

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

**Criminal Appeal S-2191-SB of 2004
Date of Decision: December 14, 2017**

Raghbir Singh @ Bira and others	Versus	Appellants
State of Haryana		 Respondent

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

Present : Mr. Amarjit Singh Virk, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. Advocate General, Haryana.

Mr. Jasvir Singh Dhaliwal, Advocate
for the injured.

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

The appellants, namely, Raghbir Singh @ Bira, Mam Chand, Charan Singh @ Charna, Raj Kumar @ Raju, Om Parkash @ Kashu, Dharam Pal @ Dharma, Raj Pal @ Raja, Pala, Banta Singh and Jagdish were tried for committing offences punishable under Sections 148, 307, 326, 325, 324, 323, 506 read with Section 149 IPC. Vide judgment and order dated 27/28.10.2004, learned Additional

Sessions Judge (Adhoc), Fast Track Court, Kurukshetra convicted Raghbir Singh @ Bira, Mam Chand, Charan Singh @ Charna and Raj Kumar @ Raju under Section 148 IPC and sentenced them to undergo rigorous imprisonment for one year each. They were further convicted under Section 326 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. They were also convicted under Section 506 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for six months each. The remaining appellants, namely, Om Parkash, Dharam Pal @ Dharma, Rajpal @ Raja, Pala, Banta Singh and Jagdish were convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for one year each. They were further convicted under Section 326 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were also convicted under Section 506 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for six

months each. All the sentences were ordered to run concurrently.

Aggrieved of their conviction and sentences, the appellants filed the present appeal, which was admitted on 8.11.2004 and they were also granted concession of suspension of their sentences of imprisonment.

Before proceeding with the matter, it would be appropriate to notice that Raghbir Singh @ Bira and Mam Chand appellants have died on 23.3.2011 and 9.7.2014, respectively, i.e. during the pendency of the appeal, which fact stands duly verified by the learned State counsel, who had produced the reports dated 12.9.2017 prepared by the Station House Officer, Police Station Pehowa in this regard. Under these circumstances, the appeal qua Raghbir Singh @ Bira and Mam Chand appellants will have to be disposed of as having abated.

According to the prosecution, on 10.11.1999 at about 7.00 a.m., complainant's brother Dalbir Singh and Gulzar Singh, their father Fauja Singh and uncle's son Surjeet Singh had gone to sow land which adjoined that of Raghbir Singh @ Bira and Jagdish, who had purchased the land from Rambhaj. While they were cultivating the land,

Raghbir Singh @ Bira armed with kirpan, Jagdish, Pala and Dharm Pal @ Dharma armed with gandasis, Mam Chand armed with barchha, Banta armed with kasola, Rajpal @ Raja armed with kassi, Raj Kumar @ Raju and Om Parkash @ Kashu armed with axes and Charan Singh @ Charna armed with gandasa came there while raising lalkara that they would teach a lesson to the complainant for sowing their land. Raghbir Singh @ Bira and Mam Chand gave gandasi blows on the head of Gulzar Singh whereas Jagdish, Dharm Pal @ Dharma and Pala gave gandasi blows on the head of Dalbir Singh. When the complainant, his father Fauja Singh and uncle's son Surjeet Singh tried to rescue them, Raj Kumar @ Raju gave an axe blow which landed on the right hand of the complainant whereas Om Parkash @ Kashu gave axe blow from its reverse side on his head. Pala gave gandasa blows on his right hand and back from its reverse side. All the accused also caused injuries to Fauja Singh, Surjeet Singh, Gulzar Singh and Dalbir Singh with their respective weapons.

This Court need not go into the merits of the case for the reason that vide application, i.e. Criminal Miscellaneous No. 22448 of 2017, the appellants brought on

record the compromise deed and affidavits, which were taken on record as Annexures A-1 to A-9. The appeal came up for hearing on 22.11.2017, when Dalbir Singh, Gurmeet Singh and Surjeet Singh out of the complainant party got recorded their joint statement to the effect that they had settled the matter amicably with the intervention of the Panchayat and relatives of both the parties. No grudge or ill-will left in their minds or in the minds of the surviving appellants. They also stated that they would have no objection if any benefit accruing to the appellants on account of the factum of compromise arrived at between the parties is extended to them.

The offence under Section 326 IPC is not lawfully compoundable. However, the factum of compromise arrived at between the parties can be considered as a mitigating circumstance while considering the sentences, which is to be imposed upon them. Reference in this regard can be made to the judgments in **Ram Lal vs. State of J&K**, 2000(1) RCR (Criminal) 92, **Bankar vs. State of Maharashtra**, 2005 (1) RCR (Criminal) 306, **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.

As per the custody certificates already brought on record by the State counsel, Charan Singh @ Charna appellant has already undergone a period of four months and eighteen days; Raj Kumar @ Raju appellant has undergone five months and seven days; Om Parkash @ Kashu appellant has undergone two months and seven days; Dharam Pal @ Dharma appellant has undergone one month and fifteen days; Raj Pal @ Raja appellant has undergone one month and twenty six days; Pala appellant has undergone two months; Banta Singh (Banta Ram) appellant has undergone two months and twelve days whereas Jagdish appellant has undergone one month and fifteen days. All these surviving appellants are facing the agony of criminal prosecution for the last about eighteen years. The appellants on the one hand and the complainant party on the other are residents of the same village and the agricultural lands belonging to them adjoin each others'. At the intervention of the Panchayat and respectables besides close relatives of the parties, they have buried the hatchet by entering into a compromise. Under these circumstances, it will not be appropriate to send the surviving appellants, once again, behind the bars for undergoing their remaining

sentences of imprisonment. Ends of justice shall be suitably met, if their remaining sentences are reduced to the one already undergone by them.

Resultantly, the appeal of Raghbir Singh @ Bira and Mam Chand appellants is disposed of as having abated. The conviction of the surviving appellants, namely, Charan Singh @ Charna, Raj Kumar @ Raju, Om Parkash @ Kashu, Dharam Pal @ Dharma, Rajpal @ Raja, Pala, Banta Singh and Jagdish, as recorded by the trial Court, is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses are, however, maintained. The appeal qua them is, accordingly, disposed of.

December 14, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No