

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

CRA-S-2214-SB-2017 (O&M)

DATE OF DECISION :- December 11, 2017

GURMIT SINGH & ANR

...Appellants

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Ms. Shweta Nahata, Advocate
with Mr. Shir Singh, Advocate for the appellants.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

This appeal is directed against the judgment dated 26.10.2015 passed by Sessions Judge, Moga vide which he had sentenced accused Gurmit Singh under Section 304 Part II of the Indian Penal Code to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year. He was further sentenced to undergo rigorous imprisonment for one year under Section 323 read with Section 34 of the Indian Penal Code, whereas accused Sukhmander Singh was sentenced under Section 304 Part II read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one years. He was further sentenced for one year under Section 323 of the Indian Penal Code. All the substantive sentences were ordered to run concurrently.

Briefly stated the prosecution story is that on 4.2.2012 at about 6.00 P.M. while complainant Sohan Singh was standing next to liquor vend of

his village then Sukhmander Singh @ Deesha son of Jarnail Singh along with his mother Bhappi arrived there. Bhappi asked the complainant to give advice to Gurmit Singh @ Luga not to abuse their entire family. As such the complainant along with Deesha went to their house. Gurmit Singh @ Luga was standing in the door. He started quarreling with the complainant. Complainant returned home that very day. At about 9.00 P.M., the complainant accompanied by said Gurdeep Singh went to house of Gurmit Singh @ Luga. They found Sukhmander Singh armed with spade and his brother armed with iron pipe standing in the street. While talking with Deesha, he got angry. Gurmit Singh @ Luga gave iron pipe blow on left ear of Gurdeep Singh, who fell on the ground. When complainant tried to attend him, Sukhmander Singh @ Deesha gave a blow with handle of spade to him hitting on left side of head. Deesha gave another blow on right side of head of the complainant and the complainant fell down. Santa Singh and Banta Singh, a younger brother of Deesha also came there armed with sticks and they attacked the complainant. On assembly of various persons at the spot, appellants ran away from there with their respective weapons. Injured were taken to the hospital.

On intimation being given, police party came to Civil Hospital, Moga where statement of injured Sohan Singh was recorded.

A formal F.I.R. was registered on the basis thereof for offences under Sections 302, 323, 34 of the Indian Penal Code. Gurdeep Singh had succumbed to the injuries. Postmortem examination on his dead body was got performed. The investigation in the matter took place. Accused were arrested in this case on 14.2.2012, weapons of offence were got recovered. Statements of witnesses were got recorded.

On completion of investigation and other formalities challan

against accused Gurmit Singh and Sukhmander Singh @ Deesha was filed in the Court of Additional Chief Judicial Magistrate, Moga.

After complying with the formalities under Section 207 Cr.P.C. observing that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Moga committed the case to the Court of Sessions. Therefore, formal charge for offences under Sections 302, 304, 34 of the Indian Penal code was framed against the accused. They pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined as many as ten witnesses.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them in the prosecution evidence were put to such accused but they denied the same contending that they are innocent and have been falsely involved in this case.

During their defence evidence, the accused examined DW1 Labh Singh. After hearing arguments, the trial Court came to the conclusion that offence under Section 304 Part II was made out against Gurmit Singh whereas regarding Sukhmander Singh @ Deesha, Section 304 Part II read with Section 34 IPC, besides offence under Sections 323/34 IPC was made out. Both the accused were convicted and sentenced accordingly.

Feeling aggrieved, the accused-convicts have filed the present Criminal Appeal, which has been admitted vide order dated 24.10.2017.

At request of learned counsel for the appellants, it has been taken on Board of this Court for final arguments.

I have heard learned counsel for the appellants and learned State counsel besides going through the record.

At the very outset, learned counsel for the appellants states that she does not challenge the impugned judgment on the point of conviction but has got submissions to make as regards the sentence part. According to her, accused Gurmit Singh is stated to be aged about 35 years, whereas accused Sukhmander Singh @ Deesha is aged about 39 years, married and having three children. They are stated to be providing financial supports to their respective families.

As per custody certificates filed by the State counsel, Gurmit Singh has undergone 7 years 8 months and 1 day out of total sentence of 10 years, whereas Sukhmander Singh @ Deesha is shown to have undergone 7 years 2 months and 9 days.

I am of the view that ends of justice shall be adequately met if sentence of the appellants-accused convicts is reduced to imprisonment already undergone by them in this case, whereas the sentence as regards payment of fine is maintained. Therefore, impugned judgment is upheld as far as conviction of both the accused-appellants is concerned, however, the sentence is modified in that way.

The appeal is disposed of accordingly. Appellants Gurmit Singh and Sukhmander Singh @ Deesha are stated to be in jail in this case. So they are ordered to be released immediately, if their custody is not required in connection with any other case.

(H.S. MADAAN)
JUDGE

December 11, 2017

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No