

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 07, 2018

1. Criminal Appeal-S-2393-SB of 2003

Satish Kumar alias Buntry ...Appellant

versus

State of PunjabRespondent

2. Criminal Appeal-S-101-SB of 2004

Rakesh Kumar alias Shaily and others ...Appellants

versus

State of PunjabRespondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Amninder Preet, Advocate for the appellants in
both the appeals

Mr. HS Sullar, DAG, Punjab for the State/respondent

Fateh Deep Singh, J.

Since both these appeals though by different set of accused
convicts one by Satish Kumar alias Buntry and the other by Rakesh Kumar
alias Shaily, Bhola Nath, Arun Kumar and Amar Kumar having arisen out

of common judgment dated 28.11.2003 passed by learned Additional Sessions Judge (Adhoc), Ludhiana in case FIR No. 162 dated 27.10.2000 under sections 326, 307, 323, 506, 148/149 IPC, Police Station City Khanna and therefore, on account of consanguinity are being taken up together and disposed of by this common judgment.

Heard Mr. Amninder Preet, Advocate for the appellants in both the appeals, Mr. HS Sullar, DAG, Punjab for the State/respondent and perused the records.

The present case was got registered by complainant Harbir Singh, a student of Punjab Institute of Textile Technology, Amritsar wherein he stated before the Investigating Officer that on 26.10.2000, he had come to his residential house situated in Khanna where his relative Rajinder Singh resident of England was also present and around 10.30 PM, both Harbir Singh along with Rajinder Singh were strolling at Lalheri Road, Khanna and when they reached in front of Barber shop of Bhatti they saw accused Bhola alias Bhola Nath with a beer bottle in his hand, accused Rakesh Kumar alias Shaily armed with sua (ice pick), Arun Kumar and Buntry alias Satish Kumar along with them. It is alleged that Buntry raised lalkara to teach the complainant side a lesson. It is further alleged that at this Arun Kumar caught hold Rajinder Singh from his arm whereas Bhola then hit the beer bottle on the ground and with the broken beer bottle hit against the left eye of Rajinder Singh and when the complainant and Rajbir

Singh tried to rescue Rajinder Singh, Shaily gave a sua blow on the abdomen of Harbir Singh threatening him and hitting the same on the right flank of Harbir Singh and thereafter accused Amar Kumar gave a fist blow on the left eye of Rajbir Singh. Hearing the raula attracted witness Manjit Singh. On seeking him, the accused ran away with their respective weapons. The injured were rushed to hospital and since the condition of Rajinder Singh was serious, he was referred to Rajindra Hospital, Patiala for further medical treatment.

Upon completion of investigations, the accused were put to trial who pleaded not guilty.

The prosecution at the trial examined PW1 Dr. Ravi Dutt who medically examined Rajinder Singh injured and who proved his injuries by way of MLR Ex. PA and his opinion Ex. PA/1 and intimation sent to the police Ex. PB, PW2 Dr. M.P.S.Virk who examined injured Harbir Singh and proved injury on the person of this injured through MLR Ex. PC and thereafter the complainant was examined as PW3 who proved his statement made to the police and thereafter injured Rajinder Singh as PW4 detailing the occurrence. Through PW5 Hardial Singh the prosecution proved scaled site plan as Ex. PE and thereafter PW6 ASI Malkiat Singh who recorded the statement of the complainant and carried on the initial investigations proved the statement of Harbir Singh, upon which he made endorsement Ex. PD/1, FIR Ex. PD/2, site plan Ex. PD and Ex. PF. On apprehension of the accused,

the witness further testified having interrogated accused Bhola Nath who suffered a disclosure statement Ex. PF and got recovered broken beer bottle and thereafter accused Rakesh Kumar also suffered a disclosure statement Ex. PF and got recovered a sua. He also proved the recovery memo of beer bottle as Ex. PG/1 and recovery memo of sua as Ex. PH/1. Rough site plan of place of these recoveries is proved as Ex. PJ and broken beer bottle as Ex. P1 and the sua as Ex. P2.

PW7 ASI Bant Singh who partly investigated the case proved his role and through PW8 HC Kulbir Singh the prosecution proved the disclosure statements as Ex. PG and Ex. PH, recovery memos as Ex. PG/1 and Ex. PH/1 and through PW9 DSP Raminder Singh proved supplementary statement of Harbir Singh. PW10 ASI Ranjit Singh proved recording of the FIR as Ex. PW11/2 and arrest of accused Satish Kumar and his personal search as Ex. PW10/1 and lastly prosecution examined Dr. Ravinder Nath Bhatnagar PW11 who proved opinion of Dr. Rajesh Chopra, Senior Resident as Ex. PW11/1 and thereafter the prosecution evidence was closed.

The accused in their stand taken under section 313 Cr.P.C. denied the allegations but did not lead any evidence in their defence. It was through impugned judgment dated 28.11.2003 the accused were found guilty for commission of offences under sections 148, 325, 324, 149 IPC whereby they were sentenced as follows:-

<i>Name of convict</i>	<i>U/s 148 IPC</i>	<i>U/s 324 IPC</i>	<i>U/s 325/149 IPC</i>
Rakesh Kumar	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for two years and to pay a fine of Rs 1000/- or in default further R.I. for one month.
<i>Name of convict</i>	<i>U/s 148 IPC</i>	<i>U/s 324/149 IPC</i>	<i>U/s 325 IPC</i>
Bhola Nath	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for two years and to pay a fine of Rs 1000/- or in default further R.I. for one month.
<i>Name of convict</i>	<i>U/s 148 IPC</i>	<i>U/s 324/149 IPC</i>	<i>U/s 325/149 IPC</i>
Arun Kumar	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for two years and to pay a fine of Rs 1000/- or in default further R.I. for one month.
<i>Name of convict</i>	<i>U/s 148 IPC</i>	<i>U/s 324/149 IPC</i>	<i>U/s 325/149 IPC</i>
Amar Kumar	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for two years and to pay a fine of Rs 1000/- or in default further R.I. for one month.

<i>Name of convict</i>	<i>U/s 148 IPC</i>	<i>U/s 324/149 IPC</i>	<i>U/s 325/149 IPC</i>
Satish Kumar	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for one year and to pay a fine of Rs 500/- or in default further R.I. for 15 days	To undergo rigorous imprisonment for two years and to pay a fine of Rs 1000/- or in default further R.I. for one month.

Mr. Amrinder Preet at the very on set of his submissions has made a humble prayer that it was a sudden fight in the heat of passion and that the accused-convicts are neither previous convicts and are young persons and have undergone more than 17 years of hardship at the trial and consequent upon their conviction and has thus prayed that offences for which they have been convicted are not of heinous nature and therefore, be granted the concession of probation.

Though the learned State counsel Mr. Sullar accepts the fact that the accused have been convicted for offence under section 325 IPC and lesser offences but has sought to oppose the grant of concession of probation on the grounds that they have taken law into their own hands and thus dis-entitles them to any concession.

The convicts are young persons in their twenties and one of the accused Bhola aged around 42 years and thus is a married man as per the contentions of the counsel for the appellants and therefore, must be having family by now. The remaining accused also must have married and families

to support. The convicts as well as the victim belong to the same very town and if the convicts are sent to the custody they might become hardened criminals while coming in contact with the other criminals in jail and might led to more complications for the two sides and thus may also sow seeds of enmity and hatred and would ignite rivalry between the two sides. Thus, to bring about amity and goodwill between the two sides, it would also be bringing about peace and tranquility in the society together with the fact that provisions of law under section 360 Cr.P.C. have been made with a definite motive to come to the aid of persons who are first time offenders and commensurating with “theory of reformation” and the fact that they have seen the ignominy of this litigation between 17 to 18 years and therefore, must have caused spell on their persons as well as their families and would have its implications, impels this Court to grant the concession of probation under section 360 Cr.P.C. Accordingly, all the appellants are ordered to be released on probation of good conduct on furnishing probation bonds to the satisfaction of the concerned court in the sum of Rs 20,000/- with one similar surety each undertaking to appear and receive sentence whenever called upon during the period of one year and in the meantime to keep peace and be of good behaviour. If probation bonds are not furnished within two months of receipt of orders of this Court by the concerned court, the instant appeals shall be deemed to have been dismissed.

Both the appeals stand disposed of with the aforesaid modification.

August 07, 2018
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>