

(2007) 03 P&H CK 0172**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 338-SB of 1994

Buta Ram and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 22, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 148, 149, 323, 324, 325

Citation: (2008) 2 RCR(Criminal) 763**Hon'ble Judges:** Arvind Kumar, J**Bench:** Single Bench**Advocate:** S.S. Dinarpur, for the Appellant; S.S. Goripuria, DAG, Haryana, for the Respondent**Judgement**

Arvind Kumar, J.

According to the prosecution allegations, on 2.6.1990 all the Appellants formed an unlawful assembly and in prosecution of the common object of that unlawful assembly, armed with lathis and iron pipes, committed the offence of rioting and further caused injuries to P Ws Kuldeep Singh and Rishi Pal. It is further the say of the prosecution that Appellant Buta Ram committed mischief by setting on fire the residential chappar belonging to Kuldeep Singh. The Appellants were accordingly charge-sheeted under Sections 148, 323, 324, 325, 436 read with Section 149 IPC. A trial was held against all the Appellants and on conclusion thereof the learned trial Court held all the Appellants guilty under Sections 148, 323, 324 read with Section 149 IPC and sentenced them to undergo rigorous imprisonment for one year. For committing an offence u/s 325 read with Section 149 IPC, the trial Court imposed sentence of rigorous imprisonment for three years on all the Appellants and directed them to pay fine of Rs. 500/- each and in default thereof further imprisonment for a period of six months was awarded. The trial Court further held the Appellant Buta Ram guilty u/s 436 IPC and sentenced him to undergo rigorous imprisonment for a period of four years with a fine of Rs. 500/- and to further

undergo imprisonment for six months, in case the fine is not paid under this head. The remaining Appellants namely Arjun Singh, Lila Ram, Jarnail Singh and Baka Ram were also convicted u/s 436 IPC with the aid of Section 149 IPC and similar sentence as that of Appellant Buta Ram was awarded to them. All the sentences except the one awarded in lieu of fine were ordered to run concurrently. Feeling aggrieved with the same, the Appellants have preferred the instant appeal.

2. I have heard learned Counsel for the parties and have gone through the paper-book carefully. Learned Counsel for the Appellants has argued that Chhab (thatched-roof) does not come within the definition of building and as such, it does not attract the provision of Section 436 IPC, but has frankly conceded that he does not contest the case on merits. His argument is that the Appellants have already suffered an agony of protracted trial since 1990. In relation of the instant case, the Appellants Buta Singh and Jarnail Singh have already undergone sentence of about 6 months each whereas the Appellants Arjan and Lila Ram have undergone more than four and a half months each and it would not be appropriate to send them behind the bars after a lapse of about 17 years. In support of his argument, he has referred to Habbalappa Dundappa Katti and Ors. v. State of Karnataka, 2004 SCC (Cri.) 463, to urge that u/s 326 IPC, for which maximum sentence of life imprisonment has been prescribed, as in Section 436 IPC, on the ground that the occurrence had taken place far back, the sentence of imprisonment was reduced to the period already undergone, which was about two months. He has further referred to Nand Singh v. State of Punjab, 2007(1) RCR(Cri.) 801 (P&PH). I find substance in the submission made by counsel for the Appellants. The present case relates to the year 1990 and the present Appellants have already undergone the agony of about 17 years during the pendency of trial/appeal. They have not touched the merits of the appeal and has left themselves at the mercy of the court. This shows their sense of repentance. The learned State counsel has not referred to a single instance of their involvement in any criminal activities during all these years. It would be inequitable to send them to the jail after passing of more than one and a half decades. There is also nothing to suggest that he continued to have strained relations with the complainant party. Moreover, the complainant party can very well be compensated with the grant of monetary benefits.

3. Therefore, keeping in view the above discussion, the order of conviction of the Appellants, passed by the courts below is upheld. However, their sentence is set aside and the same stands reduced to the period already undergone by them, for the offence to which they have been convicted subject to their depositing the fine which stands enhanced to Rs. 3,000/- each, before the Chief Judicial Magistrate, Ambala, within a period of three months, to be paid equally to Kuldeep Singh and Rishi Pal.

4. With the above modifications, the instant appeal stands disposed of.