

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(102)

**CRM No. 27687 of 2016 and
CRM No. 32911 of 2015 and
CRM No. 4093 of 2016 in/and
CRA-AD No. 63 of 2015
Date of decision: 07.09.2016.**

Balwinder Singh

..... Applicant/appellant.

Versus

State of Punjab and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Arvinder Singh, Advocate, for the applicant/appellant
with applicant/appellant - Balwinder Singh.

S.S. SARON, J.

The criminal appeal, i.e. CRA-AD No. 63 of 2015, has been filed by Balwinder Singh (complainant) against acquittal of Jagsir Singh and Davinder Singh (respondents No. 2 and 3) for the offences punishable under Sections 307, 323, 324, 447, 511 read with Section 34 of the Indian Penal Code ('IPC' - for short).

FIR in the case has been registered on the statement of complainant - Balwinder Singh, who stated that he is a resident of village Himatpura Basti, Chhintanwala. He had constructed his house in the agricultural fields. His maternal uncle Karamjit Singh had purchased land of Harijan Cooperative Society, Chhintanwala from Rabi Singh on the basis of possession measuring 32 kanals about 7-8 years earlier to the incident that had occurred on 26.06.2010. Rabi Singh had purchased the said land from Kulwant Singh, who had purchased the same from the brother of

Mohan Singh namely Sucha Singh. The 'girdawari' of the land was in the name of Karamjit Singh, maternal uncle of Balwinder Singh, on the basis of his possession. Stay had been granted by the High Court. It is alleged that Mohan Singh (accused No. 4), Himat Singh (accused No. 1), Jagsir Singh (respondent No. 2) and Davinder Singh (respondent No. 3) were trying to take forcible possession of the land. The complainant was irrigating his fields during the night on 26.06.2010 at about 9-9:30 p.m. and his maternal uncle was also ploughing the fields. Lakhwinder Singh, the son of Karamjit Singh, and uncle of the complainant namely Sher Singh were also present there. They were sitting on the motor. At that time, Mohan Singh @ Mohni (accused No. 4) armed with a spade, Himat Singh (accused No. 1) armed with a 'gandasi', Davinder Singh (respondent No. 3) armed with a 'dang' and Jagsir Singh (respondent No. 2) armed with a 'dang' came there raising 'lalkaras'. They started abusing the complainant side. Mohan Singh (accused No. 4) with his spade dismantled the boundary of the agricultural fields. The water came out from the fields. When the complainant stopped Mohan Singh (accused No. 1), then he (Mohan Singh) inflicted a spade blow which hit the complainant above his left eye on the forehead. The complainant fell down and while he was lying on the ground, Himat Singh (accused No. 1) inflicted a 'gandasi' blow on his left shoulder, Davinder Singh (respondent No. 2) inflicted a 'dang' blow on his left shoulder. The complainant raised a hue and cry. Then Karamjit Singh, Lakhwinder Singh and Sher Singh came there and all the accused ran away along with their respective weapons. The complainant could recognize them. The motive for the incident was that the assailants wanted to take possession illegally

and due to the said reason they had caused injuries to the complainant. Davinder Singh (respondent No. 2) also received injuries which the complainant had inflicted while defending himself. The complainant was admitted in Civil Hospital, Dhuri where action was asked to be taken. On receipt of X-ray report and CT scan report, offence punishable under Section 307 IPC was added. The accused were arrested.

After trial of the case, the learned Additional Sessions Judge, Patiala held that the prosecution had not been able to prove its case against Davinder Singh (respondent No. 3) and Jagsir Singh (respondent No. 2) beyond shadow of reasonable doubt. Thus, they were acquitted of the charges levelled against them by giving them the benefit of doubt. The prosecution case was held to be proved against Mohan Singh (accused No.4) and Himat Singh (accused No. 1) beyond shadow of reasonable doubt. Thus, they were held guilty for the offence punishable under Section 307 IPC; besides, Himat Singh (accused No. 1) was held guilty for the offence punishable under Section 324 IPC.

Complainant - Balwinder Singh, who is the victim of the case, filed an appeal in this Court on 16.09.2015. Along with the appeal, he also filed CRM No. 32911 of 2015 seeking condonation of 446 days' delay in filing the appeal.

Learned counsel for the applicant/appellant had taken time to file necessary application in terms of Section 378 (3) of the Code of Criminal Procedure ('Cr.P.C.' - for short) seeking leave to appeal in view of the Supreme Court judgment in **Satya Pal Singh v. State of M.P. and others**, MANU/SC/1119/2015. The application seeking leave to appeal,

i.e. CRM No. 4093 of 2016 has been filed and was taken on record vide order dated 28.07.2016.

The present criminal miscellaneous application, i.e. CRM No. 27687 of 2016, has been filed seeking withdrawal of the appeal in view of the compromise (Annexure A-1) attached with the criminal miscellaneous application.

Learned counsel for the applicant/appellant, on instructions from Balwinder Singh (complainant) who is present in Court, submits that he may be allowed to withdraw the appeal as the matter has been amicably settled.

At this stage, Mr. H.P.S. Ghuman, Advocate, who was earlier not present, has appeared and stated that he has filed a criminal miscellaneous application on behalf of Karamjit Singh, who is a witness in the case, for substituting the name of Karamjit Singh in place of Balwinder Singh. It is submitted that Karamjit Singh is the maternal uncle of Balwinder Singh (complainant) and the incident had taken place in his fields, as Mohan Singh (accused No. 4) wanted to take possession of this land. It is also submitted that the offence punishable under Section 307 IPC is not compoundable.

We have given our thoughtful consideration to the contentions raised by Mr. H.P.S. Ghuman, Advocate. However, we find no merit in the same. It is to be noticed that Balwinder Singh (complainant) has filed the appeal and the application for leave to appeal and he does not wish to pursue or continue with the same insofar as Jagsir Singh and Davinder Singh (respondents No. 2 and 3) have been acquitted. Once they are

acquitted by the Court of learned Additional Sessions Judge, Patiala, then the question of compounding the offence punishable under Section 307 IPC does not arise, as they stand acquitted and in the application for leave to appeal, leave has not been granted and before it has granted, a prayer has been made for withdrawal of the application; besides, appeal itself is barred by more then 446 days. Balwinder Singh (complainant) is present in Court. Learned counsel for the applicant/appellant has again asked him and on instructions from him stated that he does not wish to continue with the appeal. It is further submitted that there is no pressure or undue influence of any kind on him. It is further submitted that the land belongs to Karamjit Singh and he has nothing to do with the same.

In the circumstances, the criminal miscellaneous application, i.e. CRM No. 27687 of 2016, is allowed as prayed for and the applications for condonation of delay in filing the appeal, i.e. CRM No. 32911 of 2015; leave to appeal, i.e. CRM No. 4093 of 2016, and the appeal, i.e. CRA-AD No. 63 of 2015, are dismissed as withdrawn.

(S.S. SARON)
JUDGE

07.09.2016
Ramesh

(LISA GILL)
JUDGE

Note:

1.	Whether speaking/reasoned	:	Yes
2.	Whether reportable	:	No