

CRA-S-1615-SB-2008 (O&M) &
CRR-2262-2008 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: May 01, 2023

1. CRA-S-1615-SB-2008 (O&M)

Vinod and others

...Appellants

Versus

State of Haryana and others

...Respondents

2. CRR-2262-2008 (O&M)

Sham Lal

...Petitioner

Versus

Vinod and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sunil Saharan, Advocate,
for the appellants in CRA-S-1615-SB-2008, and
for respondent Nos. 1 to 7 in CRR-2262-2008.

Mr. Pankaj Mehta, Advocate,
for the petitioner in CRR-2262-2008.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Ram Kumar Saini, Advocate,
for complainant/respondent Nos. 2 to 7,
in CRA-S-1615-SB-2008.

SANJAY VASHISTH, J.

1. By this judgment, I propose to dispose of Criminal Appeal No. CRA-S-1615-SB-2008 and Criminal Revision No. CRR-2262-2008, which have been filed against the judgment of conviction dated 06.08.2008 and order of sentence dated 07.08.2008, passed by learned Additional Sessions Judge, Hisar, in Sessions Case No. 2 of 2005, dated 06.01.2005, in case FIR No. 642, dated 16.09.2004, under Sections 148, 149, 323, 324, 326, 307 and 506 IPC, registered at Police Station Sadar, Hisar.

1(i). Vide judgment of conviction dated 06.08.2008, all the seven accused, namely, (1) Vinod, (2) Balbir Singh, (3) Rajbir, (4) Satbir, (5) Raju, (6) Smt. Sheela, and (7) Sushil, were held guilty and convicted for the offences punishable under Sections 148, 307, 323 and 324 read with Section 149 & 506 IPC, and vide order of sentence dated 07.08.2008, they were ordered to undergo the sentence, as under:-

Under Section	Sentence	Fine	In Default
148 IPC	1 year R.I. each	--	--
307/149 IPC	5 years R.I. each	Rs. 2,000/- each	3 months R.I. each
323/149 IPC	6 months R.I. each	--	--
324/149 IPC	1 year R.I. each	--	--
506/149 IPC	6 months R.I. each	--	--

All the sentences have been ordered to run concurrently & already undergone period, by remaining in custody in connection with this case, has been ordered to be set-off against the period of sentence of awarded substantive imprisonment.

1(ii). Feeling aggrieved, all the aforementioned seven convicts filed Criminal Appeal No. CRA-S-1615-SB-2008, whereas injured-Sham Lal preferred Criminal Revision No. CRR-2262-2008, for enhancement of the sentence awarded by the learned Trial Court.

2. As per the story propounded by the prosecution, on 16.09.2004, statement of complainant/injured – Mange Ram (PW-6), was recorded at the first instance by SI Ishwar Singh, and on the basis of which formal FIR was registered. Said version, as detailed in para No. 2 of the impugned judgment, is reproduced here below:-

“2.stated that he is resident of village Mayar and is aged about 60 years. He does labour. About one year back, a quarrel had taken place with Rajbir, Vinod sons of Balbir and Balbir son of Chandgi Caste Dhanak residents of his village, in which his son Rajpal had received injuries and a case under section 307 IPC was registered and one month prior thereto they had also caused injuries to Rajpal for which a case under section 325 IPC was registered. Both the cases are pending in the courts and are fixed for 20.9.2004. On 13.9.2004 at about 6.00 p.m. he was standing in front of his house when Rajbir, Vinod, Balbir, Sushil and Satbir having conspired with each other came there. Rajbir, Vinod and Balbir were armed with gandas. They asked him that he will not go to court on 20.9.2004 for giving evidence. In the meantime his son Sham Lal came from outside who asked that they will certainly go to give evidence. On saying so, Rajbir, Vinod and Balbir opened an attack upon his son and inflicted injuries with gandas. The son-in-law of Balbir namely Sushil gave brick blows which hit on his head and Satbir gave a brick blow on his left hand. Raju threw a brick on his person from the roof. They cried mardiya- mardiya, which attracted his daughter-in-law Amarpati and grand-son Sushil and when they tried to rescue them, Balbir etc. also caused injuries to them. Thereafter Sushila wife of Satbir also came at the spot. She gave a brick blow on the head of Amarpati. Then his neighbour Om Parkash and many other people of the village came there and rescrued them. Thereafter the assailants went to their home and while

going extended threat that on that day they have been saved and in case they dared to give evidence they will be killed. After that his sons brought them to Civil Hospital, Hisar and later on they on their own came to Metro Hospital, Hisar.”

3. It is relevant to notice that initially FIR was registered only under Sections 148, 149, 323, 324 and 506 IPC. On 17.09.2004, as fracture was shown in the MLR of Sham Lal, Section 326 IPC was added. Still further, after obtaining opinion, when the doctor declared the injuries as dangerous to life, Section 307 IPC was also added.

4. After arrest of the accused, recovery of weapons of offence, completion of investigation and other formalities, accused were challaned for commission of offences punishable under Sections 148, 307, 323, 324 read with Sections 149 & 506 IPC.

5. To prove the case of the prosecution, total 11 witnesses were examined in the witness box. After closure of the prosecution evidence, all the seven accused/appellants were examined under Section 313 Cr.P.C. They denied the prosecution allegations and pleaded innocence, claiming that a false case has been registered against them. For brevity, relevant portion of the statement of accused/appellant – Vinod, recorded under Section 313 Cr.P.C., is reproduced here-below:-

“Q. 14. Anything else to say?

Ans. *I am innocent. I have been falsely implicated in this case. That on the date of occurrence the complainant party came to our house and wanted to abduct Sheela after inflicting injuries on her person and for*

outraging her modesty. In the meantime number of villagers came there. Sheela raised alarm and the person who assembled there caused injuries to us to save Sheela from Sushil and others. Due to this enmity a false case has been registered against us.”

6. After considering the evidence and stand taken by the appellants (accused), learned Trial Court convicted and sentenced the appellants, as detailed in the initial part of this judgment, by reaching to the following conclusions:

- i. The delay, if any, in lodging the FIR cannot be said to be inordinate and unexplained;
- ii. All the injured, namely, Sham Lal (PW-4), Sushil (PW-5) and Mange Ram (PW-6), have fully supported the prosecution version;
- iii. **Accused as well as the complainant party hales from the same village;**
- iv. Prior to present occurrence, previous litigation was going on between the parties, and two separate cases were registered against accused Rajbir, Vinod and Balbir, for causing injuries to Rajpal;
- v. Accused had the motive to cause the injuries;
- vi. The defence taken by the accused is vague and unreliable;
- vii. The ocular account is in consonance with the medical evidence;
- viii. Non-explanation of injuries sustained by any accused, which are minor and superficial in nature, is not under obligation of the

prosecution;

- ix. Dr. B.S. Khatri (PW-10), opined (Ex. P-28) that the injuries in MLR (Ex. P-27), can be caused by weapon i.e. gandasi;
- x. It is improbable that one of the accused who suffered minor and superficial injuries, would cause such grievous injury on the four persons of the complainant party in self defence; and
- xi. It stands established that all the accused were members of an unlawful assembly; committed the offence of rioting; were armed with deadly weapons; caused simple as well as grievous injuries (injury caused to injured - Sham Lal being dangerous to life); and thus, offences under Sections 148, 307, 323, 324 read with Sections 149 & 506 IPC stand proved.

7. Criminal appeal filed by the appellants was admitted on 04.09.2008. Subsequently, vide order dated 03.02.2009, sentence of the appellants, namely, Vinod, Balbir Singh and Rajbir was suspended and they were granted bail during pendency of the appeal. Thereafter, sentence of remaining appellants, i.e. Satbir, Raju, Sheela and Sushil was also suspended and they were granted bail by this Court, vide order dated 05.05.2009.

8. During pendency of the appeal, Balbir Singh (appellant No. 2), Rajbir (appellant No. 3) and Satbir (appellant No. 4) as well as complainant – Mange Ram have already expired. On an application, bearing CRM-5513-2023 in CRA-S-1615-SB-2008, all the affected persons from

complainant/victim/injured party were impleaded as respondent Nos. 2 to 7 in CRA-S-1615-SB-2008, vide order dated 08.02.2023, passed by this Court.

9. Another criminal miscellaneous application, i.e. CRM-8618-2023 in CRA-S-1615-SB-2008, has been filed seeking quashing of FIR No. 642, dated 16.09.2004, under Sections 148, 149, 323, 324, 326, 307 and 506 IPC, registered at Police Station Sadar, Hisar, alongwith all the subsequent proceedings, on the basis of compromise dated 27.11.2022 (Annexure A-1).

Vide order dated 16.03.2023, passed in the said application, the parties were directed to appear before the learned Area Magistrate/Duty Magistrate for recording of their statements qua the factum of compromise and the concerned Court was directed to send its report.

10. In compliance of the said order, all the parties appeared before learned Additional Chief Judicial Magistrate, Hisar, on 06.04.2023 and got recorded their respective statements, and report in this regard has been received from the said Court vide Memo. No. 355, dated 06.04.2023, through District and Sessions Judge, Hisar, through letter No. 7799, dated 11.04.2023. Relevant portion of the report dated 06.04.2023, says as under:-

“7- In view of the statements of the parties and statements dated 04.04.2023 and 06.04.2023 of SI Dinesh Kumar, Additional SHO, PS Sadar Hisar, report, as sought vide order dated 16.03.2023, is submitted as follows:-

i. Total Number of persons arrayed as accused in the case:-

As per statements of the parties (petitioners and respondents no. 2 to 7 in CRM-8618-2023 in CRA-S-1615-SB-2008) and SI Dinesh Kumar, Additional SHO, PS Sadar Hisar,

seven persons namely Balbir S/o Chandgi Ram, Rajbir S/o Balbir, Satvir S/o Balbir, Vinod S/o Balbir Singh, Raju S/o Nathu Ram, Sheela W/o Satbir and Sushil S/o Dalip Singh were arrayed as accused in this case.

ii. Whether all the accused and complainant/victim are party to compromise?

As per statements of the parties and SI Dinesh Kumar, Additional SHO, PS Sadar Hisar, there were four victims namely Mange Ram s/o Dhanna Ram (complainant), Shyam Lal s/o Mange Ram, Amarpati w/o Surajmal, Sushil s/o Surajmal and out of 7 accused, Balbir, Rajbir and Satvir and the complainant Mange Ram had expired. As per statements of the parties, the compromise has been effected between them, ie, petitioners and respondents no. 2 to 7.

iii. Whether any accused has been declared as a proclaimed offender or any such proceedings have been initiated or pending decision?

As per statements of the parties and SI Dinesh Kumar, Additional SHO, PS Sadar Hisar, neither was any accused declared a Proclaimed Offender in this case nor were PO proceedings initiated against any of the accused.

iv. Stage of the trial/proceedings.

Records of case FIR no. 642/2004, PS Sadar Hisar were summoned from Record Keeper, Judicial Record Room Hisar as well as from AVRK, DC Record Room Hisar. The docket was received back with report from Judicial Record Room that the requisitioned record had already been sent to Hon'ble High Court, Chandigarh in CRA-S-no. 1615 SB of 2008 titled as Vinod and others. Docket issued for summoning the case records from AVRK, DC record room Hisar was received back with report of Sh. Narender, Clerk, AVRK branch that the original file of case State v. Vinod goshwara no. 618, Mauza Mayar, had been sent to Registrar (Criminal) Hon'ble Punjab & Haryana High Court, Chandigarh on 27.1.2020.

However, as per statement of SI Dinesh Kumar, Additional SHO, PS Sadar Hisar, appeal of the case is pending before the Hon'ble High Court.

v. ***Whether the compromise is genuine, voluntary, and without any coercion or undue influence.***

As per the statements of the parties (petitioners and respondents no. 2 to 7 in CRM-8618-2023 in CRA-S-1615-SB-2008), they have compromised the matter without any fear or pressure and the compromise has been arrived at between them of their free will.”

11. This is how, the matter has been taken up for its final conclusion.

12. Mr. Sunil Saharan, learned counsel for the appellants submits that by relying upon vague opinion of the doctors, learned Trial Court has wrongly come to the conclusion that the appellants have committed an offence under Section 307 read with Section 149 IPC, whereas as per MLR, all the injuries received by the complainant and injured were lacerated wounds, caused by blunt weapon. Referring to the statement of Dr. Pushpender (PW-7), learned counsel for the appellants argued that the said doctor has admitted in his cross-examination that the injuries on the person of Amarpati and Sushil are possible while falling on hard surface by running. Drawing attention of the Court to the MLR of complainant – Mange Ram, learned counsel submits that there are four injuries mentioned therein and Injury No. 1 has been described as – lacerated wound over the left parieto occipital region, approximately 3 c.m. length and 2.5 c.m. breadth, and Injury Nos. 2 to 4 are stated to be abrasions on arms and shoulders. In other words, main Injury No. 1 suffered by complainant – Mange Ram was on left parieto occipital region and the same is not an incised wound. Same position is with regard to the injuries suffered by injured Sushil and Amarpati. Thus, learned counsel for the appellants submits that the medical

evidence is not corroborated with oral evidence.

12(i). Learned counsel for the appellants then submits that the occurrence had taken place amongst co-villagers way back on 14.09.2004. Now better sense has prevailed and with the intervention of well wishers of both the side & respectable persons of the area, all the affected parties decided to resolve the dispute amicably by entering into compromise dated 27.11.2022 (Annexure A-1). Learned counsel further submits that now both the parties are living peacefully with mutual respect and care for each other. Learned counsel for the appellants, thus, prayed that the appeal filed by the appellants may be disposed of keeping in view intent of the compromise dated 27.11.2022, by quashing FIR No. 642, dated 16.09.2004, under Sections 148, 149, 323, 324, 326, 307 and 506 IPC, registered at Police Station Sadar, Hisar, and all subsequent proceedings arising therefrom, including impugned judgment of conviction, dated 06.08.2008, & order of sentence, dated 07.08.2008, passed by learned Trial Court, and the appellants may be acquitted/discharged of the charges levelled against them.

13. Mr. Pankaj Mehta, Advocate, and Mr. Ram Kumar Saini, Advocate, appearing on behalf of complainant & victim(s) party, have not opposed the submission made by learned counsel for the appellants as regards the compromise dated 27.11.2022 (Annexure A-1) and both of them have stated at the Bar that they have instructions to not to oppose the quashing of proceedings in view of said compromise.

Mr. Pankaj Mehta, learned counsel for the petitioner – Sham Lal in Criminal Revision No. 2262 of 2008, also submits that the said revision petition may be disposed of as not pressed.

14. Mr. Vikas Bhardwaj, learned Assistant Advocate General, Haryana, after going through the statements and the report received from learned Court below, very fairly admits that the matter has been compromised between the private parties. However, learned State counsel objects the prayer of the appellants for disposal of appeal in view of the compromise dated 27.11.2022 (Annexure A-1).

14(i). While opposing the submissions addressed on behalf of the appellants, learned State counsel submits that it is proved that occurrence did take place and for the role attributed to respective appellants, they have been convicted and sentenced by the Trial Court by passing well reasoned judgment of conviction and order of sentence for the offences punishable under Sections 148, 307, 323, 324 read with Sections 149 & 506 IPC, because it has been proved on record that they were member of unlawful assembly with common object of causing grievous injury with deadly weapons.

14(ii). Learned State counsel also produced custody certificates dated 01.05.2023, showing the period of sentence undergone by the appellants in the present case. Said custody certificates, dated 01.05.2023, are taken on record and Registry is directed to tag the same at an appropriate place of the file. While referring to the custody certificate of Vinod (appellant No. 1), Rajbir

Singh (appellant No. 3, since expired), and Satbir (appellant No. 4, since expired), learned State counsel submits that against them and co-accused, namely, Jaibir, another case FIR No. 318, dated 07.06.2003, under Section 307 read with Section 34 IPC was registered at Police Station Sadar, Hisar. After trial, vide judgment of conviction, dated 17.12.2007, and order of sentence dated 24.12.2007, passed by learned Additional Sessions Judge, Hisar, they were convicted under Section 307/34 IPC, and each one of them were sentenced to undergo rigorous imprisonment of 05 years, to pay fine of Rs.1000/- each, and in default to further undergo rigorous imprisonment of 02 months each.

14(iii). Learned State counsel, thus, submits that the appellants deserve no leniency and the appeal filed by them cannot be disposed of by compounding of offences/quashing of FIR with consequential proceedings, as also acquittal/discharge of the appellants on the basis of compromise dated 27.11.2022 (Annexure A-1), entered into between the private parties.

15. I have heard learned counsel for the parties and with their able assistance gone through the record.

16. It is an admitted position that out of total seven convict/appellants, Balbir Singh (appellant No. 2), Rajbir (appellant No. 3) and Satbir (appellant No. 4) have already expired. **Accordingly, appeal qua Balbir Singh (appellant No. 2), Rajbir (appellant No. 3) and Satbir (appellant No. 4), is ordered to have abated.**

Furthermore, complainant/injured – Mange Ram (PW-6) has also expired and his LRs and other victims have been impleaded as party respondent Nos. 2 to 7 in CRA-S-1615-SB-2008.

17. Prime issue involved in the present appeal for its consideration is that once the matter has been considered and decided by the learned Trial Court after appreciation of evidence, vide judgment of conviction dated 06.08.2008 and order of sentence dated 07.08.2008, and appeal as well as revision petition against the same are pending before Appellate Court, whether proceedings can be quashed/compounded/finished on the basis of compromise amongst the private parties, especially when besides Sections 148, 323/149, 324/149 and 506/149 IPC, the appellants have also been convicted for the offence punishable under Section 307/149 IPC.

18. Hon'ble the Supreme Court in Narinder Singh and others v. State of Punjab and another, (2014) 6 SCC 466, has considered in detail the aforementioned issue as also inherent power of High Court under Section 482 Cr.P.C. to quash criminal proceedings involving non-compoundable offences in view of compromise/settlement arrived at between the parties. In the said case, FIR was registered under Sections 307, 324, 323 and 34 IPC. A petition under Section 482 Cr.P.C. was filed before this Court seeking quashing of FIR on the basis of compromise entered into between the petitioners who were the accused in the FIR and the complainant. This Court refused to exercise its extraordinary discretion invoking the provisions of Section 482 Cr.P.C. on the

ground that four injuries were suffered by the complainant and as per the opinion of the doctor, Injury No. 3 was serious in nature.

19. After detailed discussion, in paragraph No. 29 of the judgment in **Narinder Singh's case (supra)**, Hon'ble the Supreme Court laid down certain principles/guidelines for the High Court so as to give adequate treatment to the settlement between the parties while exercising power under Section 482 Cr.P.C., while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Para 29 and 29.1 of the said judgment, being relevant, are reproduced as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.”

20. In relation to cases involving the offence punishable under Section 307 IPC, in para No. 29.6 of the judgment in **Narinder Singh's case (supra)**, Hon'ble Apex Court has held as under:-

29.6 Offences under Section 307 IPC would fall in the

category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. (emphasis added)

21. In the case in hand, FIR No. 642, dated 16.09.2004, was initially lodged under Sections 148, 149, 323, 324 and 506 IPC, and Sections 326 & 307 IPC were added later on, as fracture was shown in the MLR of injured-Sham Lal, and the doctor declared the injuries as dangerous to life.

22. In the present case injured - Sham Lal is one of the victim who suffered serious injuries, which were declared dangerous to life. While appearing in the witness box as PW-4 he deposed as under:-

“ About 2 or 2/1-4 years ago Rajbir, Vinod, Balbir had caused injuries to my brother Rajpal and case under section 307 IPC was registered against them. Another case under section 325 IPC for inflicting injuries to Raj Pal was also registered. Both the cases were pending in courts at Hisar. The date 20.9.2004 was fixed for our evidence in case under section 307 IPC. On 13.9.2004 at

about 6.00/6.15 P.M. I was coming towards my house from outside and when I reached near my house I saw that Mange Ram my father was encircled by Rajbir, Vinod, Balbir, Satbir, Sushil, Raju and Sheela and were saying that in case they will give the evidence against them they will kill him. I told them that we will certainly give the evidence against them. On this Balbir gave gandas blow on my head. Vinod gave gandas blow on my cheek. Rajbir gave Farsa blow on my right shoulder and on receiving the injuries I fell down on the ground and thereafter Satbir gave brick blow on my mouth. I raised alarm. On hearing my alarm the wife of my brother Amarpati, and my nephew Sushil alongwith my father tried to rescue me. Sushil gave a brick blow to my nephew Sushil, Sheela gave brick blow to Amarpati and Raju gave brick blow to my father Mange Ram. Thereafter I became unconscious. After one month and three days police came to me in Metro Hospital, Hisar and recorded my statement. All the accused are present in the court.

XXXXX by Sh. M.S. Nain, Advocate counsel for the accused.

I had told to the police that our case was fixed for evidence for 20.9.2004 (confronted with Ex. D1 wherein the word 'for evidence' is not mentioned). I told the police that accused threatened us to kill if we deposed against them in the court (confronted with Ex. D1 wherein threat to kill is not mentioned). It is correct that one criminal case is pending against us titled as State Vs. Rajpal etc. It is correct that a case titled as State Vs. Rajpal etc. FIR No. 18 dated 7.6.2003 under sections 148, 149, 325, 323, 506 IPC is the cross case of case under section 307 IPC. I do not know as to whether case titled as State Vs. Rajpal was fixed for evidence on 20.9.2004. It is incorrect to suggest that I am concealing this fact intentionally to attribute motive to the accused.

Our houses and house of the accused are in the vicinity of each other. House of Sheela is there in the same vicinity. Our houses are situated in the abadi of village. No person of the locality was present at the time of occurrence. At the time of occurrence sun was likely to set. It is wrong to suggest that the sun has already set one hour before the alleged occurrence. My father and accused persons were standing on the road in front of our house. The doors of the house of the accused are with the door of our house. In front of our house there is the house of

Balbir. The street in between the houses is pucca road. It is correct that our houses are situated on pucca road leading from village Mayyor to Kharad. Before my reaching to the spot the accused did not inflict any injury to my father who was already there. First injury to me was given by Balbir. I fell on the ground three blow were inflicted to me. I became unconscious after receiving three injuries on head, and face. I was conscious when injuries were inflicted to my father, my nephew and my Bhabhi. There was bleeding from my all injuries. The blood fell on the clothes as well on the earth. I had seen one injury on my father, Bhabhi as well as my nephew. None of the accused received injuries at our hands. As I was unconscious I can not say as to whether I was taken to the house and was directly taken to the hospital. I do not know that what conveyance was used for lifting me to the hospital and I can not say at what time I was taken to the hospital. There is no medical facility available in our village. There is metalled road in front of our house. Our door of the house opens towards east and I fell down in between the door of our house and the door of the house of accused. Om Parkash and 5-10 other persons also attracted at the spot after hearing the alarm. I can not tell the name of other persons except Om Parkash. Some were passers-by and some were of our village. Our village Mayyor is connected national highway No. 10. Police post falls just by the side of national highway near the cantt. I do not know whether Mange Ram, Amarpati and Sushil had become unconscious after receipt of injuries. I do not know whether Mange, Amarpati and Sushil accompanied with me or not to the hospital. There was frofused bleeding from my injuries. I regained consciousness after 5-7 days of the occurrence in Metro hospital, Hisar. My wife Rani was present by my side at that time. I did not become unconscious thereafter but I could not speak as there was bandage on my mouth. The bandage from my mouth was removed after one month and 3 days. Police arrived in the evening when my statement was recorded but I can not tell the exact time. Rani was also present at that time. The doctor was not present when my statement was recorded. My wife had not told anything to me as what statement is to be given. I have four children. Sushil my nephew is aged about 17-18 years. It is incorrect to suggest that I alongwith Sushil had tress-passed the house of Sheela in absence of other family members to outrage her modesty. It is further incorrect to suggest that she raised noise, many people were attracted to the spot and Mange Ram etc. also reached there. Villagers and Sheela caused injuries to us to save Sheela and during that scuffle my bhabhi Amarpati and father

Mange Ram received injuries. It is incorrect that Balbir, Rajbir, Vinod, Satbir, Raju etc. were not present there and they have been implicated due to previous enmities. It is incorrect to suggest that on 20.9.2004 we were the accused and Balbir etc. were the witnesses in the cross case of under section 307 IPC. It is incorrect to suggest Balbir, Jaibir, Vinod, Satbir were the summoned witnesses by the court of Sh. D.S. Sheoran, ASJ, Hisar. It is incorrect to suggest that I remained admitted in Metro Hospital to get declared the injuries dangerous to life from the private doctor to implicate the accused under section 307 IPC. It is incorrect to suggest that I am deposing falsely.”

(emphasis added)

From a bare reading of above statement of injured – Sham Lal (PW-4), it is evident that he has not only fully supported the prosecution version of the occurrence, but also specifically stated about infliction of injuries on his person by Balbir Singh (appellant No. 2), Vinod (appellant No. 1), Rajbir (appellant No. 3) and Satbir (appellant No. 4). He also stated about infliction of injuries by Sushil (appellant No. 7) and Sheela (appellant No. 6) to his nephew Sushil and Bhabhi - Amarpati, respectively, as also about the injury caused by Raju (appellant No. 5) to his father - Mange Ram.

Similarly, Mange Ram, who had also sustained injuries in the occurrence, and author of the FIR, also fully corroborated the prosecution version while appearing in the witness box as PW-6.

23. In order to see nature of injuries sustained by injured persons and the medical opinion, it is necessary to peruse the statements of Dr. Pushpender, Medical Officer, ESI Dispensary, Udhoyog Vihar, Gurgaon, who appeared as PW-7, Dr. B.S. Khatri, Medical Officer, General Hospital, Hisar, who appeared

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as PW-10, and Dr. Sanjay Verma, Medical Officer, Metro Hospital, Hisar, who appeared as PW-11. These witnesses deposed as under:-

Statement of Dr. Pushpender (PW-7)

*“ On 13.09.2004 I was posted as Medical Officer, General Hospital, Hisar. On that day, I medico legally examined **Mange Ram son of Dhhana Ram 20 (60½ ?) years male resident of village Mayyor, at about 8.30 P.M. My observation is as under:-***

- 1. Lacerated wound over left parieto occipital region approximately 3 cm. in length and .5 cm. in breadth.*
- 2. Abrasion over left shoulder tip.*
- 3. Abrasion over left arm.*
- 4. Abrasion over right aliac region.*

All the injuries were caused by blunt weapon. Probable duration of injuries was within six hours. The carbon copy of the MLR prepared in the same process and at that time is Ex. P5 which is bearing my signatures.

*On the same day at about 9.30 P.M. I medico legally examined **Amarpati wife of Suraj Mal 30 years female resident of village Mayyor. My observation is as under:-***

- 1. Laceration over right occipital region about 3 cm. in length and about .5cm. In breadth.*
- 2. Abrasion over right hand dorsal aspect.*

The injuries were caused by blunt weapon and the probable duration of injuries was within six hours. X-ray of skull was advised. The carbon copy of the MLR is Ex. P6 prepared in the same process, and at that time, which is bearing my signatures.

*On the same date at about 9.45 P.M. I medically examined **Sushil son of Suraj Mal 15 years male resident of village Mayyor. My observation is as under:-***

- 1. Laceration over right parieto occipital region around 2 cm in length and .5 cm in breadth.*

X-ray of skull was advised and injury was kept under observation subject to surgeon opinion. The injury was caused by blunt weapon and the probable duration was within six hours. The carbon copy of the MLR prepared in the same process and at that time is Ex. P7 which is bearing my signatures.

The injuries on the person of Mange Ram were advised to be x-rayed. I sent ruqa Ex. P8 to the Incharge Police Post General Hospital, Hisar for information which is bearing my signatures.

XXXX by Sh. M.S. Nain, Adv. assisted by Sh. Yogesh Arya, Adv. counsel for the accused.

It is correct that while telling history of assault, the name of the attacking persons, time and place were not told. The injuries on the person of Mange Ram are not possible by fall on hard surface by running but the injuries on the person of Amarpati and Sushil are possible. I am saying about Mange Ram because the multiple injuries can not be possible by one single fall but possibility of these injuries with multiple falls can not be ruled out. It is correct that Radiological department in G.H. Hisar is separate and a qualified radiologist is posted there. The day on which I conducted MLR a Radiologist was posted in General Hospital, Hisar. I did not ask the patient to go to any private hospital. I was never shown the Surgeon's opinion lateron. Duration of injuries was mentioned on the basis of their nature i.e. colour and blood. It is correct that I did not mention in any MLRs that there was fresh bleeding or the abrasions were reddish in colour. It is incorrect to suggest that the injuries were very old and that is why I have given a false report. It is correct that on that very day I also medically examined Sheela wife of Satbir 22 years female resident of village Mayyor on 13.9.2004 at 9.15 P.M. and found following injuries on her person:-

There was lacerated wound on right side of chest 1 x .5 C.M. in measurement.

- 2. Laceration over right side of chest approximately 6 cm. right from injury No. 1. 2 cm x .5cm. in measurements.*
- 3. Abrasion over right leg anterior aspect.*

Kind of weapon used was blunt and probable duration of injuries was within 6 hours. The attested copy of the MLR is Ex. D3.

The probable duration of the injuries on the person of Sheela wife of Satbir, Mange Ram, Sushil and Amarpati was almost same. I have no personal knowledge of the case.”

Statement of Dr. B.S. Khatri (PW-10)

*On 13.9.2004 at about 7.50 p.m I medico legally examined **Sham Lal S/o Mange Ram** 32 years male Dhanak by caste resident of Mayyar. He was accompanied by his brother Rajpal. There was alleged history of assault. The patient was conscious and of moderate built. Blood pressure was 110 and pluse rate was 80 per minutes. I found following injuries:*

- 1. An incised wound was present on left side of skull of size 4x0.5cm. X-ray was advised.*
- 2. An incised wound was present on left side of the face of size 6x2-3 cm. General Surgeon opinion was advised.*
- 3. An incised wound was present on upper lip. The small portion was separated.*
- 4. An incised wound was present on right shoulder of size 5x3-4 cm bone deep. X-ray and ortheopadic surgeon opinion was advised.*

Nature of injuries. All the injuries were kept under observation and were caused by sharp edged weapon the probable duration of injuries was within 6 hours. Ex. P27 is the correct carbon copy of MLR which bears my signatures.

On 26.10.2004 Ishwar Singh SI moved an application Ex. P4 for opinion of injuries caused by gandasi and he also produced a gandasi. Vide opinion Ex. P28 I opined that the injuries in MLR Ex. P27 can be caused by weapon i.e. gandasi which was shown to me.

Xxxxxx by Sh. M.S. Nain counsel for accused.

It is correct that the patient who gave alleged history of assault for his injuries did not disclose before me the name of the persons who assaulted, place and time. It is correct that Gandasa/gandasi are heavy cutting weapon. It is correct that I

have not mentioned in the MLR the position of the hair blubs whether these were cuts or fresh. It is correct that skull is a hard bone surface and according to Modi, if sometime blunt can be resemble as incised wound. It is correct that I have not mentioned the conditions of the margins in the MLR Ex. P27 as details are not require to be given. The duration of injuries after examination of injured is given on the basis of presence of fresh bleeding and clotted blood and in this case I have not mentioned what was the position of blood as it was fresh bleeding or not. It is correct that it should be mentioned in the MLR whether there was fresh bleeding or clotted blood was present or not. It is correct that as per Modi mentioned in 38 edition page 698 the condition of the margin should be mentioned in the MLR and it is also mentioned that edges of the wound made by heavy cutting weapon such as an axe, hatches and shower may not bears smooth as caused by a light weapon such like a knife and razor and may show signs of contusion. Such a wound, is as a wound associated with extension injuries to deep underlying structure or organs. It is correct that injuries in this MLR were kept under observation for a report of X-ray report and Surgeon opinion there is arrangement of conducting of x-ray in General Hospital, Hisar and there is a posting of radiologist in Civil Hospital, Hisar. There are General Surgeon in General Hospital, Hisar. The opinion of the surgeon and x-ray report relating to this FIR were never put before me for seeking opinion about the nature of injuries. In absence of my opinion regarding x-ray report and Surgeon opinion these injuries deemed to be simple in nature. It is incorrect to suggest that to help the injured and complainant party I have given a false report showing the injuries as incised wound. It is correct that in my report Ex. P28 what seal was affixed on the palanda on which seal I re-sealed the planda. It is incorrect to suggest that these injuries were not possible by the weapon shown to me.”

Statement of Dr. Sanjay Verma (PW-11) on 08.02.2008

“ On 14.9.2004 Amarpati wife of Surajmal, Mange Ram son of Dhanna Ram and Sushil son of Surajmal were admitted in Metro Hospital, Hisar. I conducted X-ray examination of Amarpati and Sham Lal as per x-ray report of Amarpati was no fracture was seen. The report is Ex. P29 and X-ray film of Amarpati is Ex. P29/A to Ex. P29/E. As per X-ray report of Sham Lal, there is fracture mandible. My report is Ex.P30 and X-ray films of Sham Lal Ex. P30/A to Ex. P30/E. The bed head ticket of Sham Lal is Ex. P31 which consist from page 129 to Ex.P166. I

also sent ruqqa Ex.P32 to the police. On 14.9.2004 on police application Ex.P33 regarding the fitness of Amarpati to make the statement and the medical officer of our hospital vide Ex.P33/A at 9.20 a.m and Ex.P33/B at 2.00 p.m opined that the patient was unfit to make the statement. On application Ex.P34 moved by the police regarding the fitness of Sham Lal to make the statement. The medical officer of our hospital Sh. Ravinder Saini at 9.45 a.m and vide Ex. P34/B at 2.00 p.m opined that Sham Lal was unfit to make the statement. I identified the signatures of Dr. Ravinder Saini. On application Ex.P35 regarding the fitness of injured of Mange for making the statement. The medical officer Dr. Ravinder Saini vide Ex. P35/A at 9.20 a.m and vide Ex. P35/B opined that Mange Ram was unfit to make the statement. (objected to on the mode of proof). On application Ex. P36 regarding the fitness of Sushil to make the statement moved by the police the medical officer vide Ex. P36/A at 9.20 a.m and vide Ex. P36/B opined that the patient injured Sushil was unfit to make the statement. I identified the signatures of Dr. Ravinder Saini on Ex. P33, Ex.P34, Ex.P35 and Ex.P36 as he was working with me at that time (Objected to on the mode of proof).

Xxxx by defence counsel Sh. M.S. Nain Advocate

*I did not medico legally examined injured Sham Lal. There is no record with me today that for how many days injured Sham Lal remained admitted in their hospital. In X-ray report Ex.P30 there is no measurement of soft tissue. **I can say after seeing the X-ray report that fracture of mandible in case of Sham Lal was dangerous to life.** I cannot say upto which date, patient remained admitted in my hospital. It is correct that the metro hospital is a private nursing home and the hospital charges are there for admission and hospitalization and treatment. It is correct that in General Hospital, Hisar there is posting of Orthopaedic surgeon and Radiologist and a apparatus and machine for conducting the X-ray are there. It is incorrect to suggest that I have given false reports in case of Sham Lal that there was fracture of mandible in facts the patients procured these reports from me for strengthen their case.”*

Statement of Dr. Sanjay Verma (PW-11) on 4.4.2008, when called for re-examination

“ On application Ex. P-17 moved by the police regarding the fitness of injured Sham Lal to give the statement and vide opinion

*Ex.P-17/A on 17.9.2004, Ex.P-17/B dated 19.2.2004, Ex.P-17/C dated 20.9.2004 and Ex.P-17/D dated 22.9.2004 the patient Sham Lal was unfit to make the statement and on the same application on 29.2.2004 vide Ex.P-17/E the patient was fit to make the statement. On application Ex.P-18 moved by the police regarding the nature of injuries and opinion vide Ex.P-18/A I opined that there was a fracture mandible was grievous in nature in my opinion and the rest of the injuries were simple in nature. On 22.9.2004 on application Ex.P-19 moved by the police **regarding the opinion of nature of injuries of injured Sham Lal vide Ex.P-19/A I opined that injury is dangerous to life and later on I clarify vide opinion Ex.P-19/B that injury No. 2 according to x-ray report was dangerous to life.** The injury No.2 on the person of Sham Lal could have been fataled the treatment is not provided to the patient and on time (fatal had the treatment not been provided to the patient on time ?).*

Xxxx by M.S. Nain counsel for accused.

It is correct that on 17.9.2004 the police submitted application Ex.P-18 for seeking the opinion about the nature of injury and I only mentioned in my opinion Ex.P-18/A that the injury on mandible was grievous and no opinion about dangerous to life was given by me. It is correct that again police submitted an application Ex.P-19 and I gave my opinion Ex.P-19/A that injury was dangerous to life. It is correct that I had not given any opinion that the injury could have been fataled (fatal,?) if the medical treatment is not given in time. It is correct that police did not seek my opinion that injury could have been fataled (fatal,?) if the medical aid has not been given in time and I have given this opinion today on the asking of the prosecution. The condition of the patient Sham Lal remained stable from 17.9.2004 to 22.9.2004 and there was no such complication that the life of the patient was in danger and nor his condition became serious in my hospital during this period. It is correct that from the date of admission the condition of the patient improved and he was discharged as fully recovered. His surgery was conducted on 16.9.2004 and condition improved after surgery. It is correct that on 17.9.2004 when police sought my opinion about nature of injury I did not opine that injury was dangerous to life. It is correct that I have not mentioned in Ex. P-30 was simple compound conducted. It is correct that every fracture of the bone are (is?) always not fataled (fatal?). It is correct that my hospital is a private hospital. Although post mortem on the dead body can not be conducted in

private hospitals. I did not informed (inform?) the CMO Hisar regarding my conducting MLC and admission of the above said patient. It is correct that in Ex.P-30 under my signatures the date written as (is?) 17.9.2004 but same is not in my hand. It is incorrect to suggest that I have given my opinion only to please complainant party and police. It is also incorrect to suggest that I have given a wrong opinion regarding the nature of injury only to help the party.”

24. From a conjoint reading of the above reproduced statement of injured – Sham Lal (PW-4) and the medical evidence in the shape of testimony of Dr. Pushpender (PW-7), Dr. B.S. Khatri (PW-10), and Dr. Sanjay Verma (PW-11), no doubt is left that occurrence in the present case did take place on 13.09.2004 between complainant party and accused/appellants. There is admitted rivalry and old enmity between both the sides and another criminal litigation was also going on prior to the present occurrence. Thus, presence of the appellants at the spot and motive to cause injuries is well established. It has also come on record that Vinod, Balbir Singh, Rajbir and Satbir, i.e. appellant Nos. 1 to 4, respectively, had caused injuries on the person of injured Sham Lal (PW-4). As per opinion of Dr. B.S. Khatri (PW-10), all the injuries on the person of Sham Lal (PW-4) were caused by sharp edged weapon. Furthermore, Dr. Sanjay Verma (PW-11), on application (Ex.P-18) moved by the police regarding the nature of injuries, has opined (Ex.P-18/A) that there was a fracture mandible, which was grievous in nature. Not only this, the factum of infliction of injuries by Sushil (appellant No. 7) and Sheela (appellant No. 6) to Sushil s/o Surajmal and Amarpati, as well as injury caused by Raju (appellant No. 5) to Mange Ram, stood also proved.

In this view of the matter, I do not find any legal infirmity in the findings recorded by the learned Trial Court in the impugned judgment of conviction, dated 06.08.2008, and the same stands affirmed. Furthermore, it is not a fit case to exercise inherent powers under Section 482 Cr.P.C. and to dispose of Criminal Appeal No. CRA-S-1615-SB-2008, on the basis of compromise dated 27.11.2022 (Annexure A-1), i.e. by quashing FIR No. 642, dated 16.09.2004, under Sections 148, 149, 323, 324, 326, 307 and 506 IPC, registered at Police Station Sadar, Hisar, and all subsequent proceedings arising therefrom, including impugned judgment of conviction, dated 06.08.2008, & order of sentence, dated 07.08.2008, passed by learned Trial Court, and to acquit/discharge the appellants of the charges levelled against them. Consequently, criminal miscellaneous application No. CRM-8618-2023 stands disposed of. However, Criminal Appeal No. CRA-S-1615-SB-2008 qua conviction part, is dismissed.

25. Now coming to the sentence part, it is necessary to first notice the period of sentence undergone by surviving appellants, namely, Vinod, Raju, Sheela and Sushil, as per custody certificates available on record, and the same is compiled in a tabular form, as under:-

Name of Appellant	Age at the time of conviction	Actual undergone period	Any other case
Vinod	17 years	04 years 02 months 20 days	Convicted u/s 307/34 IPC in FIR No. 318, dated 7.6.2003, U/s 307/34 IPC, Police Station Sadar, Hisar, by

			learned Additional Sessions Judge, Hisar, and sentenced for imprisonment of 5 years RI, & to pay fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 2 months. Released on bail vide order No. 1259, dated 09.09.2018 and appeal No. CRA-S-296-SB-2008 is pending before Co-ordinate Bench of this Court.
Raju	35 years	10 months 04 days	Nil
Sheela	20 years	09 months 22 days	Nil
Sushil	22 years	10 months 18 days	Nil

26. Admitted facts, necessary to be taken into consideration, for the purpose of deciding quantum of sentence in the present case are that:-

- A fight had occurred between co-villagers;
- All the convicts/appellants were convicted and sentenced under Sections 148, 323/149, 324/149, 506/149 and 307/149 IPC;
- No particular accused/appellant is convicted for causing injury dangerous to life, by holding him guilty under Section 307 IPC;
- The maximum period of substantive sentence awarded by learned Trial Court, under Section 307/149 IPC is 5 years;
- Balbir Singh, Rajbir and Satbir, i.e. appellant Nos. 2, 3 & 4, who had caused injuries to injured – Sham Lal (PW-4), have already expired;
- Vinod (appellant No. 1), who had also caused grievous injury on

the person of injured – Sham Lal (PW-4), has already undergone actual substantive sentence of 4 years 2 months and 20 days, out of 5 years;

- Complainant – Mange Ram has also expired and his LRs and other victim/injured persons have already been impleaded as respondent Nos. 2 to 7 in criminal appeal;
- As per custody certificates, the age of surviving four appellants was between 17 to 35 years at the time of their conviction, i.e. in August, 2008;
- For the last more than about 18 years, the appellants are facing the agony after registration of the case vide FIR No.642. dated 16.09.2004;
- The matter has been compromised between private parties and report dated 06.04.2023, has been received from learned Additional Chief Judicial Magistrate, Hisar, which is to this effect that all the affected parties have arrived at the compromise voluntarily, without force, coercion or undue influence and the compromise is genuine; and
- No fruitful purpose will be served by sending the surviving appellants back to jail.

27. Accordingly, impugned order of sentence, dated 07.08.2008, passed by learned Trial Court is modified and the period of **substantive**

sentence awarded by learned Trial Court is reduced to the extent of period already undergone by the appellants, namely, Vinod, Raju, Sheela and Sushil. However, there shall be no change in the fine imposed by the learned Trial Court.

28. Furthermore, considering the fact that injury was inflicted on vital part of the body of injured – Sham Lal, this Court feels that some amount of compensation is liable to be awarded in his favour. Therefore, in totality of facts and circumstances, it is directed that in addition to the payment of fine imposed by the learned Trial Court, the appellants, namely, Vinod, Raju, Sheela and Sushil, shall also pay a sum of Rs.10,000/- each, within a period of two months from the date of receipt of notice(s), to be issued by the learned Trial Court for the purpose, and upon payment thereof, the same will be disbursed by the learned Trial Court to injured – Sham Lal as compensation, by following proper procedure.

However, it is made clear that in case of non-payment of the amount of fine and/or compensation by the aforementioned appellants, within stipulated time, substantive sentence(s) as awarded by learned Trial Court, vide order of sentence dated 07.08.2008, shall enure, after issuance of due notice in that regard to the defaulting person by the learned Trial Court.

29. With the above modification in the order of sentence dated 07.08.2008, passed by learned Trial Court, Criminal Appeal No. CRA-S-1615-SB-2008, and other pending criminal miscellaneous application(s) therein,

CRA-S-1615-SB-2008 (O&M) &
CRR-2262-2008 (O&M)

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stand disposed of.

30. So far as Criminal Revision No. CRR-2262-2008 is concerned, in view of statement made by Mr. Pankaj Mehta, learned counsel for the petitioner, the same is disposed of as not pressed.

31. Registry is directed to send back original lower court record alongwith a copy of this judgment to learned Trial Court, for taking further steps with regard to the recovery of fine and compensation amount & then disburse the same to the victim/injured, in accordance with law.

(SANJAY VASHISTH)
JUDGE

May 01, 2023

Pkapoor

Whether Speaking/Reasoned: YES/~~NO~~
Whether Reportable: YES/~~NO~~