

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 05.07.2019

1. CRA-S-2396-SB-2006 (O&M)

Sukhdev Singh @ Sukha and others

....Appellants

Versus

State of Punjab

....Respondent

2. CRA-S-2400-SB-2006 (O&M)

Zora Singh and others

....Appellants

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vishal Rattan Lamba, Advocate
for the appellants.

Mr. Jagmohan Ghumman, DAG, Punjab.

Mr. Jasjeet S. Dhaliwal, Advocate for
Mr. H.S. Brar, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Vide this judgment, the aforesaid two appeals filed by

appellants-accused; CRA-S-2396-SB-2006 filed by Sukhdev Singh @ Sukha, Kuldeep Kaur, Sapinder Singh and CRA-S-2400-SB-2006 filed by Zora Singh, Bhupinder Kaur, Harneek Singh and Gurpreet Singh are being disposed of.

Brief facts of the case are that on 29.06.2004 at about 8.30 a.m., Sukhdev Singh started to cut the trees from the passage about which there was a dispute between Sucha Singh and Sukhdev Singh and Sarabjit Singh had gone to report the matter to Sucha Singh, who was working in his fields. In the meantime, Ranjit Kaur and Mohinder Kaur asked them to stop to uproot the trees and Zora Singh son of Mast Singh, Harneek Singh and Gurpreet Singh, sons of Sukhdev Singh armed with dandas and sotis were present at the spot when Bhupinder Kaur wife of Zora Singh and Kuldeep Kaur wife of Sukhdev Singh came there and caught them. Ranjit Kaur was caught hold by Bhupinder Kaur and made her to lay on the ground and Harneek Singh, Zora Singh, Gurpreet Singh and Sapinder Singh gave fist blows and similarly, injuries were given to Mohinder Kaur. When Sucha Singh along with Bhupinder Singh and Sarabjit Singh came there and raised the noise, Sukhdev Singh and others went to their home and Sapinder Singh raised the lalkara that daily dispute be ended and they be not spared and Kuldeep Kaur wife of Sukhdev Singh handed over 12 bore DBBL rifle to him and exhorted that daily dispute be ended and then he fired towards Sucha Singh and others with an intention to kill and the pellets of fire struck Sarabjit Singh on his neck, chest and other parts of the body. The pellets also struck Navjot Singh and Gurminder Singh. On account of the injuries,

Sarabjit Singh fell down. They again raised the noise of *mar dita mar dita* and thereafter, Sukhdev Singh and others ran away from the spot along with their weapons. Sarabjit Singh, Mohinder Kaur and Ranjit Kaur and others were taken to the hospital. After receiving a telephonic call made by Sucha Singh to Police Station Morinda, ASI Garja Singh along with other police officials came there and he recorded the statement of Sucha Singh Ex.PA, on which ASI Garja Singh made endorsement Ex.PA/2, on the basis of which formal FIR Ex.PA/3 was registered. He also collected blood stained earth from the spot, made it into parcel and sealed with his seal bearing impression 'GS' and taken into police possession vide memo Ex.PB. One empty cartridge was also recovered from the place of occurrence, on which Indian Ordinance Special was written, its parcel was prepared and sealed with the seal 'GS' and taken into police possession vide memo Ex.PC. Injured Sarabjit Singh, Mohinder Kaur, Ranjit Kaur, Gurvinder Singh and Navjot Singh were medico-legally examined in CH, Morinda and clothes of injured Sarabjit Singh were collected from the spot, the same were made into parcel, sealed by the Investigating Officer with his seal bearing impression 'GS' and taken into police possession vide memo Ex.PX. On 01.07.2004, accused Kuldeep Kaur, Sukhdev Singh and Zora Singh were arrested in this case. From the possession of Sukhdev Singh, one 12 bore DBBL gun was taken into police possession, licence of which was in his name. Scaled site plan of the place of occurrence was also got prepared. Case property was deposited with MHC of police station. Gun along with cartridge and blood stained earth was sent to FSL, Punjab, Chandigarh, its

report was received.

After completion of the investigation, the report under Section 173 Cr.P.C. was presented in the Court. Copies of the challan along with relevant documents were supplied to the accused and the case was committed to the Court of Sessions. A prima facie case under Sections 148, 307, 149, 323 IPC and Section 27 of Arms Act was made out against appellant Sukhdev Singh.

The prosecution, in its evidence, examined PW1 Sucha Singh, PW2 Sarabjit Singh, PW3 Ranjit Kaur, PW4 Nasib Singh, PW5 ASI Nirmal Singh, PW6 Dr. Jagdish Singh Gill, who had medico-legally examined the injured persons, PW7 ASI Tarsem Singh, PW8 Jasmeet Singh, draftsman, PW9 ASI Jagir Singh, MHC, PW10 Kulwinder Singh, formal witness and PW11 ASI Garja Singh, Investigating Officer and also tendered into evidence FSL report Ex.PLL and thereafter, the prosecution evidence was closed.

The accused in their statement, recorded under Section 313 Cr.P.C., denied the allegations and pleaded innocence. In defence, the accused persons examined DW1 ASI Sohan Singh, who proved photocopy of DDR Ex.DE and DDR No.17 dated 01.07.2004 Ex.DF. The accused also tendered into evidence the judgments dated 20.10.1990 Ex.DG and DH, certified copy of decree sheet Ex.DJ, certified copy of FIR No.58 dated 24.04.2001 Ex.DK and closed the defence evidence.

Thereafter, the trial Court, vide judgment dated 20.11.2006, convicted all the accused and vide order of sentence of even date, sentenced

them to undergo imprisonment, which is as under: -

1. Sukhdev Singh

Under Section 307 IPC R.I. for five years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for six months.

Under Section 323/149 IPC R.I. for three months.

Under Section 323/34 IPC R.I. for three months.

Under Section 27 of Arms Act R.I. for three years, and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 01 month.

2. Zora Singh

Under Section 323/149 IPC R.I. for three months.

3. Kuldip Kaur

Under Section 307/34 IPC R.I. for five years and to pay a fine of Rs.3,000/-, in default of payment of fine to further undergo R.I. for 04 months.

Under Section 323/34 IPC R.I. for three months.

Under Section 323/149 IPC R.I. for three months.

4. Sapinder Singh

Under Section 307/34 IPC R.I. for five years and to pay a fine of Rs.3,000/-, in default of

payment of fine to further
undergo R.I. for four months.

Under Section 323/34 IPC R.I. for three months.

Under Section 323/149 IPC R.I. for three months.

5. Bhupinder Kaur

Under Section 323/149 IPC R.I. for three months.

6. Harnek Singh

Under Section 323/149 IPC R.I. for three months.

7. Gurprit Singh

Under Section 323/149 IPC R.I. for three months.

Both these appeals i.e. CRA-S-2396-SB-2006 and CRA-S-2400-SB-2006 were admitted on 01.12.2006 and 05.12.2006 respectively and thereafter, sentence of the applicants-appellants was suspended.

During pendency of these appeals, two accused-appellants namely Kuldip Kaur and Bhupinder Kaur have died and this fact is verified by learned State counsel, who has placed on record a report of the Chief Judicial Magistrate, who reported on 28.09.2018 that Kuldeep Kaur had died on 19.02.2014 and Bhupinder Kaur had died on 26.06.2015, therefore, both these appeals against these two accused persons stand abated.

It is worth noticing here that during pendency of the present appeals, CRM-48435-2012 was filed for placing on record the compromise affidavits (Annexure A-1 colly.) of all the six injured persons and it was ordered that the same will be taken up at the time of final disposal of the appeal. In all the affidavits, it is specifically stated that with the intervention

of respectables from both the sides, a compromise has been effected and the same is for maintaining peace, harmony and brotherhood amongst the parties and the complainants/eyewitnesses/injured do not want to proceed further with the matter and has no objection if the appellants are acquitted. All the affidavits bear photographs of the injured witnesses and are duly attested by the Notary Public.

An application bearing CRM-49696-2012 was also filed in CRA-S-2396-SB-2006 for impleading the injured persons namely Sucha Singh, Sarabjit Singh, Gurvinder Singh, Mohinder Kaur, Ranjit Kaur and Navjot Singh as party-respondents No.2 to 7. The same is allowed and the aforesaid injured persons are impleaded as party-respondents No.2 to 7.

Learned counsel for the appellants has restricted his arguments to the extent that the sentence awarded by the trial Court to the appellants may be reduced to the period already undergone by them. In view of the compromise effected between the parties, learned counsel further submits that the appellants as well as respondents No.2 to 7 are residents of the same village, the FIR is dated 29.06.2004 and subsequent to registration of the FIR, no untoward incident has taken place between the parties and they are maintaining peace, harmony and brotherhood in the village.

Learned counsel for the appellants has further argued that appellant Sukhdev Singh has undergone 02 years, 05 months and 05 days of actual sentence and appellant Supinder Singh has undergone 01 year, 04 months and 12 days of actual sentence, out of 05 years R.I. awarded by the trial Court. It is further argued that the other appellants were awarded

simple imprisonment of three months under Section 323/34 IPC and all the appellants have shown substantive improvement in their character, as they are maintaining peace and harmony in the village. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in **Badrilal Vs. State of Madhya Pradesh, 2005 (7) SCC 55**, wherein it is held that in case of conviction under Section 307/34 IPC, on the basis of compromise, sentence can be reduced to the period already undergone. Similar view has been taken by the Hon'ble Supreme Court in **Pappu and others Vs. State of Punjab, 2000 AIR (SC) 3633**.

Learned counsel has further referred to **Ishwar Singh Vs. State of Madhya Pradesh, 2009 (1) RCR (Cr1.) 1**, wherein the Hon'ble Supreme Court has held that the offence under Section 307 IPC is not compoundable, however, considering the compromise effected between the parties during pendency of the appeal, the sentence was reduced to the period already undergone. The operative part of this judgment reads as under: -

“Now, it cannot be gainsaid that an offence punishable under Section 307 Indian Penal Code is not a compoundable offence. Section 320 of the Code of Criminal Procedure 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

In Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255, Murugesan & ors. v. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal v. State of M.P., JT 1988 (3) SC 366 (I), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan, 1990 (3) RCR (Crl.) 332, such offence was ordered to be compounded.

In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstances which, the Court may keep in mind.

In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after decision of the High Court, he again

surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (accused No.1) is reduced to the period already undergone.

For the foregoing reasons, the appeal deserves to be partly allowed and accordingly allowed by maintaining the conviction recorded by the trial Court and confirmed by the Appellate Court but by reducing the sentence already undergone by the appellant. The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine, he will pay such amount without four weeks from today.

Ordered accordingly.

Appeal partly allowed.”

Learned State counsel has filed the custody certificates in the Court today and has not disputed the sentence undergone by appellants Sukhdev Singh and Supinder Singh, who were sentenced to undergo 05 years R.I. under Section 307 IPC.

A perusal of the custody certificates shows that both the appellants are not involved in any other case, after registration of the present FIR in the year 2004, which supports the arguments of learned counsel for the appellants and they have not repeated any such offence.

Learned counsel for respondents No.2 to 7 has reiterated the

version that there is a valid compromise between the parties.

After hearing learned counsel for the parties, in view of the limited arguments of learned counsel for the appellants, which is supported by the affidavits of the injured/witnesses/complainants-respondents No.2 to 7 and the statements made by the learned counsel representing them at bar that the compromise was effected way back in the year 2012, as per the affidavits (Annexure A-1 colly.) and even subsequent thereto, a period of more than 06 years has passed and the appellants have not repeated any such offence; they have maintained peace, harmony and brotherhood amongst both the families, which are residents of the same village and also in view of the judgment of the Hon'ble Supreme Court in **Badrilal's** case (supra), both these appeals are partly allowed. The judgment of conviction dated 20.11.2006 is upheld and the order of sentence of even date is modified to the extent that the sentence awarded by the trial Court is reduced to the period already undergone by the appellants, however, imposition of fine is upheld. Fine be deposited within a period of 08 weeks from today (if not deposited), failing which both the appeals shall be deemed to be dismissed without any further orders.

[**ARVIND SINGH SANGWAN**]
JUDGE

05.07.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No