

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-S-827-SB-2010(O&M)

Date of Decision:-12.07.2022

Dinesh Kumar & Ors.

.....Appellants.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ranjit Saini, Advocate for the Petitioner.

Mr. Parveen Kumar Aggarwal, Deputy Advocate General,
Haryana.

JASJIT SINGH BEDI, J.

CRM-38620-2021

The prayer in the application under Section 482 Cr.PC is for impleadment of complainant-Malkiat Singh son of Nirmal Singh.

For the reasons stated in the application duly supported by affidavit of Mr. Deepak, one of the appellants, the same is allowed and complainant Malkiat Singh is hereby ordered to be impleaded as respondent no.2 for the purpose of this appeal.

Amended memo of parties filed along with application is taken on record. Registry to place the same at appropriate place and paginate the paper book accordingly.

CRA-S-827-SB-2010(O&M)

The appellants have preferred the instant appeal against the judgment of conviction and order of sentence dated 12.03.2010 passed by the learned Additional Sessions Judge, Jagadhari whereby they have been sentenced to undergo rigorous imprisonment for period of six months for committing offences punishable under Section 323 read with Section 34 IPC and rigorous imprisonment for one year each with fine of Rs.500/- each for committing offence punishable under Section 325 read with Section 34 IPC and in default of payment they shall further undergo simple imprisonment for one month.

The brief facts of the case are that the injured/complainant namely Malkiat Singh got recorded in his statement with the police to the effect that he was a resident of Shiv Puri-A Colony and a contractor. On 11.09.2007 at about 7.30 PM he along with his friend named Toni came towards Shivpuri Colony on a motor cycle. He dropped his friend near his house and when he was in the process of returning to his house then the accused named Rahul Negi, Lavi and Khushi came there on foot and stopped his motor cycle. The accused persons then opened an attack on him with rods, swords and caused injuries on his persons. Accused Sanjay and Sandeep also came there and caused injuries to them. He then raised a hue and cry and hearing the noise of the complainant many persons of the mohalla were attracted at the spot. His friend named Toni and his brother Ravi also came there. When both of them tried to intervene, the accused persons also caused injuries to them also. He further got recorded in his statement that on the eve of Janmashtami he had an altercation with Rahul Negi and Sanjay and on that very count the accused persons caused them

injuries. On the basis of the said statement the present case was registered under Sections 323, 324, 325 read with Section 34 of the Indian Penal Code, in the police station City Farakpur. The accused were arrested. Statements of witnesses under Section 161 Cr.PC were recorded. Reports from the different quarters collected and thereafter, the accused were challaned and produced before the Court to face trial for the commission of the alleged offences.

A cross case titled State vs. Malkiat etc. had already been pending in Court. Both the cases pertained to one and the same occurrence and bear the same FIR number. So both the cases came to be heard by the court of ASJ, Yamuna Nagar.

Pursuant to the recording of the evidence and examination of entire record the learned trial Court convicted and sentenced the accused persons as under:-

For committing offence punishable under Sections 323 read with Section 34 IPC	Each accused is sentenced to undergo rigorous imprisonment for a period of six months.
For committing offence punishable under Section 325 read with Section 34 IPC	Each accused is sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.500/- each. In default of payment of fine accused-convict shall further sentence to undergo simple imprisonment for one month.

Against the said judgment of conviction, the present appeal was preferred before this court and was admitted vide order dated 30.03.2010. The sentence of the applicants/appellants was suspended during the pendency of the appeal.

That during the pendency of the present appeal, both the parties have entered into a settlement/compromise pursuant to which the complainant Malkiat Singh was impleaded as respondent. The compromise

executed between the parties dated 11.10.2021 is annexed as Annexure C-1 with the application bearing CRM-38622-2021.

The Counsel for the appellants contends that it is a case of version and cross version and in fact the opposite party was aggressor side. He contends that the opposite party has been held guilty for having committed offence under Section 307 IPC and, therefore, the appellants deserves to be acquitted. He further contends that the conviction of the appellants under Section 34 IPC is not justifiable as it could be said to be a free fight and each accused can be held to be individually liable. It was lastly contended that the accused ought to be released on probation as they are the first time offenders or their sentence be reduced to the period already undergone by them.

The Counsel for the State on the other hand does not dispute the factum of compromise but states that the offence is well proved and states that the conviction of the appellants ought to be upheld in view of the findings arrived at by the trial Court.

I have heard learned Counsel for the appellants and the Counsel for the State as well as examined the records of the case.

In the instant case, the statements of Malkait Singh (PW-5) and Ravi Kumar (PW-7) who are the injured witnesses is duly corroborated by the statement of Doctor Manisha Singh, who found two injuries on the person of Malkiat Sihng and one injury on the person of Ravi Kumar.

PW-4 Dr. Manisha Singh when stepped into the witness box proved the injuries on the person of Malkiat Singh and Ravi Kumar, and had also proved their MLRs Ex.P-4 of Malkiat Singh and Ex.P-7 of Ravi Kumar.

PW-5 Malkiat Singh, who was the injured witness when stepped into the witness box has specifically deposed about the role played by each accused and holding of the respective weapons. In his cross examination he deposed that the accused persons gave 3-4 injuries to him.

PW-7 Ravi Kumar another injured when stepped into the witness box testified that on 8.9.2007 at about 7.30 PM he was present in the house and at that time Malkiat Singh/injured had come to his house for dropping his brother Toni. When Malkiat was returning to his house, accused persons caught hold of him and had opened attack on Malkiat Singh. He further testified that Rahul Negi gave a rod blow to Malkiat on his right leg. Labbi gave binda blow in his land and then Khushi and Deepak came there having swords. Khushi then gave sword blow to Malkiat Singh in his back. He further testified that Sanjay and Sandeep also came there and they also gave beatings to Malkiat Singh and they dragged him. He further specifically deposed that when they tried to intervene, then Sanjay also gave sword blow to him which hit on his left hand.

The contradictions pointed out by the learned defence counsel in the ocular evidence and medical evidence is not material to dislodge the case of the prosecution regarding the occurrence.

Complainant-injured Malkiat Singh and Ravi Kumar-injured have given a cogent and convincing account of the occurrence. They stood the test of judicial scrutiny successfully and no material aberration could be caused to their testimony despite long searching cross examination. No enmity or ill will of these witnesses with the accused has either been proved, as pleaded by learned defence counsel while addressing arguments. Under such circumstances, there is no reason to disbelieve the statements of the

injured and eye witnesses.

Malkiat Singh (PW-5) and Ravi Kumar (PW-7) when stepped into the witness box categorically deposed about the weapons holding by the accused persons i.e. rod, binda sword, etc. There is no explanation as to why the accused persons were having such deadly weapons with them at about 7.30 pm on 8.9.2007. This shows that they had common intention to give beatings to Malkiat. When Ravi came to the rescue of Malkiat Singh, then the accused persons also gave injuries to him with their respective weapons which they were holding at that time. These facts and circumstances make it abundantly clear that the accused had the common intention and in furtherance thereof they had caused injuries to Malkiat and Ravi.

In order to convict the person vicariously under Section 34 it is not necessary to prove that each and every one of them had indulged in such overt act inflicting deadly injuries. It is enough if the material available on record discloses that the overt act of one or more of the accused was or was done in furtherance of common intention. The common intention shared by the accused is evident from the fact that they were armed with deadly weapons i.e. swords, rods and binda etc. and inflicted injuries on the victims with the said deadly weapons. All the accused attacked the injured/victim and caused injuries in furtherance of common intention to Malkiat Singh. All the accused persons came on the spot with deadly weapons which clearly shows that the accused persons were having prior meetings of mind and they assembled there in a pre-planned manner. So each of the accused can be vicariously liable for the criminal act of another which has been done in furtherance of their common intention.

In view of the abovesaid detailed discussion, it has amply been proved that the prosecution has been able to bring home the guilt of the accused beyond shadow of reasonable doubt as PW-5 Malkiat Singh and PW-7 Ravi Kumar, who are the injured, have categorically deposed that all the accused persons caused injuries to them. The evidence of the said witnesses is further duly corroborated by the medical evidence available on the case file.

In view of the evidence discussed hereinabove, it is apparent that the accused persons/appellants had caused injuries on the persons of Malkiat Singh and Ravi Kumar with their common intention and thus their conviction is liable to be upheld for having committed the offences under Section 323 r/w Section 34 IPC and Section 325 r/w Section 34 IPC.

However, keeping in view the fact that a compromise has been effected between the parties during the pendency of the appeal before this Court, no useful purpose would be served by sending the appellants back to custody to serve out their remaining sentence.

Thus, while upholding the conviction of the accused/appellants, I deem it appropriate to reduce their substantive sentences to the period already undergone by them and order accordingly.

The appeal stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

July 12, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>