>Sentence</i>
1	Kulwant Singh	325 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.200. In default of payment of fine to undergo further RI for 10 days.
		367/34 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.300. In default of payment of fine to undergo further RI for 15 days.
		323 IPC	To undergo rigorous imprisonment for three months.

<i>Sr.No.</i>	<i>Name</i>	<i>Offence u/s</i>	<i>Sentence</i>
2	Kulwant Rai	367/34 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.300. In default of payment of fine to undergo further RI for 15 days.
		325/34 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.300. In default of payment of fine to undergo further RI for 15 days.
		323 IPC	To undergo rigorous imprisonment for three months.
3	Satnam Singh	367 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.300. In default of payment of fine to undergo further RI for 15 days.
		325/34 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.200. In default of payment of fine to undergo further RI for 10 days.
		323 IPC	To undergo rigorous imprisonment for three months.

All the sentences were ordered to run concurrently.

2) Aggrieved by the judgment and order dated 27.10.2003 passed by the Sessions Judge (Adhoc), Fast Track Court, Gurdaspur, in Sessions Case No. 29 dated 15.5.1998, the present Criminal Appeal has been presented.

(3) The prosecution story in brief is that on 23.1.1995 there was a marriage of daughter of Avtar Singh s/o Lachhman Singh r/o Rania. The marriage was performed at Saini Guest House, Gurdaspur. On the evening of 23.1.1995, there was a celebration at Avtar Singh's house, where all family members/relatives of Avtar Singh were assembled and they were performing 'Bhangra and Gidhha' in their house. At about 8.30 P.M. about 20 police personnels entered into Avtar Singh's house while abusing and beating the members of the family/relatives. Even ladies were not spared and they were also beaten up. One Beant Singh, retired Panchayat Officer who came there from his house and asked the reason for doing so from the

police personnels. One of the policeman gave butt blow on the head of Beant Singh and he received head injuries and fell unconscious. He was rushed to Civil Hospital but the hospital authorities refused to give medical treatment and admit him as it was a case against the police. He was taken to Muni Lal Chopra Hospital, Amritsar. After giving beatings to Hardev Singh, Avtar Singh, Shamsher Singh, Beant Singh and other members of family/relatives, who were present, the police dragged them to the police station where they were also given beatings. Hardev Singh was stripped naked in the police station in the presence of his family members and other police personnels. The police persons showed their annoyance because they were not provided whiskey in the marriage. Hardev Singh, Avtar Singh and Shamsher Singh etc. were compelled to sign some blank papers by the police and had apprehension in their mind that the police personnels must have utilized the said papers for some written compromise, although no such compromise was ever effected. The complainant party approached police authorities for registration of criminal case against police officials, however, the complainants were not allowed to meet SSP Gurdaspur. On 29.1.1995, the entire episode was published as a news item in 'Daily English Tribune'. Since complaint was against police persons through police station, the complainant party preferred a writ before this Court. This Court directed the concerned officer to register a criminal case against the police personnels vide order dated 9.8.1996 passed in CWP No. 2691 of 1995. Pursuant to the directions of this Court, on 26.8.1996 FIR

No. 92 dated 20.8.1996, under Sections 452/363/323/34 IPC was registered at Police Station Dhariwal, District Gurdaspur. The accused-appellants and another were arrested. Statement of witnesses were recorded and after completion of all necessary formalities, challan against the accused was filed in the Court. Since the offence under Section 367 IPC was exclusively triable by the Court of Session, therefore the case was committed to the Court of Session by JMIC Gurdaspur on 7.5.1998.

4) During pendency of the trial, one of the accused namely, Harvinder Singh died. Accordingly, on 9.10.2001, trial was abated in so far as Harvinder Singh is concerned.

5) The accused-appellants were charge sheeted under Sections 325/323, 367/34, 452 IPC. Prosecution examined 17 witnesses.

6) Statement was recorded under Section 313 Cr.P.C. in which the accused have denied the allegations of the prosecution and pleaded that they have been implicated falsely in the case. It was also contended that the witnesses who have been examined by the complainant party are related to each other. The Sessions Court evaluated the evidence of PW-1 Hardev Singh, PW-2 Shamsher Singh, PW-3 Avtar Singh, PW-8 Dr. Harbhajan Singh, MO, PW-4 ASI Lakhbir Singh, PW-5 ASI Jagdish Raj, PW-6 Dr. C.L. Thukral, PW-12 SI Swaran Singh, PW-13 Krishan Chand, PW-17 Ashwani Kumar and exhibits. The Sessions Court also considered the delay in filing the FIR and non-examination of Dr. Bhagwant Rao. Pursuant to the

medical certificate and the evidence, it was held that grievous injury caused with blunt weapon on the head of injured Beant Singh is attributed to Kulwant Singh ASI and so also simple injuries which were attributed to all the accused. Thus the Sessions Court has given finding that prosecution has been able to prove their case against the accused. Thus they were convicted for the offences under Sections 325/323/367/34, 452 IPC

7) Learned counsel for the appellants contended that the entire proceedings are liable to be set aside on the ground of delay in filing the FIR. Injured persons were not examined, there are contradictory statements among PW-1, PW-2 and PW-3, Dr. Bhagwant Rao has not been examined. There is no evidence of grievous injury. Since simple injuries have been caused, therefore, Section 367 IPC is not attracted. Moreover, there is no evidence. It was further contended that the appellants are entitled to be released on probation, as they are not involved in any other criminal case.

8) Learned counsel for the appellants further contended that on 15.12.2014, there was a compromise entered between the appellants and injured persons and requested this Court to accept the compromise deed and close the matter or quash the sentence ordered by the Sessions Court. In support of the abovesaid contention, learned counsel for the appellants has placed reliance on two decisions, reported as **Sube Singh and another vs. State of Haryana and another** 2013 (4) RCR (Criminal) 102 and **Bharti vs. State of Haryana and another** 2014 (2) RCR (Criminal) 133. In so far as,

contention regarding releasing the appellants on probation, the appellants' counsel has placed reliance on decisions reported as **Md. Monir Alam vs. State of Bihar** 2010 (1) RCR (Criminal) 737, **Karnail Singh and others vs. State of Haryana** 2010 (1) RCR (Criminal) 502. In support of contention regarding compounding of offence, learned counsel for the appellants has relied on decisions reported as **Kamaldeep Singh vs. State of Punjab** 2009 (2) RCR (Criminal) 719 and **Surat Singh vs. State of Uttaranchal (Now Uttarakhand) and another** 2013 (1) RCR (Criminal) 1011.

9) Learned State counsel vehemently contended that each of the contentions raised in this appeal, namely, delay, non-examination of witnesses and appreciation of evidence adduced, have been dealt by the Sessions Judge. Therefore, there is no infirmity, so as to interfere with the decision impugned in this appeal.

10) Learned State counsel cited two decisions of the Apex Court, countering the issue of compromise among the parties, namely, **Manohar Singh vs. State of Madhya Pradesh and another** 2014 (3) RCR (Criminal) 865 and **Narinder Singh and others vs. State of Punjab and another** 2014 (2) RCR (Criminal) 482. Thus, learned counsel for the State distinguished the application of compounding and non-compounding offences where compromise among the parties can be entertained by the Court. He contended that in the present case, the appellants have been convicted and even on the count of non-compoundable offence, therefore plea of the appellants to accept compromise entered into between the appellants and injured persons,

is liable to be rejected.

11) Heard learned counsel for the parties.

12) Learned Sessions Judge has analyzed the factual aspects and discarded the contention of the appellants that there is delay in filing FIR. The appellants are police persons and the complaint was to be registered in the very same police station where the appellants were working (jurisdictional police station). Therefore, injured persons approached SSP, Gurdaspur. However, subordinates to SSP, Gurdaspur, did not permit injured persons to meet SSP, Gurdaspur. Therefore, injured persons were compelled to approach this Court by filing a Civil Writ Petition. These facts are sufficient to ignore the question of delay in filing FIR.

(13) The appellants contention that they have been falsely implicated and the witnesses are related to the injured persons is concerned, the appellants have not pointed out in the entire proceedings what was the ill will between the appellants and the injured persons, so as to implicate the appellants falsely. At this juncture, it is relevant to mention that common man/people filing a case against police personnel is unimaginable, that too when the injured persons were residing in the jurisdictional police personnel (appellants). Therefore, contention of the appellants that they have been falsely implicated is to be rejected.

(14) The appellants contention that Dr. Bhagwant Rao has not been examined, who treated the injured persons, is concerned, the said contention was dealt in the judgment of the Sessions Judge, in

which it has been recorded that he had gone abroad and is not available in India. However, PW-17, who is conversant with the handwriting of Dr. Bhagwant Rao, has identified the medical record Exhibit PW-17/A with regard to treatment of injured Beant Singh. So also PW-6 Dr. C.L. Thukral identified Exhibits PW-6/A and PW-6/B, which are the reports relating to CT Scan of injured Beant Singh, has been taken note of. At this stage, it is relevant to notice that Beant Singh was injured on the head due to one hit of a butt by first appellant. Perusal of evidence of PW-1, PW-2 and PW-3 also shows that there is no discrepancy as contended by counsel for the appellants. Therefore, the prosecution has proved the charges against the appellants herein.

(15) It was also noticed that on the day of occurrence i.e. on 23.1.1995, the injured persons went to get treatment in the hospital, but the doctors/staff did not entertain them to treat for the reasons that it was a police case. Therefore, the injured persons were compelled to move from one hospital to another, in fact in two hospitals at Gurdaspur and Naushera, may be due to police pressure the injured persons were not attended. Consequently, injured persons were shifted to Amritsar in Muni Lal Chopra Hospital for getting treatment. MLR Exhibit PW-8/B proved by PW-8 Dr. Harbhajan Ram shows that duration of injuries was within 48 hours. In totality of the circumstances, the prosecution has been able to prove on record that the injured persons received injuries as per story of the prosecution.

Therefore, the appellants have not made out a case so as to set aside

the judgment and order dated 27.10.2003.

(16) Learned counsel for the appellants contended that appellants and injured persons have entered into compromise deed on 15.12.2014. The appellants have not committed crime so as to attract offence under Section 367 and 323 IPC. At the most they can be punished only for offence under Section 323 and 325 IPC. If the sentence is modified, the compromise entered by the parties be taken on record and judgment and order dated 27.10.2003 be set aside. In this regard, counsel for the appellants relied on decisions cited supra. The same have been examined. Firstly, question of modifying sentence is not permissible having regard to the factual aspects that Beant Singh had grievous hurt on the head (seat of injury). The injured persons were dragged to the police station and beaten in the police station. In fact injured persons were stripped in front of members of the family/general public who were present in the police station. Moreover, the appellants have been sentenced under non-compoundable offence. Consequently, the compromise entered into by the parties cannot be accepted in view of the Supreme court decision in **Narinder Singh's case (Supra)** wherein guidelines were issued. One of the guideline is that when the accused is convicted, High Court should not accept compromise during pendency of appeal and acquit the accused. So, if the parties entered into a compromise in a non-compoundable offence after they were convicted and in an appeal stage, the compromise is impermissible. In the present case, parties have entered into compromise in the appeal stage i.e. after

their conviction by the Sessions Court. Therefore, the decisions cited by the counsel for the appellants are entirely under different circumstances.

(17) The question of considering the appellants' plea that they should be released on probation does not arise, for the reasons that the way in which the appellants have physically and mentally harassed the injured persons in the case and moreover they managed to avoid complaint from the injured persons against them. Consequently, the injured persons were compelled to approach this Court seeking a direction to register a criminal case against the appellants. Therefore, the appellants are not entitled to be released on probation. The cited judgments by counsel for the appellants may not assist in the present case, having regard to the facts and circumstances of the case in hand.

(18) In fact the Supreme Court in the case of **Hazara Singh vs. Raj Kumar and others** 2013 (9) SCC 516 while dealing with the issue of sentencing policy held as follows:-

“9. This position was reiterated by a three-Judge Bench of this Court in [Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat](#), (2009) 7 SCC 254, wherein it was observed as follows:-

“99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed

object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.”

10. XXX XXX XXX

11. XXX XXX XXX

12. Recently, this Court in [Gopal Singh vs. State of Uttarakhand JT 2013 \(3\) SC 444](#) held as under:-

“18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence.....”

13. We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the

nature of the offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”

(19) Time and again the Hon'ble Supreme Court warned police persons not to misuse their uniform and authority when they are supposed to protect citizens of this country. The Apex Court in **Prithipal Singh vs. State of Punjab** (2012) 1 SCC 10, held as follows:-

“POLICE ATROCITIES :

25. Police atrocities in India had always been a subject matter of controversy and debate. In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrong-doer is accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of

the State. Latin maxim *salus populi est suprema lex* – the safety of the people is supreme law; and *salus reipublicae suprema lex* – safety of the State is supreme law, 14 co-exist. However, the doctrine of the welfare of an individual must yield to that of the community.

26. The right to life has rightly been characterised as “‘supreme’ and ‘basic’; it includes both so-called negative and positive obligations for the State”. The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.

27. The State must protect victims of torture, ill-treatment as well as the human rights defender fighting for the interest of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences must be understood in correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the

hands of any State agency/police force.

28. In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. In its 113th report, the Law Commission of India recommended the amendment to the Indian Evidence Act, 1872 (hereinafter called “Evidence Act”), to provide that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period. Onus to prove contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes. (Vide: *Dilip K. Basu v. State of W.B., N.C. Dhoundial v. Union of India and Munshi Singh Gautam . v. State of M.P.*).”

20) In the present case the police officials – appellants are themselves arrayed as accused. The State must make sincere endeavor to guide/train the police personnels that they must be friendly with general public. Some States have woman police station which shows that State has no confidence among the men police to handle cases relating to women. These facts shows that some of the police personnels have not mended their behaviour/attitude towards general

public, for which necessary training is required.

21) In view of the above discussion, the appeal stands dismissed.

22) This Court suspended the sentence of the accused/appellants on 21.11.2003. The bail bonds of the accused/appellants stand cancelled. They shall surrender within 15 days from the date of this judgment before the CJM, Gurdaspur, failing which CJM, Gurdaspur shall take coercive steps to secure their presence and send them to jail to undergo the remaining sentence.

(P.B. Bajanthri)
Judge

December 15, 2015.
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