

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

Crl. Appeal S-907-SB of 2004
Date of Decision : February 21, 2017

Kulwinder Singh and others

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Daldeep Singh, Advocate
for the appellants.

Dr. Deipa Singh, Addl. A.G., Punjab.

Mr. H.S.Mavi, Advocate
for the complainant.

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

The appellants were tried for committing the offences punishable under Sections 364, 323/149 and 148 IPC. Vide judgment and order dated 16.4.2004, learned Additional Sessions Judge (Adhoc), Ludhiana convicted them under Section 364 IPC and sentenced them 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 suffer further rigorous imprisonment for one month. They were further convicted under Sections 323/149 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 200/- each and in default, to suffer further rigorous imprisonment for one week. They were also convicted

under Section 148 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- each and in default to suffer further rigorous imprisonment for two weeks. All the substantive sentences were ordered to run concurrently. The period of detention undergone by them during enquiry, investigation and trial was ordered to be set off against the period of sentences imposed upon them.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and all of them are presently on bail.

According to the prosecution, on 27.7.2001 Lal Singh son of late Shri Gurdeep Singh, who was a Nihang Singh, was to start Akhand Path in the Gurdwara of Jathedar Ranjodh Singh, situated in Transport Nagar, Ludhiana. He alongwith his mother Kuldip Kaur, other family members, Nihang Singhs and some ladies had collected in the said Gurdwara. At about 11.00 a.m., all the accused, while accompanied by others, came there on a four wheeler and surrounded Lal Singh, who was at that time lighting the Jot. The accused were armed with swords and sticks. *Lalkara* was raised by Santokh Singh that Lal Singh be not spared as with great difficulty they have been able to corner him. The other accused over powered Lal Singh and putting a chain around his arms and after giving him beatings, abducted him in the four wheeler. When Kuldip Kaur, Bharpur Singh and Swaran

Kaur wife of Parkash Singh tried to rescue him, the accused assaulted them as well and, thereafter, drove away the four wheeler.

Further case of the prosecution is that after registration of the case, investigation was initiated by ASI Balwinder Singh, who on 31.7.2001, rescued Lal Singh from Gurdwara Chamkaur Singh, District Ropar while he was in the custody of the accused.

It may be worthwhile to mention that during the pendency of the appeal, Baba Santokh Singh and Balam Singh appellants who were on bail, had passed away. The death certificates in that regard have already been placed on the record. The factum of their death has already been verified by the authorities. Under these circumstances, the appeal filed by Baba Santokh Singh and Balam Singh ought to be disposed of as having abated.

As regards the surviving appellants, it may be noticed that a miscellaneous application i.e. CRM 22258 of 2015 was filed by them wherein it stood mentioned that both the parties had settled the matter by entering into a compromise. Accordingly, copy of the compromise deed and the affidavits of Kuldip Kaur and Lal Singh were brought on record as Annexures A-1, A-2 and A-3, respectively.

On the last date of hearing, this Court while taking into

consideration the fact that the parties had entered into a compromise, directed Lal Singh, the only injured in the case, to remain present in the Court. Pursuant to the same, Lal Singh has put in appearance and got recorded statement separately wherein he has confirmed the factum of compromise having been arrived at between the parties. In order to establish his identity, he has also placed on record the photocopies of his voters card, driving licence and the aadhaar card.

Two of the offences i.e. Sections 364 and 148 IPC are not lawfully compoundable. However, the factum of compromise can be taken as a mitigating circumstance while considering the question of sentence of imprisonment to be imposed upon the surviving appellants.

As per the custody certificates already brought on record by the learned State counsel, Kulwinder Singh son of Santokh Singh-appellant has undergone an actual sentence of two years, six months and nineteen days inclusive of remissions of one year, two months and eleven days, Sadhu Singh (Sada Singh)-appellant has undergone an actual sentence of five months and seventeen days, Kulwinder Singh son of Vir Singh-appellant has undergone an actual sentence of five months and five days, Mehal Singh, Joginder Singh, Tehal Singh and Amarjit Singh-appellants have undergone four months and one day each. As regards, Man Singh-appellant, one custody certificate was

appended as Annexure A-2 with the application for suspension of sentence, as per which he had undergone total custody period of one year, one month and twenty two days.

The surviving appellants are facing the agony of criminal prosecution for the last more than fifteen years. They are presently on bail. None of them is either shown to be involved or convicted in any other case. The parties have since resolved their differences. Under these circumstances, no useful purpose will be served by sending the surviving appellants behind the bars, once again, for undergoing their remaining sentence of imprisonment.

Resultantly, the appeal filed by Baba Santokh Singh and Balam Singh-appellants is disposed of as having abated. The conviction of the remaining appellants under Sections 364, 323/149 and 148 IPC is upheld. However, their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses are maintained.

The appeal of the surviving appellants is, accordingly, disposed of.

February 21, 2017
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(T.P.S. MANN)
JUDGE

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