

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2355-SB of 2011 (O&M)

Date of decision : 28.2.2018

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Jaswinder Singh @ Kaka and others

.....Appellants

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.S. Chahal, Advocate for the appellant.

Mr. Saurav Khurana, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

An FIR was registered against accused Jaswinder Singh @ Kaka and Sukhdev Singh, bearing No. 148 dated 1.4.2006, for offences under Sections 307, 506, 188 IPC and Section 27 of Arms Act, registered at Police Station Kotwali, Sangrur.

Briefly stated, the allegations as per the prosecution story are that on 31.3.2006 on receipt of information from Civil Hospital, Sangrur, regarding admission of Harjinder Singh s/o Kuldeep Singh r/o village Ubhawal, HC Darshan Singh went to the said hospital and sought opinion of the attending doctor regarding the fitness of the

injured to make statement. The said doctor declared him unfit to make statement. As no other person conversant with the facts of the case was found to be there at Civil Hospital, Sangrur, therefore HC Darshan Singh came back. Then on 1.4.2006 ASI Kashmir Singh alongwith HC Darshan Singh and other police officials went to Civil Hospital, Sangrur and obtained opinion of the attending doctor regarding fitness of the injured to make statement, which was positive, as such he recorded statement of Harjinder Singh complainant, wherein he stated that he is a mason by avocation and on 31.3.2006, he alongwith his elder brother Harchand Singh, was standing in front of the street and the time was about 2.00 P.M., then Sukhdev Singh s/o Hazara Singh, armed with a stick (soti) and his elder son Jaswinder Singh armed with revolver came there and on a lalkara being raised by Sukhdev Singh that 'Harjinder Singh be taught a lesson for getting the shop vacated', Sukhdev Singh gave a stick blow on the head of the complainant and Jaswinder Singh fired a shot from his revolver with an intention to kill the complainant, which hit the complainant on his left arm in the axillary region. Jaswinder Singh fired another shot from his revolver, which hit the complainant on the right side of abdomen. The complainant fell down and raised an alarm, on hearing which, his brother-in-law Angat Singh s/o Teja Singh, resident of Sajima, came there and the incident was witnessed by Harchand Singh and Angat Singh. Injured were taken to Civil Hospital, Sangrur and got admitted there. The motive behind the occurrence as stated by the complainant was that the about a year earlier, he had given the shop on rent to Jaswinder Singh @

Kaka Ram, from whom he had got it vacated. Therefore, both the accused with common intention had caused injuries to him.

Such statement, alongwith his endorsement was sent by ASI Kashmir Singh to the Police Station, where formal FIR was registered. Thereafter, the investigation in the case started. The accused were arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of the challan copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that offence under section 307 IPC is exclusively triable by the Court of Sessions, the Chief Judicial Magistrate, Sangrur, committed the case to the Court of Sessions Judge, Sangrur, vide commitment order dated 31.8.2006

When the case was received in the Court of Additional Sessions Judge, Sangrur, then finding that prima facie charge for offence under Sections 307, 323, 506, 188 read with Section 34 IPC and Section 27 of the Arms Act, was disclosed against the accused, charge sheeted them accordingly, to which they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, the prosecution examined as many as 11 PWs, as per details below:-

1. Harjinder Singh – complainant PW-1
2. Harcharan Singh PW-2
3. Dr. Makhan Singh PW-3

4. Dr. Baljit Singh PW-4
5. Amrinder Singh, Clerk DC Office, Sangrur, PW-5
6. Dharminder Singh, Draftsman PW-6
7. Dr. Suresh Singal PW-7
8. Ramesh Kumar Pharmacist PW-8
9. ASI Kashmir Singh PW-9
10. MHC Karamjit Singh PW-10, Ramesh Kumar Clerk PW-10
11. HC Darshan Singh PW-11

After closure of the prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them but they denied the same stating that they were innocent and have been falsely involved in this case; that actually Harjinder Singh armed with a takua, Harcharan Singh armed with a gandas, Gurdev Singh, Angat Singh armed with sticks came to the shop of Jaswinder Singh with an intention to kill him and when Harjinder Singh tried to hit him, he moved aside and Takua blow struck on the counter of his shop; that Harcharan Singh had also attacked him and when he tried to take out his revolver from the drawer of the counter, Harjinder Singh grappled with him and at the same time other abovesaid persons also grappled with him and started giving him blows and in the meantime the revolver went off. Jaswinder Singh stated that he did not attack Harjinder Singh and he had approached the police, but no action was taken by them; that he and his father had moved an application to SSP Sangrur, upon which an enquiry was conducted by DSP (D) Sangrur. After enquiry, Sukhdev Singh was declared

innocent. During defence evidence, the accused examined DW-1 Karamjit Singh, DW-1 Paramjit Singh Goraya, SP (H) Batala, DW-2 Balwinder Singh, photographer, DW-3 Rajinder Singh and DW-4 Harbant Singh. With that the defence evidence was closed.

After hearing the arguments, the trial Court convicted Jaswinder Singh @ Kaka and Sukhdev Singh as given below:-

<i>Sr.No.</i>	<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
1	Jaswinder Singh @ Kaka	U/s 307 IPC	To undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
		U/s 323 IPC read with Section 34 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of seven days.
		U/s 506 IPC	To undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
		U/s 188 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
2	Sukhdev Singh	U/s 307 IPC read with Section 34 IPC	To undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
		U/s 323 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of seven days.

<i>Sr.No.</i>	<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
		U/s 506 IPC	To undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.

All the sentences were ordered to run concurrently.

As such feeling, aggrieved, the accused have approached this Court by way of filing the present appeal.

The appeal came up for hearing on 21.9.2011, when it was admitted and recovery of fine was ordered to remain stayed in the meanwhile.

Upon getting notice, learned State counsel had put in appearance. In the meanwhile, the matter has been compromised between the parties. Parties were directed to appear before the court of CJM, Sangrur, for recording their statements with regard to compromise.

Report has been received from Chief Judicial Magistrate, Sangrur, in terms of which complainant Harjinder Singh and accused, namely, Jaswinder Singh @ Kaka and Sukhdev Singh had appeared there and their statements were recorded, in terms of which they have admitted to have entered into a voluntary compromise, with free will, without any pressure, coercion or undue influence. Further complainant has stated that he has no objection if the FIR in question is quashed by this Court. There is nothing on record to doubt the genuineness of the compromise so arrived at between the parties. It has been reported that no accused has been declared

proclaimed offender in the FIR in question. Alongwith the report copies of statements of the complainant and the accused, have been annexed

Learned counsel for the appellants has further referred to authority reported as Puttaswamy vs. State of Karnataka and another 2009 (1) RCR (Criminal) 501, by the Apex Court, wherein it was observed that a non-compoundable offence cannot be compounded, but sentence can be reduced if the parties confirmed the matter.

In the instant case, as per the custody certificate filed by the State counsel Jaswinder Singh @ Kaka has undergone 1 year, 5 months and 22 days of imprisonment out of the total substantive sentence of 5 years, whereas Sukhdev Singh has undergone 11 months and 4 days of imprisonment, out of the total substantive sentence of 5 years. They are not shown to be involved in any other criminal case. Furthermore, after being released on bail, they are not shown to have indulged in any criminal activity. Therefore, while maintaining the conviction, the sentence awarded is modified and the appellants are sentenced to imprisonment already undergone by them in this case.

With the above modification, the appeal stands disposed of.

28.2.2018
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(H.S. Madaan)
Judge

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