

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

Crl. Appeal S-1212-SB of 2004
Date of Decision : February 09, 2017

Dharam Singh and others

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Anil Chaudhary, Advocate
for the appellants.

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

Mr. Madan Sandhu, Advocate
for the complainant.

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

The appellants were tried for committing the offences punishable under Sections 326/324/323/34 IPC. Vide judgment and order dated 30.4.2004, learned Additional Sessions Judge, Mansa convicted and sentenced them as mentioned below:-

<u>Name of the convict</u>	<u>under Section</u>	<u>Sentence</u>
Balwinder Singh	326 IPC	Rigorous imprisonment for two years and to pay fine of Rs. 200/- or in its default to further undergo RI for one month;
	324/34 IPC	Rigorous imprisonment for one year.
	323/34 IPC	Rigorous imprisonment for six months.

Joginder Singh	326/34 IPC	Rigorous imprisonment for two years and to pay fine of Rs.200/- or in its default to further undergo RI for one month;
	324/34 IPC	Rigorous imprisonment for one year.
	323/34 IPC	Rigorous imprisonment for six months.
Dharam Singh	326/34 IPC	Rigorous imprisonment for two years and to pay fine of Rs. 200/- or in its default to further undergo RI for one month;
	324 IPC	Rigorous imprisonment for one year.
	323/34 IPC	Rigorous imprisonment for six months.

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 29.5.2004. Simultaneously, their sentences of imprisonment were suspended till the disposal of the appeal subject to their furnishing fresh bail bonds to the satisfaction of the Chief Judicial Magistrate, Mansa.

According to the prosecution, complainant-Inder Singh made statement Ex. PO before the police stating therein that they were three brothers and residents of village Jhanda Kalan. They

were jointly cultivating their agriculture land. They had taken the land belonging to Sharan Singh and Chanan Singh on lease for cultivation. Dharam Singh accused, who was resident of the village was having land adjoining their land. On 9.9.1997 in the evening it was their turn of water from the water channel. He alongwith Joginder Singh, Surjan Singh and Gurmit Singh went to the fields to irrigate the land. After their turn which came to an end at 9.20 p.m. Dharam Singh accused had taken the turn of water and at 11.27 p.m. again it was the turn of the complainant party to have water in order to irrigate the land which land they had taken on lease from Sharan Singh and Chanan Singh. However, they took the turn of water when the time was 11.31 p.m. for their ancestral land and residue water was not allowed to remain there in the water channel. They had just stopped the flow of the water when accused Dharam Singh armed with a gandasa alongwith 4-5 persons, whom he could identify, came there. Dharam Singh raised a *lalkara* that a lesson be taught to the complainant party for taking the turn of water. Dharam Singh accused gave a gandasa blow to complainant-Inder Singh hitting him on big toe of his right foot. Joginder Singh @ Bittu accused gave a gandasa blow upon the right eye of Gurmit Singh. Joginder Singh @ Bittu accused gave a gandasa blow on the little toe of right foot of the complainant. He again gave a gandasa

blow on the left side of forehead of complainant's brother Joginder Singh. They raised noise. One of the assailants gave a dang blow on the right thigh joint. Another unidentified person gave a stick blow on the left elbow of Joginder Singh and another blow on his right foot. The noise raised by the complainant party attracted Surjan Singh, who proclaimed that he had come. The accused alongwith 4-5 persons while carrying their respective weapons decamped from the spot.

This Court is not required to go into the merits of the appeal for the reason that on 10.2.2016 Gurmit Singh, who alongwith Inder Singh (since dead) and Joginder Singh son of Bakhtaur Singh had received injuries, appeared before this Court and got recorded their statements 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. Similarly, Joginder Singh son of Bakhtaur Singh got recorded his statement and re-iterated that the dispute between the parties stood amicably resolved. They also stated that they 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 offence for which the appellants stand convicted is under Section 326 IPC which cannot be lawfully

compounded. The other offences can, however, be lawfully compounded. In such a situation, the factum of the parties arriving at an amicable settlement can only be taken as a mitigating circumstance for determining the question of sentence.

It may be worthwhile to mention here that on 7.12.2015, learned counsel for the appellants had informed the Court that Dharam Singh had died during the pendency of the appeal. Though learned State counsel sought an adjournment so as to verify the said fact but till date this Court has not been informed in this regard. At the same time, Mr. Madan Sandhu, Advocate, who represents the complainant party in the present case, admits the fact that Dharam Singh-appellant had died on 30.12.2012. Under these circumstances, the appeal of Dharam Singh-appellant is required to be disposed of as having abated.

From the records, it is made out that Joginder Singh @ Bittu appellant had remained behind the bars for about one month and twenty days whereas Balwinder Singh @ Bindu had undergone a period of about fifteen days during the trial of the case. The surviving appellants are facing the agony of criminal prosecution for the last more than nineteen years. The only injury falling within the ambit of Section 326 IPC was on the non vital part of complainant-Inder Singh i.e. on his right foot. Both the parties are residents of the same village. Their lands are

adjoining. They are agriculturists by profession. 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 surviving 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 appeal of Dharam Singh appellant is disposed of as having abated. The conviction of the surviving appellants, namely, Balwinder Singh @ Bindu and Joginder Singh @ Bittu, 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 sentence of fine alongwith its default clause is maintained. Their appeal is, accordingly, disposed of.

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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No