

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

**CRR No.2168 of 2008 (O&M)
Decided on: 25.10.2018**

Surender Singh and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. B.S. Saroha, Advocate
for the petitioners.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the judgment dated 10.02.2006 passed by the trial Court vide which the petitioners were held guilty of offence punishable under Sections 323, 324, 325, 326 read with Section 34 of the Indian Penal Code (in short 'IPC') and the order of sentence dated 10.02.2006 vide which the petitioners were sentenced to undergo rigorous imprisonment for a period of 03 years substantive sentence under Section 326 read with Section 34 IPC and to pay a fine of Rs.4,000/- each with a further default clause that in the absence of payment of fine, the petitioners shall undergo simple imprisonment for a period of 03 months as well as the judgment dated 06.09.2008 vide which the appeal preferred by the petitioners was dismissed.

Brief facts of the case are that on getting information about the admission of one Bhim Singh son of Shadi Ram, resident of village Mirjapur at General Hospital Narnaul, in injured condition, the police went there and recorded his statement during the intervening night of 15.1.1998 and 16.1.1998 (at 12.10 A.M. on 16.1.1998) after getting opinion of the Medical Officer. The complainant Bhim Singh made statement to the effect the *chhapper* belonging to his father's brother Ratti Ram had been burnt about 1½ months ago and he was named as a culprit in that case on 4.1.1998 and he was accordingly arrested and thereafter released on bail by the Court. On 15.1.1998, at about 8.30 P.M. he was smoking *hukka* at his house after taking meals when Surender son of Ratti Ram stated hurling abuses from outside and also passed threats. When the daughters of the complainant tried to shut the door, Surender accompanied by his brother Narender pushed the door and entered his house. Birender, who is also the son of Ratti Ram, made entry in the house of the complainant through courtyard. Surender was armed with a knife and Birender was armed with an iron rod whereas Narender was carrying a *lathi*. Surender gave a knife blow to the complainant aiming his neck and when he turned his face, the blow hit on his left ear and a portion of his ear was chopped off. The complainant tried to take hold of the knife and in this process, he suffered injury on the right hand. Birender gave blows on his knees with the iron rod whereas Narender gave *lathi* blows on his left hand fingers as well as on his waist. On hearing alarm raised by the complainant his elder brother Vijay as well as his mother Smt. Sarli and one Tula Ram and some other people arrived there and on this the

accused ran away by scaling the back side wall. The complainant, thereafter, was taken to General Hospital Narnaul.

The FIR was registered on the basis of the statement of the complainant and thereafter, the investigation was carried out. The accused were arrested and a knife was recovered from accused – Surrender. However the police presented challan against Surrender only and found remaining two accused to be innocent.

Thereafter, charge was framed against the accused under Sections 323, 324 and 325 IPC on 29.9.1998, to which he pleaded not guilty and claimed trial.

Thereafter, the application for summoning of the remaining two accused namely Narender and Birender under Section 319 Cr.P.C. was moved by the prosecution, which was allowed on 7.2.2000 and on their appearance, charge was also framed against them on 4.7.2000.

Vide order dated 2.1.2002 the application moved by the prosecution for alteration of the charge was allowed and it was concluded that a *prima facie* case was made out under Section 326 IPC also and thereafter, the trial Court framed fresh charge under Sections 323, 324, 325 and 326 IPC read with Section 34 IPC against all the three accused to which they pleaded not guilty.

The prosecution examined the complainant – Bhim Singh as PW1, Dr. Sanjay Bishnoi as PW2 and PW4, Constable Ganesi Lal as PW3, HC Hanuman Singh as PW5, Chhattar Singh (Retired D.S.P.) as PW6, Rajender Singh (Retired Sub Inspector) as PW7.

After conclusion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., to which they denied the

allegations and pleaded innocence. The accused produced two documents in defence evidence. Ex.D1, which is the copy of FIR No.15 date 4.1.1998 regarding the setting of chhapper on fire and Ex.D2, which is the copy of order vide which the complainant – Bhim Singh was granted bail.

On appraisal of the material evidence available on record, the trial Court convicted and sentenced the accused vide order dated 10.02.2006.

Feeling aggrieved against the said order, the accused preferred an appeal, which was also upheld by the Lower Appellate Court and thereafter, the present revision has been filed by the accused.

The present revision petition was filed in the year 2008 and the sentence of the petitioner was suspended vide order dated 14.01.2009.

During the pendency of the revision petition, the parties have entered into a compromise and the trial Court was directed to submit a report with regard to validity and genuineness of the compromise.

The Chief Judicial Magistrate, Narnaul, after recording the statement of the parties, vide its report dated 24.09.2008 has recorded its satisfaction that the parties have amicably settled the matter mutually and they are praying for permission to get the matter compounded.

Counsel for the petitioners has submitted that the petitioners and the complainant are in close relation and are resident of the same village and a compromise has already been effected between the parties in order to bring peace and harmony and the same was

necessary as the common relative of both the sides have helped them to maintain good relations between them.

Counsel for the petitioners has further submitted that the compromise was effected way back in the year 2008 and thereafter, a period of 10 years have elapsed and no further untoward incident has happened. It is further submitted that the parties are maintaining peace and they have not repeated any such offence and there is no grievance from the side of the complainant that the petitioners have extended any threat, after the compromise was arrived at between them in the year 2008. Counsel for the petitioners has further argued that fine imposed by the trial Court has already been paid by the petitioners.

Counsel for the State, on the other hand, has filed the Custody Certificate dated 20.11.2017 today in the Court. As per the Custody Certificate, the petitioners have undergone 01 years, 03 months (approximately) out of 03 years rigorous imprisonment.

After hearing the counsel for the parties, I find merit in the present revision petition. Since, the parties have entered into a compromise, considering the fact that the FIR pertains to the year 1998 and, thereafter, a period of more than 20 years have passed and the petitioners are facing the agony of protracted trial and also in view of the fact that the compromise was effected in the year 2008 and thereafter, the complainant has not levelled any allegations regarding any threat or misuse of the compromise at the instance of the petitioners, the present revision petition is allowed and the sentence awarded by the trial Court so upheld by the Lower Appellate Court is modified to the extent that the same is reduced to the period already

undergone by the petitioners.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

25.10.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No