

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

351

1) CRA-S-638-SB-2004 (O&M)
Decided on : 15.12.2022

Sunil and others . . . Appellant(s)
Versus
State of Haryana . . . Respondent(s)

2) CRA-S-666-SB-2004 (O&M)

Anil . . . Appellant(s)
Versus
State of Haryana . . . Respondent(s)

3) CRA-S-727-SB-2004 (O&M)

Balwan Singh and others . . . Appellant(s)
Versus
State of Haryana and another . . . Respondent(s)

4) CRR-2004-2004 (O&M)

Balwan Singh . . . Appellant(s)
Versus
State of Haryana and others . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sanjiv Sheoran, Advocate
for the appellant(s)
(in CRA-S-638-SB-2004 & CRA-S-666-SB-2004).

Mr. Rajesh Malik, Advocate
for the appellant(s) (in CRA-S-727-SB-2004)

Mr. Abhishek Sandhu, Advocate

for the petitioner(s) (in CRR-2004-2004) &
for the complainant (in CRA-S-638-SB-2004 & CRA-S-666-SB-2004).

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

By way of this common judgment, I will decide the fate of CRA-S-638-SB-2004 (O&M), CRA-S-666-SB-2004 (O&M), CRA-S-727-SB-2004 (O&M) and CRR-2004-2004 (O&M), as the issue involved therein is identical, and these are version and cross-version cases.

2. CRA-S-638-SB-2004 - Sunil and others Vs. State of Haryana, and CRA-S-666-SB-2004 - Anil Vs. State of Haryana, have been filed against the judgment dated 09.03.2004 and order of quantum of sentence dated 11.03.2004, passed by Ld. Addl. Sessions Judge, Sonapat, in Sessions Case No.132 of 07.11.2003, arising from FIR No.182, dated 06.09.2001, registered under Sections 148, 323, 324, 307, 149 of Indian Penal Code (IPC) & Section 25 of the Arms Act, Police Station Kharkhoda, District Sonapat, wherein, appellants were convicted and sentenced as under:-

Name of Convict	Under Section	Sentence	Fine	In Default
Anil	307 IPC	05 years RI	Rs. 3000/-	06 months RI
Sunil, Ranbir, Shamsher, Rajbir and Sushil	307/149 IPC	03 years RI	Rs. 3000/- (each)	06 months RI
Anil, Sunil, Ranbir, Shamsher, Rajbir and Sushil	324/149 IPC	01 year RI	Rs. 1000/- (each)	03 months RI
Anil, Sunil, Ranbir, Shamsher, Rajbir and Sushil	323/149 IPC	06 months RI	--	--
Anil, Sunil, Ranbir, Shamsher, Rajbir	148 IPC	01 year RI	Rs. 1000/- (each)	03 months RI

and Sushil				
Anil	25 Arms Act	01 year RI	Rs. 500/-	01 month RI

All the substantive sentences were ordered to run concurrently. However, the period of detention already undergone by the accused-appellants, if any, was ordered to be set off against the substantive sentence.

3. Besides above, by way of CRR-2004-2004 - Balwan Singh Vs. State of Haryana and others, petitioner sought maximum sentences for the offences committed by the respondents i.e. appellants in FIR No.182, dated 06.09.2001. Also, a criminal appeal i.e. CRA-S-727-SB-2004 - Balwan Singh and others Vs. State of Haryana and another, has been filed by appellants Balwan Singh, Rajinder Singh, Darbari Singh, Jagat Singh and Hari Ram, against the judgment dated 09.03.2004 and order of quantum of sentence dated 11.03.2004, passed by Ld. Addl. Sessions Judge, Sonapat, in Sessions Case No.131 of 07.11.2003, **in cross-complaint** under Sections 148, 149, 323, 392 & 452 of IPC, arising from FIR No.182, dated 06.09.2001, registered under Sections 148, 323, 324, 307, 149 of IPC & Section 25 of the Arms Act, Police Station Kharkhoda, District Sonapat, wherein, accused-appellants were convicted and sentenced as under:-

Name of Convict	Under Section	Sentence	Fine	In Default
Balwan Singh, Rajinder Singh, Darbari Singh, Jagat Singh & Hari Ram	148 IPC	01 year RI	Rs. 1000/- (each)	03 months RI
	452/149 IPC	02 years RI	Rs. 2000/- (each)	06 months RI
	323/149 IPC	06 months RI	--	--

All the substantive sentences were ordered to run concurrently. However, the period of detention already undergone by the accused-appellants, if any, was ordered to be set off against the substantive sentence.

4. For the purpose of convenience, before starting the discussion on the facts of the case, it is noticeable that during the pendency of the aforesaid appeals/revision petition before this Court, parties have settled their disputes by way of compromise, regarding which report has been submitted before this Court by the Court of Ld. Magistrate, to the effect that compromise between the parties is genuine, and voluntary. Thus, counsel representing all the sides have in fact straightway pressed upon the decision of the case in view of the compromise arrived at between the appellants and victims in all the appeals/revision petition.

5. In FIR case i.e. CRA-S-666-SB-2004 & CRA-S-638-SB-2004, Ld. Trial Court has recorded its reasoning for giving finding of conviction in para Nos. 26, 27, & 28, which says as under:-

“26. As already discussed that the accused after forming an unlawful assembly caused injuries to the complainant and other injured in the same occurrence and their object was to cause death of Balwan Singh. Under the law if any offence is committed by any member of an unlawful assembly in prosecution of the common object of each unlawful assembly, then every member of such assembly is liable for commission of the offence as if he himself had committed the offence. Certainly, accused Anil had only caused gun shot injury to complainant Balwan Singh and not to other injured. Similarly, other co-accused have also not caused injuries to the persons of complainant and they caused injuries to other injured but their presence is proved with that of accused Anil and they formed an unlawful assembly by coming in the street in front of the house of Ved Parkash armed with deadly weapons, where the occurrence took place, So under the circumstances, the

accused are liable for the commission of offence being members of the unlawful assembly, the provisions of Section 149 of the Indian Penal a11 the under Code besides the main offences.

27. *Further, accused Anil Kumar has also been charge-sheeted for the offence punishable under Section 25 the Arms Act besides other offence. As already discussed that the gun has been recovered from the possession of accused Anil, who had kept concealed the same in the house of his father. The gun is belonging to his father Sarup Singh. This fact is not disputed on the part of the accused even. He kept the gun unauthorizedly in his possession and also used the same in the commission of the crime. The prosecution has also obtained sanction order Ex.PA from the District Magistrate, Sonapat, for launching prosecution against accused Anil U/s 25 of the Arms Act, which has been proved by PW1 Jai Bhagwan. So, in view of the same, it is concluded that accused Anil has also committed the offence punishable under Section 25 of the Arms Act, besides other offences.*

28. *As a result of the above discussion, I have come to this conclusion that the prosecution has been able to prove its case against all the accused for the offences punishable under Sections 148, 307, 324 and read with section 149 of the Indian Penal Code. Besides this the prosecution has also been able to prove its case against accused Anil for the offence punishable under Section 25 of the Arms Act. Therefore, I hold them guilty and convict them for the aforesaid offences. Let all the accused be taken into judicial custody and be produced on 11.3.2004 for hearing them on the question of sentence.”*

On the findings reproduced hereinabove, learned respective counsel have not chosen to refer any part of evidence to say that there is any error in the judgment. Moreover, much reliance is placed on the compromise having been arrived at between the parties and to quash the proceedings, or to allow compounding of offences.

6. Similarly, in cross-case also i.e. in CRA-S-727-SB-2004, para Nos. 20, 21, 22, which is concluding part of the judgment of the Ld. Trial Court, says as under:-

“20. Further, it is the contention of the learned defence counsel that the occurrence took place in the street and if the cross version is believed even then the accused have not committed the offence punishable under Section 452 of the I.P.C. But I do not find any merit in this contention. Certainly, as per the defence version, the occurrence took place in the street in front of the house of Ved Parkash where Anil PW fired a gun shot upon Balwant Singh. But the houses of Ved Parkash and that of Anil (i.e. of the father of Anil) are situated in front of each other in the same street. Possibility is there that once Anil fired a gun shot upon Balwan Singh then in the sequence of the same occurrence, the accused party might have entered into the house of complainant where they caused injuries to Anil. At that time, they were armed with deadly weapons like lathis; and Jailis. Thus I am of the view that there is sufficient on the file to convict the accused for the commission of the offence punishable under section 452 of the Indian Penal Code. Whereas the accused have voluntarily caused injuries to the persons of injured Anil and others, which have been proved by the doctors while appearing in the witness box as PW4 and PW5. Thus

the prosecution has proved its case successfully against the accused for causing of the injuries to Anil and others by entering into their house.

21. *Since the matter has already been discussed in the earlier paragraph that the accused were armed with deadly weapons and they formed an unlawful assembly and their object was to cause injuries to Anil and others and that is why they entered into their house. So, under the law they being members of the unlawful assembly are liable to be punished for the offence which they have committed, read with Section 149 of the Indian Penal Code.*

22. *Further, the accused have also been charge-sheeted for the offence punishable under section 392 of the Indian Penal Code. But the prosecution has failed to establish this charge in this case. The gun in question was belonging to complainant Sarup Singh. While it is in evidence that it was got recovered from the possession of his son Anil (accused in another case), so under such circumstances, there is no question of committing the offence of robbery of gun by the accused. So, they cannot be convicted for the offence punishable U/s 392 IPC.”*

On the findings recorded hereinabove also, learned respective counsel have not chosen to refer any part of evidence to say that there is any error in the judgment. Moreover, much reliance is placed on the compromise having been arrived at between the parties and to quash the proceedings or to allow compounding of offences.

7. Learned counsel for the appellants has produced the copy of death certificate dated 18.03.2013 of appellant No.2 – Ranbir s/o Hukum Chand [in CRA-S-638-SB-2004 (O&M)], which is taken on record, subject

to all just exceptions. Office to tag the same at appropriate place.

Learned State counsel is not in a position to oppose the contention of counsel for the appellants.

Thus, in view of the fact that as per death certificate dated 18.03.2013 – Ranbir (appellant No.2) has expired, appeal *qua* him stands abated. However, same would be subject to the terms & conditions, passed by this Court in **IOIN-CRA-S-4686-SB-2018 in CRA-S-4686-SB-2018**, titled as, **“Shivji Ram @ Dimple Vs. State of Punjab”**, decided on **24.11.2022** (Law Finder Doc Id # 2076392).

8. During the pendency of all the appeals, one CRM-23312-2015 in CRA-S-727-SB-2004, was filed for placing on record the compromise-deed between the parties to quash the FIR case (supra), and also the complaint case (supra), relying upon the compromise-deed dated 20.07.2015. In view the said fact, this Court vide order dated 29.07.2015, passed in CRA-S-638-SB-2004 (O&M), directed the parties to appear before the Court of Ld. Chief Judicial Magistrate, and to get recorded their statement on the factum of genuineness of compromise, and thus, sought for the report of Ld. Chief Judicial Magistrate with regard to the genuineness and voluntary nature of compromise. Order dated 29.07.2015, says as under:-

“It has been contended that the parties have entered into amicable settlement and a compromise has been executed between them. Disposal of appeal on the basis of compromise is being sought.

Both the parties are directed to appear before Chief Judicial Magistrate, Sonapat on 12.08.2015. In the event of their appearance, Magistrate shall record their statements on the factum of genuineness of compromise. After recording their

statements, Magistrate shall form his opinion with regard to genuineness and voluntary nature of compromise and shall submit a report to this effect before the adjourned date.

Adjourned to 26.08.2015.”

9. Thereupon, reports dated 13.08.2015 and 20.08.2015 prepared by Ld. Chief Judicial Magistrate, Sonapat are forwarded to this Court affirming that the factum of compromise by the concerned parties is genuine and voluntary.

10. Relevant part of report dated 13.08.2015 says as under:

"From

*Surender Kumar,
Chief Judicial Magistrate,
Office of the District and Sessions Judge,
Sonapat.*

To

*The Registrar General,
High Court of Punjab and Haryana,
Chandigarh.
(THROUGH PROPER CHANNEL)*

Sub: Status report regarding the genuineness and voluntary nature of compromise in Criminal Case titled as 'Sunil and others Vs. State of Haryana' bearing in Criminal Appeal no.CRA-S-638-SB-2004 to be sent before 26.08.2015.

Respected Sir,

I have the honour to submit that in the above noted case vide order dated 29.07.2015, the Hon'ble High Court was pleased to ask for a status report regarding genuineness and voluntary nature of compromise and for recording the statements of the first and second party as per order dated 29.07.2015. The joint statement of first party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram and joint statement of second party namely Sarup Singh, Anil, Sushil, Rajbir, Sunil and Shamsher were recorded by undersigned today. First party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram have stated in their joint statement that they have entered into a compromise with second party Sarup Singh, Anil, Sushil, Rajbir, Sunil and Shamsher

without any pressure, undue influence and fear with the intervention of respectable persons of the village and Panchayat. They have further stated in their joint statement that they do not want to initiate any further proceeding against the second party and Darbari son of Sh. Kure has died on 8.3.2013. The second party namely Sarup Singh, Anil, Sushil, Rajbir, Sunil and Shamsher have stated in their joint statement that they have entered into a compromise with first party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram without any pressure, undue influence and fear with the intervention of respectable persons of the village and Panchayat. They have further stated in their joint statement that they do not want to initiate any further proceeding against the first party.

2. *It is kindly submitted that from the statements of first party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram and second party namely Sarup Singh, Anil, Sushil, Rajbir, Sunil and Shamsher, it is noticed that the first and second party have genuinely and voluntarily arrived at a compromise with each other and both the parties are not interested in further prosecution of the matter against each other.*

Submitted please,

Yours faithfully,

*(Surender Kumar),
Chief Judicial Magistrate,
Sonapat 12.08.2015*

Encl:

The original statements first party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram and second party namely Sarup Singh, Anil, Sushil, Rajbir, Sunil and Shamsher.

*(Surender Kumar),
Chief Judicial Magistrate,
Sonapat/12.08.2015"*

11. Further, relevant part of report dated 20.08.2015 says as under:

"From

*Surender Kumar,
Chief Judicial Magistrate,
Office of the District and Sessions Judge,
Sonapat.*

To

*The Registrar General,
High Court of Punjab and Haryana,
Chandigarh.
(THROUGH PROPER CHANNEL)*

Sub: Status report regarding the genuineness and voluntary nature of compromise in Criminal Case titled as 'Balwan Singh and others Vs. State of Haryana and another' bearing in Criminal Appeal no. CRA-S-727-SB-2004 (O&M) to be sent before 26.08.2015.

Respected Sir,

I have the honour to submit that in the above noted case vide order dated 29.07.2015, the Hon'ble High Court was pleased to ask for a status report regarding genuineness and voluntary nature of compromise and for recording the statements of the first and second party as per order dated 29.07.2015. The joint statement of first party namely Balwan Singh, Rajinder Singh, Jagat Singh and Hari Ram and joint statement of second party namely Sarup Singh, Anil. Sushil, Rajbir. Sunil and Shamsher were recorded by undersigned on 12 08 2015 in Criminal Appeal no.CRA-S-638-SB-2004 titled as Sunil and others Vs. State of Haryana. The status report in said case was sent vide letter no.203 dated 13.08.2015 from the Court of undersigned to your goodself duly forwarded vide endorsement no. 13186 dated 13.08.2015 by the office of learned District & Sessions Judge. Sonapat.

It is further kindly submitted that both the parties in Criminal Appeal no CRA S-727-SB-2004 (O&M) titled as Balwan Singh and others Vs. State of Haryana and another and in Criminal Appeal no. CRA-S-638-SB-2004 titled as Sunil and others Vs. State of Haryana are same. Therefore, the status report sent in Criminal Appeal no. CRA-S-638-SB-2004, titled as, "Sunil and others Vs. State of Haryana" sent vide letter no.203 dated 13.08.2015 be also read as status report regarding the genuineness and voluntary nature of compromise in present Criminal Appeal no.CRA-S-727-SB- 2004 (O&M) titled as Balwan

Singh and others Vs. State of Haryana and another.

Submitted please,

Yours faithfully,

*(Surender Kumar),
Chief Judicial Magistrate,
Sonapat 20.08.2015*

Encl:

Photo copy of status report bearing no. 203 dt. 13.08.2015"

12. Perusal of the reports show that one Darbari Singh (appellant in CRA-S-727-SB-2004) has expired, hence, appeal *qua* him also stands abated, subject to the terms & conditions, passed by this Court in **Shivji Ram @ Dimple's case** (supra).

13. On the other hand, learned State counsel tenders five custody certificates dated 14.12.2022 in CRA-S-727-SB-2004 (O&M) in respect of appellants namely; Balwan Singh, Rajinder Singh, Darbari Singh, Jagat Singh and Hari Ram. Said custody certificates are taken on record, subject to all just exceptions. Office to tag the same at appropriate places.

Copies thereof have been handed over to the opposite counsel.

14. Learned State counsel submits that as per said custody certificates, appellants (in CRA-S-727-SB-2004) have undergone total custody period of 03 days (including remission).

Whereas, as per order of suspension of sentence dated 22.04.2004, passed by the Coordinate Bench of this Court (in CRA-S-666-SB-2004), appellant – Anil has already undergone the custody period of more than one year and six months, out of the substantive sentence of five years of rigorous imprisonment. Also, sentence of appellants in CRA-S-638-SB-2004, has already been suspended vide order dated 22.03.2004 of the Coordinate Bench of this Court.

15. I have heard counsel for the parties and perused the relevant material on record with their able assistance.

16. In view of the fact that incident took place in the year 2001, both the parties i.e. appellants and victims are co-villagers who have settled their disputes peacefully by way of compromise and the compromise being genuine and voluntary as per the reports of Ld. Chief Judicial Magistrate, nothing would be attained by sending them again inside the jail to undergo the remaining period of sentence.

Therefore, judgments of **conviction in all the appeals are maintained**, however, orders of sentence are modified to the extent of already undergone period by all the appellants in the aforesaid appeals.

However, sentence *qua* fine would remain same and intact, as already ordered by Ld. Trial Court.

All the appeals stands disposed of in above terms.

In view of the compromise arrived at between the parties, revision petition filed by the petitioner – Balwan Singh carries no meaning, and same also becomes infructuous, and stands disposed of as having been rendered infructuous.

Pending miscellaneous applications, if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 15, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No