

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2677-SB-2016 (O&M)
Date of Decision: 28.07.2023

Jaspal

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-S-1801-SB-2016 (O&M)

Jugal Kishore and others

... Appellants

Versus

State of Punjab

... Respondent

3. CRA-S-1967-SB-2016 (O&M)

Jagdish and others

... Appellants

Versus

State of Punjab

... Respondent

4. CRA-S-1989-SB-2016 (O&M)

Sunil Kumar

... Appellant

Versus

State of Punjab

... Respondent

5. CRA-S-2315-SB-2016 (O&M)

Lakhwinder Singh and others

...Appellants

Versus

State of Punjab

... Respondent

6. CRA-S-2641-SB-2017(O&M)

Vinod Kumar @ Billa

... Appellant

Versus

State of Punjab

... Respondent

7. CRA-S-4385-SB-2016 (O&M)

Gurpreet Singh @ Gopi

.... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms.Samridhi Sareen, Advocate, Legal Aid Counsel
for the appellant(s) in CRA-S-2677-SB-2016, CRA-S-2315-SB-
2016 and CRA-S-4385-SB-2016.

Mr. Ashok Giri, Advocate for the appellant(s) in
CRA-S-1967-SB-2016 and CRA-S-2641-SB-2017).

Mr.Narinder S.Lucky, Advocate for the appellant(s) in
CRA-S-1801-SB-2016 and CRA-S-1989-SB-2016.

Mr.Iqbal Singh Mann, DAG, Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. By this common order, 7 appeals, details of which have been given in the heading, are being disposed of as they have been preferred against the judgments of conviction and orders of sentence dated 26.04.2016 & 14.07.2017 passed by the learned Additional Sessions Judge, Jalandhar whereby the appellants herein have been held guilty and sentenced to undergo rigorous imprisonment for 7 years, 5 years and 3 years respectively in FIR No. 122 dated 01.10.2009, under Sections 307, 326, 324 and 452 IPC at Police Station Lambra, District Jalandhar.

2. There are two versions of the same occurrence regarding which one common FIR was registered bearing No.122 dated 01.10.2009, under Sections 307, 326, 324 and 452 IPC at Police Station Lambra, District Jalandhar against accused Vinod Kumar alias Billa, Jagdish, Vijay Kumar, Ramesh Kumar alias

Vicky, Sunil Kumar, Rakesh Kumar alias Khoti, Darshana, Jugal Kishore, Balbir alias Kala, Gogi, Jaspal and Varinder alias Vicky. However, cross version of the occurrence was presented by Rakesh Kumar alias Khoti implicating accused Gurpreet Singh alias Gopi, Lakhwinder Singh alias Lucky, Narinder Kumar alias Nindi, Raman Kumar alias Kallu, Deepak Kumar alias Deepu, Davinder Kumar alias Gindri, Chander Bhan and Ashwani Kumar against whom a case under Sections 452, 323, 148 and 149 IPC was also registered with the same police station.

FACTUAL BACKGROUND

3. Prosecution case, in brief as it emerges from the record is that complainant Ganga Ram made a statement on 01.10.2009 to the effect that he had been engaged in farming on the land of Hardeep Singh Maan, resident of village Deh. On the previous night i.e. 30.09.2009, he was having his meal in his room and his wife Preeto and daughters Asha Rani and Kamaljit Kaur were also present there. At about 10.00 p.m. accused Billa, Jagdish alias Deesha and Dinesh alias Chirri, all three armed with *Kirpan*, Vicky son of Jugal Kishore armed with base ball bat and Vicky alias Vinod Kumar son of Balbir armed with *Datar* forcibly entered into his house. At that time electric bulb was on in the courtyard. Bhulla son of Jugal Kishore, Rakesh Kumar alias Mangi alias Khoti son of Jugal Kishore, Jugal Kishore son of Shankar Dass, Darshana wife of Balbir and Baby daughter-in-law of Jugal Kishore, all residents of Quadianwali were throwing brick bats from their house into the courtyard of the house of the complainant. Accused Billa and Chirri exhorted to locate Lakhwinder Singh @ Lucky for teaching him a lesson for extending help to the boys of Udhampur. Accused Billa gave a *kirpan* blow on the person of complainant Ganga Ram which he intercepted by raising his right arm resulting in injury on his right elbow. Jagdish alias Deesha gave *kirpan* blow

on the right side of the head of the complainant, accused Dinesh alias Chirri gave *kirpan* blow on the right side of back of his head, Vicky gave three base ball bat blows on the person of the complainant which hit him on his left leg, knee and at face resulting in uprooting of his teeth. On hearing hue and cry, his son Lakhwinder Singh alias Lucky came forward to rescue him but the assailants gave him numerous injuries on his head, face and other parts of his body. Accused Billa gave injury to Kamaljit Kaur, daughter of the complainant with *kirpan*. The assailants also gave injuries to his wife Preeto. Accused Gogi and Vijay Kumar were standing in Goli Chowk and obstructed the way of the complainant party while exhorting that they should not be allowed to escape and that they be killed. When the family of the complainant raised hue and cry, Tulsi, brother of the complainant and other persons came to their rescue and on seeing them, all the accused fled from the spot after leaving their respective weapons.

4. On the basis of statement of the complainant, the investigating machinery swung into motion and after completing usual formalities, challan was presented in Court against accused Vinod Kumar alias Billa, Jagdish, Vijay Kumar, Ramesh Kumar alias Vicky, Sunil Kumar alias Bhulla, Rakesh Kumar alias Khoti, Darshana, Jugal Kishore, Balvir alias Kala and Gogi. The names of two more accused namely Jaspal and Varinder alias Vicky were added by way of presentation of supplementary challan. They all were charge-sheeted under Sections 148, 452, 307 and 324 IPC to which they all pleaded not guilty and claimed trial.

5. Complainant Rakesh Kumar alias Khoti in cross version suffered a statement on 01.10.2009 to the effect that on 30.09.2009 at around 8.30/8.45 p.m., Lakhwinder alias Lakhi, Narinder Kumar alias Nindi, Raman Kumar alias Kallu, Gindri, Deepu, Chander Bhan, Gopi and Ashwani Kumar along with two-

three unknown persons forcibly entered his house and gave beatings to his brothers Vicky and Sunil. He, his brother Chirri and their father Jugal Kishore were not at home at that time. On hearing hue and cry they came and went to the roof of their house and started throwing bricks towards the accused upon which accused Gopi, Ashwani and their accomplices fled from the spot. Thereafter he, his father and his younger brother Chirri came down from the roof. The accused had dragged his uncle Jagdish to their house and gave him beatings. The complainant party entered the house of Lakhwinder alias Lucky and caused injuries to them. They rescued their uncle Jagdish from the clutches of accused. In this scuffle, accused Ganga Ram gave iron *patti* blow on his right arm. Accused Lucky gave a blow with the handle of Toka machine which he warded off by raising his right hand but it hit on his little finger and adjoining finger of right hand. Accused also gave injuries to his brother Vicky, Sunil and his father Jugal Kishore. On the basis of this statement, cross version of FIR bearing No. 122 dated 01.10.2009, P.S. Lambra , Jalandhar was registered under Section 452, 324, 323, 148 and 149 IPC. On finding a prima facie case for the commission of offence punishable under Sections 148, 452, 324 and 323 read with Section 149 of the IPC, they all were chargesheeted to which they all pleaded not guilty and claimed trial.

CONTENTIONS

6. Learned counsel(s) appearing for the appellants contend that they are not assailing the impugned judgment of conviction dated 26.04.2016/14.07.2017 on merits and restrict their prayers for modification of the orders dated 26.04.2016/14.07.2017 on quantum of sentence to that of the sentence already undergone by the appellants. The appellants in CRA-S No.2677-SB of 2016, CRA-S No.1967-SB of 2016, CRA-S No.1801-SB of 2016 and CRA-S No.1989-

SB of 2016 were convicted under Sections 307 read with Section 149 IPC, 324 read with Section 149 IPC, 148 IPC, 452 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for a period of 7 years. The appellant-Vinod Kumar @ Billa in CRA-S No.2641-SB of 2017 was convicted under Sections 148, 452, 307 read with Section 149 IPC, 324 read with Section 149 IPC and 323 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for a period of 5 years whereas the appellants in CRA-S No.2315-SB of 2016 and CRA-S No.4385-SB of 2016 were convicted under Sections 324, 323 read with Section 149 IPC, 148, 452 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for a maximum period of 3 years.

7. Learned counsel(s) for the appellants submit that injuries attributed to the complainant/injured persons were simple in nature and therefore, appellants ought not to have been charged with and convicted under Section 307 IPC. It is further contended that the appellants herein have already undergone a substantial sentence out of the total sentence awarded to them. There is also no opinion by the doctor with regard to any of the injury being dangerous to life. They have reformed and desire to live a normal and peaceful life. It is also contended by learned counsel(s) for the appellants that there is no minimum sentence provided under Sections 307, 324, 323, 452 IPC and therefore, prayed that orders of sentence of the appellants be modified to that of already undergone.

8. Per contra, learned State counsel opposes the prayer of the appellants for modification of the order of sentence to that of already undergone on the ground that the appellants have been convicted for a serious crime, as such, they do not deserve any leniency. It is also contended that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record.

ANALYSIS AND OBSERVATION

9. Undisputedly, it is a case of version and cross-version wherein allegations levelled by complainants are that injuries were inflicted upon them at the hands of the other party. The FIR in question is an outcome of a dispute that arose amongst neighbours, however, after the incident, till now, no new dispute has been arisen between the parties and they are living in harmony. It is submitted by the counsel(s) for the appellants that the FIR in question was registered in the year 2009 and the appellants have been suffering the agony of trial from last about 14 years as the appeals are also continuation of trial, therefore, they have prayed that the order of sentence be modified to that of already undergone.

10. A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546*** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

A two Judge Bench of the Hon'ble Supreme Court in ***Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633*** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing

the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused."

11. A two Judge Bench of the Hon'ble Supreme Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

12. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the

accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

13. A perusal of the *ratio decidendi* culled out in the above-mentioned judgments of the Hon’ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

14. As per the custody certificates produced by the learned State counsel, details of total period undergone out of the sentence imposed on the appellants are tabulated as under:-

CRA-S-2677-SB-2016		
Name of the appellant	Sentence awarded	Total/Actual Period Undergone including remission
Jaspal	7 years	2 Years 5 Months 4 Days
CRA-S-1801-SB-2016		
Jugal Kishore	7 years	8 months 4 days
Ramesh Kumar @ Vicky	7 years	1 year 6 months 11 days
Rakesh Kumar @ Khoti	7 years	2 years 2 months 27 days
CRA-S-1967-SB-2016		
Jagdish	7 years	1 Year 3 months 11 days
Vijay Kumar	7 years	1 year 1 month 21 days
Darshana	7 years	10 months 17 days

Balbir @ Kala	7 years	11 months 15 days
Gogi	7 years	1 year 1 month 16 days
CRA-S-1989-SB-2016		
Sunil Kumar	7 years	2 year 5 months 04 days
CRA-S-2315-SB-2016		
Lakhwinder Singh @ Lucky	3 years	Vide order dated 26.04.2016, sentence of the appellants herein had been suspended by the trial Court till 26.05.2016 and further in the appeal preferred by them before this Court, sentence of the appellants was also suspended by this Court vide order dated 11.07.2016 and therefore, they have not remained in custody.
Raman Kumar @ Kallu	3 years	
Deepak Kumar @ Deepu	3 years	
Davinder Kumar @ Gindri	3 years	
Chander Bhan	3 years	
CRA-S-2641-SB-2017		
Vinod Kumar @ Billa	7 years	10 months 13 days
CRA-S-4385-2016		
Gurpreet Singh @ Gopi	3 years	4 months 28 days

15. A perusal of the judgment of conviction passed by the trial court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Counsel for the appellants have not assailed the judgment of conviction on merits, rather they have restricted their prayer only qua quantum of sentence.

CONCLUSION

16. The FIR in the present case was lodged on 01.10.2009 and the appellants have suffered the agony of trial for about 14 years. After their conviction, they have grown into law abiding citizens with a desire to live a normal and peaceful life. After overall assessment of evidence available on record, this Court is of the considered opinion that it is a case of free fight in which every accused-appellant is liable for his individual act and in the absence of any specific opinion of the doctor with regard to any injury being declared as dangerous to life, conviction under Section 307 PC would not sustain. Out of total sentences of 7 years/5 years/3 years awarded to the appellants respectively, they have already undergone a substantial period of the sentence. Since learned counsel(s) for the appellants have not assailed the judgments of conviction on merit and the accused-

appellants are living in the same vicinity peacefully after burying the hatchet, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 7 years/5 years/3 years respectively awarded to the appellants is reduced to the period already undergone by them.

17. Consequently, the present appeal is disposed of in the following terms:-

- (i) The judgments dated 26.04.2016 and 14.07.2017 passed by the learned Additional Sessions Judge, Jalandhar convicting the appellants are upheld, however, orders of sentence dated 26.04.2016 and 14.07.2017 are modified and the sentence of rigorous imprisonment for 7 years/5 years/3 years awarded to the appellants respectively are reduced to the period of sentence already undergone by them.
- (ii) The sentence of fine imposed upon the appellants by the trial Court is kept intact except qua appellants in CRA-S-2315-SB-2016. The appellants (except the appellant in CRA-S-2315-SB-2016) are directed to deposit the amount of fine, if not already paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellants shall be liable to be taken into custody and made to undergo RI for two months in cases where the maximum sentence imposed is 7 years and one month in cases where maximum sentence imposed is 5 years.
- (iii) Since the order of sentence of the appellants in CRA-S-2315-SB-2016 has remained suspended vide orders passed by the trial Court as well as by this Court and they have not undergone any period of sentence, however, fine as imposed upon the appellants by the trial

Court is enhanced to Rs.10,000/- qua each of the appellants, which shall be deposited by them to the District Legal Services Authority, Jalandhar and a due receipt of the same be furnished in the trial Court within a period of one month from the date of receipt of certified copy of this order and in case of default of payment of fine, they shall be liable to be taken into custody and made to undergo RI for one month.

18. Bail bonds and surety bonds of the appellant stand discharged.
19. Pending miscellaneous application(s), if any, shall also stand disposed of.
20. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)

JUDGE

July 28, 2023

Pankaj*

Whether reasoned/speaking

Whether reportable

Yes

Yes