

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(233)

CRA-S-1310-2021

Date of decision: - 08.07.2022

Balihar Singh

....Appellant

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Gursimran Singh Madaan, Advocate, for the appellant.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Bhupinder Gupta, Advocate, for respondent No.2.

VIKAS BAHL, J. (ORAL)

Challenge in the present appeal is to the judgment dated 05.10.2021, passed by the Additional Sessions Judge, Jalandhar as well as the order of sentence dated 05.10.2021, vide which the appellant has been convicted and sentenced as under: -

<i>Name of the convict</i>	<i>Offence U/S</i>	<i>Sentence imposed</i>
<i>Balihar Singh</i>	<i>307 of IPC</i>	<i>Rigorous imprisonment for a period of five year and to pay a fine of Rs.20,000/- and in default thereof, to further undergo rigorous imprisonment for a period of three months.</i>
<i>Balihar Singh</i>	<i>324 IPC</i>	<i>Rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.</i>

Learned counsel for the appellant has submitted that in the present appeal, the appellant is not challenging the conviction and only

prays that a lenient view be taken with respect to the sentence which has been awarded to the appellant. Learned counsel for the appellant has pointed out that the matter has been compromised between the parties vide compromise dated 25.10.2021 (Annexure A-6). As per the said compromise, the sole victim/complainant Satnam Singh has specifically stated that he has no objection in case the appellant is granted concession of suspension of sentence and FIR is quashed and the subsequent proceedings are quashed. It is further submitted that the compromise has been entered into with their own will and consent and without any pressure, coercion, fear from any quarter. It is also submitted that the incident is of the year 2009 and the appellant has suffered the agony of trial/appeal for all these years. It is further submitted that the appellant has been granted concession of suspension of sentence and even granted bail, but he has never misused the said concession. It is further submitted that in the present case, the conviction is in a complaint case, as initially in the FIR, which had been registered, the police had filed an untraced report. It is also submitted that the appellant is 44 years of age and is the sole bread winner of the family and has to take care of his entire family and he is also not involved in any other case. In support of his arguments, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in case "**Gulab Das and others Vs. State of M.P.**", **reported as 2011(10) SCC 765** as well as the judgments of the Co-ordinate Benches of this Court in cases titled as "**Sukhdev Singh @ Sukha and others vs. State of Punjab**" reported as **2019(4) RCR (Crl) 760** and "**Inderjit @ Inder and others Vs. The State of UT**

Chandigarh", reported as 2011(1) R.C.R. (Criminal) 234.

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 and thus, the conviction of the appellant deserves to be upheld.

Learned counsel appearing for the complainant on the other hand has admitted the fact that the matter has been compromised and has stated that the said compromise is genuine and bona fide and has been entered into between the parties without any coercion or undue influence and thus, has submitted that the sentence of the appellant be reduced to the period already undergone.

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

In so far as the conviction of the present appellant is concerned, this Court is of the view that the judgment of the Additional Sessions Judge, Jalandhar dated 05.10.2021 and order of sentence dated 05.10.2021, suffer from no illegality or perversity. The prosecution story in the present case is that a private complaint under Sections 307/326/324/34 of the IPC was filed by complainant Satnam Singh against the present appellant, Balvir Singh and Tirath Singh. The co-accused Balvir Singh and Tirath Singh were declared as proclaimed offenders, vide orders dated 22.04.2016 and 23.11.2015, respectively and thus, the complete trial was held only against the present appellant. As per the allegations in the complaint dated 27.09.2009, the complainant was coming back to his village from bus stand of village Kangniwal and when

he reached near a 'Khoo' (well) of 'Veera Ragia', the time was 9.00 PM, accused persons, namely, Balihar Singh armed with '*kirpan*', Balbir Singh armed with '*datar*' and Tirath Singh armed with '*datar*' came on a motorcycle from the front side and stopped the complainant and thereafter, the said Balvir Singh raised a '*lalkara*', upon which the present appellant Balihar Singh attacked the complainant with his *dasti* '*kirpan*' and hit the '*kirpan*' on the left side of the head of complainant and co-accused Balvir Singh hit the complainant with his *dasti* '*datar*' on the left side of the head of complainant and other co-accused Tirath Singh hit the complainant with his *dasti* '*datar*' on the left hand of complainant and the present appellant Balihar Singh again hit the complainant with his '*kirpan*' on the palm of left hand of complainant near the thumb and on account of the same, the complainant suffered multiple injuries. Initially, an FIR No.131 dated 05.10.2009 under Sections 307, 326, 324 and 34 IPC was registered against the accused persons, but in the same, an untraced report was submitted by the police and thereafter the present complaint was filed in which the summoning order was passed on 26.02.2015 by the Judicial Magistrate 1st Class, Phillaur. The charges were framed and as many as seven witnesses had been examined. The details of the said witnesses are reproduced herein-under: -

PW1	Satnam Singh, complainant/injured
PW2	Gurdial Singh, eye witness
PW3	Gurnam Singh, Sarpanch
PW4	Santokh Singh, father of complainant.
PW5	Dr. Sanjiv Goel

PW6 Retired Inspector Mohinder Singh
PW7 Dr. Rajnish Nagal of NMR Scanning Centre,
Jalandhar.

After the evidence of the said witnesses, the statement of appellant Balihar Singh was recorded under Section 313 Cr.P.C. The Additional Sessions Judge, Jalandhar, after considering the said evidence and documents on record, convicted the present appellant and sentenced him, as has been detailed herein-above.

This Court has reconsidered the entire evidence and finds no infirmity in the same.

PW-1 Satnam Singh, who is the complainant/injured had detailed the incident and had fully supported the case. PW-5 Dr. Sanjiv Goel, had proved on record the injuries report and had thus proved the injuries suffered by the complainant Satnam Singh. PW-7 Dr. Rajnish Kant Nagpal, had proved on record the CT Scan report as Ex.PW7/C. PW-6 Mohinder Singh, who was the investigating officer in the present case, had duly proved on record the documents including the formal FIR i.e., Ex.PW6/3, rough site plan i.e., Ex.PW6/4 and also the statement of complainant as Ex.PW6/1. 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 complainant. Accordingly, the appellant was convicted. Apart from the fact that the conviction of the appellant is based on the above said evidence and documents, learned counsel for the appellant has not challenged the conviction and accordingly, the conviction of the appellant is upheld.

Insofar as the sentence, which has been awarded to the appellant is concerned, it would be relevant to note that the matter has been compromised vide compromise dated 25.10.2021 (Annexure A-6). The relevant portion of the said compromise is reproduced hereinunder: -

*"THIS COMPROMISE is made the 25th day of October, 2021,
BETWEEN*

*Balihar Singh son of Jeet Singh resident of village Dharni
Pind, Tehsil & Distt. Jalandhar.*

(herein after called the party of the First part)

AND

*Satnam Singh son of Santokh Singh resident of village
Machiana, Tehsil Phillaur, Distt. Jalandhar*

(here in after called the party of the Second part)

*have compromised together with the intervention of the
respectables, on the following terms and conditions in respect of their
disputes:*

*i. That a Criminal complaint Case titled as Satnam Singh
versus Balihar Singh U/S 307/326/324/34 IPC has been filed at the
instance of Satnam Singh party of the second part against the party of
the party of the first part and others.*

*ii. That in the said criminal complaint vide CIS No. SC/
35/2016 the party of the first part has been convicted by the Hon'ble
Court of Sh. Lalit Kumar Singla, Addl. Sessions Judge Jalandhar vide
order dated 05.10.2021.*

*iii. That with the intervention of respectables, both the
parties have decided to compromise all the disputes among them and
they have no grudge or ill will against each other.*

*iv. That in view of the compromise, both the parties do at
not want to pursue the above-said case. Both the parties will endure to
withdraw/cancel the above mentioned case by giving statements
accordingly. before the appropriate forums including the Hon'ble
Punjab and Haryana High Court, Chandigarh.*

*v. That as per the compromise the party of the first part
will file an appeal against conviction and application for suspension*

of sentence and further the party of the first part will file an application for bail or quashing petition before the Hon'ble Punjab & Haryana High Court in the above mentioned criminal complaint in favour of the party of the first part and as per the compromise the party of the second part undertakes to give statement in both the petitions in favour of the party of the first part of the compromise as per the directions by the Hon'ble Court.

vi. That now if the party of the first part is acquitted or granted bail by the Hon'ble High Court in the above mentioned case then the party of the first part undertakes that he will not file any complaint such as malicious prosecution or defamation or of any kind against the party of the second part and the party of the first part further undertakes that he will not claim anything as damages or file any such suit for compensation against the party of the second part in respect of the present criminal complaint.

vii. That similarly as per the compromise the party of the second part shall not claim anything as damages or file any such suit for compensation against the party of the first part in respect of the above mentioned complaint case.

viii. That the terms and conditions of the compromise will be binding upon both the parties.

ix. That the parties have entered into the present compromise with their sweet will and consent and without any pressure, coercion, fear from any quarter.

IN WITNESS whereof, both the parties have hereto set their hands on the above said compromise in the presence of the undersigned witnesses after being read over to them in their vernacular language and admitting the same to be correct, in the presence of undersigned witnesses."

Perusal of the above-said compromise would show that complainant Satnam Singh has specifically stated that he has no objection in case the present appeal is allowed or the FIR is quashed. Learned counsel appearing for the complainant has stated that the said compromise is genuine and has been entered into with their sweet will and consent and without any pressure, coercion, fear from any quarter.

This Court is of the view that since the incident in the present case is of the year 2009 and the appellant has never misused the concession of suspension of sentence and bail granted to him and the appellant is 44 years of age and is the sole bread winner of the family and to take care of entire family and he is also not involved in any other case and the matter has been compromised, thus, a lenient view could be adopted with regard to the sentence awarded.

The Hon'ble Supreme Court of India in case of **Gulab Das's** **case (supra)** has held as under: -

"1. *Leave granted.*

2. *This appeal calls in question the correctness of an order passed by the High Court of Madhya Pradesh at Jabalpur whereby Criminal Appeal No.1509 of 2000 filed by the appellants challenging their conviction and the sentences awarded to them by the Additional Sessions Judge, Hoshangabad, in Sessions Trial No.60/1995 has been dismissed.*

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5. *Aggrieved by their conviction and sentence the appellants appealed to the High Court of Madhya Pradesh at Jabalpur which failed and has been dismissed by the order impugned in this appeal. The appellants have in the present appeal by special leave assailed the said order of dismissal.*

6. *Ms. June Chaudhari, learned senior counsel for the appellants argued that during the pendency of the case in this Court the parties have entered into an amicable settlement/compromise and filed Criminal Misc. Petition No.20418 of 2011 for permission to compound the offences of which the appellants stand convicted. She drew our attention to the compromise deed filed along with the application and argued that since the parties had buried the hatchet by amicably settling their disputes, this Court could allow the matter to be compounded or in the alternative take a lenient view in regard to the sentence awarded to them. It was further submitted that so far as*

Appellant No.1 is concerned he has already served the sentence awarded to him under Section 323 IPC.

7. *In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived at between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Cr.P.C. cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in **Ram Lal and Anr. V. State of J&K (1999)2 SCC 213, and Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667.** We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos.2 and 3 stand convicted.*

8. *Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence.*

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9. *In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalise the relationship between them.*

10. *In the result, while upholding the order of conviction recorded by the Courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case."*

In the above said case, the appellants therein were convicted under Section 307 IPC and on the basis of compromise, the sentence was reduced to the period of sentence already undergone. The Hon'ble Supreme Court however, had not allowed the parties to compound the offence under Section 307 IPC. To a similar effect is the judgment of a Co-ordinate Bench of this Court in *Inderjit @ Inder's case (supra)*.

Thus, in view of the above said facts and circumstances, as well as ratio of law laid down in the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone by him. Learned counsel for the appellant has submitted that the fine has already been deposited by the appellant.

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.

July 08, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No