

Jatinder Singh alias Jyoti and another

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Abhimanyu Singh, Advocate
for the appellants.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Parveen Kumar, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

Challenge in the present appeal is to the judgment dated 16.05.2014 passed by the Additional Sessions Judge, Sahibzada Ajit Singh Nagar, Mohali, vide which the present appellants have been convicted and sentenced as under:-

<i>Name of the convict</i>	<i>Convicted under Section</i>	<i>Sentence imposed</i>	<i>In default of payment of fine</i>
<i>Jatinder Singh alias Jyoti</i>	<i>307 of IPC</i>	<i>Rigorous imprisonment for four years and fine of Rs.2,000/-.</i>	<i>Further rigorous imprisonment for two months.</i>
	<i>323/34 of IPC</i>	<i>Rigorous imprisonment for six months</i>	<i>---</i>
	<i>341 of IPC</i>	<i>Rigorous imprisonment for one month.</i>	<i>---</i>
<i>Major Singh</i>	<i>307/34 of IPC</i>	<i>Rigorous imprisonment for four years and fine of Rs.2,000/-.</i>	<i>Further rigorous imprisonment for two months.</i>
	<i>323 of IPC</i>	<i>Rigorous imprisonment for six months</i>	<i>---</i>
	<i>341 of IPC</i>	<i>Rigorous imprisonment for one month.</i>	<i>---</i>

However, all the substantive sentences of imprisonment shall run concurrently and the period of detention already undergone by the convicts during investigation or trial shall be set off against the substantive sentences of imprisonment.”

Learned counsel for the appellants has submitted that in the present case, the appellants are not challenging the conviction and have only prayed that a lenient view be taken with respect to the sentence which has been awarded to the appellants. In said regard, it is submitted that the incident in question is of the year 2013 and the appellants have suffered agony of trial / appeal for all these years. It is further submitted that the matter has been compromised with the complainant and the complainant has also given an affidavit to the effect that the matter has been compromised and both the parties wish to live peacefully and have no objection in case the appeal is allowed and the sentence awarded to the appellants is reduced to the period already undergone by the appellants in terms of the compromise. It is also submitted that the appellant no.1-Jatinder Singh is 36 years of age and he has an old father to take care of and is not involved in any other criminal case. On behalf of appellant no.2-Major Singh, it has been submitted that Major Singh is 40 years of age and has two minor children and is the sole bread winner of the family and he is also not involved in any other case. It is further submitted that out of sentence of 4 years, appellant no.1-Jatinder Singh alias Jyoti has already undergone 2 years and 12 days and has also earned remission of 5 months and 20 days and thus, total sentence including remission undergone by the appellant no.1-Jatinder Singh alias Jyoti is 2 years, 6 months and 2 days. It is submitted that as far as, appellant no.2-Major Singh is concerned, he has also undergone 1 year 5 months and 20 days of actual custody and both of

them are not involved in any other case.

In support of his arguments, learned counsel for the appellants has relied upon judgment of co-ordinate Bench of this Court in case titled as ***“Sukhdev Singh @ Sukha and others vs. State of Punjab”*** reported as ***2019(4) RCR (CrI) 760.***

Learned counsel for the State has stated that the judgment of the Court below has been passed after considering the entire evidence and material on record although, the other factual aspects have not been rebutted by the learned counsel for the State. He has also produced the custody certificate of the appellants, which is taken on record, as per which, the period of custody as stated by the learned counsel for the appellants, is reaffirmed.

This Court has heard the learned counsel for the parties and has gone through the paper book.

In so far as the conviction of the present appellants is concerned, this Court is of the view that the judgment of the Additional Sessions Judge dated 16.05.2014 suffers from no illegality or perversity. The prosecution story in the present case is that on 19.03.2013, a telephonic call was received by MHC of Police Station Sadar Kharar regarding admission of Victor at Civil Hospital, Kharar due to injuries caused to him on account of which he was referred to the GMSH, Chandigarh, where he was subsequently referred to PGI Chandigarh and said Victor had given statement that on 18.03.2013 at about 6:30 PM, he was not well and was going to village Rurki Pukhta on his motor cycle bearing no.PB27C-4245 in order to bring medicine and Pidda son of Labh Singh was the pillion rider on his motor cycle. On the way, the appellant no.1-Jatinder Singh along

with an unidentified boy stopped the complainant and appellant no.1-Jatinder Singh raised lalkara and the unidentified boy caught the complainant from his right arm and started slapping and beating him with fist blows and in the meantime, Jatinder Singh took out a kirch which was concealed behind his back and gave kirch blow on the left bicep of the complainant and inflicted another kirch blow in the abdomen below the belly button and third kirch blow was inflicted on the left palm of the complainant and thereafter the complainant raised alarm and then the accused persons ran away along with their weapon. On the basis of said allegations, the FIR was registered and during investigation, after the arrest of appellant no.1-Jatinder Singh, appellant no.2-Major Singh was nominated in the case and was arrested on 25.03.2013 and the motor cycle used in the commission of offence was recovered and the same was in the name of Mohan Singh.

In order to prove the case of prosecution, the following witnesses were examined:-

PW1 Bikram Singh alias Pidda, eye witness

PW2 Victor Singh, Complainant/injured

PW3 Jasbir Kaur, eye witness

PW4 Ranvir Singh, Draftsman

PW5 C.Gurwinder Singh

PW6 Kamlesh Kumar, Clerk

PW7Mohan Singh

PW8 Harkewal Singh

PW9 Palwinder Singh, MHC

PW10 Dr. Tarsem Singh

PW11 HC Dalwinder Singh, Investigating Officer

PW12 Dr.Narendra Pandit

PW13 SI Amarbir Singh, IO.

PW-2 Victor Singh complainant had fully proved the case of the prosecution and had stated that it was the appellants who inflicted injuries upon him. PW-6 Kamlesh Kumar, official, District Transport Office, Fatehgarh Sahib had proved on record Ex.P4 i.e., the registration certificate of the motor cycle bearing no.PB23H-7995 and PW-7 Mohan Singh proved Ex.P7 which was the recovery memo of the motor cycle. PW-10 Dr. Tarsem Singh proved on record Ex.P12 i.e., the medico legal report and also Ex.P15 i.e., endorsement dated 06.06.2013 regarding nature of injuries. PW-11 HC Dalwinder Singh who was the investigating officer, had proved on record Ex.P16 to Ex.P34 including Ex.P25 which was the recovery memo of the weapon i.e., kirch. The said witness along with other witnesses had fully proved the case of the prosecution. The said witnesses were cross-examined at length but nothing came out from the same so as to cause a dent in the case set up by the prosecution. Accordingly, the appellants were convicted. Apart from the fact that the conviction of the appellants is based on the above said evidence and documents, learned counsel for the appellants has not challenged the conviction and accordingly, the conviction of the appellants is upheld.

Insofar as the sentence which has been awarded to the appellants is concerned, this Court is of the view that the incident in the present case is of the year 2013 and the appellants have never misused the concession of bail granted to them. Appellant no.1-Jatinder Singh is 36 years of age and he has an old father to take care of and is not involved in any other criminal case and appellant no.2-Major Singh is 40 years of age and he has two minor children and is the sole bread winner of the family and he is also not involved in any other case. Out of the sentence awarded

of 4 years, appellant no.1-Jatinder Singh alias Jyoti has already undergone 2 years and 12 days and has also earned remission of 5 months and 20 days and thus, the total sentence including remission undergone by appellant no.1-Jatinder Singh alias Jyoti is 2 years, 6 months and 2 days. Appellant no.2-Major Singh has also undergone 1 year 5 months and 20 days of actual custody. Both the appellants are not involved in any other case. The matter has been compromised with the complainant and the complainant has also given affidavit to the effect that the matter has been compromised and both the parties wish to live peacefully and the complainant has no objection in case the appeal is allowed and the sentence awarded to the appellants is reduced to the period already undergone by the appellants in terms of the compromise. The relevant portion of the said affidavit is reproduced hereinbelow:-

“Jatinder Singh @ Jyoti and another

Versus

State of Punjab

..Appellants

...

Respondent

AFFIDAVIT of Victor Singh Dhanoa aged about 31 years,
son of Nachhattar Singh resident of Village Mamupur P.O.
Gharuan Tehsil Kharar District S.A.S Nagar Mohali.

I the above named deponent do hereby solemnly affirm and
declare as under:

1. That appellants have filed the aforementioned criminal appeal before this Hon'ble Court impugning the judgment conviction and order of sentence dated 16.05.2014 passed by the court of Ld. Additional Sessions Judge, S.A.s Nagar (Mohali).
2. That the Ld. court of Additional Sessions Judge, [S.A.S. Nagar \(Mohali\)](#) convicted the appellants in the following manner:-

Name of convict	Convicted under Section	Sentence impose	In default of payment of fine
Jatinder Singh @ Jyoti	307 of IPC	R.I. for four years and fine of Rs.2,000/-.	Further R.I. for two months.

<i>Name of convict</i>	<i>Convicted under Section</i>	<i>Sentence impose</i>	<i>In default of payment of fine</i>
	323/34 of IPC	R.I. for 6 months	---
	341 of IPC	R.I. for one month.	---
Major Singh	307/34 of IPC	R.I. for 4 years and fine of Rs.2,000/-.	Further rigorous imprisonment for two months.
	323 of IPC	R.I. for 6 for six months	---
	341 of IPC	R.I. for one month.	---

3. That after the intervention of the respectable persons of the society, now we have already entered into a compromise and as per the compromise both of the parties will live cordially in the society.

4. That both parties intend to live peacefully without hatred by effecting compromise and without taking grudge against each other. Both parties want to live peacefully without nursing any grudge against one and another.

5. That now if the aforementioned criminal appeal pending before this Hon'ble Court allowed or the sentence be reduced to already undergone in terms of the compromise in that eventuality, the complainant/ deponent will have no any objection.

6. That this compromise has been affected between both the parties to create peace and harmony amongst the friends and family. There is no 'ill will' in the minds of the parties.

PLACE:-CHANDIGARH

DATED:-25.05.2022

DEPONENT

VERIFICATION: Verified that the contents of para no.1 to 6 of the affidavit are true and correct to the knowledge of the deponent, no part of it is false nothing material has been kept concealed therein.

PLACE:-CHANDIGARH”

The original affidavit is taken on record as Mark X.

A co-ordinate Bench of this Court in **Sukhdev Singh @**

Sukha's case (supra) has held as under:-

“...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*

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9. 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.

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11. *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.*

12. *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**.*

13. *Learned counsel has further referred to **Ishwar Singh Vs. State of Madhya Pradesh, 2009 (1) RCR (CrL) 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 (1), 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.”

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17. *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.”*

Thus, in view of the above said facts and circumstances, as also the judgment relied upon by the learned counsel for the appellants, sentence awarded to the appellants is ordered to be reduced to the period already undergone by them. The same would however, be subject to the appellants depositing the fine as awarded by the trial Court within a period of one month from today.

It is made clear that in case the fine is not deposited within the aforesaid period, the appeal will be deemed to have been dismissed.

With the above said observations, the present appeal is

disposed of.

Pending miscellaneous application, if any, stands disposed of in
view of the abovesaid order.

May 25, 2022

Davinder Kumar

Whether speaking / reasoned

Whether reportable

(VIKAS BAHL)

JUDGE

Yes/No

Yes/No