
(2000) 03 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 368-SB of 1989 and Criminal Miscellaneous No. 36830 of 1999

Jawala Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Citation : (2000) 3 AICLR 453 : (2000) 3 RCR(Criminal) 166

Hon'ble Judges : T.H.B.Chalapathi, J

Judgement

T.H.B. Chalapathi, J. (Oral)

1. This appeal is directed against the sentence and conviction order passed by learned Additional Sessions Judge, Sirsa in Sessions trial No. 11 of 1988 on 17.8.1989, by which the five appellants have been convicted for the offence under Sections 326, 324, 323 IPC read with Sections 149, 148 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs. 600/ each for the offence under Section 326 IPC read with Section 149 IPC, R.I. for a period of one year and to pay a fine of Rs. 200/ each for the offence under Section 324 IPC read with Section 149 IPC and R.I. for six months and to pay a fine of Rs. 100/ each for the offence under Section 323 IPC read with Section 149 IPC and R.I. for a period of one year and to pay a fine of Rs. 200/ each for the offence under Section 148 IPC.

2. The appellants and the complainants filed an application to dispose of the appeal in view of the compromise effected between them. Since the offence under Section 326 IPC is not compoundable even with the permission of the court, I had gone through the record and grounds of appeal.

3. The case of the prosecution in brief is that civil litigation was pending in regard to the possession of land between the parties. Proceedings were also pending under Sections 107/151 Cr.P.C. On 3.9.1987, at about 9 a.m. when the complainant Gurjant Singh, his brother Jagjit Singh and others were present at

the bus stand at village Jendwala Jatan to catch a bus for Dabwali, accused 4 and 5 Bella Singh and Maghar Singh were already present at the bus stand armed with lathis and in the meanwhile accused Manjit Singh, Jawala Singh, Jagtar Singh and Jagsir Singh alongwith one Bachan Singh came there in a tractor armed with double barrel gun, gandasa, barchha and lathi. Manjit Singh accused asked his coaccused to catch hold of the complainant, on which the complainant and his brother tried to run away but Manjit Singh accused fired a shot from his gun. Complainant Gurjant Singh managed to escape while Jawala Singh, Jagtar Singh and Maghar Singh gave injuries to his brother Jagjit Singh with their weapons. On the basis of statement of Jagjit Singh, a case was registered and investigation was taken. After completion of investigation, challan was presented against the accused 2 to 6. Accused Manjit Singh was summoned on an application filed under Section 319 Cr.P.C. Charges have been framed for the offences under Sections 148, 307 IPC and under Section 307 read with Section 149 IPC against all the accused, to which the accused pleaded not guilty. In order to prove the guilt of the accused, the prosecution examined 11 witnesses and marked certain documents. After closure of the evidence, accused were examined under Section 313 Cr.P.C. and their statements were recorded. The accused pleaded that they have been falsely implicated in the case on account of previous enmity. In defence, the accused examined one witness. On consideration of the evidence on record, learned Additional Sessions Judge convicted the accused and sentenced in the manner as stated above.

4. Aggrieved by the said conviction and sentence, the accused preferred this appeal.

5. There cannot be any doubt that Jagjit Singh sustained grievous injuries. PW10, Medical Officer who examined Jagjit Singh on 3.9.1987 found 22 injures on his person. PW6, who is Medical Officer in Civil Hospital, Sirsa deposed that he found fracture of left peristal bone and fracture of distal phalanx of right thumb. Ex.PF is his report while Ex.PF/17 are the Xrays taken by him. Thus it is evident that Jagjit Singh sustained grievous injuries. In regard to the occurrence, the prosecution examined Gurjant Singh, who is an eye witness and Jagjit Singh, PW2. The evidence of PW1 and PW2 is consistent. Their evidence clearly shows that the accused attacked them when they were at the bus stand and that the accused were armed with weapons.

6. It is no doubt true that the accused No. 1 is said to have opened fire, but none was injured. After going through the evidence of PWs 1 and 2 and the medical evidence, I am satisfied that the accused have been rightly convicted for the offence under Section 326 read with Section 149 IPC and also for the offence under Sections 324, 323 IPC read with section 149 IPC. I do not, therefore, find any ground warranting interference with the conviction of the accused.

7. The fact remains that the incident took place in the year 1987 i.e. more than 13 years ago. The accused except Manjit Singh have undergone imprisonment for a period of 1 to 11/2 months. The complainant had entered into a

compromise and they received compensation for the injuries sustained by Jagjit Singh. Complainant Gurjant Singh present in Court states that there is compromise between him and his brother on the one hand and the accused on the other hand. It was held by the Apex Court in case of Ram Lal v. State of J & K, 2000(1) RCR(CrL.) 92 (SC) : JT 1999(1) SC 147 that the factum of compromise can be taken into account while reducing the imprisonment to the period already undergone. In case of Ram Phal and other v. State of M.P., JT 2000(1) SC 265, the Apex Court termed the compounding of the offence taking into account the fact that the occurrence was of the year 1987. In case of Surendra Nath Mohanty v. State of Orissa, 1999(2) RCR(CrL.) 683 : JT 1999(3) SC 408 , it was held by the Supreme Court that factum of compromise can be taken into consideration while reducing the sentence. It is brought to my notice that accused 1 to 4 have been in jail for a period of 1 or 1/12 months during the pretrial stage, while accused No. 5 has been granted anticipatory bail. The proceedings in the trial Court cannot be quashed on the ground of compromise. The petition is, therefore, dismissed.

8. Having regard to the facts and circumstances of the case, I reduce the sentence of accused appellants 1 to 4 to the period, during which they have been in jail and enhance the sentence of fine to Rs. 1000/ in addition to the fine imposed by the trial Court for the offence under Section 326 IPC read with Section 149 IPC while maintaining the sentence of fine imposed by learned Additional Sessions Judge for the offence under Section 324 IPC read with Section 149 IPC, and under Section 323 IPC read with Section 149 IPC and also for the offence under Section 148 IPC. I sentence the 5th appellant Jagsir Singh to undergo imprisonment till the rising of the Court and to pay a fine of Rs. 2000/ in addition to the fine already imposed by the learned Additional Sessions Judge under various counts. In default of payment of enhanced fine, the accused shall undergo simple imprisonment for a period of 3 months. The sentence of imprisonment on all charges imposed by the trial Court is hereby set aside subject to modification as stated above. Enhanced amount of fine has been deposited in this Court.