

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision: 27.09.2016.

CRA-S-1754-SB-2004

Kailasho and anotherAppellants.

VERSUS

State of HaryanaRespondent.

AND

CRA-S-1975-SB-2004

Jeeto and othersAppellants.

VERSUS

State of HaryanaRespondent.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Sanjay Verma, Advocate for the appellants.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This judgment shall dispose of two appeals numbered CRA-S-1754-SB-2004 filed by appellants Kailasho and Roopi and CRA-S-1975-SB-2004 filed by appellants Jeeto, Paramjit, Prem and Harish, as all these appellants had been held guilty, convicted and sentenced by a common judgment of conviction dated 26.08.2004 and order of sentence dated 28.08.2004 recorded by learned Additional Sessions Judge, (Adhoc) Fast Track Court, Kurukshetra, in Session Case No.12 of 2002 based on First Information Report No.436 dated 22.11.2001 registered at Police Station

In precise, the case of the prosecution was that on 22.11.2001 Surjit Kumar, Sub Inspector of Detective Staff, Ambala City alongwith Constables Kesar Singh and Balbir Singh went to Deha Colony, Shahabad to arrest appellant-accused Prem, who was a bail jumper. They apprehended Prem but immediately then wife of Prem, namely Jeeto and Roopi Lamberdarni came there. To them, it was disclosed by the police officials that Prem was a proclaimed offender and they had come to arrest him. On this, Roopi Lamberdarni challenged their authority to take Prem and called several men and women of the colony. On instigation by her, the police party was attacked with *Dandas* and bricks. Jeeto gave a blow of '*Mogri*' on the right hand and head of Sub Inspector Surjit Kumar and the other assailants-accused, namely Paramjit, Kailasho and Harish inflicted injuries on the other police officials and they succeeded in getting Prem released.

The injured police officials were got medico legally examined at CHC, Shahabad. On the statement of Sub Inspector Surjit Kumar, a First Information Report was registered. The weapon used during crime were taken into possession. Appellants Jeeto, Kailasho, Roopi, Paramjit, Prem and Harish were arrested and challaned and were sent to the Court for trial.

The appellants were charge-sheeted under Sections 147, 332, 333, 353, 186, 224, 225 read with Section 149 of the Indian Penal Code (for short, "I.P.C.") to which they pleaded not guilty.

To substantiate the charge, the prosecution examined as many as 12 witnesses. After closure of evidence of the prosecution, statements of the appellants under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C.") were recorded wherein they denied the allegations of the

prosecution and pleaded innocence and false implication.

No evidence was led by the appellants in their defence.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants, learned trial Court held guilty and convicted the appellants for commission of offence under Sections 147 and 333 read with Section 149 I.P.C. All the appellants except appellant Prem were also held guilty and convicted for commission of offence under Section 225 read with Section 149 I.P.C. and appellant Prem was held guilty and convicted for commission of offence under Section 224 I.P.C.

All the appellants were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- each for commission of offence under Section 333 read with Section 149 I.P.C. and in default of payment of fine to further undergo rigorous imprisonment for a period of five months and they were also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- each under Section 147 I.P.C. and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. Appellants Jeeto, Roopi, Kailasho, Paramjit and Harish were sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/- each under Section 225 read with Section 149 I.P.C. and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. Appellant Prem was sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/- under Section 224 I.P.C. and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

dated 26.08.2004 and order of sentence dated 28.08.2004 passed by learned trial Court, the appellants preferred the instant appeal.

The submissions made by Mr. Sanjay Verma, learned counsel representing the appellants and Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana have been heard and record perused.

As the matter was opened for arguments, learned counsel for the appellants submitted that he does not challenge the judgment of conviction recorded by learned trial Court against the appellants under Sections 147, 224, 225 and 333 read with Section 149 I.P.C. but would like to point out that PW4 Dr. Rattan Lal Arya testified in very clear and crystal words that examination of X-ray of skull of injured Sub Inspector Surjit Kumar showed “no bone injury” and X-ray of right hand-AP and lateral showed fracture of 5th Meta-carpal bone. From the evidence, it is established that neither Sub Inspector Surjit Kumar nor the other injured suffered grievous injury on any vital part of the body. Only one injury that Sub Inspector Surjit Kumar suffered in his right hand was proved to be grievous.

Learned counsel contended that almost 14 years and 10 months have lapsed since the occurrence had taken place. Three of the appellants, namely Roopi, Prem and Kailsho are very old and are not keeping good health. They all have young children who need their care and guidance. Considering the said facts, the sentence imposed upon the appellants be reduced. To support his arguments, learned counsel relied upon Nasib Hussain Siddi and others vs. State of Gujarat, 2011(4) R.C.R. (Criminal) 698; Buta Singh vs. State of Punjab, 2004(3) R.C.R. (Criminal) 605;

Jyvan Singh and anr. vs. State of Rajasthan, 2013(3) W.L.N. 495; and

V.R. Murthy vs. State, 1995(2) Crimes 365.

The appellants have not assailed the judgment of conviction on merits. Otherwise also, there is substantive, direct and ample evidence of the prosecution consisting of deposition of Sub Inspector Surjit Kumar (PW8), Head Constable Kesar Singh (PW9) and Head Constable Balbir Singh (PW10), eyewitnesses/injured which establishes beyond doubt that the said police officials had gone to Deha Colony, Shahabad for arrest of appellant Prem, who was a proclaimed offender in criminal case arising out of First Information Report No.90 dated 09.12.1994 registered under Section 392 I.P.C. at Police Station Mahesh Nagar, Ambala Cantt. Appellant Prem was apprehended by them but then Jeeto wife of Prem and Roopi Lamberdarni resisted their action and protesting against arrest of Prem collected several other persons from the locality and made concerted effort to secure release of Prem from their custody. Not seeing the police officials relenting, they started beating them. Jeeto brought a 'Mogri' from her house and caused injury with the same to Sub Inspector Surjit Kumar. The other two companions of Sub Inspector Surjit Kumar, namely Head Constable Kesar Singh and Head Constable Balbir Singh were also caused injuries by the appellants and they succeeded in getting Prem released. All the appellants were stated to have actively participated in the assault on the police officials in one way or the other. Nothing such could be derived by the appellants during cross-examination of the aforesaid witnesses which could cast a shadow of doubt on their credibility. The statement of complainant Sub Inspector Surjit Kumar and other injured-eyewitnesses is corroborated by medical evidence. PW3 Dr. Ravinder Nath had medico legally examined all

the medico legal reports prepared by him Ex.PB and Ex.PC of Sub Inspector Surjit Kumar and Head Constable Balbir Singh respectively and gave a detailed narration of the injuries found on the person of each of the said injured. There were four injuries found on the person of Sub Inspector Surjit Kumar. Injury No.1 on the right parietal area of scalp and Injury No.2 on the back of ulnar side of right hand were subjected to X-ray whereas the other two injuries No.3 and 4 were declared simple. The weapon used for was opined to be 'blunt'. All the three injuries found on the person of Head Constable Balbir Singh were declared simple and caused by blunt weapon.

PW4 Dr. Rattan Lal proved the X-ray films Ex.PG/1 and Ex.PG/2 and the X-ray report Ex.PG relating to Sub Inspector Surjit Kumar and firmly stated that 'X-ray of skull showed fracture of 'no bone injury' and 'X-ray of right hand-AP and lateral showed fracture of 5th Meta-carpal bone. As regards injured Balbir Singh, he proved X-ray film Ex.PH/1 and the X-ray report Ex.PH and stated that the X-ray of left shoulder-AP showed 'no bone injury'. Meaning thereby that only the injury in the right hand of Sub Inspector Surjit Kumar came out to be grievous. In other words, none of the injuries suffered by complainant Sub Inspector Surjit Kumar or the other injured was grave or serious.

In the above premise, the judgment of conviction dated 26.08.2004 recorded by learned Trial Court is upheld.

Coming to the order dated 28.08.2004 on quantum of sentence, none of the appellants is a previous convict. The occurrence is 15 years old by now. As per the custody certificates of the appellants produced by learned State counsel subsequent to the occurrence also, the appellants have

children because as per the statements recorded by learned trial Court on the quantum of sentence, they all had children of tender age at that point of time. Four out of the appellants happened to be females. Keeping in view all the said circumstances, in my considered opinion, the ends of justice would be best served if instead of sending the appellants to jail, they are given the benefit of probation for a period of two years under Probation of Offenders Act, on their furnishing bail bonds in the sum of Rs.10,000/- each with one surety each in the like amount to the satisfaction of learned Chief Judicial Magistrate, Kurukshetra. During this period, they shall undertake to keep peace and be of good behaviour and appear and receive sentence as and when called upon to do so. The appellants will also deposit litigation expenses to the tune of Rs.5,000/- each. In the event of their failure to comply with this order within two months from today, they would be arrested and sent to jail to serve the remaining period of their sentence.

With above modification in the order on quantum of sentence, the appeal is dismissed.

(SNEH PRASHAR)
JUDGE

27.09.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes