HAZARA SINGH

*v.*

RAJ KUMAR AND ORS.

(Criminal Appeal Nos. 603-604 of 2013)

APRIL 18, 2013

**[P. SATHASIVAM, M.Y. EQBAL AND A.K. SIKRI, JJ.]**

*Penal code, 1860 – s.307 – Conviction under – Trial court sentenced two accused to 5 years RI and another two accused to 3 years RI – High Court in appeal upheld the conviction, but reduced the sentence to the period already undergone – Held: conviction upheld – Reduction of sentence by High Court without appreciating the nature of offence, grievous injuries of witnesses/Victims, is unsustainable.*

*Sentence/Sentencing – Sentencing policy – It is duty of the court to consider all the relevant factors to impose an appropriate sentence – The punishment awarded should be directly proportionate to the nature and magnitude of the offence – Undue sympathy to impose inadequate sentence would do more harm to the Justice system and undermine the public confidence in the efficacy of law.*

**Respondents (the 4 accused persons) were prosecuted for attempting murder of 3 persons, including the appellant-complaint. They were charged u/s 148, 149, 323, 324, 435, 447 and 307 IPC. The trial court convicted them. For the offence punishable u/s 307 IPC, accused 'P'and 'B' were sentenced to undergo RI for 5 years and accused 'K' and 'L' were sentenced to undergo RI for 3 years. All the accused were imposed with a fine of Rs. 10,000/- with default clause. The accused persons preferred criminal appeal, whereas the appellant-complainant preferred Criminal Revision for**

A enhancement of sentence.

High Court dismissed the revision, but partly allowed the appeal of the accused person by reducing their sentence to already undergone. Hence the present appeal
B by one of the complainants,

The question for consideration before this court was whether the High Court was justified in reducing the sentence awarded by trial court , to already undergone.

C Allowing the appeal, the Court

HELD: 1.1. The maximum punishment provided u/s. 307 IPC is imprisonment for life or a term which may extend to 10 years. Although Section 307 does not expressly state the minimum sentence to be imposed, it
D is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The
E punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the judges in arriving at a fair and impartial verdict. [Para 6] [986-F-H]

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1.2. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was
G planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the
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**public confidence in the efficacy of law. It is duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. [Para 13] [990-E-G]**

*Shailesh Jasvantbhai and Anr. vs. State of Gujarat and Ors.* **(2006) 2 SCC 359: 2006 (1) SCR 477;** *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat* **(2009) 7 SCC 254: 2009 (8) SCR 719;** *Jameel vs. State of Uttar Pradèsh* **(2010) 12 SCC 532: 2009 (15) SCR 712;** *Guru Basavaraj @ Benne Settapa vs. State of Karnataka* **(2012) 8 SCC 734: 2012 (8) SCR 189;** *Gopal Singh vs. State of Uttarakhand* **JT 2013 (3) SC 444 – relied on.**

**2. The reduction of sentence passed by the High Court without appreciating the nature of offence, grievous injuries of witnesses/victims, is unsustainable. The High Court failed to take note of the fact that as per the medical evidence, Injury No.1 shown in supplement MLR on the person of appellant-complainant was found to be grievous. Injury No.2 on the person of complainant 'P' was also found to be grievous whereas Injury Nos. 1 and 2 caused to complainant 'M' one was declared as dangerous to life and it is also on record that injured complainant 'M' had also lost his speech. From the statements of eye-witnesses coupled with the medical evidence, it is proved that the accused caused injuries in the manner as propounded by the prosecution. While dismissing the revision for enhancement of sentence at the instance of the appellant-Complainant and ordering reduction of sentence, the High Court has assigned only two reasons, viz., (1) if the accused are sent behind bars, it will revive the old enmity between the parties in the village and (2), the accused also suffered agony of long**

A trial/appeal for the last 14 years. The courts cannot let the accused go scot-free on mere suspicion of eruption of enmity between the families. This ground is irrelevant for the purpose of determining the sentence to be awarded to the accused. High Court also failed to appreciate that
B the reduction of sentence merely on the ground of long pending trial is not justifiable. The High Court has failed to take note of a very relevant fact that with regard to the offence u/s. 307 IPC, appellant-accused 'R' has been charge sheeted individually for causing grievous injury
C on the head of the complainant 'M' with an intention or knowledge and under such circumstances, if by that act, he had caused death of 'M', he would have been guilty of murder. Therefore, the sentence imposed by the High Court is set aside and the sentence imposed by the trial
D court is restored. [Paras 19, 20, 21, 23, 24, 25 and 26] [999-C-G; 1002-C-D, G-H; 1003-B]

*Sadha Singh and Anr. vs. State of Punjab* (1985) 3 SCC 225; *State ofU.P. vs. Nankau Prasad Misra and Ors.* (2005) 10 SCC 503 – relied on.

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Case Law Reference:

| | | |
|---|---|---|
| 2006 (1) SCR 477 | relied on | Para 8 |
| 2009 (8) SCR 719 | relied on | Para 9 |
| F 2009 (15) SCR 712 | relied on | Para 10 |
| 2012 (8) SCR 189 | relied on | Para 11 |
| JT 2013 (3) SC 444 | relied on | Para 12 |
| G (1985) 3 SCC 225 | relied on | Para 21 |
| (2005) 10 SCC 503 | relied on | Para 22 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 603-604 of 2013.

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From the Judgment & Order dated 03.11.2008 of the High Court of Punjab & Haryana at Chandigarh in Crl. Revision No. 416 of 1997 & Crl. Appeal No. 4-SB of 1997.

R.C. Kohli, S.S. Shamshery, Shubhashis R. Soren, V.M. Vishnu, Bharat Sood, Asha Kochhar for the Appellant.

Naresh Bakshi, Ashwani Antil, Sanjay Kumar Tyagi for the Respondents.

The Judgment of the Court was delivered by

**P.SATHASIVAM, J.** 1. Leave granted.

2. These appeals are directed against the common final judgment and order dated 03.11.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 4-SB of 1997 and Criminal Revision No. 416 of 1997, whereby the High Court partly allowed the appeal filed by the respondents herein by reducing the sentence awarded to them to the period already undergone and dismissed the revision preferred by the appellant herein.

3. Brief facts:

(a) According to the prosecution, on 25.04.1994, Dr. P. Aggarwal, Medical Officer, C.H.C. Ladwa, sent a ruqa to the Police Station informing that Mehma Singh, Piara Singh and Hazara Singh have been admitted to the hospital after allegedly having received injuries in a fight. Mehma Singh was serious and had been referred to the L.N.J.P. Hospital, Kurukshetra. After receipt of the said ruqa, on 26.04.1994, Raj Pal Singh, S.I., In-charge Police Station, Babain, went to the hospital and recorded the statements of the injured.

(b) Hazara Singh, in his statement, alleged that he was a resident of village Kassithal and was an agriculturist. That about 6/7 years back, he had purchased 6 kanals of disputed agricultural land in village Rampura from one Sat Pal, possession of which was delivered to him. He along with his

A family members harvested wheat crop from that land and had kept it in their adjoining field.

(c) On 25.04.1994, at about 6.30 p.m., his brother Piara Singh was ploughing the above said land, with the help of a B tractor, while he along with his father was collecting the harvested wheat crop in the adjoining field. At that time, they suddenly, heard the noise of "bachao bachao" from his brother Piara Singh. Thereafter, he noticed Piara Singh jumping from the tractor and raising alarm coming towards them and Kesho Ram and his brother, along with 5/6 persons, were lifting the C harvested wheat crop and placing it on the tractor. Raj Kumar was pouring diesel on the tractor out of the can held by him. Then Kesho Ram lit the fire on the tractor and Lal Chand and Bhag Singh ran after his brother Piara Singh and encircled him. They started inflicting lathi blows to his brother. He along with D his father went near their brother by raising alarm. When they reached near their brother, Kesho Ram inflicted gandasi blow over his head but he rescued it by lifting his right hand which resulted in an injury in the middle of the right thumb and fingers. Simultaneously, Annu and Tinna started inflicting lathi blows E upon him. In the meanwhile, Lal Chand, Raj Kumar and Bhag Singh started inflicting injuries on his father and caused grievous injuries. On hearing their alarm, Lachman Singh and Bhagat Singh were attracted from the nearby fields. On seeing them, all the accused with their respective weapons, i.e., lathis and F gandasis ran away. All three of them became unconscious due to the said injuries. When he regained consciousness, he found himself in the hospital, Ladwa.

(d) Upon this information, an FIR under Sections 148, 149, G 323, 324, 435 and 447 of the Indian Penal Code, 1860 (in short "IPC") was registered. After receipt of the opinion of the doctor that the injuries sustained were dangerous to life, an offence under Section 307 IPC was also added.

(e) After obtaining medical reports and completion of H investigation, all the accused were arrested and on their

disclosure statements, weapons of offence were recovered and the case was committed to the Court of Sessions. After hearing the parties, all the accused totaling six were charge sheeted for the above-said offences. Out of the six accused, two were held to be minors and were directed to be tried by the Juvenile Court. The remaining four accused (respondent Nos. 1 to 4 herein) pleaded not guilty and claimed trial.

(f) The Additional Sessions Judge, Kurukshetra, by order dated 21.12.1996, in Sessions Case No. 44 of 1994 convicted all the accused persons, namely, Raj Kumar, Bhag Singh, Kesho Ram and Lal Chand for the offence punishable under Section 307 IPC and sentenced Raj Kumar and Bhag Singh to undergo RI for 5 years and a fine of Rs.10,000/-, in default, to further undergo RI for 1 year, whereas Kesho Ram and Lal Chand to undergo RI for 3 years and a fine of Rs. 10,000/-, in default, to further undergo RI for 9 months. In addition to the above, all the accused persons were convicted and sentenced under different heads.

(g) Aggrieved by the said order of conviction and sentence, the accused-respondents preferred Criminal Appeal No. 4-SB of 1997 whereas the appellant preferred Criminal Revision No. 416 of 1997 for enhancement of sentence before the High Court of Punjab and Haryana at Chandigarh.

(h) The High Court, by impugned order dated 03.11.2008, dismissed the revision filed by the appellant and partly allowed the appeal filed by the accused by reducing the sentence to the period already undergone.

(i) Being dis-satisfied with the judgment of the High Court, the appellant has preferred these appeals by way of special leave before this Court.

4. Heard Mr. R.C. Kohli, learned counsel for the appellant, Ms. Naresh Bakshi, learned counsel for the State of Haryana

A and Mr. Ashwani Antil, learned counsel for respondent Nos. 1 to 4.

5. The only point for consideration in these appeals is whether the High Court is justified in reducing the sentence awarded to the accused persons to the period already undergone. In view of the limited question relating to sentence alone urged before the High Court, there is no difficulty in confirming the conviction under Section 307 IPC, accordingly, we do so.

6. In order to understand the reasoning of the High Court for reduction of sentence, it is but proper to refer Section 307 IPC which reads thus:

> **"307. 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 punished 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 is hereinabove mentioned."

From the above, it is clear that the maximum punishment provided therein is imprisonment for life or a term which may extend to 10 years. Although Section 307 does not expressly state the minimum sentence to be imposed, it is the duty of the Courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the judges in arriving at a fair and impartial verdict.

**Sentencing Policy:**

7. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.

8. The factual matrix of this case is similar to the facts and circumstances of the case in *Shailesh Jasvantbhai and Another vs. State of Gujarat and others,* (2006) 2 SCC 359, wherein the accused was convicted under Section 307/114 IPC and for the same the trial Court sentenced the accused for 10 years. However, the High Court, in its appellate jurisdiction, reduced the sentence to the period already undergone. In this case, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eyes of law. This Court, observed thus:

> "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be -a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing

process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

9. This position was reiterated by a three-Judge Bench of this Court in *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat,* (2009) 7 SCC 254, wherein it was observed as follows:-

"99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose

punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

In this case, the court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of society.

10. In *Jameel vs. State of Uttar Pradesh* (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

A 11. In *Guru Basavaraj @ Benne Settapa vs. State of Karnataka,* (2012) 8 SCC 734, while discussing the concept of appropriate sentence, this Court expressed that:

> "It is the duty of the court to see that appropriate sentence
B is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

12. Recently, this Court in *Gopal Singh vs. State of*
C *Uttarakhand* JT 2013 (3) SC 444 held as under:-

> "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality
D between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."

13. We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based
E on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which
F would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the
G offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

H 14. With these principles, let us consider whether the

reasons rendered by the impugned judgment falls within the parameter of the established principles. The relevant paragraph in the impugned judgment are as under:-

> ".....Stress is that Raj Kumar has undergone 14 months of sentence and so as Bhag Singh six months of sentence whereas Kehso Ram and Lal Chand have undergone two months' sentence each and they are facing the agony of trial since 1994. The purpose of criminal law justice is to bring discipline, peace and harmony in the society and also to give an opportunity to an erring individual to reform himself. In appropriate cases, leniency be shown and opportunity is required to be given to the accused to reform themselves by adopting reformative approach. It is not in dispute that the parties are co-villagers. It has also not been indicated that during all these years, they had any further tiff among themselves. If the appellants are sent behind bars, it will revive the old enmity between the parties in the village. They have already suffered agony of long trial/appeal for the last 14 years. Therefore it would be expedient in the interest of justice to take a lenient view that the sentence awarded to he accused deserves to be modified and the injured complainants can be granted compensation"

15. Now, let us analyze the reasoning mentioned in the impugned judgment for reduction of sentence. It was mentioned before the High Court that Raj Kumar has undergone 14 months of sentence, Bhag Singh has undergone six months of sentence, Kesho Ram and Lal Chand have undergone two months of sentence each. It was also noted by the High Court that they were facing the agony of trial since 1994. In addition to the same, the High Court has noted that both the parties are co-villagers and during pendency of these proceedings, they had no further tiff among themselves. If the accused are sent behind bars, it will revive the old enmity between the accused and the victim's family. Mentioning these facts, the High Court has concluded that in the interest of justice, it is but proper to

A take a lenient view and that the sentence awarded to the accused deserves to be modified and the injured complainants be granted compensation. By saying so, the High Court reduced the sentence to the period already undergone by them and directed the accused to pay a sum of Rs.25,000/- each B as compensation to all the three injured persons, namely, Mehma Singh, Piara Singh and Hazara Singh within three months from the date of its order, failing which the appeal filed by them shall be treated as dismissed.

C 16. For the reasons best known to it, the State has not challenged the said order of the High Court before this Court. On the other hand, one of the complainants', namely, Hazara Singh has filed the present appeals by way of special leave petitions. We have already concluded that the conviction relating to the offence punishable under Section 307 is confirmed, in D fact, it was not at all challenged. In the present appeals, learned counsel appearing for the appellant pointed out that considering the serious nature of the injuries, period of treatment, agony undergone, reduction of sentence to the period already undergone i.e. for a period of few months is not E justifiable and the decision of the High Court is to be set aside and the order of the trial Court is to be restored.

17. It is not in dispute that three persons were injured at the hands of the accused persons and all of them were F examined by the doctors. Their injuries were evidenced by certificates issued by the doctors, who treated them, which read thus:

> "PW-1 is Dr. K.K. Chawla, Medical Officer, L.N.J.P. Hospital, Kurukshetra, who has proved x-ray report Ex.PA G with regard to Hazara Singh and has opined that as per x-ray of left knee, it showed fracture of patilla left with regard to remaining 5 injuries, i.e. X-ray of skull, left thigh, left forearm, right hand and left shoulder of the injured, he has stated that no bonny injury was found. With regard to injured H Piara Singh, he has stated that X-ray skull showed no

bonny injury. Simultaneously, x-ray chest right forearm and left ankle showed no bonny injury. However, there was fracture of left scapula as per x-ray of left shoulder. The report in this behalf is Ex.PB.

PW-2, Dr. P. Aggarwal, Medical Officer, C.H.C. Ladwa, has examined Mehma Singh on 25.04.1994 at 9.25 p.m. and found the following injuires on his person:-

1. Lacerated wound 1-1/2 cm x ½ cm x bone deep on the left parietal region, 3 cm posterior to anterior hair line. Surrounding parts in diameter of 8 cm was swollen. Swelling was boggy in nature. X-ray and surgeon's opinion was advised.

2. Left eye was swollen and reddish blue in colour. Both lids were swollen. Swelling was extending upto forehead. X-ray and eye surgeon's opinion was advised.

3. Contusion 10 cm x 1 cm each two in number on back of left side of chest situated perpendicular on each other. X-ray was advised.

4. Contusion 12 cm x 2 cm on outer side of left side of abdomen x-ray and surgeon's opinion was advised.

5. Lower half of left fore-arm was swollen. Crepitus was present. X-ray was advised.

6. Two contusions on left buttock, surrounding parts swollen, x-ray was advised.

7. Abrasion 1 cm x ½ cm on right side of nose bridge. X-ray was advised.

He also examined Hazara Singh, son of Mehma Singh at 9.50 p.m. and found the following injuries on his person:

A 1. Lacerated wound 3 cm x ½ cm into bone deep on left parietal region situated anterior posteriorily, 3 cm posterior to anterior hair line. Fresh bleeding was present. X-ray and surgeon's opinion was advised.

B 2. Contusion 12 cm x 3 cm on antro lateral side of middle of left thigh. Surrounding parts were swollen. X-ray was advised.

3. Swelling was present on middle half of left fore-arm. C X-ray was advised.

4. Incised wound 1 cm x ½ cm, x muscle deep on outer side of right palm in between index finger and thumb. Margins were cleancut. Fresh bleeding was D present. X-ray was advised.

5. Abrasions 2 cm x 1 cm x 1 cm on back of right shoulder. Movements were painful. X-ray was advised.

E 6. Lacerated wound 1 cm x ½ cm x skin deep on right sole near base of second toe.

That during examination of the patient routine checking on 26.04.1994, he found one more injury on the person of F Hazara Singh as under:-

"There was faint reddish swelling, diffused all around the left knee. Patient was complaining of severe pain. Injury was tender to touch. Movements were painful and restricted. X-ray left knee was advised."

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All the injuries on the person of Mehma Singh were found to have been caused by blunt weapon. All the injuries except injury No.4 on the person of Hazara Singh was found to have been caused by blunt weapon. Injury No.4 H was caused by sharp weapon.

That this doctor witness also examined Piara Singh at 10.05 p.m. and found the following 6 injuries on his person:-

1. Lacerated wound 1-1/2 cm x ½ cm x bone deep on middle of scalp with fresh bleeding situated 12 cm posterior to anterial hair-line. X-ray and surgeon's opinion was advised.

2. Reddish swelling, diffused on back of left shoulder. Movements of shoulder were very painful. Tenderness was present. X-ray was advised.

3. Contusion 18 cm x 2 cm on lateral side of left side of chest and abdomen situated vertically.

4. Abrasion 4 cm x 1 cm on back of right side of chest surrounding parts were swollen. X-ray was advised.

5. Swelling diffused present on lower 3rd of right forearm. X-ray was advised.

6. Diffused swelling near left medial mallelous was present. Movement at ankle joint was painful. X-ray was advised.

All the injuries were caused by blunt weapon. Medical Report in this behalf is Ex. PE and diagram showing seat of injuries in this behalf is Ex. PE/1.

This witness has further proved his report Ex. PG to the effect that the injury No.1 shown in supplementary M.L.R. i.e. Ex. PH on the person of Hazara Singh was found to be grievous. He also proved report Ex. PK to the effect that injury No.2 on the person of Piara Singh, was also grievous and rest were simple. He has also stated that on 28.04.1994, he received operation note of Mehma Singh from P.G.I. Chandigarh, whereupon, he sent intimation Ex. PL to the Police and declared injuries No.1 and 2 as dangerous to life.

A That PW-3 Dr. P. Vara Prasad, S.M.O., Casualty, P.G.I. Chandigarh has proved his endorsement Ex. PM/1 and Ex. PM/3 to the effect that on 02.06.1994 and 22.07.1994, when the police wanted his opinion, Mehma Singh injured was unfit for statement.

B That PW-15, Hazara Singh injured, PW-16 Jaspal Singh, eye-witness, PW-17 Piara Singh injured and PW-19, Mehma Singh injured, have broadly supported the case of the prosecution."

C After analyzing the above injuries with reference to the specific evidence by the doctors concerned and the certificates issued, the trial Court came to the following conclusion:-

"a) In the present case, the prosecution has been able to
D show that the witness was unable to speak during investigation. Even, Dr. Ashwani Kumar Chaudhary, while appearing in the witness box as PW-18, on 02.04.1996, has stated after examining the witness orally in the Court, that his speech was blurred. When Mehma Singh appeared
E as PW-19, he was feeling difficulty in speaking but since he could be understood, what he wanted to say, his statement was recorded. The perusal of his statement further shows that during his examination, he was feeling difficulty in speaking the name of the accused and he was allowed to touch their person to depose about the part
F played by each of the accused. As per the case of the prosecution, the witness was injured in the occurrence and as such no prejudice was caused to the accused in examining the witness for the first time in Court.

G (b) That in view of the statements of these eye-witnesses coupled with the medical evidence, it is proved that the accused caused injuries in the manner propounded by the prosecution. Although, the prosecution has discharged its onus in proving its case, yet, to analyze the defence, at this

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stage, would be relevant for the purpose of deciding the complicity. A

(c) Resultantly, thus, I hold that on the date of occurrence, the injured party were in possession of the disputed land. The occurrence took place in the manner propounded by the prosecution and further that the accused have not acted in the right of private defence and property. B

(d) In this view of the matter, and the fact that all the accused formed an unlawful assembly and entered into the field belonging to the injured and being in their possession, they have committed an offence punishable under Sections 148 and 447 of the Indian Penal Code. C

(e) The version of burning of the tractor by the accused in furtherance of their common object of the assembly, has been found proved and as such, they have also committed an offence punishable under Section 435 read with 149 of the Indian Penal Code. D

(f) It is proved that Bhag Singh inflicted injury with blunt weapon on the left shoulder of Piara Singh. Copy of X-ray report in this behalf is Ex. PB which shows fracture of bone. He has thus committed an offence punishable under Section 325 and the other accused are also liable for an offence under Section 325 read with 149 of the Indian Penal Code. E F

(g) In view of the M.L.R. of Hazara Singh, injury No. 4 was caused by sharp edged weapon i.e. gandasi by Kesho Ram and he himself has held liable for an offence under Section 324 of IPC and the other accused being members of an unlawful assembly are liable for an offence under Section 324 read with Section 149 of the Indian Penal Code. G

(h) It is also proved that all the accused voluntarily caused simple hurt to Mehma Singh, Piara Singh and Hazara H

A Singh and held themselves liable for an offence under Section 323 read with Section 149 of the Indian Penal Code.

(i) With regard to the offence under Section 307 IPC, Raj
B Kumar accused has been charge-sheeted individually, for causing the injury on the head of Mehma Singh with an intention or knowledge and under such circumstances, that if by that act, he had caused death of said Mehma Singh, he would have been guilty of murder. The other accused have been charge-sheeted with the aid of Section 149 of
C IPC Bhag Singh accused, was also individually charged for offence under Section 307 IPC and other accused were also charged with the aid of Section 149 IPC for the act of Bhag Singh.

D 18. The trial Court, after detailed analysis of the evidence of doctors and the certificates issued, convicted the above accused persons and passed the following sentence:

"a) Accused Raj Kumar U/s 307 IPC – RI for 5 years and
E fine of Rs.10,000/- in default further RI of 1 year.

(b) Accused Bhag Singh U/s 307 IPC – RI for 5 years and fine of Rs.10,000/- in default further RI for 1 year.

(c) Accused Kesho Ram U/s 307 IPC – RI of 3 years and
F fine of Rs.10,000/- in default further RI for 9 months

(d) Accused Lal Chand U/s 307 IPC – RI of 3 years and fine of Rs.10,000/- in default further RI for 9 months.

Addition to the above all accused respondents were
G awarded following sentence:-

U/s 325 IPC – RI for 2 years and a fine of Rs.2,000/- in default further sentence for 6 months RI.

U/s 324 IPC – RI for 1 year
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U/s 447 IPC – RI for 1 month

U/s 323 IPC – RI for 6 months.

U/s 148 IPC – RI for one year.

U/s 435 IPC – RI for 2 years with fine of Rs.10,000/- each in default further sentence of RI for 6 months."

19. It is clear that the High Court failed to take note of the fact that as per the medical evidence, Injury No.1 shown in supplement MLR on the person of Hazara Singh was found to be grievous. Injury No.2 on the person of Piara Singh was also found to be grievous whereas Injury Nos. 1 and 2 caused to Mehma Singh one was declared as dangerous to life and it is also on record that injured Mehma Singh had also lost his speech.

20. As rightly pointed out by learned counsel for the appellant, the High Court failed to appreciate that the trial Court has come to the conclusion that in view of the statement of injured eye-witnesses coupled with medical evidence, it is proved that the accused caused injuries in the manner explained by the prosecution and passed appropriate sentence to the accused respondents. We have already stated that while dismissing the revision for enhancement of sentence at the instance of the present appellant and partly allowing the order of reduction of sentence, the High Court has assigned only two reasons, viz., **"one, if the accused are sent behind bars, it will revive the old enmity between the parties in the village and secondly, the accused also suffered agony of long trial/appeal for the last 14 years."**

21. It is unfortunate that the High Court failed to appreciate that the reduction of sentence merely on the ground of long pending trial is not justifiable. In *Sadha Singh and Another vs. State of Punjab,* (1985) 3 SCC 225, a three Judge Bench of this Court, while considering the identical issue which also arose for an offence under Section 307 and reduction of

substantive sentence by the High Court, held as under:-

> "5. ... We must confess that what ought to be the proper sentence in a given case is left to the discretion of the trial court, which discretion has to be exercised on sound judicial principles. Various relevant circumstances which have a bearing on the question of sentence have to be kept in view. Before deciding the quantum of sentence the learned Sessions Judge has to hear both the sides as required by the relevant provision of the Code of Criminal Procedure.
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> 6. In an appeal against the conviction, it is open to the High Court to alter or modify or reduce the sentence after confirming conviction. If the High Court is of the opinion that the sentence is heavy or unduly harsh or requires to be modified, the same must be done on well recognised judicial dicta. Therefore, we may first notice the reasons which appealed to the learned Judge to reduce the substantive sentence awarded to the appellants to sentences undergone."

While rejecting the similar reasons as stated by the High Court in the present case, the following conclusion arrived at by this Court are relevant:

> "7. .... The learned Judge then took notice of the fact that three co-accused of the appellants were given benefit of doubt by the trial court and acquitted them although they were also attributed causing of some injuries. If acquittal of some co-accused casts a cloud of doubt over the entire prosecution case, the whole case may be rejected. But we fail to understand how acquittal of some of the accused can have any relevance to the question of sentence awarded to those who are convicted. In this case the prosecution submitted that these two appellants alone were armed with guns. Then the learned Judge observes that no useful purpose, will be served by sending the

appellants to prison again to undergo the unexpired period of their sentence. We repeatedly asked why this indulgence and waited for answer in vain. If someone is enlarged on bail during the pendency of appeal and when the appeal is dismissed sending him back to jail is going to raise qualms of conscience in the Judge, granting of bail pending appeal would be counter-productive. One can pre-empt or forestall the decision by obtaining an order of bail.

8. If the learned Judge had in mind the provisions of Section 360 of CrPC so as to extend the benefit of treatment reserved for first offenders, these appellants hardly deserve the same. Admittedly, both the appellants were above the age of 21 years on the date of committing the offence. They have wielded dangerous weapons like firearms. Four shots were fired. The only fortunate part of the occurrence is that the victim escaped death. The offence committed by the appellants is proved to be one under Section 307 of IPC punishable with imprisonment for life. We were told that the appellants had hardly suffered imprisonment for three months. If the offence is under Section 307 IPC i.e. attempt to commit murder which is punishable with imprisonment for life and the sentence to be awarded is imprisonment for three months, it is better not to award substantive sentence as it makes mockery of justice. Mr Jain said that the High Court has enhanced the fine and compensated the injured and, therefore, we should not enhance the sentence. Accepting such a submission would mean that if your pockets can afford, commit serious crime, offer to pay heavy fine and escape tentacles of law. Power of wealth need not extend to overawe court processes. Thus it appears that the High Court wrongly interfered with the order of sentence on wholly untenable and irrelevant grounds some of them not borne out by the record. In order, therefore, to avoid miscarriage of justice we must interfere and set aside the sentence imposed by the High Court and restore the

A sentence imposed by the learned Sessions Judge which we hereby order. Both the appellants shall be taken into custody forthwith to suffer their sentence."

22. Applying the same principles in *State of U.P. vs. Nankau Prasad Misra and Others,* (2005) 10 SCC 503, this B Court set aside the judgment of the High Court reducing the sentence without adequate reasons.

23. The second ground relied on by the High Court is that it will further the enmity between the families of victim and the C accused. In our considered view, this ground is irrelevant for the purpose of determining the sentence to be awarded to the accused. The Courts cannot let the accused go scot-free on mere suspicion of eruption of enmity between the families.

D 24. In our view, the reduction of sentence passed by the High Court without appreciating the nature of offence, grievous injuries of witnesses/victims, is unsustainable.

25. In addition to the factual matrix discussed in the earlier paras, Dr. Ashwani Kumar Chaudhary (PW-18), after examining E the witness Mehma Singh, (PW-19), has stated that his speech was blurred and he was feeling difficulty in speaking. We are satisfied that from the statements of eye-witnesses coupled with the medical evidence, it is proved that the accused caused injuries in the manner as propounded by the prosecution. It is F also proved that Bhag Singh inflicted injury with a blunt weapon on the left shoulder of Piara Singh. Likewise, the M.L.R. of Hazara Singh proves that the injury was caused by a sharp-edged weapon i.e. gandasa by Kesho Ram. The High Court has failed to take note of a very relevant fact that with regard G to the offence under Section 307 IPC, Raj Kumar has been charge sheeted individually for causing grievous injury on the head of Mehma Singh with an intention or knowledge and under such circumstances, if by that act, he had caused death of the said Mehma Singh, he would have been guilty of murder.

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26. Under these circumstances, we hold that the High Court has wrongly interfered with the order of sentence on wholly untenable and irrelevant grounds, some of them even not borne out on record. To avoid miscarriage of justice, we must interfere and accordingly, we set aside the sentence imposed by the High Court and restore the sentence imposed by the trial Court. All the respondents-accused, namely, Raj Kumar, Keshav Ram, Lal Chand and Bhag Singh shall be taken into custody forthwith to serve the remaining period of sentence as ordered by the trial Court. The appeals are allowed.

K.K.T. Appeals allowed.