In the High Court of Punjab and Haryana at Chandigarh

CRA-S-626-SB-2003
Date of decision: 25.02.2016

Jai Mohindru and another ..... Appellants

Vs.

State of Punjab ..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. R.S.Athwal, Advocate
for the appellants.

Mr. Amarinder Singh Klar, AAG, Punjab.

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RAJ RAHUL GARG.J.

Appellants Jai Mohindru and Ashish @ Rinku have filed this appeal against the judgment and order on sentence dated 26.03.2003 rendered by learned Additional Sessions Judge (Adhoc), Jalandhar, whereby, appellants along with co-accused Madan Lal @ Nikka and Narinder Bhalla were convicted. Accused Jai Mohindru and Madan Lal were convicted under Section 307 IPC and each one of them was sentenced to undergo RI for 5 years and a fine of ₹1,000/-. In default of payment of fine, to further undergo RI for one year each. Co-accused Ashish @ Rinku was sentenced to undergo RI for one year and a fine of ₹10,000/-. In default of payment of fine to further undergo RI for 6 months for the offence under Section 324 IPC. Co-accused Narinder Bhalla, who was below the age of

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21 years on the date of commission of the crime, was given benefit of Probation of Offenders Act and was bound down for a period of two years for an amount of ₹5,000/- by way of furnishing of probation bonds. He was also directed to deposit ₹10,000/- as litigation expenses. Out of this amount, ₹5,000/- was required to be paid to the State as litigation costs whereas ₹5,000/- to the victim/complainant Dimpy Bahri, after expiry of period of appeal, if any. Remaining accused namely Varinder Kumar, Raju Bahri and Ajay Bahri were acquitted whereas all the accused were acquitted for the offence under Sections 148,149 and 326 IPC as the same were not proved against any one of them. The convicts were found liable for their individual acts in this case.

Brief facts of the case are that Dimpy Bahri son of Rakesh Kumar Bahri, complainant is resident of Mohindru Mohalla and is running a confectionery shop there. On 25.03.1999 at 7.00 pm, complainant Dimpy alongwith his uncle Shakti Raj and cousin Ashu Bahri and Amit @ Bawa Bahri were coming back home after closing their shops. When they reached in front of their house, accused Jai Mohindru son of Vijay Mohindru, armed with a *Kirpan*, Ashish Kumar @ Rinku armed with a *Kirpan*, Narinder Kumar @ Lakha armed with *'Datar*', Madan Lal @ Nikka armed with *'Datar'*, Raju Bahri armed with iron rod, Ajay Bahri armed with soda water bottle and Varinder Bhalla came there. Varinder Bhalla accused raised *'lalkara'* that the *'Bahries'* should be taught lesson and should not be allowed to go alive. On this, accused Mohindru gave *Kirpan* blows on the hand and head of complainant Dimpy and he fell down on the ground. Uncle of the complainant and his cousin came to save him but the accused persons gave sufficient *Kirpan* blows, *'Datar'* blows, iron rod blows and

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soda water bottle blows which hit them on their face, head and arms. The injured persons raised alarm, which attracted uncle of Dimpy (his father's elder brother) and Bunty Chauhan son of Vijay Chauhan. When they reached there, the accused left the spot hurling abuses against them. All the four injured were got admitted by the uncle of complainant in Civil Hospital, Jalandhar. Ashu cousin of the complainant and his uncle Shakti Raj received serious injuries. Their condition had become serious and they were taken to DMC, hospital, Ludhiana on the advise of the doctor. On the basis of the complaint dated 25.3.1999 made by complainant Dimpy, FIR No.33 dated 25.3.1999 under Sections 323, 324, 326, 307, 148, 149 IPC was registered against the accused at Police Station Divn. No.2, Jalandhar.

After completion of necessary investigations, challan was filed against the accused.

On finding a prima-facie case, the charge under Sections 307, 326, 324, 323, 148, 149 IPC was framed against the accused. However, the accused pleaded not guilty to the charge and claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied the prosecution allegation and pleaded that they are innocent.

After hearing counsel for the parties and appraising evidence and material on record, the impugned judgment of conviction and order dated 26.03.2003 were passed as set out in the earlier part of the judgment. Against the aforesaid judgment of conviction and order dated 26.03.2003, present appeal has been filed.

I have heard learned Shri R.S.Athwal, Advocate, counsel for

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the appellants and learned Shri Amarinder Singh Klar, AAG, Punjab, Advocate for the respondent-State besides going through the material available on the file.

At the very outset, learned counsel for the appellants contended that in fact parties have compromised this case. They are living in peace. They do not want to go ahead with this appeal and even the cross-cases i.e. criminal revision petitions filed in cross-cases as well in this case for enhancement of sentence and vide order of even date, the counsel for the revisionist have withdrawn their revision petitions respectively.

Counsel for the appellants further contended that the case is very very old. The appellants have already faced agony of protracted trial. Above all, they have compromised the case and as such even if the case under Section 307 IPC being not compoundable, their sentence may be reduced to the one already undergone and in that eventuality, they do not contest the findings of learned trial Court recorded on merits of the case.

Appellant Jai Mohindru and Madan Lal @ Nikka have been convicted and sentenced for the offence punishable under Section 307 IPC. The sentence awarded is RI for 5 years and a fine of ₹1,000/-. In default of payment of fine, to undergo further RI for one year. Custody certificate of Jai Mohindru shows that he remained in custody for 3 months and 15 days whereas custody certificate of Aahish shows that he remained in custody for 6 months and 5 days.

In support of his contention, learned counsel for the appellants-accused has cited judgments rendered by Hon'ble Apex Court i.e. ***Surendra Nath Mohanty Vs. State of Orissa, 1999(2) RCR (Criminal) 683 and Ishwar Singh Vs. State of Madhya Pradesh, 2009 (1) RCR (Criminal) 1***.

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Another judgment of Bombay High Court titled as ***Balchand Vs. State of Maharashtra and another, 2013 All MR(Crl.)4399*** has also been cited.

In the aforecited judgments, also the case was not compoundable but compromised.

Keeping in view the factum of compromise arrived at between the parties outside the Court and further that 10 years had elapsed, reduced the sentence to already undergone (three months) in ***Surendra Nath Mohanty case (Supra)***. It was also contended by learned counsel for the appellants-accused that Madan Lal @ Nikka has also completed his sentence. This fact is also not disputed by learned State counsel, even otherwise, the present appeal has been filed by Jai Mohindru and Ashish. Compromise deed is also on record. The case is of course not compoundable but keeping in view the fact that the parties have settled their dispute outside the Court and further the fact that more than 15 years have already elapsed and the appellants have faced protracted trial, as such, taking into consideration the aforecited case law on the point, I feel that the ends of justice would be met if the sentence of the appellants-accused is reduced to the one already undergone. So is ordered accordingly. However, the sentence of fine shall remain intact.

(RAJ RAHULGARG)
JUDGE

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