

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

**Criminal Appeal S-1255-SB of 2004
Date of Decision: September 7, 2017**

Gian Chand and another	Versus	Appellants
State of Punjab		 Respondent

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

Present : Mr. S.P.S. Sidhu, Advocate
for the appellants.

Mr. Sandeep Vermani, Additional A.G., Punjab.

Mr. Ravinder Singh, Advocate
for complainant/injured-Maya Bai.

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

The accused/appellants, namely, Gian Chand and Harmesh Kumar @ Ramesh Chand, alongwith five others were tried for committing offences punishable under Sections 326/324/148 read with Section 149 IPC. Vide judgment and order dated 29.4.2004, learned Additional Sessions Judge (Fast Track Court), Ferozepur acquitted co-accused of the appellants of the charges against them. Harmesh Kumar @ Ramesh Chand appellant was convicted under Section 326 IPC whereas Gian

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Chand appellant under Section 326/34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for nine months. Gian Chand appellant was also convicted under Section 324 IPC whereas Harmesh Kumar @ Ramesh Chand appellant under Section 324/34 IPC and sentenced to undergo rigorous imprisonment for 1½ years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. Both the substantive sentences were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 1.7.2004. Subsequently, Gian Chand appellant was enlarged on bail pursuant to the order dated 16.9.2004 whereas Harmesh Kumar @ Ramesh Chand appellant granted the same relief on 16.12.2004.

When the appeal came up for final hearing on 29.11.2015, learned counsel for the appellants apprised the Court that Gian Chand appellant had died on 27.11.2013. Accordingly, learned State counsel sought time to file necessary report. On the adjourned date, learned State counsel placed on record status report in the shape of affidavit of Shri Gurmeet Singh, DSP, Sub-Division Fazilka, wherein, it was mentioned that the factum of

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Gian Chand appellant having died on 27.11.2013 stood duly verified. However, as no legal representative of Gian Chand appellant has filed the application to pursue the appeal qua him, it was disposed of as having abated.

Subsequent thereto, Maya Bai, who had received injuries in the occurrence moved an application under Section 482 Cr.P.C. for placing on record her affidavit dated 15.12.2015 with regard to compromise effected between her and Harmesh Kumar @ Ramesh Chand appellant. The said application was allowed and the affidavit dated 15.12.2015 was taken on record. On 31.3.2017, this Court ordered for impleading Maya Bai injured as respondent No.2. On the adjourned date, learned counsel for the complainant stated that Maya Bai was an old lady, aged about 70 years and, therefore, it was not possible for her to appear before this Court for getting her statement recorded regarding the compromise. Keeping in view the said fact, this Court directed Harmesh Kumar @ Ramesh Chand appellant and Maya Bai injured to appear before the Chief Judicial Magistrate, Fazilka for getting their statements recorded regarding the factum of compromise.

On 17.4.2017, this Court went through the report of the Chief Judicial Magistrate, Fazilka, wherein, it stood mentioned that Maya Bai complainant/injured had compromised the matter with Harmesh Kumar @ Ramesh Chand appellant without any

pressure and with her own free will. There was no inducement or influence on the parties in arriving at the compromise and the same was, thus, voluntary, genuine and without any coercion and undue influence.

As per the custody certificate produced by the learned State counsel, Harmesh Kumar @ Ramesh Chand appellant has already undergone an actual sentence of nine months and twenty days. He has also earned remission of one year, one month and two days. In all, he has undergone actual sentence of one year, ten months and twenty two days out of the sentence of five years imposed upon him. The offence under Section 326 IPC, for which, he stood convicted is not lawfully compoundable. However, the factum of compromise arrived at between the parties can be considered as a mitigating circumstance in considering the question of sentence to be imposed upon him. He has been facing the agony of criminal prosecution for the last more than fourteen years. The injury attributed to him, which resulted into his conviction under Section 326 IPC was on the left leg of Maya Bai injured. Both the parties, who are residents of the same village have amicably settled their disputes *inter se* and are now leading peaceful life. Out of the sentence of five years imposed upon him, he has undergone more than one year and ten months. He is not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the

circumstances, this Court is of the view that no useful purpose will be served by sending Harmesh Kumar @ Ramesh Chand appellant behind the bars, once again, so as to undergo his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of Harmesh Kumar @ Ramesh Chand appellant under Sections 326 and 324/34 IPC is upheld. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentences of fine alongwith their default clauses are maintained.

The appeal qua Harmesh Kumar @ Ramesh Chand appellant is, accordingly, disposed of, whereas appeal qua Gian Chand appellant already stands disposed of as having abated.

September 7, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No