

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH  
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CRA-S-799-SB-2015 (O&M)  
Reserved on: 31.08.2023  
Pronounced on: 02.09.2023

Krishan  
Vs.  
..... Appellant

State of Haryana and others  
..... Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA  
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Present: - Mr. Gaurav Mohunta, Advocate, for the applicant/appellant.  
Mr. P.K. Aggarwal, DAG, Haryana.

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DEEPAK GUPTA, J.

Appellant Krishan, besides two others namely, Rakesh @ Doctor and Vikki @ Banjara faced trial in case FIR No.181 dated 10.06.2012 registered at Police Station Sadar Dadri under Sections 147, 148, 149, 323, 325, 307 and 506 IPC. Two more accused being juvenile were sent to the Juvenile Board. After conclusion of trial, appellant and two others were convicted under Section 148, 323, 325, 307 and 506 Part II read with Section 149 IPC vide judgment dated 04.02.2015 in Sessions Case No.21 of 2013 by Id. Additional Sessions Judge, Bhiwani. Vide a separate order dated 04.02.2015, the convict Krishan along with two others were sentenced as under: -

| Offence/Under Section         | Imprisonment                                          | Fine          | In default of fine imprisonment |
|-------------------------------|-------------------------------------------------------|---------------|---------------------------------|
| 148 read with Section 149 IPC | Rigorous imprisonment for a period of two years each. | ₹2,000/- each | Imprisonment of three months    |

|                                       |                                                         |               |                             |
|---------------------------------------|---------------------------------------------------------|---------------|-----------------------------|
| 323 read with Section 149 IPC         | Rigorous imprisonment for a period of one year each.    | ₹1,000/- each | Imprisonment of one months  |
| 325 read with Section 149 IPC         | Rigorous imprisonment for a period of three years each. | ₹3,000/- each | Imprisonment of four months |
| 307 read with Section 149 IPC         | Rigorous imprisonment for a period of seven years each. | ₹5,000/- each | Imprisonment of six months  |
| 506 Part-II read with Section 149 IPC | Rigorous imprisonment for a period of three years each. | ₹3,000/- each | Imprisonment of four months |

The substantive sentences were directed to run concurrently.

However, the period undergone during trial was directed to be set off.

2. Against the aforesaid judgment of conviction and order of sentence, the present appeal was filed.

3. During pendency of the appeal, parties entered into a compromise, inasmuch as the injured of the case accepted compensation of ₹6 lakh from the petitioner towards compensation for the injuries received by him including the expenses incurred on the treatment. Said compromise took the shape of settlement recorded before the Mediation and Conciliation Centre of this Court on 24.05.2023, which has been signed not only by the petitioner but also by the two injured namely Rajesh @ Sanjay and complainant Sunil Kumar.

4. In the light of the aforesaid compromise, submission of ld. counsel for the petitioner is that as the matter stands compromised between the parties, so this Court should exercise its power under Section 482 Cr.P.C. to set aside the judgement of conviction and order of

sentence and to acquit the petitioner. For that, ld. counsel has relied upon *Balwan Singh and others Vs. State of Haryana, 2020(3) RCR (Criminal) 39; Kaushalya and others Vs. State of Haryana and others, 2019(3) RCR (Criminal) 695 and Ayyappan Vs. State of Kerala, 2018(4) RCR (Criminal) 287.*

5. In the case of *Balwan Singh and others (Supra)*, conviction was recorded by the trial Court under Sections 324, 326 and 452 read with Section 34 IPC, which was upheld by the Appellate Court. During pendency of the revision before this High Court, compromise was effected and this Court set aside the judgments of conviction and sentence passed by the Courts below and acquitted the accused-petitioner of the charges on the basis of compromise.

6. Similarly, in the case of *Kaushalya and others (Supra)*, conviction was recorded under Section 452 IPC, besides Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. During pendency of the appeal, compromise was effected between the parties and this Court set aside the conviction recorded by the Court below and recorded acquittal of the accused, by accepting the compromise.

7. In the case of *Ayyappan (Supra)*, compounding of the offence under Section 326 IPC was allowed by Hon'ble Supreme Court by taking into account the settlement arrived at between the parties, though the conviction had been upheld up to the High Court.

8. The alternative contention raised by ld. counsel for the appellant is that appellant had already undergone custody period of 2 years 7 months and 9 days out of the total 7 years of imprisonment

imposed by the Court and therefore, having regard to the compromise having been effected between the parties, the order of sentence be modified and the appellant may be sentenced for the period already undergone by him. For this, ld. counsel has placed reliance on a decision of the Supreme Court in the case of ***Murali Vs. State represented by Inspector of Police, (2021) 1 Supreme Court Cases 726*** and decisions of this Court in CRA-S-1519-SB-2004 titled as ***Rajbir and others Vs. State of Haryana*** decided on 03.05.2023; and CRA-S-1615SB-2008 titled as ***Vinod and others Vs. State of Haryana and others*** decided on 01.05.2023.

9. Though, ld. State counsel has no serious objection to the alternative prayer of the appellant to sentence him for the period already undergone by him having regard to the compromise, but ld. State counsel has raised serious objection to set aside the conviction on the basis of compromise between the parties.

10. I have considered submissions of both sides and have appraised the record.

11. In the case of ***Murali (Supra)***, Hon'ble Supreme Court held as under: -

*“There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 (“CrPC”) does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants’ offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.”*

12. It is clear from the aforesaid legal position explained by Hon'ble Supreme Court that in view of the unequivocal language of Section 320 (9) Cr.P.C. prohibiting compounding except as permitted under the provision, it is not possible to compound the offences committed by the appellant of this case, which also includes offence under Section 307 IPC. However, in the case before Hon'ble Supreme Court, the appellants had already served significant portion of the sentences and so keeping into account the compromise between the parties, Hon'ble Supreme Court allowed appeal to the extent of reducing the sentence for the period already undergone by them.

13. Similar view has been taken by two Coordinate Benches of this High Court in the cases of *Rajbir and others (Supra)* and *Vinod and others (Supra)*.

14. In view of the aforesaid legal position, particularly as explained in *Murali (Supra)* case, the first prayer made by Ld. counsel of for the appellant so as to set aside the impugned judgment of conviction and sentence on account of compromise between parties, is hereby declined.

15. Coming to the alternative prayer, as per the prosecution allegations, the occurrence had taken place on 04.06.2012, when Sunil and Sanjay were assaulted by the appellant and others with weapons like lathi, danda etc. The FIR was lodged on the complaint of Sunil. During investigation, the Medico Legal Reports were collected. During trial, prosecution examined not only the two injured i.e., Sunil Kumar and Rajesh @ Sanjay, but further produced the doctor witnesses, who had provided treatment to the injured. As per the medical evidence on record,

Sunil was found to have sustained two injuries, one of which was a lacerated wound on the parietal region skull and other was in the form of pain on his right thigh. Injured Sanjay was found to have sustained one injury, which was a lacerated wound on the parietal region skull. The radiological examination and the CT scan found resolving contusions in brain of Rajesh @ Sanjay and so, injury on his person was declared dangerous to life. Both the injured supported the prosecution case and their testimonies found corroboration from the medical evidence.

16. After going through the impugned judgement dated 04.02.2015 passed by the Id. trial Court, I find no legal infirmity therein, as the conviction has been recorded based on proper appreciation of evidence on record. Said conviction, even otherwise has not been seriously challenged by Id. counsel for the appellant on merits, though setting aside of the said judgment was sought on account of the compromise. As such, the conviction recorded by the trial Court vide judgment dated 04.02.2015, is hereby upheld.

17. As far as the order of sentence dated 04.02.2015 is concerned, the effective sentence awarded to the appellant is 7 years rigorous imprisonment under Section 307/149 IPC, as rest of the sentences awarded under other provisions are to run concurrently. Prior to suspension of sentence vide order dated 04.08.2016 by this Court, the appellant had already undergone total sentence of 2 years 7 months and 9 days including earned remission, though the actual sentence undergone by him is 1 year 10 months and 9 days, as per the custody certificate dated 04.08.2016 available on record. The said custody certificate further reveals that appellant is not involved in any other criminal case.

18. Apart from above, the parties have arrived at amicable settlement before Mediation and Conciliation Centre of this Court. Injured Rajesh @ Sanjay has accepted an amount of ₹6 lakh as compensation towards the injuries received by him and the expenses incurred on his treatment from the appellant, by way of a banker's cheque and the other injured-complainant Sunil Kumar has endorsed the settlement. All the parties are the residents of the same village. Neither there is anything on record nor any averment that after the occurrence which had taken place on 04.06.2012, there was any scuffle amongst the parties. Meaning thereby, parties are now residing harmoniously in the village. Appellant has already undergone substantial period of sentence out of the total sentence. Sentence was suspended on 4.8.2016 and so, it will not be in the interest of justice to send the appellant behind bars after such a long time, having regard to the compromise.

19. Considering all the aforesaid facts and circumstances, the impugned order of sentence is modified to the extent that appellant is sentenced to undergo imprisonment for the period already undergone by him.

Disposed of.

Pending application(s), if any, shall stand disposed of.

**(DEEPAK GUPTA)**  
**JUDGE**

**02.09.2023**

*Vivek*

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No  
Yes/No