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**(2004) 03 P&H CK 0023**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Appeal No. 319-SB of 1991**

Vijay Pal Singh and others

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 31-03-2004

**Acts Referred:**

**Citation :** (2004) 2 CCC 262 : (2004) 3 RCR(Criminal) 600

**Hon'ble Judges :** Jasbir Singh, J

**Advocate :** Mr. Ajai Lamba, Advocate. Mr. Rattan Singh, AAG, Haryana.,  
Advocates for appearing Parties

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## Judgement

Jasbir Singh, J.

1. This order will dispose of two Criminal appeals bearing Nos. 319SB of 1991 and 324SB of 1991 arising out of the same judgment and order dated 8.8.1991 and 9.8.1991 respectively.

2. Initially appellants in both these appeals were put to face trial for commission of offences under Sections 148, 452, 307, 149, 323/149, 342/149, 436/149 of IPC. It was case of prosecution that appellants, by forming an unlawful assembly and in pursuance to their common object, caused injuries to Tej Ram, Vijay Kumar and Smt. Kanta Devi. At the time of occurrence, they were armed with deadly weapons and they had also committed house trespass by entering into house of Tej Ram PW. It was also allegation against appellants that they had wrongly confined Vijay Kumar in the house of Atma Ram.

3. After completion of investigation, final report was submitted before the competent court for trial. Appellants were chargesheeted to which they pleaded not guilty and claimed trial. Prosecution led evidence to prove their guilt. After completion of prosecution evidence, statements of accused appellants were recorded under Section 313 of Cr.P.C., wherein they denied all allegations appearing against them in prosecution evidence and pleaded false implication. It was further stated by them that they had been implicated at the instance of Sh.

Rajiv Sagar, the then Commandant of HAP Hisar with whom they had old enmity. They also led evidence in defence. Trial court on appraisal of evidence available on the record, acquitted accused appellants so far as charges under Sections 307/342/436/149 of IPC are concerned. Three of the accused namely Atma Ram, Ram Pyari and Sharda have been acquitted however, qua appellants, following order was passed regarding sentence :

"All the 7 accused convicts are, therefore, sentenced as under :

- (i) For the offence under Section 148 IPC 2 year R.I. each
- (ii) For the offence under Section 323/149 IPC One year R.I. and a fine of Rs. 1000/ each.
- (iii) For the offence under Section 452 IPC 3 years R.I. and a fine of Rs. 1000/ each.

In default of payment of fine, each accused shall further undergo rigorous imprisonment for a period of one year. All the sentences except the sentence awarded in lieu of the fine shall run concurrently. Out of the amount of fine, if paid, a sum of Rs. 4000/ shall be paid to PW Vijay Kumar and a sum of Rs. 3000/ shall be paid to Smt. Kanta Devi in lieu of compensation."

4. It is not necessary to give further details of facts of the case as Sh. Lamba has confined his arguments only regarding quantum of sentence. It has been stated that appellants are the only bread winners for their families and most of them were young at the time of alleged occurrence. May be without knowing consequences of their act, they might have committed the offence with which they were charged and if at this stage, they are sent behind the bars, not only they but their families will also suffer. He further states that appellants and the injured were residents of the same locality and it was a dispute between landlord and tenant. After their conviction in this case, appellants had not involved themselves into any other similar activity and now they are residing in peace. Sh. Lamba states that if at this stage they are asked to undergo remaining part of their sentence it will vitiate atmosphere in the locality and will be prejudicial to the peace and harmony in that area. He also brought it to the notice of the Court that during trial, appellants have undergone about one month of imprisonment. He prays that leniency be shown and a chance be given to them to rehabilitate in life and sentence be reduced to the one already undergone by them. He also brought it to the notice of the court that at the time of alleged occurrence, injuries were also caused to Vijay Pal and Hukan Chand, appellants.

5. Sh. Rattan Singh, AAG, Haryana appearing for the State, by referring to the evidence on record, has vehemently argued that guilt of the appellants accused was proved on record and the punishment awarded to them was in proportion to the offence committed. He prayed that appeal be dismissed having no substance, however, he failed to rebut other arguments raised by counsel for the appellants.

Heard learned counsel for the parties.

This court feels that purpose of criminal Justice is not only to bring discipline, peace and harmony in the society but is also to give an opportunity to an erring individual to reform himself. This desired purpose seems to have been achieved during the pendency of this appeal, which is pending for the last more than 13 years.

6. Their Lordships of the Supreme Court in *Karamjit Singh v. State (Delhi Admn.)*, 2000(3) RCR(Crl.) 561 (SC) : 2001(9) Supreme Court Cases 161 , observed as under :

"Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such case : a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person, who has been found to have committed offence in the facts and circumstances placed on record, would only have a hardening society at large. Such a situation, has to be avoided, again within the permissible limits of law."

7. In *Tarak Nath Singh and another v. State of West Bengal*, 1998(1) Supreme Court Cases (Criminal) 587, their Lordships of Supreme Court, keeping in view the fact that the occurrence took place 18 years earlier to the decision of appeal and the parties were relatives, reduced the sentence of the period already undergone.

8. Similar is the opinion expressed by two Division Benches of this Court in *State of Punjab v. Gurmail Singh*, 2002(2) RCR (Criminal) 600 (P&H). In that case in an appeal against acquittal, accused were convicted. However, they were sentenced to a term of imprisonment already undergone, keeping in view the fact that incident had occurred in the year 1981.

9. To the same effect is the opinion of this Court in *Chhota Singh v. State of Punjab*, 1998(1) RCR (Criminal) 467 (P&H).

10. Counsel for the appellants has also placed reliance upon a judgment of Supreme Court in *Mohammad alias Biliya v. State of Rajasthan*, (2000) 10 Supreme Courts Cases 486, wherein, in a case under Section 304 Part II IPC,

leniency was shown to the accused in that case and they were ordered to be released on probation.

11. To support his contention, counsel for the appellants has also relied upon judgment of the Hon"ble Supreme Court in Mohinder Pal Jolly v. State of Punjab, AIR 1979 Supreme Court 577, wherein after convicting the appellant accused therein for commission of an offence under Section 304 Part II IPC, their Lordships of the Supreme Court observed in para No. 12 as under :

"12. Even so on the facts and in the circumstances of this case we do not feel persuaded to let off the appellant with an imposition of fine only. We, however, thought that sentence of three years rigorous imprisonment would meet the ends of justice in this case. We were informed at the Bar and an affidavit sworn by the appellant's wife was also filed before us to the effect that the appellant was in jail for about nine months as an under trial prisoner and for about four months after conviction. Thus, he has already undergone imprisonment for a period of about a year and a month. The occurrence took place more than a decade ago. The appellant had to pass this long ordeal all these years both mentally and financially. Considering, therefore, the totality of the circumstances while maintaining the imposition of fine of Rs. 10,000/ and in default two years further imprisonment, we reduce his substantive term of imprisonment to the period already undergone and maintain the conviction of the appellant not under Part I of S. 304 of the Penal Code but under Part II."

12. In the case in hand, it is apparent from the records that at the time of alleged occurrence, injuries were also caused to two appellants namely Vijay Pal and Hukam Chand. It is coming out from facts of this case that it is a dispute between landlord and tenant. Most of appellants were young at the time when alleged occurrence had taken place. They continued to face agony of trial for about one year and thereafter, their appeal is pending in this Court. As per information supplied, after their conviction in this case they had disciplined themselves and, had not committed any similar offence again. It is also clear from the judgment that so far as serious offences under Sections 307, 342 and 436 IPC are concerned, all of them were acquitted all together. Three of the accused named in the FIR were exonerated by the trial Court. Appellants are the only bread earners for their families and if at this stage they are sent behind the bars, their families will suffer and it will also be prejudicial to the peace and harmony in the locality. Appeal is pending for the last more than 13 years.

13. Keeping in view the provisions of Article 21 of the Constitution of India and interpretation thereof, judicial compassion can play a role and leniency can be shown to the appellant accused for mental agony suffered by them on account of long drawn litigation before the trial court and also due to pendency of this appeal in this Court for the last more than 13 years.

Keeping in view the verdict of their Lordships of the Supreme Court in Baldev Singh and another v. State of Punjab, 1995(3) RCR(Cr.) 750 (SC) : AIR 1996

Supreme Court 372 , injured Vijay Kumar and Kanta Devi are also entitled to some more compensation than the one as awarded to them by the trial court. All the appellants have also remained in jail for about one month. This fact has not been controverted by the State counsel.

14. Accordingly, conviction is upheld. Sentence is reduced to the one already undergone by the appellants. Sentence of fine is maintained and further enhanced to Rs. 14,000/ over and above the fine already imposed by the trial Court, to be paid equally by all the appellants. They are directed to deposit the amount of enhanced fine in the trial court within 2 months from the date of receipt of copy of this order failing which their appeal shall be deemed to have been dismissed. On deposit so being made, trial court is directed to issue notice to the injured namely Vijay Kumar and Kanta Rani/their legal representatives and disburse that amount to them forthwith (1/2 share each).

With the abovementioned modification qua sentence, appeals are disposed of.