

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

CRA-S-851-SB-2010(O&M)

Date of Decision:-12.07.2022

Malkiat Singh & Ors.

.....Appellants.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Krishan Singh, Advocate for the Appellants.

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

JASJIT SINGH BEDI, J.

CRM-38758-2021

The prayer in the application under Section 482 Cr.PC is for impleadment of complainant-Sanjay Kumar son of Jai Ram.

For the reasons stated in the application duly supported by affidavit of Mr. Ravi Kumar, one of the appellants, the same is allowed and complainant Sanjay Kumar 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-851-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 offence punishable under Section 323 read with Section 34 IPC, rigorous imprisonment for one year for committing offence punishable under Sections 324 read with Section 34 IPC and rigorous imprisonment for a period of four years with fine of Rs.1,000/- each for committing offence punishable under Section 307 IPC read with Section 34 IPC and in default of payment of fine they shall further undergo simple imprisonment for one month.

The brief facts of the case are that on 8.9.2007 at about 7.30 pm Sanjay Complainant/injured along with Rahul Negi went to Shivpuri for taking medicines. When they had just entered the gate of Shivpuri Colony, the accused persons caught hold of them and asked them that on the occasion of Janmashtami the complainant had insulted them. Accused Malkiat gave a sword blow on the head of the complainant and he gave a second blow near the temple of the complainant. The brother of Malkiat Singh accused namely Jitender Singh gave a blow on the head of the complainant with a Binda. On receipt of the said blow the complainant fell on the ground. The accused then dragged Sanjay upto the house of Hunny and there Mohit accused gave first a knife blow on the left thigh and he then gave second knife blow on the left side of the abdomen of the complainant. When the complainant was lying on the ground then the accused Ravi gave a sword blow to him near his waist and shoulder. Rahul Negi then raised a

hue and cry. On hearing the noise the brother of the complainant namely Sandeep also came to the spot along with another person. On seeing them the accused persons managed to flee along with their respective weapons. The matter was investigated. The accused were consequently, challaned and produced before the court to stand trial for the commission of the alleged offence.

After the registration of the FIR the investigation was conducted culminating into challan and a charge sheet under Section 323, 324, 307 read with Section 34 IPC was filed.

As many as 11 prosecution witnesses were examined and based on the evidence of the witnesses recorded and material on record the accused persons/appellants were convicted and sentenced 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 324 read with Section 34 IPC	Each accused is sentenced to undergo rigorous imprisonment for a period of one year
For committing offence punishable under Section 307 IPC read with Section 34 IPC	Each accused is sentenced to undergo rigorous imprisonment for a period of four years and also to pay fine of Rs.1000/- each. In default of payment of fine, the accused shall further sentenced 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 09.04.2010. 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 vide **CRM-38760-**

2021. The compromise executed between the parties dated 11.10.2021 is annexed as Annexure C-1 with the application.

The Counsel for the appellants contends that the deposition of the witnesses is discrepant and contradictory and the medical evidence belies the oral testimony of the alleged eye witnesses. He contends that there is a delay of 05 days in lodging the FIR as the occurrence in this case is said to have taken place on 8.9.2007 at 7.00 pm whereas the FIR has been lodged after a gap of 05 days on 14.09.2007. The prosecution has failed to explain the injuries which have been suffered by the accused in the alleged incident at the hands of the complainant party. It has further been pointed out that there are material contradictions in the statements of eye witnesses and even otherwise no offence under Section 307 IPC is made out. It is lastly contended that in view of the compromise effected between the parties, the sentence of the appellants may be reduced to the period already undergone in case the court finds no ground for acquittal is made out.

The Counsel for the State on the other hand does not dispute the factum of compromise but states that 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.

PW-1 Sanjay who is complainant as well as victim/injured when stepped into the witness box has categorically deposed about the role played by the accused persons in the occurrence. He specifically narrated the blows given by the accused with their respective weapons. He deposed in his statement that all the accused persons caught hold them. He

specifically deposed that the accused Malkiat Singh gave sword blow on his head. The younger brother of Malkiat Singh namely Jitender Singh gave head injury to the complainant with base ball (binda). He further specifically deposed that accused Mohit gave knife blow on the right thigh of the complainant and also on the abdomen of the complainant. The complainant further deposed that accused Ravi gave him sword blow on the back portion of his shoulder. A lengthy cross examination has been conducted upon this witness by the learned defence Counsel, but the learned defence Counsel failed to exact anything from the mouth of this witness favourable to the accused persons, rather, in his cross examination the complainant deposed about the minute details of the occurrence.

Likewise, PW-2 Rahul Negi an eye witness when stepped into the witness box corroborated the version of the complainant PW-1 and has further deposed about the suffering of injuries by Sanjay at the hands of the accused persons.

The ocular version of the complainant as well as the eye witness has further been corroborated by the medical evidence as PW-6 Dr. Manisha Singh, when appeared in the witness box has proved the five injuries on the person of Sanjay and has also proved his MLR Ex.P-4. She also proved her endorsement on the application of the police Ex.P-5 vide vide which she referred the patient Sanjay to PGI, Chandigarh.

The arguments of the learned defence counsel that there is delay in lodging the FIR in the case is without any merit, because, in this case first of all the MLR of injured Sanjay was immediately prepared after just two hours of the occurrence i.e. 9 PM on 8.9.2007 and after that the injured was referred to PGI, Chandigarh, being his condition critical.

Moreover, the accused persons admitted the occurrence in their statements under Section 313 Cr.PC, so there is no dispute remains that no occurrence had ever taken place and the complainant has falsely roped the accused persons in this case.

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 were 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 and knives etc. and inflicted injuries on the victims with the said deadly weapons on the vital parts of the body. All the accused attacked the injured/victim and caused injuries in furtherance of common intention to kill Sanjay (PW-1). In such a situation the nature of injuries inflicted by the accused on the victims could be dangerous to life. 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 with 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-1 & PW-2 who are the injured, as well as the eye witnesses of the occurrence, 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 person of Sanjay with their common intention and thus they are liable to be convicted for having committed the offences.

It is established from the overwhelming evidence brought on record by the prosecution that the accused had caused simple as well as grievous injuries on the persons of Sanjay with their common intention. The conviction of the appellants is consequently upheld for having committed offences punishable under Section 323, 324, 307 read with 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.

This 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>