

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

Criminal Appeal-S-1847-SB of 2005 (O&M)

Date of Decision: 12.07.2019

Mohinder Singh and others
..... Appellants
Versus
State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. R.A.Sheoran, Advocate for the appellants/accused.

Mr. Arun Beniwal, Deputy Advocate General, Haryana
for the respondent/State.

Mr. Aditya Sanghi, Advocate for the complainant.

MAHABIR SINGH SINDHU, J.

At the outset, it has been jointly stated by both sides that during the pendency of the present appeal, accused Om Parkash (appellant No.2) died on 27.11.2012, therefore, the appeal qua him stands abated.

Present appeal has been filed against the impugned judgment and order dated 08.10.2005 and 10.10.2005, respectively, passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani, vide which, the appellant(s) have been convicted and sentenced in the following terms:-

<i>Name of appellants/convicts</i>	<i>Conviction Under Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
Mohinder (A-1)	148, IPC	Rigorous imprisonment for a period of <u>one year</u>	₹ 500/-	Rigorous imprisonment for a period of <u>one month</u>
Om Parkash (A-2) Ashok Kumar (A-3) Suraj Bhan (A-6)	323 r/w 149, IPC	Rigorous imprisonment for a period of <u>six months</u>	NIL	NIL
Subhash (A-7)	341 r/w 149, IPC	Rigorous imprisonment for a period of <u>one month</u>	NIL	NIL

All the aforesaid sentence were ordered to run concurrently.

<i>Name of appellants/convicts</i>	<i>Conviction Under Section(s)</i>	<i>Sentence</i>
Sanjay (A-4)	148, 323/149, 341/149, IPC	Released on probation for one year and to pay compensation of ₹ 500/-.
Baljeet (A-5)	324, IPC	-do-

It is apposite to mention here that co-accused of the appellants, namely, Angoori and Babli were acquitted by learned trial Court.

Allegations, in brief, are that Khazani (PW-7) made a statement dated 28.06.2000 (Ex.PA), by alleging that she is resident of Village Tigrana and her husband was running a shop near old Devsar, Octroi Post. On 27.06.2000 at about 07:00 PM, some children were playing in the street in front of her house and an altercation took place between them. She heard the noise, came out of her house and saw that Mohinder s/o Lekh Raj (appellant No.1) was giving beatings to her son-Dheeraj. In the meantime, co-accused Angoori w/o Mohinder and Babli w/o Subhash also came there. Complainant enquired about the reasons for giving beatings to her son, then, Angoori and Babli caught hold of her, gave fists and slaps blows. Thereafter, Baljeet (appellant No.5), armed with knife, came there and inflicted knife blow on her right hand wrist. Consequently, she raised alarm “*Mar Diya Mar Diya*”, upon which, wife of Kundan and other ladies from neighbourhood came at the spot and rescued her from the clutches of accused persons. Thereafter, her children sent a telephonic message to her husband. When her husband was taking the complainant to the Hospital at Bhiwani on a Scooter, then, Ashok s/o Jage Ram (appellant No.3) along with 4/5 other persons came there from the

backside in an Ambassador Car bearing registration No.DBC-5891 and parked their Car by the side of Scooter and Ashok caught hold the collar of the shirt of her husband while he was driving the Scooter and due to which, Scooter fell down. Thereafter, accused Sanjay (appellant No.4) and his father-Om Parkash (appellant No.2) alighted from the Car and caught hold of her husband and accused Mohinder (appellant No.1) gave hockey blows to him. She tried to stop them, upon which, Suraj Bhan s/o Lekh Ram and Ashok (appellant No.3) caught hold of her and Subhash (appellant No.7) lifted a hockey from the Car and caused her injuries. Complainant and her husband raised alarm, upon which, accused persons stated that they will not allow them to approach the Police Station and the Hospital. Magan s/o Balbir and Satbir reached at the spot, upon which, assailants escaped in their Car with their respective weapons towards the side of Village Tigrana. Further alleged that the occurrence is alleged to have taken place one and half Kms. from Village Tigrana near the fields of Kamal s/o Balbir. Complainant and her husband were admitted in the General Hospital, Bhiwani. Further allegation is that on earlier occasion also, quarrel had taken place between the parties, but the matter was compromised in the Panchayat. Also alleged that the accused caused injuries to the complainant as well as her husband on account of the altercation that took place between the children.

On the basis of above statement, formal FIR No.233 dated 28.06.2000, under Sections 148, 149, 323, 324 and 341 of the Indian Penal Code, 1860 (*for short 'IPC'*) was registered at Police Station Sadar, District Bhiwani against nine accused, namely, Mohinder Singh, Ashok Kumar,

Sanjay, Baljeet, Suraj Bhan, Angoori, Babli, Subhash and Om Parkash. During investigation, Section 307, IPC was added on 23.07.2000 and after completion of the same, report under Section 173 Cr.P.C. was submitted before learned Illaqa Magistrate against all the accused except Subhash as he was found innocent by the Investigating Agency and the case was committed to the Sessions Court on 22.02.2001.

Learned trial Court charged the appellant(s) along with other co-accused for the commission of offences punishable under Sections 148, 307/149, 323/149, 324/149 and 341, IPC, vide order dated 14.03.2001, to which, they pleaded not guilty and claimed trial.

It transpires that after recording the statements of five prosecution witnesses, including complainant/injured-Khazani, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning the accused Subhash, which was allowed on 30.10.2001 and he was summoned for commission of offences punishable under Sections 307, 148, 149, 323, 324 and 341, IPC. Consequently, fresh charges were framed against all nine accused on 20.09.2002, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses, which are as under:-

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|-------------|----------|---|
| <i>PW-1</i> | <i>:</i> | <i>ASI Bhim Singh, who on receipt of Ruqa (Ex.PA), registered the formal FIR (Ex.PA/1) and also made endorsement (Ex.PA/2) on it.</i> |
| <i>PW-2</i> | <i>:</i> | <i>Dr. Ranvir Singh, Medical Officer, who medico-legally examined complainant-Khazani and her husband-Krishan Kumar and gave opinion, as to the nature of the injuries.</i> |
| <i>PW-3</i> | <i>:</i> | <i>Dr. K.L.Bawa, SMO, CSC, Keru, who radio-logically examined husband of complainant and</i> |

gave report (Ex.PE).

- PW-4 : Dr. S.C. Batra, SMO, ESI, Bhiwani, who declared Khazani as fit to make statement, but declaring unfit her husband due to the injuries.*
- PW-5 : Jagdish Chander, Photographer*
- PW-6 : Anoop Singh, Halqa Patwari, Tigrana, who prepared the Site Plan (Ex.PJ).*
- PW-7 : Complainant/injured-Khazani*
- PW-8 : Injured/husband of complainant, namely, Krishan*
- PW-9 : Inspector Ram Bilas, who enquired the matter*
- PW-10 : Bhim Sain, Mechanic, Hr. Roadways, Bhiwani, examined both vehicles i.e. Scooter & Car and gave reports (Ex.PK and Ex.PK/1).*
- PW-11 : H.C. Jagdish, who recorded the statement of complainant in the hospital after receipt of opinion of the doctor.*

Prosecution also produced the following documentary evidence in support of their case:-

- Ex.PA : Ruqa*
- Ex.PA/1 : FIR recorded by PW 1-ASI Bhim Singh*
- Ex.PA/2 : Endorsement made on FIR by ASI Bhim Singh*
- Ex.PB : MLR of injured-Krishan Kumar*
- Ex.PC : MLR of complainant/injured-Khazani*
- Ex.PD : Ruqa sent by PW 2-Dr. Ranvir Singh*
- Ex.PE : Report given by PW 3-Dr. K.L.Bawa, who radio-logically examined Krishan Kumar.*
- Ex.PE/1 to Ex.PE/6 : X-ray films of injured-Krishan Kumar*
- Ex.PF : Report given by PW 3-Dr. K.L.Bawa, who radio-logically examined Khazani.*
- Ex.PF/1 & Ex.PF/2 : X-ray films of injured-Khazani*

<i>Ex.PG</i>	:	<i>Police request to Doctor for recording the statements of injured</i>
<i>Ex.PG/1</i>	:	<i>Report/Opinion of PW 4-Dr. S.C. Batra for recording the statements of injured</i>
<i>Ex.PH</i>	:	<i>Police request to PW 4-Dr. S.C.Batra regarding the injuries on the person of Krishan Kumar</i>
<i>Ex.PH/1</i>	:	<i>Report of PW 4-Dr. S.C.Batra on Ex.PH</i>
<i>Ex.P-1 to Ex.P-12</i>	:	<i>Photographs of the spot</i>
<i>Ex.PJ</i>	:	<i>Site Plan, prepared by PW 6-Anoop Singh, Halqa Patwari, Tigrana</i>
<i>Ex.PK</i>	:	<i>Report of PW 10-Bhim Sain, Motor Mechanic, Haryana Roadways, Bhiwani, who mechanically examined Scooter</i>
<i>Ex.PK/1</i>	:	<i>Report of PW 10-Bhim Sain, Motor Mechanic, Hr. Roadways, Bhiwani, who mechanically examined Ambassador Car</i>
<i>Ex.PL Ex.PL/1</i>	:	<i>Rough Site Plans, prepared by PW 11-HC Jagdish with correct marginal notes</i>
<i>Ex.PM</i>	:	<i>Recovery Memo of Scooter</i>
<i>Ex.PN</i>	:	<i>Recovery Memo of Ambassador Car.</i>

The entire incriminating material was put to all the accused under Section 313 Cr.P.C., but they denied the same and claimed innocence on account of their false implication.

In defence, appellants/accused examined two witnesses, namely, H.C. Ram Niwas and Dr. S.P. Chugh, Casualty Medical Officer, PGIMS, Rohtak as DW-1 and DW-2, respectively and produced the following documents:-

<i>Ex.DW1/1</i>	:	<i>Ruqa</i>
<i>Ex.DW1/2</i>	:	<i>MLR of injured-Kuldeep</i>
<i>Ex.DW1/3</i>	:	<i>Opinion for recording statement of</i>

injured-Kuldeep

Ex.DW1/4 : Statement of injured-Kuldeep

Ex.DW1/5 : Endorsement made by police on the statement (Ex.DW1/4) of Kuldeep

Learned trial Court, after taking into consideration the entire material available on record, acquitted Angoori and Babli by giving them the benefit of doubt, but convicted and sentenced the appellants as mentioned above in the opening para of this order.

It is contended by learned Counsel for the appellants that matter has been compromised between the parties; appellant Nos.4 and 5 have already completed their period of probation successfully and none of them is a previous convict. Further contended that there is no material on record to prove the charge under Section 148, IPC and thus, the impugned judgment is liable to be set aside and appellants be acquitted of the charges in entirety.

Learned State Counsel, on instructions from the police official present in the Court, although acknowledged the factum of compromise between the parties, yet, opposed the submissions of the appellants and prayed for dismissal of the appeal.

However, learned Counsel for the complainant fairly submitted that matter has been compromised between the parties and their statements have already been recorded to that effect before learned Chief Judicial Magistrate, Bhiwani on 03.06.2019.

Heard learned Counsel for the parties and perused the paper-book.

As per testimony of PW-2 Dr. Ranvir Singh, he examined Krishan Kumar on 27.06.2000 and noticed three injuries, which were caused by blunt

weapon, but all were declared simple in nature. On same day, he also examined Khazani (PW-7) and found four injuries, out of which, Injury No.1 was stated to be caused by sharp edged weapon having an incised wound of size 1.5 x .5 cm. over lateral aspect of middle of right forearm, bleeding was present and she was advised x-rays. Injury Nos.2, 3 and 4 were contusion & abrasion, which declared simple in nature.

During cross-examination, PW-2 Dr. Ranvir Singh stated that possibility cannot be ruled out for sustaining injuries to Krishan Kumar by fall on hard surface and similar possibility was acknowledged regarding injury Nos.2 to 4, suffered by Khazani (PW-7). This witness further deposed that possibility cannot be ruled out regarding Injury No.1, suffered by Khazani, on account of fall on a sharp object.

PW-3 Dr. K.L.Bawa, radiologically examined both the injured i.e. Krishan Kumar as well as Khazani, but he did not find any fracture in view of his x-ray reports, Ex.PE and PF, respectively.

Learned trial Court, in para 42 of the judgment, observed that *“the dispute arose on account of a trivial matter with regard to some altercation between the children”* and they are residing adjoining to each other and belong to the same family. Now the parties have decided to forego their differences, settled the dispute amicably, stated to be living with peace & harmony and there is no grievance pending against each other as on today.

Record reveal that injuries, suffered by Krishan Kumar as well as Khazani, were found to be simple in nature. Injury No.1, suffered by Khazani (PW-7) as an incised wound, has been attributed to appellant No.5-Baljeet and

he stands convicted u/s 324, IPC, but was released on probation. So far as conviction of appellant Nos.1, 3, 4, 6 and 7 under Section 148, IPC is concerned, there is neither sufficient material on record; nor any finding(s) recorded by learned trial Court to the effect that appellants were members of an unlawful assembly or armed with deadly weapons or they used anything as a weapon of offence likely to cause death. Therefore, the conviction of the above appellants, under Section 148, IPC, is not legally sustainable and the same is set aside.

As mentioned above, during the pendency of the present appeal, the matter has been compromised between the parties and consequently, an application bearing CRM No.15604 of 2019 was moved for compounding of the offence on the basis of compromise dated 04.05.2019 (A-1) and this Court, on 13.05.2019, directed the parties to present themselves before the Chief Judicial Magistrate, Bhiwani on 29.05.2019 or any other date convenient to the Court for recording their statements with regard to the compromise so effected between them. The Chief Judicial Magistrate was directed to record the statements of both the parties to his satisfaction qua:-

- i) The genuineness or otherwise of the compromise so arrived at between the parties and
- ii) The statements are not the result of any pressure or coercion.

The Chief Judicial Magistrate was further directed to send a report along with statements of the parties with regard to the validity or otherwise of the compromise so effected between the parties and also intimate whether any other case is pending against either of the parties.

In terms of the above order, report dated 11.06.2019 from learned Chief Judicial Magistrate, Bhiwani has been received and operative part of the same reads as under:-

“ i) The compromise is genuine in between the parties and not otherwise.

ii) The statements are not the result of any pressure or coercion.

In the considered opinion of this court, the compromise is genuine, voluntary and out of free will of the parties.

It is further submitted that one of the accused namely Om Parkash expired and qua that fact the statement of his son namely Sanjay has been recorded and report has also been obtained from the SHO concerned. The copies thereof are also enclosed herewith.”

Above report clearly reveals that matter has been amicably settled by both sides and there is no grievance left against each other.

Appellant No.4-Sanjay and appellant No.5-Baljeet, who were released on probations, have already completed their probation successfully and there is no allegation against them that they were involved in any other criminal activity.

Also to be noticed that prior to Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005), Section 324, IPC was compoundable by the person to whom hurt is caused. Concededly, in the present case, the occurrence had taken place prior to the amendment of 2005 i.e. on 27.06.2000, therefore, there is no reason to deny the permission to the parties to compound the offence under Section 324, IPC qua appellant No.5-Baljeet and a reference in this regard can be made to judgment of Hon'ble the

Supreme Court, reported as **Md. Abdul Sufan Laskar and others Versus State of Assam, (2008) 9 SCC 333** and para Nos.15, 16 and 17, being relevant, are extracted as under:-

“ 15. Under the Code, as originally enacted in 1973, an offence punishable under Section 324, IPC (voluntarily causing hurt by dangerous weapons or means) was made compoundable with the leave of the Court. The said entry read as under:

TABLE

<i>Offence</i>	<i>Section of the Indian Penal Code Applicable</i>	<i>Person by whom offence may be compounded</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>Voluntarily causing hurt by dangerous weapons or means.</i>	<i>324</i>	<i>The person to whom hurt is caused.</i>

16. It is no doubt true as stated by the learned counsel for the appellants even at the time of preliminary hearing of this matter that by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the above entry has been deleted. In other words, an offence of voluntarily causing hurt by dangerous weapons or means punishable under Section 324, IPC is no more compoundable. The Amendment Act of 2005 came into force from June 23, 2006.

17. As we have already noted, according to the prosecution, the appellants had committed the offence on June 15, 1995. In view of the above fact, in our opinion, Act 25 of 2005 has no application to the facts of the case. We, therefore, see no ground to refuse permission as sought by the parties who have compromised the offence which was compoundable under the Code as it stood in 1995. If it is so, compounding can be permitted and accused (appellants) can be acquitted. ”

In view of the above, this Court is of the opinion that parties should be allowed to compound the offence punishable under Sections 323, 341,

both r/w Section 149 as well as under Section 324, IPC.

In view of the facts and circumstances, discussed hereinabove, appeal is allowed and the impugned judgment of conviction and order of sentence dated 08.10.2005 & 10.10.2005, respectively, passed by learned Additional Sessions Judge, Bhiwani are set aside and appellants Nos. 1, 3, 4, 5, 6 and 7 are acquitted of the charges. Their bail bonds as well as surety bonds, if any, stand discharged.

July 12, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>