

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

(1) CRA-S-1502-SB of 2002
Date of decision:8.1.2016
Chander Mohan ...Appellant

Versus

State of Punjab ...Respondent

(2) CRA-S-1519-SB of 2002(O&M)
Date of decision:8.1.2016
Bikramjit Singh and anr. ...Appellants

Versus

State of Punjab and anr. ...Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. J.B.S. Gill, Advocate for
the appellant in
CRA-S-1502-SB of 2002.

Mr. H.S. Randhawa, Advocate for
Mr. P.S. Ahluwalia, Advocate
for the appellants in
CRA-S-1519-SB of 2002.

Mr.Deepak Garg, AAG, Punjab.

GURMIT RAM, J.

The above noted both the appeals have been taken up together for disposal since these have arisen from one and the same judgment of conviction in order to avoid repetition and conflict of judgments.

2. The above-said appellants have preferred the above-noted appeals whereby assailing the judgment and order of sentence dated

13.9.2002 passed by the Court of learned Additional Sessions Judge, Hoshiarpur in criminal case bearing FIR No.36 dated 6.3.2001 u/Ss 307, 420, 325, 342, 148, 506 read with Section 149 of IPC, Police Station Haryana, District Hoshiarpur vide which they were held guilty for the offences punishable u/Ss 307, 325, 342 read with Section 34 of the IPC and u/Ss 420 and 506 of the IPC and sentenced thereunder.

3. The case of prosecution in brief as put forth before the learned trial Court was that on 6.3.2001, HC Bhulla Singh was present in Police Post Bhunga where a wireless message was received from SHO Division No.3, Ludhiana regarding admission of injured Balwinder Singh son of Faqir Singh in CMC Ludhiana due to some accident. Upon this, HC Bhulla Singh along with Constable Sucha Singh reached at CMC Hospital, Ludhiana for recording the statement of injured Balwinder Singh and sought the opinion of the doctor for this purpose. Doctor declared him fit to make the statement and accordingly statement of above-said Balwinder Singh was recorded which was as under:-

“That he is resident of Dashmesh Nagar, Dagana Road, Police Station Model Town, Hoshiarpur. On 25.1.2001, he received a telephonic message from Bikramjit Singh son of Boota Singh resident of village Dhhot Kalan, P.S. Haryana that he had struck a deal for sending him abroad and that he (complainant) should reach at his house in the said village alongwith papers and a sum of Rs.50,000/- on 26.1.2001 at 6:00 p.m. Accordingly, he went to the house of said Bikramjit Singh on 26.1.2001 along with necessary papers and a sum of Rs.50,000/- where Bikramjit Singh met him. He took two pegs of liquor on the

asking of said Bikramjit Singh. Then Bikramjit Singh said to him that the person with whom the deal had been struck for sending him to America is to meet them at bus stand Dosarka, Dhoot Kalan on the confectionary shop of one Chander Mohan alias Bulla son of Ved Parkash. Accordingly, he accompanied him and they reached at the shop of said Chander Mohan. Immediately thereafter, Dilbagh Singh alias Baga and Rahul Singh son of Bikramjit Singh also came there. When they all were sitting there, then Chander Mohan said to Bikramjit Singh that Balwinder Singh had brought Rs.50,000/- for going abroad and he would call the person who is to send him abroad. Then Chander Mohan and Rahul went to call that person and while going from there, they took a sum of Rs.200/- from him for bringing a bottle of liquor. Within a short span, they came back with that man and also brought a bottle of liquor. When they were taking the liquor in the shop of Chander Mohan, then half of its shutter was open. In the meanwhile, one Diwan Singh resident of village Dadialan Kalan entered into the shop and requested to make a telephone call, but Chander Mohan @ Bulla told him that telephone is out of order. Said Diwan Singh also asked him (Balwinder Singh) as to whether you are not to go home, as it was dark and foggy. On this, he replied him, that he would accompany him, but said Chander Mohan @ Bulla and Bikramjit Singh uttered that he would stay with them today. After departure of Diwan Singh from shop, Bulla closed the shutter of the shop and demanded from him his passport and a sum of Rs.50,000/- for sending him abroad. When he asked them to give him receipt in token of having

received the said sum, then they started abusing him. When he tried to come out of the shop, then Bikramjit Singh, Dilbagh Singh and Bulla caught hold of him, removed his coat and started giving him fist blows. They also started uttering that now he is under their control, his money is to be spent upon him and the plan to kill him has materialized today. Then Bulla and Bikramjit Singh caught hold of his arms. Dilbagh Singh gave him fist blows on his head, ear, eyes and Rahul gave him kick blows. Then they laid him down with his face downwards. They also removed his underwear and pant. Bulla and Dilbagh Singh caught hold his legs, Bikramjit Singh and the person (Bahadar) who was called from the outside caught hold his arms and Rahul Singh thrust an iron rod in his anus on the asking of Bikramjit Singh, while he was crying. Then they all remained lifting him while holding the rod and also started uttering that now he has got the visa and within 5-6 hours he would reach abroad. Bikramjit Singh also uttered that he (Balwinder Singh) used to say that his wife had been wandering with Bulla, when he (Bikramjit Singh) was in jail and that now today they took the revenge for that. Then thereafter, he became unconscious and above-said all the accused persons threw him out of the shop in the said condition. Later on he came to know that he was got admitted in CMC for treatment by his brother Amarjit Singh.”

The above-said statement of complainant was read over to him after recording the same by HC Bhulla Singh which he had signed after admitting it to be correct. Upon his statement, HC Bhulla Singh made his endorsement, on the basis of which the instant case was

registered at Police Station Hariana by ASI Bikram Singh on 6.3.2001. The place of occurrence was inspected and its plan was prepared. Accused Bikramjit Singh, Rahul Singh and Chander Mohan @ Bulla were arrested. Statements of witnesses were recorded. On receipt of report of the doctor with regard to nature of injuries, injury No.2 was declared dangerous to life, injuries No.1, 2 and 4 caused by blunt weapon and injury No.4 as simple. Offences u/Ss 325 and 307, IPC, were added in this case. Accused Dilbagh Singh was not arrested and as such P.O. proceedings were initiated against him. During investigation, accused Bahadar was found to be innocent. On completion of investigation, challan against accused Bikramjit Singh, Rahul Singh and Chander Mohan in this case was presented in the Court of learned Illaqa Magistrate, who further committed this case to the Court of learned Sessions Judge, Hoshiarpur for trial after making compliance of the provisions of section 207 of Cr.P.C.

4. Finding a prima-facie case under Sections 307, 325, 342 read with Section 34, IPC and 420 and 506, IPC, the accused were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

5. During the trial of the case, the prosecution examined as many as ten witnesses in total in order to prove its version.

6. Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence as brought on the file during the trial of the case against them was put to them, which they denied. They pleaded their innocence and false implication in this case. They further pleaded that in CMC, Ludhiana, the complainant gave

history that he sustained injuries in a road side accident while under the influence of liquor and they did not want to take any action against any person.

7. In their defence, accused also examined two witnesses.
8. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well held the present appellants (accused) guilty for the offences punishable u/Ss 307, 325, 342 read with Section 34 of the IPC and u/Ss 420 and 506 of the IPC vide the impugned judgment and awarded them sentences as detailed below:-

Sr.No.	Name of accused	Under Section	Sentence
1	Rahul Singh	307, IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- and in default of payment of fine, he shall suffer further rigorous imprisonment for a period of three months.
2	Bikramjit Singh and Chander Mohan	307/34, IPC	To undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.500/- each and in default of payment of fine, they shall suffer further rigorous imprisonment for a period of three months each.
3	Bikramjit Singh, Rahul Singh and Chander Mohan	325/34, IPC	To undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs.300/- each and in default of payment of fine, they shall suffer further rigorous imprisonment for a period of two months each.
4	Bikramjit Singh, Rahul Singh and Chander Mohan	342/34, IPC	To undergo rigorous imprisonment for a period of six months each.
5	Bikramjit Singh, Rahul Singh and Chander Mohan	420, IPC	To undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.200/- each and in default of payment of fine, they shall suffer further rigorous imprisonment for a period of two months each.
6	Bikramjit Singh, Rahul Singh and Chander Mohan	506, IPC	To undergo rigorous imprisonment for a period of six months each.

9. The accused/appellants being not satisfied with the impugned judgment of conviction and order of sentence have come up in the instant appeals before this Court notice of which was given to the respondent - State. Record of the learned trial Court was also requisitioned.

10. Learned counsel for both the parties are heard and record is also examined with their able assistance.

11. At the time of arguments, the learned counsel for the appellants did not assail the impugned judgment of conviction, rather they have contended that during pendency of the appeals, a good sense has been prevailed between both the parties and they have settled the matter amicably and now they do not want to pursue with these appeals any further. Further they have contended that they have no objection, if the appeals be disposed of in terms of compromise/affidavit (Annexure A-1) of complainant - Balwinder Singh which has come on the record vide CRM No.20599 of 2015 filed in CRA-S-1519-SB of 2002.

12. Since the parties now are not at issue with regard to the alleged occurrence so there is no need to discuss the evidence as came on record during the trial of the case.

13. Vide the impugned judgment, the appellants were held guilty and convicted, *inter alia*, for the offence punishable under Section 307 etc., IPC.

14. But it is a fact that as per the Table drawn under section 320, Cr.P.C., the offence under Section 307 IPC is not compoundable and as such the permission to compound this offence cannot be granted since that would be against the provisions of the statute. But now it is also

settled law that if during the pendency of the proceedings a compromise has been made amicably by the parties concerned and if on verification, the same is found to be genuine one then it can be taken as a circumstance in considering the quantum of sentence. Herein the principles as laid down by the Hon'ble Apex Court in **Ram Lal Versus State of Jammu & Kashmir, 2000(1) R.C.R.(Criminal) 92** and **Ishwar Singh Versus State of Madhya Pradesh, 2009(1) R.C.R.(Criminal) 1** are followed.

15. Then report from Chief Judicial Magistrate, Hoshiarpur has also been received as per which the alleged affidavit/compromise (Annexure A/1) of Balwinder Singh is found to be genuine as well as voluntary act of both the parties.

As mentioned in the affidavit/compromise (Annexure A/1) of complainant Balwinder Singh, the parties have settled the matter amicably on the intervention of the respectables of the village and relatives of the parties. Now they are living peacefully and harmoniously and no unwanted incident has occurred between them after the settlement of the dispute. This compromise is stated to be for the welfare of both the parties. Now they do not want to take any action against the appellants/accused.

16. As per the custody certificates of the appellants produced on record by learned State counsel, the appellants have already undergone the sentences as under:-

Chander Mohan	One year, nine months and six days.
Bikramjit Singh	One year, seven months and eighteen days.
Rahul Singh	One year, eight months and twenty six days.

17. In the light of above, I am of the considered opinion that ends of justice in this case would meet if the sentence of the appellants is reduced to the extent they have already undergone. So accordingly the impugned judgment of conviction of all the appellants in both the appeals is upheld, but their sentence is reduced to the extent they have already undergone as above mentioned. Sentence of fine is anyhow kept intact. The same is ordered to be deposited within two months from today, if not deposited earlier, otherwise to undergo the sentence as imposed upon them by the learned trial Court in default of payment of fine. So these appeals qua the impugned judgment of conviction stand dismissed and disposed of with above modification in sentence. Appeals to this extent only are accepted.

Since the main appeals have been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

Copy of this order be sent to the quarter concerned for strict compliance.

(GURMIT RAM)
JUDGE

8.1.2016
Brij

1. Whether to be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes