

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

Date of decision: 20.11.2017

1. CRA-S-1358-SB-2003 (O&M)

Balwinder Singh and others

... Appellants

Vs.

State of Punjab

... Respondent

2. CRA-S-1425-SB-2003 (O&M)

Teja Singh and another

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Surinder Gaur, Advocate
for the appellants (in CRA-S-1358-SB-2003).

Mr. H.S. Brar, Advocate
for the appellants (in CRA-S-1425-SB-2003).

Mr. Amandeep S. Gill, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Vide this judgment, I dispose of two criminal appeals i.e. CRA-S-1358-SB-2003 filed by accused-appellants Balwinder Singh, Gurmel Singh, Nishan Singh and Shingara Singh (appellant No.4 Shingara Singh has already

died and appeal qua him stands abated vide order dated 14.03.2017) and CRA-S-1425-SB-2003 filed by Teja Singh and Jagjit Singh.

Brief facts of the case are that on the statement of injured-complainant Iqbal Singh, FIR No.30 dated 24.04.1997 was registered under Sections 326/325/323/148/149 of the Indian Penal Code (‘IPC’ for short). On completion of investigation, report under Section 173 of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’ for short) was submitted before the trial Court and the trial Court, after completing the formalities, committed the case to the Court of Sessions. The Additional Sessions Judge vide order dated 18.01.1999 framed charges against accused persons namely Teja Singh, Gurmel Singh, Nishan Singh and Karnail Singh under Sections 307/323/325/326/148/149 IPC. Later on, the prosecution filed an application under Section 319 Cr.P.C. and vide order dated 10.05.1999, remaining accused persons namely Balwinder Singh, Shingara Singh, Harnek Singh, Jangir Singh, Jagjit Singh, Bagh Singh and Madho Dass were summoned and vide order dated 19.07.1999, charges were framed against these accused persons under Sections 148/307 read with Sections 149 IPC, 326/149, 325/149 and 323/149 IPC. The trial Court, after conclusion of the trial, held six persons namely Balwinder Singh, Gurmel Singh, Nishan Singh, Shingara Singh, Teja Singh and Jagjit Singh guilty of offences under Sections 326/325/323/324 IPC and sentenced them to the following sentences: -

Name of convict	Offences	Imprisonment	Fine	In default of payment of fine
Balwinder Singh	U/s 326 IPC	RI 5 years	Rs.1000/-	RI 4 month
Teja Singh	U/s 325 IPC	RI 3 years	Rs.500/-	RI 3 month
Gurmel Singh	U/s 325 IPC	RI 3 years	Rs.500/-	RI 3 month
Nishan Singh	U/s 325 IPC	RI 3 years	Rs.500/-	RI 3 month

Jagjit Singh	U/s 324 IPC	RI 1, 1/2 years	Rs.500/-	RI 3 month
Shingara Singh	U/s 323 IPC	RI 1 year	Rs.400/-	RI 2 month

The present two appeals have been filed challenging the judgment of conviction and order of sentence of even date i.e. 19.07.2003 passed by the Additional Sessions Judge.

At the very outset, counsel for the appellants submits that the appellants are not challenging the sentence awarded to them and restricts his arguments qua the sentence part. It is submitted on behalf of the appellants that accused Balwinder Singh awarded 05 years R.I. and he has already undergone 04 years, 04 months and 21 days of total sentence, including remission. It is further submitted that accused Gurmel Singh, who was awarded 03 years R.I., has undergone 18 days of actual sentence. It is further submitted that the other co-accused were granted anticipatory bail during the trial and therefore, they have not undergone any sentence so far. Counsel for the appellants has further submitted that as per the version given in the FIR, accused Balwinder Singh caused grievous injury with a *Gandasa* and he alone was convicted under Section 326 IPC, whereas other co-accused were convicted under Sections 323, 324, 325 IPC. Counsel for the appellants has also submitted that none of the accused has misused the concession of bail during pendency of the trial or during pendency of the present appeal. It is further submitted that the appellants are not involved in any other case and are aged persons. Appellant Balwinder Singh was aged 48 years, Gurmel Singh was aged 45 years, Nishan Singh was aged 38 years, Teja Singh was aged 45 years and Jagjit Singh was aged 39 years on the date of occurrence i.e. 24.04.1997 and as such all the appellants are now either above the age of 60 years or are nearing this age. It is submitted that the

appellants have improved their behaviour and they are ready to pay compensation to the injured-complainant Iqbal Singh. It is further submitted that the appellants have faced protracted trial of about 20 years and considering the fact that in the intervening period, they are not involved in any subsequent FIR, it will not be in interest of justice to send them to judicial custody for undergoing the remaining part of sentence. Thus, counsel for the appellants has submitted that there are mitigating circumstances for reducing the sentence undergone by the appellants, to already undergone by them and by awarding suitable compensation to the injured-complainant Iqbal Singh.

Learned State counsel has submitted custody certificates of appellant Balwinder Singh, according to which, he has already undergone 01 years, 02 months and 02 days of actual sentence and 04 years, 04 months and 21 days of total sentence including remission and appellant Gurmel Singh has undergone 18 days of actual sentence.

After hearing learned counsel for the parties, considering the fact that the appellants are now about 60 years of age and have faced protracted trial for the last 20 years; they are not previous convict; they have not misused the concession of bail and in view of the submissions made by learned counsel for the appellants that he do not want to challenge the judgment qua conviction of the appellants, judgment of conviction dated 19.07.2003 to this effect is upheld. However, in view of the fact that the appellant Balwinder Singh was convicted under Section 326 IPC for causing grievous injury to the injured-complainant Iqbal Singh and has undergone substantive sentence and similarly, the accused Gurmel Singh has already undergone 18 days of actual sentence, out of 03 years sentence awarded to him by the trial Court under Section 325 IPC, the sentence

awarded to all the appellants is reduced to the period already undergone by them, however, subject to the condition that they will pay compensation of Rs.1 lac to the complainant Iqbal Singh in terms of Section 357 Cr.P.C. All the appellants are directed to deposit an amount of Rs.20,000/- each on account of compensation before the Chief Judicial Magistrate, Faridkot, within a period of 04 months from today, which shall be disbursed to the injured-complainant Iqbal Singh, after due identification by SHO, Police Station Kotbhai.

It is made clear that in case the appellants fail to deposit the amount of compensation, both these appeals stand dismissed without any further orders.

[ARVIND SINGH SANGWAN]
JUDGE

20.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No