

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

Crl. Appeal S-1089-SB of 2004
Date of Decision : February 09, 2017

Joginder Singh and others

.....Appellants

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Madan Sandhu, Advocate
for the appellants.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

Mr. Anil Chaudhary, Advocate
for the complainant.

T.P.S. MANN, J. (Oral)

The appellants alongwith Inder Singh were tried for committing the offences punishable under Sections 307, 324, 323, 148 and 149 IPC. During the trial of the case, Inder Singh died and, accordingly, proceedings against him were dropped as having abated. Vide judgment and order dated 30.4.2004, learned Additional Sessions Judge, Mansa acquitted the appellants of the charge under Section 307 IPC. However, they were held guilty under Sections 148, 324/323/149 IPC and sentenced as below:-

<u>Name of the convict</u>	<u>under Section</u>	<u>Sentence</u>
Joginder Singh	148 IPC	Rigorous imprisonment for one year.
	324 IPC (on two counts)	Rigorous imprisonment for one year (on each count).
	324/149 IPC	Rigorous imprisonment for one year.
	323/149 IPC (on two counts)	Rigorous imprisonment for six months (on each count).
Surjit Singh	148 IPC	Rigorous imprisonment for one year.
	324 IPC (on three counts)	Rigorous imprisonment for one year (on each count).
	323/149 IPC (on two counts)	Rigorous imprisonment for six months (on each count).
Gurmit Singh	148 IPC	Rigorous imprisonment for one year.
	324/149 IPC (on three counts)	Rigorous imprisonment for one year (on each count).
	323/149 IPC (on two counts)	Rigorous imprisonment for six months (on each count).
Daljit Singh	148 IPC	Rigorous imprisonment for one year.
	324 IPC	Rigorous imprisonment for one year.
	324/149 IPC (on two counts)	Rigorous imprisonment for one year (on each count).
	323/149 IPC (on two counts)	Rigorous imprisonment for six months (on each count).

The substantive sentences of all the appellants were ordered to run concurrently. The period of detention, if any,

undergone by them during investigation or trial was ordered to be set off against the awarded sentence.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which was admitted on 24.5.2004. Simultaneously, their sentences of imprisonment were suspended subject to their furnishing appropriate bonds to the satisfaction of the Chief Judicial Magistrate, Mansa.

According to the prosecution, complainant-Joginder Singh @ Bittu and Balwinder Singh were real brothers being sons of Dharam Singh and joint in residence, mess and cultivation alongwith their father. Their land adjoined that of Joginder Singh-accused, who alongwith his brothers Surjit Singh and Inder Singh besides their nephews Gurmit Singh and Daljit Singh were also joint in cultivation. The accused had taken the land belonging to complainant's uncle Sharan Singh and grandfather Chanan Singh on lease. The turn of the water of the complainant party came after that of the accused and the turn of the complainant party was followed by the turn of the accused party for the purposes of irrigating the land which they had taken on lease. On 9.9.1997 the complainant alongwith his brother Balwinder Singh, father Dharam Singh and one Mukhtiar Singh son of Teja Singh were irrigating their land as per their turn. They took their turn of water at 9.12 p.m. and at 11.27 p.m. when they were about to hand over

the turn of water to the accused, the latter advanced the commencement of their turn by cutting the water channel at 11.17 p.m. for irrigating their ancestral land. The complainant party was under an impression that there had occurred a breach in the flow of the water somewhere in the watercourse and, therefore, the water had started leaking somewhere else. The complainant alongwith his father Dharam Singh and Mukhtiar Singh went to have a look at the water course. They saw with the help of torchlight that the accused had cut the water and had diverted the flow of water to their ancestral field. Dharam Singh told the accused that their turn of water had not yet commenced and they had cut the water before time. On this, the complainant was about to cut the water channel when Joginder Singh and Gurmit Singh accused armed with gandasis, Daljit Singh and Inder Singh accused armed with takuas and Surjit Singh accused armed with a gandas came there. Inder Singh raised a *lalkara* that Dharam Singh and others should be taught a lesson for cutting the water channel and gave a gandasi blow on the right hand of complainant-Joginder Singh which landed on two of the middle fingers of his right hand. Daljit Singh gave a takua blow on the right cheek of Mukhtiar Singh. Surjit Singh gave gandasi blow on the back of Dharam Singh. He gave another gandasi blow on the left side of the head of complainant-Joginder Singh. When the

complainant party raised an alarm, Balwinder Singh, brother of the complainant raised a *lalkara* that they should girdle up their loins as he had come. In the meantime, Surjit Singh accused gave a gandasi blow on the left shoulder of the complainant. In their defence, the complainant party also caused injuries to Joginder Singh, Inder Singh and Gurmit Singh accused. Afterwards the accused ran away from the spot.

This Court is not required to go into the merits of the appeal for the reason that on 10.2.2016 complainant-Joginder Singh @ Bittu appeared before this Court and got recorded his statement to the effect that both the parties belonged to village Jhanda Kalan; their agriculture lands adjoined each others; and at the intervention of the respectables, the dispute between the parties stood amicably resolved. He also stated that he would have no objection if any benefit accruing to the appellants on account of amicable settlement of the matter was extended to them.

One of the offences i.e. Section 148 IPC is not lawfully compoundable. However, once the parties have amicably settled the matter, the factum of compromise can be taken as a mitigating circumstance in determining the question of sentence which is to be imposed upon the appellants.

As per the custody certificate dated 5.12.2015 already brought on record by the learned State counsel, three of the appellants, namely, Joginder Singh, Surjit Singh and Gurmit Singh have undergone a period of twenty six days out of the sentence of one year imposed upon them. From the records, it is made out that Daljit Singh-appellant had undergone a period of about a week after he was arrested pursuant to the order passed by the learned trial Court summoning him under Section 319 Cr.P.C. as additional accused.

The appellants are facing the agony of criminal prosecution for the last more than nineteen years. The injuries attributed to them were found to be simple in nature. The parties are residents of the same village. They are agriculturists by profession. The land of the one party adjoins the others. At the intervention of the respectables, the parties have settled the matter by arriving at an amicable settlement.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice will be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants, as recorded by the learned trial Court on various counts, is upheld and their substantive sentences of imprisonment are reduced to the one already undergone by them.

The appeal is, accordingly, disposed of.

February 09, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No