

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1773-SB of 2005 (O&M)
Date of Decision : March 15, 2019

Raj Singh and others.....Appellants

VERSUS

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. N.S.Shekhawat, Addvocate
for the appellants.

Mr. Ayuwan Singh, AAG, Haryana.

Mr. Sahil Gupta, Advocate
for the complainant.

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MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the judgment of conviction dated 22.09.2005 and the order of sentence dated 26.09.2005 passed by the learned Additional Sessions Judge, Rewari, vide which all the appellants were convicted for the offence punishable under Sections 148/326/323/149 IPC and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
148 IPC	Rigorous imprisonment for one year and fine ₹1,000/- each.
326 IPC read with Section 149 IPC	Rigorous imprisonment for three years and fine ₹3,000/- each.
323 IPC read with Section 149 IPC	Rigorous imprisonment for six months each.

In case of default of payment of fine, to further undergo rigorous imprisonment for a period of four months each. All the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on receipt of Ruqa from General Hospital, Rewari, on 13.04.1997, ASI Charan Singh went to the hospital and recorded the statement of injured Hardev Singh who stated that on that day i.e. 13.04.1997 when he along with his father Ram Kumar, wife Suresh and sister-in-law Ram Ratti were harvesting their mustard crop in their fields, the accused appellants came to the spot and picked up a fight with them. Thereafter, appellant-Ram Gopal inflicted jelly blow on the left arm of complainant-Hardev Singh while the remaining appellants inflicted injuries on his person with lathis. The father, wife and sister-in-law of Hardev Singh rushed to his rescue but they too were not spared by the appellants who inflicted injuries on their person as well. Daulat Ram and Umrao, who were present near by, saved the complainant party from the attack of the appellants. A formal FIR Ex.PA/1 was registered on the statement of complainant-Hardev Singh on 13.04.1997.

3. After filing the police report under Section 173 Cr.P.C., a *prima facie* case under Sections 148, 326, 324, 395 IPC read with Section 149 IPC was made out against the accused who were accordingly charged, to which they pleaded not guilty and claimed trial.

4. The prosecution examined as many as 11 witnesses including the complainant Hardev Singh. PW Umrao was given up as having been won over while injured PW Ram Ratti was given up as being unnecessary. After conclusion of the prosecution evidence when the accused were examined under Section 313 Cr.P.C., they pleaded innocence and false

implication. They pleaded that they were in cultivating possession of the land where the occurrence took place and in fact it was the complainant party which came to the spot armed with weapons and attacked them.

5. In defence, the accused examined 6 witnesses including DW1 Dr. Vishvender, Medical Officer, General Hospital, Rewari, DW2-Dr. Chander Shekhar, Medical Officer, General Hospital, Rewari, who medico-legally examined the accused on the date of occurrence, and DW6-injured Ram Ratti.

6. On perusal of the evidence on record, the learned trial Court convicted and sentenced the accused/appellants as already detailed above.

7. I have heard learned counsel for the appellants, complainant and the State.

8. At the outset, learned counsel for the appellants submitted that during the pendency of the instant appeal, the parties entered into a compromise vide Annexure A2 dated 09.09.2018. Ram Kanwar, who had suffered a simple injury in the alleged occurrence, died on 04.06.2014 and a compromise (Annexure A2) was effected between his legal heirs and the accused. The main accused Ram Gopal who was attributed the injury attracting the provisions of Section 326 IPC too expired during the pendency of the appeal. Hence, learned counsel for the appellant submitted that he would confine his prayer to the reduction in sentence to the period already undergone. The learned counsel for the appellant and the complainant submitted that both the parties were not only co-villagers but immediate neighbours as well and an amicable compromise had been effected between both of them. Learned counsel for the complainant further submitted that there was no grievance from their side against the

appellants and the compromise so arrived between them was voluntary and without any coercion or threat.

9. It would be relevant to high light that it has come in evidence that there was some civil dispute between the parties at the time of alleged occurrence. In fact, the appellants in their defence examined DW6 injured Ram Ratti who is none other than the real sister-in-law of the complainant and who too received an injury attracting the provisions of Section 324 IPC in the alleged occurrence. She deposed that she received the said injury during the quarrel between the two parties. As far as the remaining and surviving appellants Raj Singh, Billu and Mahabir @ Pappu are concerned, they were attributed injuries caused with lathi blows on the person of the injured Hardev Singh, Ram Kumar, Suresh and Ram Ratti which were simple in nature. It is also a matter of record that the accused party too sustained injuries in the alleged occurrence and they were medico-legally examined on the day of alleged occurrence itself. The lower Court while convicting and sentencing the appellants convicted and sentenced them under Section 326 read with Section 149 IPC, under Section 323 read with Section 149 IPC and under Section 148 IPC along with a default clause.

10. Section 320 of Cr.P.C. relates to offences which are punishable under the Indian Penal Code only. It categories the offences which can be compounded, by whom they can be compounded as also those offences which can be compounded only with the permission of the court concerned. The provisions of Section 320 Cr.P.C. can not be given a go by or deviated from. But as has been observed by the Hon'ble Supreme Court in ***Unnikrishnan @ Unnikuttan v. State of Kerala*** 2017 AIR (SC) 1745 that if an offence is not compoundable within the scope of Section 320 of Code of

Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

11. An offence under Section 326 IPC is not compoundable. However, it would be relevant to notice that none of the surviving appellants have been attributed injury falling under Section 326 IPC and they have been convicted only with the aid of Section 149 IPC and under Section 148 IPC. As also submitted earlier, the accused attributed injury under Section 326 IPC has since expired.

12. Learned counsel for the State placed on record the Custody Certificates of the appellants which were taken on record. As per the Custody Certificates dated 17.01.2019, appellant No.1-Raj Singh and appellant No.2-Billu had undergone 04 days of actual imprisonment and appellant No.5-Mahabir @ Pappu has undergone 08 days of actual imprisonment.

13. Learned counsel for the State, on instructions from ASI Satbir Singh submitted that the compromise between the parties had indeed been effected and the parties had been residing amicably and peacefully for the last 22 years with no untoward incident having been reported between them.

14. I have no hesitation in holding that taking into account, the compromise effected between the parties particularly so when they are neighbours and for the past 22 years have been maintaining cordial relations, reduction in sentence can be ordered but at the same time I do not find any ground for interference with the conviction of the appellants. In view of the fact that they have undergone the agony of a protracted trial for almost 22 years and have been maintaining peace and cordiality, the

sentence of the appellants is reduced to the period already undergone.

15. Appeal is accordingly disposed of.

15.03.2019
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No