

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

Crl. A. No. S-818-SB of 2004

DATE OF DECISION : 02.09.2016

Roshan Singh and others

.... APPELLANTS

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ankush Singla, Advocate,
for the appellants.

Ms. Svaneel Jaswal, DAG, Punjab.

Mr. D.S. Malwai, Advocate,
for the complainant.

* * *

1. Roshan Singh, his two sons Gurdeep Singh and Gurcharan Singh, wife Inder Kaur and daughter Bala, were tried for offences punishable under Sections 148, 307, 323, 324, 326 and 149 IPC. Vide judgment and order dated 02.04.2004, rendered by the trial court, Roshan Singh along with his sons Gurdeep Singh and Gurcharan Singh was convicted under Sections 307, 323, 324, 326 read with Section 34 IPC, and sentenced for maximum period of 5 years with fine, whereas Inder Kaur and Bala, wife and daughter, respectively, of Roshan Singh, were acquitted of the charges, by giving them benefit of doubt. All the sentences were ordered to run concurrently.

2. Aggrieved by their conviction and sentence, Roshan Singh and both of his sons, namely Gurdeep Singh and Gurcharan Singh, preferred the instant appeal.

3. On 05.02.2001, FIR in this case was registered on the statement of Joga Singh (PW.6), recorded by ASI Darshan Singh (PW.11) that his real brother Gurbachan Singh (PW.8) along with his family was residing near his house in Mohalla Nanakpura, Barnala. Gurbachan Singh and appellant No.1 Roshan Singh were neighbourers having a common wall having a width of 10". Each of them had raised construction by using half of the common wall. On 04.02.2001 at about 1.00 PM, Gurbachan Singh was getting the common wall plastered from his own side by engaging one Darshan Singh as mason. Complainant Joga Singh and his son Harpal Singh (PW.7) had gone to the house of Gurbachan Singh, in connection with some domestic work. Appellant No.1 Roshan Singh, who being an *Amritdhari* Sikh was having a small *kirpan* and his son Bittu (appellant No.3) came inside the street and started abusing Gurbachan Singh as to how he could plaster the common wall. Thereupon, they had some altercation. On hearing noise, accused Inder Kaur, Bala and Dimple alias Gurdeep Singh (appellant No.2) came on the spot. Then, appellant No.1 Roshan Singh took out his small *kirpan* and gave two blows in the abdomen of Harpal Singh, upon which he fell on the ground. Bittu, who was armed with *kirch*, gave two blows on the back of Harpal Singh. Appellant No.1 Roshan Singh gave another *kirpan* blow below the right arm pit of Harpal Singh. Dimple alias Gurdeep Singh armed with *Soti*, gave a blow on the left shoulder of Harpal Singh. Complainant Joga Singh and his brother Gurbachan Singh came forward to rescue Harpal Singh. Appellant No.1 Roshan Singh then gave *kirpan* blow to Gurbachan Singh which had hit on his fore-head. Dimple alias Gurdeep Singh gave a *Soti* blow on the left shoulder of Gurbachan

Singh. On receipt of injuries Gurbachan Singh fell on the ground. Accused Inder Kaur and Bala, present on the spot, were saying that complainant party should not be spared. After causing injuries, all the accused fled away from the spot with their respective weapons. During the grappling, appellant Roshan Singh suffered injuries on his hand.

4. During investigation, statement of injured Gurbachan Singh was also recorded. He produced blood stained clothes worn by injured Harpal Singh at the time of occurrence, which were made into a parcel and the parcel, after duly sealed with the seal bearing impression D.S, was taken into possession by the police vide separate memo, attested by the witnesses. Rough site plan of the place of occurrence with correct marginal notes was prepared.

5. On 06.02.2001, the appellants were arrested. During interrogation, appellant No.1 Roshan Singh produced small *kirpan*. After preparing its sketch, it was taken into police possession vide separate memo, attested by the witnesses. In D.M.C., Ludhiana, statement of injured Harpal Singh was recorded.

6. After completion of investigation, challan was filed against the appellants. Charges for the offences under Sections 307, 323, 324, 326, 34 IPC were framed against them, to which they did not plead guilty and claimed trial.

7. During trial, on an application under Section 319 Cr.P.C., moved by the prosecution, Inder Kaur and Bala were summoned as accused to face trial along with the appellants. On their appearance, charges for the offences under Sections 148, 307, 323, 324, 326 and 149 IPC were framed

against all the five accused, to which they did not plead guilty and claimed trial.

8. In support of its case, the prosecution examined as many as 11 witnesses.

9. In their statements recorded under Section 313 Cr.P.C., the accused denied all the incriminating evidence appearing against them in the prosecution evidence. They pleaded their innocence and false implication. In their defence, they examined Dr. Narsi Ram as DW.1 and AMHC Ajaib Singh as DW.2.

10. After hearing learned Additional Public Prosecutor for the State and learned counsel for the accused, the trial court while observing that presence of both the lady accused, namely Inder Kaur and Bala, was doubtful, acquitted them. However, it was held that the appellants had caused injuries to Gurbachan Singh and Harpal Singh. Accordingly, they were convicted and sentenced, as indicated in the earlier part of this judgment.

11. At the outset, learned counsel for the appellants submitted that the appellants do not want to challenge the impugned judgment of conviction on merits. While praying for taking leniency in the order of sentence, he submitted that appellant No.1 is an old man of more than 60 years, whereas appellants No.2 and 3 are the only earning members of their respective families. They have suffered a lot and have faced protracted trial of more than 15 years. While referring to the custody certificates of the appellants, which have been filed in court today by learned Deputy Advocate General, Punjab, learned counsel for the appellants submitted that

appellant No.1 has undergone 11 months and 10 days (including the period of remission) of actual sentence, appellant No.2 has undergone 1 month and 28 days of actual sentence, whereas appellant No.3 has undergone 1 month and 27 days of actual sentence. The maximum sentence awarded to the appellants under Section 307 IPC is five years rigorous imprisonment besides fine. Moreover, in addition to the compensation already awarded to the complainant by the Civil Court, regarding which execution application filed by the complainant is pending, the appellants are ready to compensate the injured persons in terms of money.

12. On the other hand, learned counsel for the complainant very fairly submitted that he has no objection, if the period of sentence awarded to the appellants is reduced to the period already undergone, subject to payment of reasonable compensation by them to the complainant.

13. In the instant case, the alleged occurrence took place in February, 2001. The complainant party and the appellants are neighbours. The complainant has been awarded compensation by the Civil Court, regarding which execution application is pending. The appellants have already undergone sufficient period of sentence and have also faced protracted trial of more than 15 years. Keeping in view all these facts and the old age of appellant No.1, as well as concession of learned counsel for the complainant, I am of the considered view that the ends of justice will be met, if sentence of all the appellants is reduced to the period already undergone, subject to the condition that they pay ₹ 50,000/- to the complainant as compensation.

14. At this stage, the appellants, who are present in the court, have

paid the aforesaid amount of ₹ 50,000/- in court to learned counsel for the complainant, to be paid to Harpal Singh injured. In this regard, learned counsel for the respondent has furnished receipt, which is taken on record. It is clarified that the above compensation is in addition to the decretal amount awarded to the complainant by civil court, against which execution is stated to be pending.

15. Consequently, the impugned judgment of conviction dated 02.04.2004 is upheld and the order of sentence dated 02.04.2004 passed by the trial court is modified to the extent that the period of sentence is reduced to the one already undergone by the appellants.

16. Appeal is, accordingly, disposed of.

September 02, 2016
ndj

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No