

201/1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2488-SB-2004 (O&M)
Reserved on: 25.04.2023
Date of Pronouncement: 02.05.2023

Sahab Singh and Anr.

State of Haryana

...Appellants

...Respondent

vs.

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present : Mr. Nagar Singh, Advocate for
Mr. A.S Virk, Advocate
for the appellants.

Mr. Rajinder Kumar, Deputy Advocate General, Haryana.

Mr. Ashit Malik, Advocate
for the complainant.

N.S.Shekhawat J.

1. The present appeal is directed against the judgment of conviction dated 01.12.2004 and order of sentence dated 06.12.2004, passed by the Court of Additional Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, whereby the appellants have been convicted for the commission of the offences punishable under Sections 307, 323, 506 read with Section 34 of IPC and were sentenced as under:-

Under Section 307 read with Section 34 of the Indian Penal Code	Rigorous imprisonment for three years and to pay a fine of Rs.3000,-/ each. In default of payment of fine, they shall further undergo rigorous imprisonment for three months.
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Under Section 506 read with Section 34 of the Indian Penal Code	Rigorous imprisonment for six months.
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2. During the pendency of the present appeal, Sher Singh, appellant No.2 had expired and the appeal was pursued only on behalf of appellant No.1 Sahab Singh.

3. The brief facts of the prosecution are that on receipt of a ruqa from Community Health Centre, Shahabad on 17.10.2001, ASI Kartar Singh reached there and inquired about the injured Balkar Singh. However, he was informed that Balkar Singh, injured had been referred to the PGI, Chandigarh. On this ASI Kartar Singh reached PGI Chandigarh, where the doctors declared the injured to be unfit to make statement. On 20.10.2001, Virender Singh complainant met him and got his statement recorded. As per the complainant, at about 11:00 AM on 16.10.2001 he was working in the fields. Sahab Singh, accused reached there on his tractor and destroyed his paddy fields with his tractor. He asked the accused as to why he had done that; on which Sahab Singh abused him and stated that he would do so and he could do whatever he liked. Sahab Singh had beaten him up and abused him. Sahab Singh, accused also threatened to teach him a lesson in future. At about 05:00 AM on 17.10.2001, the complainant and his brother Balkar Singh were taking fodder for the animal and when they reached near the *bara*, Sahab Singh, accused armed with an iron rod, Sher Singh accused armed with lathi and Ramesh Kumar accused armed with a handle of Kassi (spade) came there. Sahab Singh, gave a blow with iron rod on the head of Balkar Singh and Sher Singh had hit Balkar Singh on his right side. Ramesh Kumar, accused had hit Balkar Singh on his mouth with the

handle of the spade. His brother raised an alarm and on this, the complainant and Ram Chander reached there and rescued Balkar Singh from the accused. The accused left the place of occurrence after extending threat to them. With these broad allegations, the FIR in the instant case was registered against three accused namely Sahab Singh, Ramesh Kumar and Sher Singh.

4. Balkar Singh injured was initially got admitted in C.H.C Shahabad and on 17.10.2001, he was referred to PGI. During the course of investigation, injury No.1 on the person of Balkar Singh was declared dangerous to life and Section 307 of the Indian Penal Code was added. The statements of the witnesses were recorded and the accused were arrested. After completion of the investigation, the report under Section 173 Cr.P.C was prepared and was presented in the competent Court.

5. After consideration of the material collected during the course of investigation, the learned Trial Court found that prima facie the offence punishable under Sections 323, 307, 506 read with Section 34 of the IPC was made out against the accused and they were ordered to be charge-sheeted accordingly. The accused pleaded that they were innocent and claimed trial.

6. To bring home the guilt of the accused, the prosecution examined nine witnesses. Dr. Ravinder Nath, Medical Officer, CHC Shahabad was examined as PW-1, who examined the only injured of the present case Balkar Singh and found the following injuries on his person:-

1. There was a diffused swelling 5 cm x 2 cm present on the left frontal area of scalp. A depression was also seen on the side of this swelling. Patient was unconscious and haematemesis was present. X-ray was advised.

2. Patient was having difficulty in breathing. X-ray of the chest

was advised.

3. There was guarding of the abdomen and patient had vomiting. X-ray was advised.

4. Patient's condition was serious and he was referred to PGI Chandigarh for further management and treatment.

7. As per him, the nature of injuries were subjected to X-Ray and all the injuries were caused by blunt weapon within a duration of six hours. He proved on record the carbon copy of the MLR as Ex.PA. On 27.10.2001, ASI Kartar Singh moved an application to seek his opinion with regard to the nature of injuries suffered by Balkar Singh and he had given his opinion Ex.PD/1 to the effect that injury No.1 in the MLR of the Balkar Singh would have been dangerous to life but for the medical treatment. He had rendered the said opinion on an application Ex.PD. He also give his opinion to the effect that injury No.1 described in the MLR of Balkar Singh could have been caused by blunt weapon like iron rod. In his cross-examination, he admitted that in Ex. PD/1, he had given the opinion about injury No.1 on the person of Balkar Singh that it could have been dangerous to life. He further clarified that actually he had intended that the injury No.1 would have been dangerous to life instead of could have been dangerous to life. He had never mentioned anywhere about injury No.1 would have been dangerous to life. The prosecution examined PW-2 SI Ram Singh, SHO who had completed the investigation and prepared the report under Section 173 Cr.PC. Subhash Chand, SI was examined as PW-3, who had registered the formal FIR Ex.PF at Police Station Shahabad. Head Constable Mukesh Kumar had prepared a scaled site plan Ex.PG with marginal notes and was examined as PW-4 by the prosecution. The prosecution further

examined PW-5 Virender Singh, complainant and he supported the case of the prosecution case, as narrated in the FIR. He admitted in his cross-examination that Sahab Singh accused and Ramesh Kumar accused were sons of his father's eldest brother Sher Singh, who was also an accused in the present case. He further admitted that the occurrence had taken place in five minutes and they were empty handed at that time. On 17.10.2001, Sahab Singh gave injury to his brother Balkar Singh and none else caused an injury. The prosecution examined PW-6 Balkar Singh injured, who deposed on similar lines and supported the case of the prosecution. The prosecution further examined Dr. M.N. Swamy, Senior Resident, Department of Neuro Surgery, PGI, Chandigarh as PW-7. He had prepared the discharge summary Ex.PK of Balkar Singh injured. As per him, Balkar Singh injured was operated upon by Dr. S.M and Dr. Parmod and discharge and the follow up card was Ex.PK/1. He further admitted that the operation was not performed by him on the patient/injured and he did not admit the patient in the hospital and had only prepared the discharge card in the summary. The prosecution further examined ASI Kartar Singh as PW-8, who was the initial Investigating Officer of the present case. The prosecution further examined PW-9 Dr.S. Mohindra, PGI, Chandigarh, who had operated Balkar Singh and had given the treatment to him. He further admitted that he had brought the original treatment file pertaining to the patient and the treatment slip was Ex.PL and discharge summary was Ex. PK, whereas the discharge card was Ex. PK/1. He further stated that the injury was grievous in nature, which was already recorded in the medical treatment. On a Court question, he stated that the nature of injury of this patient should be taken as dangerous to life.

8. After the closure of the prosecution evidence, the entire incriminating evidence was put to the accused in the shape of the statement under Section 313 Cr. PC and they pleaded their false implication. After this, the appellant closed the defence evidence.

9. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

10. Learned counsel for the appellant vehemently contended that in the present case, no offence under Section 307 IPC was made out against the present appellant and since the parties had amicably resolved all their disputes, the appeal may be disposed of on the basis of compromise between the parties. Learned counsel further contends that even the parties had entered into a compromise before the learned trial Court itself. However, the conviction was recorded under Section 307 IPC, consequently, the offences could not be compounded by the learned Trial Court. However, the fact regarding the compromise between the parties was also recorded by the learned Trial Court. Even before this Court, the compromise has been placed on record as Annexure A1 between the parties. Even Balkar Singh injured of this case, has filed an affidavit in the instant case and stated that the parties had compromised the matter between themselves and they have no objection, in case, the appellant is ordered to be acquitted or his sentence is reduced to the period already undergone by him, on the basis of the compromise between the parties.

11. Even the learned counsel appearing on behalf of the injured/complainant also stated that he has no objection in case, the appellant Sahab Singh is acquitted or his sentence is reduced to the period already

undergone by him. However, learned State counsel submits that the offence under Section 307 IPC is not compoundable and the submissions made by learned counsel for the appellant is liable to be rejected by this Court.

12. The first point for consideration that arises in this case is whether in the facts and circumstances of the present case, the offence under Section 307 IPC is proved against the appellant or not. Section 307 IPC reads as follows:-

***Attempt to murder:-**Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as to hereinbefore mentioned.*

***Attempts by life-convicts:-** When any person offending under this section is under sentence of imprisonment for life, he may , if hurt is caused , be punished with death.”*

13. A reading of the Section 307 IPC attracts the following ingredients to make out an offence punishable under Section 307 IPC:-

- (i) That the accused did an act;
- (ii) That the act was done with the intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury was in the ordinary course of nature was sufficient to cause death, or that the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all

probability cause death or such bodily injury as is likely to cause death; and

(iii) That the accused had no excuse for incurring the risk of causing such death or injury.

14. In the light of the evidence brought on record by the prosecution, it has to be ascertained as to whether the injuries on the person of Balkar Singh, injured were caused with such intention or knowledge and under such circumstances that if the accused caused death of Balkar Singh, he would have been guilty of murder.

15. From the evidence adduced by the prosecution, it is evident that the parties on both the sides were closely related. PW-5 Virender Singh, complainant admitted in his cross-examination that Sahab Singh accused and Ramesh accused were the sons of his father's elder brother Sher Singh, who was also accused in the present case. The said witness also admitted that the occurrence had taken place in five minutes. Only Sahab Singh had caused injury to his brother Balkar Singh and none else caused any injury to him. Apart from that, it was also apparent that the occurrence had taken place at the spur of the moment between the closely related parties on both the sides. Thus, it is apparent that the accused side had no intention to cause the death of Balkar Singh, the only injured. Even PW-5 Virender Singh is shown to be an eye-witness, but no injury was caused to him. Still further, the medical evidence produced in the case was also not sufficient to prove that the injuries caused on the person of Balkar Singh PW-6, injured were of such a nature that these would have caused the death of the complainant. The prosecution examined PW-1 Dr. Ravinder Nath, Medical Officer who clearly stated that injury No.1 in

the MLR of Balkar Singh would have been dangerous to life but for the medical treatment. Still further, the prosecution had further examined PW-9 Dr. S Mohindra, PGI Chandigarh, who stated that this injury was grievous in nature and the same was already recorded in the medical record. He proved on record the treatment slip as Ex.PL, discharge summary as Ex.PK and discharge card as Ex.PK/1. He further admitted that in the given situation for this patient Balkar Singh in the middle of the night, the surgery was only the answer and the patient could have been saved only with the surgery. He further clarified on Court question that the nature of injury in this case should be taken as dangerous to life.

16. If an injury inflicted on the victim is not sufficient in ordinary course of nature to cause death, the provisions of Section 307 IPC are not attracted in that case. In the instant case, PW-1 Dr. Ravinder Nath had given his opinion Ex. PD/1 to the effect that the injury No.1 was in the MLR of Balkar Singh would have been dangerous to life but for medical treatment. Thus, it is apparent that the injury No.1 was dangerous if the medical aid was not given to the patient. If the timely medical aid had not been given to the patient, he would have died and consequently, it is apparent that the ingredients of the offence under Section 307 IPC were completely missing in the instant case.

17. It has been held in the matter of **Piara Singh Vs. State of Punjab** **1996(2) RCR (Criminal)371 as follows:-**

“I have heard learned counsel for the parties and, with their assistance gone through the records of the case. There appears to be considerable merit in the contentions raised by learned defence counsel. PW8 Dr. J.K Sachdeva, after describing two injuries

*noticed by him on the person of Mukhtiar Singh clearly stated that in his examination-in-chief itself that injury No.2, which admittedly was the only injury which was serious in nature could be dangerous to life and could cause death of the injured in the ordinary course of nature if treatment was not given to him. Injury No.2 has been attributed to Piara Singh and the other injury which is simple in nature, has been attributed to Gulzar Singh appellant. In **Tej Ram vs. State of Punjab, 1978 CLR P&H 76** it was held that, “the injury in question had ruptured the lung of the victim and was described by the examining doctor as “dangerous to life and if not treated, i.e. to say that but for timely and medical aid the injured was likely to die. This is certainly not the type of the injury as would attract the provisions of Section 307 of the Code which envisages an injury sufficient in the ordinary course of nature to cause death. The injury described by the doctor was a lesser injury which would fall within clause Eighthly of Section 300 of the Indian Penal Code and be punishable under Section 326 thereof.” The same very view has been taken by this Court in two other decisions in **Gurjant Singh Vs. State of Punjab, 1983 (1) RCR 319** and **Narmail Singh Vs. Nihal Singh, 1979 PLR 151**. Following the dictum of law laid down in the decisions, referred to above, I hold that none of the appellants can be convicted under Section 307 Indian Penal Code.”*

18. In view of the above discussion, it is apparent that the offence under Section 307 IPC is not proved against the sole appellant and in view of the discussion made by this Court and the judgment passed by this Court in **Piara Singh Vs. State of Punjab** (supra), the offence proved against the appellant is under Section 326 IPC. Accordingly, the offences under Sections 323, 326, 506, 34 of IPC is proved against Sahab Singh the appellant.

19. Now adverting to the order of sentence, learned counsel for the appellant has argued that the matter has been compromised between the parties. Even it has been recorded in the impugned order of sentence that the parties were real brothers living in the same village and they had compromised the matter and would like to live peacefully and not as enemies and there is no bad blood between them and they did not have any latent or hidden agenda to harm each other. But since the offence under Section 307 IPC was not compoundable, the parties were not allowed to compound the offence under Section 307 IPC, by the learned Trial Court.

20. In the present case also the custody certificate has been produced by the learned State counsel and as per the custody certificate, the appellant has undergone three months and one day of actual sentence. Apart from that, the dispute was between the families of two real brothers and the appellant/accused is facing the agony of trial/appeal for the last 22 years. Even the parties are living peacefully in the village since the year 2004 i.e. for about 19 years. Consequently, the ends of justice would be suitably met if lenient view is taken in the matter. That it has been held by the Hon'ble Supreme Court in the matter of **Ramgopal and another Vs. State of Madhya Pradesh, 2021 (4) R.C.R. (Criminal) 322** as follows:-

*“10. The compendium of these broad fundamentals structured in more than one judicial precedent, has been recapitulated by another 3-Judge Bench of this Court in **State of Madhya Pradesh v. Laxmi Narayan & Ors., (2019) 5 SCC 688** elaborating:*

“(1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-

compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(2) Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(3) Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(4) xxx xxx xxx

(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc. "

(Emphasis Applied) "

11. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C., 1973 Any such attempt by the

court would amount to alteration, addition and modification of Section 320 Cr.P.C, 1973 which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., 1973 which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C., 1973 is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C., 1973 The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C., 1973 in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., 1973 even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the

*cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C., 1973 may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in **Narinder Singh & Ors. v. State of Punjab & Ors., (2014) 6 SCC 466** and *Laxmi Narayan (Supra)*.*

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

21. Keeping in view the above stated discussion and the law laid down by the Hon'ble Supreme Court, it is apparent that in the instant case, the dispute was between the families of two real brothers over a trivial issue. Even it has

been held that the offence under Sections 323, 326, 506, 34 of IPC is made out against the present appellant. However, the parties have resolved all their disputes and are living peacefully in the village for the last more than 19 years. Still further, even Balkar Singh, only injured has also file an affidavit to the effect that he no objection in case the appellant is ordered to be acquitted on the basis of compromise. Consequently, the parties are allowed to compound the offences in the present case and the judgment of conviction dated 01.12.2004 and order of sentence dated 06.12.2004, passed by the Court of Additional Sessions Judge (Adhoc), Fast Track Court, Kurukshetra are set aside and the appellant is ordered to be acquitted. The bail bonds of the appellant stand discharged and he may be released from custody, if not on bail and if not required in any other case.

22. All pending applications, if any, are also disposed off, accordingly.

23. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial court record be sent back.

02.05.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No