

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No.1772-SB of 2003

Date of Decision : 04.11.2015

Navjeet Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.A.S.Khosa, Advocate
for the appellant.

Mr. Manjit Singh Naryal, Addl.AG, Punjab.

Mr. Angel Sharma, Advocate
for the complainant.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred by accused-appellant Navjeet Singh against the judgment dated 25.08.2003, vide which appellant has been held guilty and convicted for the offence punishable under Section 307 of Indian Penal Code, 1860 (for short 'I.P.C') and the order on the quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous

imprisonment for a period of five years and to pay a fine of Rs. 1000/- in default thereof to further undergo imprisonment for a period of one month.

2. The brief facts giving rise to this prosecution are that on 22.02.2002, at 7.45 p.m, complainant-Balkar Singh son of Charan Singh and his nephew-injured Gurjit Singh son of Gurmej Singh were returning to their house from their fields. When they reached near the house (Haveli) of Harbhajan Singh, they found that Harbhajan Singh and his son Navjeet Singh (present appellant) were present in the street. Harbhajan Singh raised 'lalkara' that "Kill him what for he was waiting". At this, appellant Navjeet Singh who was armed with 'Gandassi' gave its blow on the head of Gurjit Singh. Gurjit Singh fell down on the ground. Complainant raised hue and cry and asked the accused not to cause injuries to him. On hearing the alarm, Shamsheer Singh son of Boor Singh, resident of village Kotla Bet reached at the spot. On his arrival, the accused-appellant along with the weapons of offence fled away from the spot. After arranging the conveyance, Gurjit Singh was shifted to the hospital. On receipt of the information from the Sobti Neuro and Trauma Centre, Ludhiana, ASI Gurnam Singh reached there and moved the application for seeking the opinion of doctor about the fitness of injured to make the

statement. But, injured Gurjit Singh was declared unfit to make the statement by the doctor. Thereafter, complainant Balkar Singh met him and got his statement Ex.PC recorded. On the basis of which, the formal FIR Ex.PC/2 was registered and the investigation was started. On 23.02.2003 itself, ASI Gurnam Singh inspected the spot and prepared the site plan Ex.PD.

3. On 25.02.2002, the Investigating Officer again visited Sobti Hospital, Ludhiana and moved the application Ex.PG to seek the opinion about the fitness of the injured, who was declared fit to make the statement. Thereafter, he recorded the statement of injured Gurjit Singh. He moved another application Ex.PE seeking opinion of the doctor with respect to the nature of injuries which was declared as dangerous to life vide opinion Ex.PE/1. On the basis of this opinion, the offence under Section 307 IPC was added. Accused Harbhajan Singh was arrested in this case on 27.02.2002. Accused-appellant Navjeet Singh was arrested on 08.03.2002. He suffered the disclosure statement Ex.PF and got recovered the weapon of offence i.e. 'Gandassi', which was taken into possession vide memo Ex.PH/2 after preparing the sealed parcel. On completion of the formalities of the investigation, the report under Section 173 of Code of Criminal Procedure was presented in the Court.

4. The case was committed to the Court of Sessions for trial by the learned Judicial Magistrate Ist Class vide order dated 27.03.2002.

5. The present appellant was charge sheeted for the offence punishable under Section 307 IPC and his co-accused Harbhajan Singh was charge sheeted for the offence punishable under Section 307 read with Section 34 IPC, to which both of them pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as six witnesses.

7. When examined under Section 313 Cr.PC, accused-appellant pleaded that about two months ago there was a dispute about the motor between him and Gurjit Singh. He gave fist blows to him and he was feeling aggrieved of. On the day of occurrence, he alone was present in their cattle shed. Gurjit Singh came inside the cattle shed and raised 'lalkara' to teach him a lesson for giving fist blows to him and he (Gurjit Singh) gave a 'Soti' blow which hit on his head. He was also accompanied with 2-3 persons. In the self defence in order to save himself, he had to use the 'Gandasi'.

8. In the defence evidence, appellant examined DW-1 Dr. Shashi Kiran Singh, Medical Officer, Subsidiary Health

Centre, Barma, PHU, Machhiwara, who has medico legally examined injured Navjeet Singh. Manmohanjit Singh son of Gurbachan Singh resident of Shhoria, Police Station Machhiwara has appeared as DW-2 and supported the defence version raised by the appellant.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 307 IPC and were awarded the sentence as mentioned in the upper part of the judgment. However, his father Harbhajan Singh was acquitted of the charges.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. I have heard Mr. A.S.Khosa, Advocate, learned Counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General, for the State of Punjab, Mr. Angel Sharma, learned counsel for the complainant and has meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that there is delay of about 24 hours in lodging the FIR. The occurrence is alleged to have taken place in the street and was witnessed by other persons. But,

nobody tried to give any information to the police. Thus, the unexplained delay in lodging the FIR renders the prosecution version doubtful.

13. He further contended that firstly the injured was taken to the Government Hospital, Machhiwara and then he was shifted to Sobti Hospital, Ludhiana. But, there is no referral slip available on record.

14. He further contended that the prosecution witnesses have admitted in the cross-examination that the 'Haveli' of accused does not fall in the way if one comes from the fields of the injured to their house. This admission by the prosecution witnesses in the cross-examination contradicts the basic story of the prosecution as they have alleged that the occurrence has taken place when they were passing in front of the house of the accused.

15. He further contended that entire case of the prosecution is based on the testimonies of the interested witnesses. One Shamsher Singh is alleged to have been attracted to the spot, but he has not been examined. So, there is no independent corroboration to the statements of the prosecution witnesses on the point of occurrence.

16. He further contended that injured Gurjit Singh has given the contradictory version. While appearing in the witness box, he has stated that after receiving the injuries

he had become unconscious. But, he has not stated so in his statement under Section 161 Cr.P.C. The doctor has also stated that the injured was conscious when he was brought to the hospital. He has even disclosed the history of the occurrence to the doctor, which shows that he was fully conscious at that time.

17. He further contended that the presence of Balkar Singh is extremely doubtful. PW-1 Dr.J.S.Sidhu has stated that the injured was brought to the hospital by his father and brother. The name of Balkar Singh does not figured anywhere. If, he would present at the spot and would have taken the injured to the hospital, his name also might have been mentioned in the hospital record.

18. He further contended that entire case of the prosecution is based on the treatment in private hospital. PW-6 Dr. M.K.Sobti, Managing Director, Sobti Trauma Centre, Ludhiana has admitted that there was no mark of identification of the injured put by the Radiologist. So, it cannot be stated that the CT-scan belongs to injured Gurjit Singh. Thus, it is not proved that the injuries suffered by him was dangerous to life.

19. He further contended that complainant Balkar Singh has stated that the blood stained earth was lifted by the Investigating Officer. But, PW-4 ASI Gurnam Singh has

stated that no blood stained earth was lifted from the place of occurrence. It is also alleged that blanket of the injured was also stained with blood and that has also not been taken into possession.

20. He further contended that the investigation has not been fairly conducted. ASI Gurnam Singh has admitted that the blood was found inside the 'Haveli' of the appellant. It shows that the occurrence has taken place inside the Haveli/house of the appellant which supports his defence plea and falsify the prosecution version that the occurrence has taken place in the street. He further contended that the Investigating Officer has admitted that he has recorded the statement of appellant Navjeet Singh, but no action was taken on the basis of that statement. He further contended that from the statement of DW-1 Dr. Shashi Kiran Singh, Medical Officer Subsidiary Health Centre, Barma, it is established that the appellant has also suffered head injury. In-fact, injured Gurjit Singh accompanied with 2-3 other persons has entered in the house of the appellant and attacked him and caused injuries. Appellant has only acted in his self defence and has not committed any offence.

21. Learned counsel for the appellant also pleaded that the appellant is a poor person. He has already undergone one year, nine months and fourteen days of

actual sentence excluding remission. The occurrence has taken place 13 years back. So, the sentence awarded to him should be reduced to the period already undergone by him in jail.

22. He further contended that even as per the prosecution version only a single blow of 'Gandasi' has been given by the appellant, which will not attract Section 307 IPC. To support his contentions, he relied upon cases **Pritam Singh and another Vs. State of Punjab 2010(3) R.C.R (Criminal) 395, Rakesh Vs. State of Haryana 2014(7) RCR (Criminal) 1092 and Pishora Singh Vs. State of Punjab 1993(1) R.C.R (Criminal) 188.**

23. On the other hand, learned State counsel assisted by learned counsel for the complainant contended that from the consistent testimonies of PW-3 injured Gurjit Singh and PW-2 complainant Balkar Singh, the witness of the occurrence, it is established that the present appellant has given a 'Gandasi' blow on the head of injured Gurjit Singh with intention to kill him. The medical evidence shows that he has suffered the mark of parietal bone and has to undergo the surgery. The injuries suffered by injured Gurjit Singh has been declared to be dangerous to life. He further contended that the non-examination of Shamsheer Singh is no ground to discredit the testimonies of the injured and the

complainant. He further contended that the defence version raised by the appellant is not established. The occurrence has taken place at about 7.45 p.m on 22.02.2002. As per the statement of DW-1 Dr. Shashi Kiran Singh, Medical Officer Subsidiary Health Centre, Barma, the duration of injury on the person of appellant was only within two hours. Meaning thereby, the injury has been suffered by the appellant after 9.00.p.m when the occurrence had already taken place. He further contended that the non lifting of the blood stained earth from the spot was only a lapse on the part of the Investigating Officer. This lapse cannot be made a ground to discredit the direct evidence i.e. statement of the injured and complainant.

24. He further contended that injured Gurjit Singh has suffered Intracerebral blood with diffuse cerebral odema with pneumocranium with fracture left parietal bone with bony fragment in brain tissue. The injuries suffered by Gurjit Singh shows the force applied to gave the 'Gandasi' blow on the head of the appellant, which depicts his intention to kill Gurjit Singh, which will attract Section 307 IPC. He further contended that the appellant has caused a severe head injury with intention to kill Gurjit Singh, so the sentence awarded to him by the learned trial Court is just and appropriate. Thus, he pleaded that the conviction of

appellant has been rightly recorded by the learned trial Court and the sentence awarded to him is just and appropriate.

25. I have duly considered the aforesaid contentions.

26. The occurrence has taken place at about 7.45 p.m on 22.02.2002. As per statement of the complainant, after arranging the car, injured Gurjit Singh was taken to Sobti Hospital, Ludhiana. PW-2 Balkar Singh has stated in the cross-examination that first of all they went to Civil Hospital, Machhiwara, but they were asked to take the injured to Ludhiana. The doctor/incharge in Civil Hospital, Machhiwara first checked the injured. Thereafter, he further deposed that from Civil Hospital, Machhiwara, they straight went to Ludhiana. It shows that the condition of injured was serious and that is why the doctor at Civil Hospital, Machhiwara advised the attendants of the injured to take him to Ludhiana for better treatment and management as injured Gurjit Singh has received the severe head injury. The foremost concern of his family members was to save his life then to indulge in legal formalities of reporting the matter to the police and wasting the time, which could have proved fatal for his life. So, there was nothing abnormal in the conduct of the family members of the injured. PW-4 ASI Gurnam Singh on receiving information about admission of

the injured went to Sobti Neuro and Trauma Centre, Ludhiana on 23.02.2002 and moved the application Ex.PB. Vide opinion Ex.PB/1, the injured was declared unfit to make the statement at 12.30.p.m on 23.02.2002. Thereafter, the statement of PW-2 complainant Balkar Singh Ex.PC was recorded by the Investigating Officer. On the basis of which the present case was registered. In these circumstances, as the condition of injured Gurjit Singh was serious, so the delay in lodging the FIR is almost explained. In case **Gurnek Singh Vs. State of Punjab 1988 (2) R.C.R (Criminal) 543**, the injured witnesses rushed the victim to hospital to save his life instead of first going to the Police Station. The Hon'ble Supreme Court held that this is precisely the manner in which one would have acted in the circumstances of the case and delay was held to be satisfactorily explained. This authority is fully applicable to the facts of the case. Moreover, when there is positive evidence of complicity of the appellant in the commission of the crime, the delay in lodging the FIR is rendered inconsequential. Reference can be made to cases **Dalip Singh Vs. State of Punjab 2014(4) R.C.R (Criminal) 151 (DB)** and **Shanmugam and another Vs. State represented by Inspector of Police, Tamil Nadu 2014 (7) R.C.R (Criminal) 1518**.

27. It is not mandatory that there must be a referral slip for taking the injured to the higher medical institution for the better treatment and medical aid. PW-2 Balkar Singh has stated that firstly they had taken the injured to Civil Hospital, Machhiwara, but the doctor advised them to take the injured to Ludhiana obviously due to the severe injury suffered by him. There is no material on record to establish that the medical facility to treat the patient of head injury was available in that hospital. There was no alternative with the relatives of the injured to take him to Ludhiana in order to save his life. The absence of any slip by the doctors of Civil Hospital, Machhiwara is no ground to render the prosecution case about the nature of injury doubtful.

28. As per the prosecution version, when injured Gurjit Singh and Balkar Singh were returning to their house from their fields and reached near the house/Haveli of the accused, appellant Navjeet Singh caused injuries with a 'Gandasi' on the head of injured PW-3 Gurjit Singh. This version of the prosecution has been assailed by learned counsel for the appellant on the ground that prosecution witnesses have admitted in the cross-examination that if one comes from the fields of the injured to his house, the Haveli/house of the accused does not fall in the way. But, both these witnesses have not been cross-examined on the

point that as to whether the street shown in front of the house of the accused in the site plan does not at all leads to the house of the injured. Another street parallel to the road leading to village Haidon Bet is also shown in the scaled site plan Ex.PW5/1 and if a person comes from that street, the house of accused falls on the way though it may not be the short route, but it is not necessary that a person will adopt only the short route. Thus, in these circumstances, it cannot be stated that the prosecution version is totally improbalised.

29. No doubt, as per the prosecution version one Shamsher Singh was also attracted to the spot on hearing the alarm raised by complainant Balkar singh. But, said Shamsher Singh has not been examined by the prosecution and was given up as unnecessary by the learned Public Prosecutor vide his statement dated 09.09.2002. As per Section 134 of the Indian Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact. Even, the solitary statement of a witness, if found reliable, can be acted upon to base the conviction. It is the quality of the evidence and not the quantity of the evidence, which matters. The prosecution is not bound to examine each and every person, who happens to be present at the spot at the time of the occurrence. To support this

view reference can be made to cases **Nagarjit Ahir Vs. State of Bihar 2005(2) R.C.R (Criminal) 26** and **Raj Narain Singh Vs. State of U.P & Ors. 2009(4) R.C.R (Criminal) 347**. Thus, the non examination of Shamsheer Singh is no ground to discredit the testimony of PW-3 Gurjit Singh, the injured witness, which carries the great evidentiary value and is also corroborated from the testimony of PW-2 complainant Balkar Singh, the eye witness of the occurrence and the medical evidence. It is settled principle of law that evidence of the injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injuries to the victim is an inbuilt guarantee of his presence at the scene of the crime and that the injured witness would not want to let the actual assailant go unpunished. To support this view reference can be made to case **Balwan & Ors. Vs. State of Haryana 2014(4) R.C.R (Criminal) 71**.

30. Mere this fact that PW-2 complainant Balkar Singh happens to be the uncle of injured Gurjit Singh is also no ground to discard his testimony. It is well settled principle of law that relationship is not a factor to affect the credibility of a witness. The relationship of the witness with the victim is also no ground to consider him an interested witness. Reference can be made to cases **State of**

Maharashtra Vs. Ahmed Shaikh Babajan & Ors. 2009 (1) RCR (Criminal) 224 (SC), Arumugam Vs. State 2009 (3) SCC (Criminal) 1130. Thus, there is no ground to ignore the testimony of PW-2 complainant Balkar Singh, the witness of occurrence.

31. It is a fact of common knowledge that we can hardly find the statement of a witness which is free from some exaggerations and deviations. These exaggerations and deviations are sometimes the result of over-consciousness of a witness, which is not a ground to adversely effect the evidentiary value of his statement. Thus, if there are some deviations in the statement of the complainant as to whether he was conscious or otherwise at the spot or at the time when he was taken to the hospital is not going to the root of the case with respect to his evidence about the actual occurrence. Thus, the same are of no legal consequences.

32. There is nothing to doubt the presence of PW-2 complainant Balkar Singh at the spot. Mere this fact that PW-1 Dr. J.S.Sidhu has stated that when the injured was brought to the hospital, he was accompanied by his father and brother is no ground to render the presence of Balkar Singh doubtful at the time of occurrence. Moreover, it is a fact of common knowledge that when as a result of the

occurrence of this type, the injured having severe injury is taken to the hospital, he is generally accompanied with some persons. The doctor generally record the presence of the closest relatives of the injured. It is not necessary that the name of each and every person who had accompanied the injured to the hospital must be recorded in the Medico Legal Report or the other record of the hospital. So, the omission of the name of PW-2 Balkar Singh in the hospital record is no ground to conclude that he was not present at the spot. PW-2 Balkar Singh has given the natural and cogent version of the occurrence and has faced the test of cross-examination and even then his testimony could not be shattered.

33. This fact is not disputed that the Investigating Officer has not taken into possession any blood stained earth from the spot. As per the prosecution version, the occurrence has taken place on the evening of 22.02.2002. The presence case has been registered on 23.02.2002. PW-4 ASI Gurnam Singh, the Investigating Officer has stated that he has visited the spot on 23.02.2002 along with Balkar Singh at about 5.00 p.m. So, the Investigating Officer has visited the spot near about after 22 hours of the occurrence. As already mentioned, the place of occurrence is a thoroughfare. So, it is not possible that after such a lapse of

time, the blood stained earth may be available on the spot. No doubt, the prosecution witnesses have stated that at the time of occurrence the injured was having the blanket wrapped over his body, which was stained with blood. But, the said blanket has also not been taken into possession by the Investigating Officer which is a lapse on the part of the Investigating officer and is no ground to adversely affect the credibility of the direct evidence on the point of occurrence. The report of the expert with respect to the presence of the blood on the clothes of the victim and the corresponding cut are only the corroborative evidence. If, the direct evidence brought on record to prove the occurrence is cogent, convincing and reliable then the lapse on the part of Investigating Officer to send the blood stained clothes to the Forensic Science Laboratory will be no ground to afford any benefit to the accused. To support this view reference can be made to cases **Shyamal Ghosh Vs. State of West Bengal 2013(1) R.C.R (Criminal) 770 (S.C)** and **Ram Singh @ Chajju Vs. State of H.P 2010 (1) RCR (Criminal) 851 (S.C).**

34. The plea raised by learned counsel for the appellant that ASI Gurnam Singh has lifted the blood from inside the Haveli of the accused is against the record. PW-4 ASI Gurnam Singh has categorically stated in the cross-

examination that it is incorrect that blood was lying on the ground inside the Haveli. He further categorically denied that he did not lift the blood stained earth from inside the Haveli as the occurrence was falsely shown to have taken place outside the Haveli. So, there is no material on record to establish that any blood stained earth was lifted from inside the Haveli of the appellant. Rather, the Investigating Officer has categorically denied that any blood was found available in the Haveli of the appellant or the same was lifted by him.

35. The plea raised by learned counsel for the appellant that injured Gurjit Singh accompanied by 2-3 persons had gone to the house of accused and caused injuries to appellant and appellant has only acted in his self defence is also not established from the material/ evidence on record. The whole defence version of the appellant is based on the testimony of DW-2 Manmohanjit Singh and the medical evidence showing an injury on the left side of his scalp. The testimony of DW-2 Manmohanjit Singh is not reliable at all. He has stated that on 22.02.2002, he was going to the house of Gurdial Singh, Commission Agent at 7.30 p.m at village Kotla. When he reached near the cattle shed of Navjeet Singh, he heard commotion from the house of Navjeet Singh. He parked his scooter outside and went

inside to have a look, where he found Navjeet Singh lying on the ground. Before that 2-3 persons fled outside by pushing him aside. On his inquiry, Navjeet Singh told him that Gurjit Singh and 2-3 persons have caused injuries on his person. He then summoned his father and after making arrangement of a vehicle, he removed Navjeet Singh to Civil Hospital, Machhiwara. On the following day, he reported the matter to the police, but no action was taken. It is highly surprising that even if Gurjit Singh and 2-3 other persons had fled away by pushing DW-2 Manmohanjit Singh, he was not able to recognize them. Their identity was only disclosed to him by accused Navjeet Singh. He is resident of village Shhorian, Police Station Machhiwara, whereas the occurrence has taken place in village Kotla Bet. It is also not known as to for what purpose he was going to visit the house of Gurdial Singh, Commission Agent at the time of occurrence. He has stated that on the following day he informed the police, but in the cross-examination he has not been able to tell the name of the concerned police official to whom he has made the statement. ASI Gurnam Singh has not been cross-examined to the effect that he has recorded the statement of DW-2 Manmohanjit Singh during the investigation of the case. In these circumstances, the presence of DW-2 Manmohanjit Singh is not established at

the spot and he has only been introduced as a defence witness to support an afterthought defence plea.

36. PW-4 ASI Gurnam Singh has admitted in the cross-examination that he has recorded the statement of accused-appellant Navjeet Singh during investigation of the case. But, the said statement of Navjeet Singh has not been brought on record by the accused-appellant by summoning the relevant record for the reasons best known to the accused-appellant. Rather, the impugned judgment shows that during the course of arguments, learned trial Judge had asked the learned Additional Public Prosecutor to place the Daily Diary Report recorded on the basis of statement of Navjeet Singh on judicial file as the same was lying in the police file. But, the said Daily Diary Report has not been taken into consideration by the learned trial Court on the ground that the same was not proved in-accordance with law and the learned defence counsel has also pleaded that it does not contain the true facts disclosed by the accused. Admittedly, no action has been taken on the statement of accused-appellant recorded by the Investigating Officer. The accused-appellant or his relatives did not agitate the matter before the Investigating Officer or the higher police authorities, rather, they kept mum. Even, no private complaint has been filed by the appellant against Gurjit

Singh and his alleged associates. It shows that the defence plea raised by the appellant is only an afterthought.

37. The presence of injury on the person of appellant will also not advance his case. DW-1 Dr. Shashi Kiran Singh, Medical Officer, Subsidiary Health Centre, Barma, PHU Machhiwara has medico legally examined the appellant and found the following injury on his person:-

1. 6 cms x .3 cm laceration placed over scalp left side of mid line about 8.5 cms above the left ear. The margins were irregular. Fresh bleeding was present. The patient was advised x-ray of the scalp (skull).

He further deposed that on receipt of the x-ray report, this injury was declared as simple. As per the statement of DW-1 Dr. Shashi Kiran Singh and the Medico Legal Report Ex.D1/1, accused arrived in the hospital at 11.30 p.m on 22.02.2002. Probable duration of the injury was within two hours. In this manner, the injury on the person of appellant might have been caused between 9.00 to 9.30 p.m on 22.02.2002, whereas the occurrence has taken place at 7.45 p.m. In these circumstances, it cannot be stated that the injury was suffered by appellant during the course of this occurrence. Moreover, the non-explanation of such simple injury on the person of accused cannot be a ground to disbelieve the prosecution version. It is not the

law that the prosecution case shall fail only because injuries on the person of accused have not been explained. If, the case of the prosecution is supported by an eye witness, who is found to be truthful, the non-explanation of injuries on the person of accused cannot be a foundation for discarding the prosecution version. To support this view reference can be made to cases **Triloki Nath & Ors. Vs. State of U.P 2005(4) R.C.R (Criminal) 870, Ram Avtar Vs. State of Uttar Pradesh 2003 (1) Crimes 138 and Gurmail Singh Vs. State of Punjab & Anr. 2013(2) SCC (Cri.) 369.**

38. The defence plea raised by the appellant also does not inspire any confidence, as neither appellant Navjeet Singh nor DW-2 Manmohanjit Singh were sure as to how many persons were accompanying Gurjit Singh. If the occurrence will have taken place in the manner alleged by accused, they must have been able to specifically tell the number of persons having attacked the appellant in his house. As already mentioned, the accused-appellant and his family members have not taken any concrete step to pursue the statement of appellant recorded by the police for taking legal action against injured Gurjit Singh and his associates. If, the police was not taking any action, appellant was free to file the private complaint in the Court. The occurrence has not been even disputed by the appellant in his statement

under Section 313 Cr.P.C, rather he has alleged that Gurjit Singh came inside the cattle shed and raised 'lalkara' to teach him a lesson for causing fist blows to him and on that he gave a 'soti' blow, which hit on his head. He was also accompanied by 2-3 persons. In self defence in order to save himself, he had to use 'Gandasi'. Thus, he has admitted that he caused injuries to Gurjit Singh with 'Gandasi'. The plea raised by him that Gurjit Singh and his associates trespassed in his house/cattle shed in order to cause injuries to him is not established. Thus, it can not be stated that Gurjit Singh was the aggressor. Rather, from the evidence adduced by the prosecution, it comes out that when Gurjit Singh accompanied by his uncle Balkar Singh was going to his house from his fields. He was attacked by appellant armed with a 'Gandasi' and caused him a severe head injury. Thus, he being an aggressor can not claim the right of self defence. To support this view reference can be made to case **Abid Vs. State of U.P 2009(4) R.C.R (Criminal) 985.**

39. I also do not find any substance in the contentions raised by learned counsel for the appellant that Section 307 IPC is not attracted. From the statement of PW-6 Dr. M.K.Sobti, the treating neurosurgeon, it comes out that injured Gurjit Singh was having two inch long cut

wound with fresh bleeding and sharp margins in the left parietal region. Probable duration of the injuries was within six hours and kind of weapon was sharp. He further deposed that his C.T.Scan showed Intracerebral blood with diffuse cerebral edema with pneumocranium with fracture left parietal bone with bony fragment in brain tissue. He further deposed that the patient was taken for surgery. His left parietal craniotomy was done. Blood inside the brain was taken out and duro plasty was done. He further deposed that on the application Ex.PE, he declared injury to head was dangerous to life.

40. Section 307 IPC reads as under:-

“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 hereinbefore mentioned.

Attempts by life convicts.—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death]”.

41. The Hon'ble Supreme Court in case **State of M.P**

Vs. Kashiram & Ors. 2009(1) R.C.R (Criminal) 956 has laid down as under:-

9. “To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present intent coupled with some overt act in execution thereof.

10. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled

with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 Indian Penal Code cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

42. Similarly, in case **Jage Ram and others Vs. State of Haryana 2015 (1) RCR (Criminal) 802**, the Hon'ble Apex Court has laid down as under:-

12. “For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused persons intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the

intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.”

43. The same ratio of law has been laid down by the Hon'ble Apex Court in cases **Prakash Chandra Yadav Vs. State of Bihar & Ors. 2007(4) R.C.R (Criminal) 860** and **Lachman Singh Vs. State of Haryana 2006(3) R.C.R (Criminal) 904**. In view of the aforesaid ratio of law laid down by Hon'ble Apex Court to justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although, the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. To justify a conviction under Section 307 IPC, the Court has to see whether the act, irrespective of its result, was done with intention or knowledge and under such circumstances as mentioned in Section 307 IPC. So, the intention or the knowledge of the accused are the determining factor, rather than the nature of the injury.

But, in the instant case from the medical evidence, it is established that the victim has suffered the severe head injury. His C.T. Scan showed Intracerebral blood with diffuse cerebral edema with pneumocranium with fracture left parietal bone with bony fragment in brain tissue and he had to be operated upon immediately on arriving in the hospital. If such head injury is not treated, it can certainly result to death. The damage caused to the vital part of the body of injured Gurjit Singh i.e. parietal region of the head shows that the blow was given by appellant with considerable force. As per the testimonies of complainant Balkar Singh and injured Gurjit Singh, the accused-appellant was already present in the street armed with a 'Gandasi' and when they arrived near the accused, the forceful blow of 'Gandasi' was given on the most vital part of the body i.e. head of Gurjit Singh. The manner in which the appellant armed with 'Gandasi' was waiting for the arrival of injured in the street and then aiming the 'Gandasi' blow on the head of the injured Gurjit Singh indicates the intention and the knowledge of the appellant to cause his death. It has also come in the statement of prosecution witnesses that prior to this occurrence, the appellant had a dispute with injured Gurjit Singh. So, he also had a motive to commit the crime. Thus, all the ingredients to attract

Section 307 IPC are clearly made out from the evidence on record.

44. Mere this fact that the accused-appellant has given a single blow of 'Gandasi' on the head of injured Gurjit Singh is itself no ground to conclude that he had no intention to kill him. in case **Arun Raj Vs. Union of India and others 2010(3) R.C.R (Criminal) 230**, a single blow on the chest of deceased was given with a kitchen knife to take the revenge, which proved fatal. The Hon'ble Supreme Court held that accused will be guilty of the offence punishable under Section 302 IPC and not under Section 304 Part-II IPC. In case **Balraje & Trimbak Vs. State of Maharashtra 2010(3) R.C.R (Criminal) 430**, a single blow was given by the accused with knife on the chest and deceased died due to said injury. The Hon'ble Supreme Court held that Court was fully justified in convicting the accused under Section 302 IPC. The same ratio of law has been reiterated in case **Vijender Kumar @ Vijay 2010(3) R.C.R (Criminal) 450**. Thus, keeping in view the aforesaid consistent ratio of law laid down by the Hon'ble Apex Court, mere this fact that the appellant has given the single blow of 'Gandasi' on the head of injured Gurjit Singh is no ground to conclude that he had no intention or knowledge to commit the act under the circumstances mentioned in Section 307 IPC.

45. The cases relied upon by learned counsel for the appellant are quite distinguishable of facts. In **Pritam Singh and another's case (Supra)**, the weapon used was a small size 'Gatra Kirpan'. If the intention of the appellant would have been to cause death, then he would have brought some lethal weapon to inflict the injury. The doctor who conducted the operation was also not examined to establish the actual nature of injury. In **Rakesh's case (Supra)** there was no previous enmity. No case was made out by the prosecution that appellant came to the spot with pre-planning to commit the crime. Whereas, in the instant case, the appellant armed with a weapon was waiting for arrival of the injured and immediately on his arrival, the assault was opened. **Pishora Singh's case (Supra)** is entirely on different footing as in that case it was not established as to who out of two accused had inflicted the injury dangerous to life. But, in the instant case, the injury has been specifically attributed to the appellant. Thus, I do not find any legal infirmity in the conviction of appellant as recorded by the learned trial Court.

46. Learned counsel for the appellant faced with this situation has contended that appellant Navjeet Singh is a poor person. He is the first offender and was not involved in any other criminal case. His father Harbhajan Singh had

died during the pendency of the present appeal. Now, there is no other senior member to look after the family. It is also a case of single injury. Thus, he pleaded for reduction in the matter of sentence.

47. I found substance in these contentions raised by learned counsel for the appellant. This fact is not disputed that during the pendency of present appeal Harbhajan Singh, the father of appellant Navjeet Singh has already died. As per the custody certificate placed on record by the learned State counsel, appellant is not involved in any other criminal case. Thus, he is the first offender. It is also the case of single blow/injury. He has faced the agony of these proceedings for the last more than thirteen and half years. Thus, even the lenient view in the matter of sentence will suffice the ends of justice. However, the fine can be enhanced in order to pay compensation to the injured as per provisions under Section 357 (1) Cr.P.C as fine is the part of the sentence.

48. Thus, keeping in view my aforesaid discussion, there is no legal infirmity or impropriety in the conviction of the appellant recorded by the learned trial Court for the offence punishable under Section 307 IPC and the same is hereby confirmed. However, the sentence awarded to the appellant is hereby modified. Now, the appellant is ordered

to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 41,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. Out of the fine so realized Rs.40,000/- shall be paid to injured Gurjit Singh as compensation under Section 357(1) Cr.P.C. The enhanced amount of fine be deposited with the learned trial Court. With the aforesaid modification in the order of sentence, the present appeal has no merits and the same is hereby dismissed.

November 4, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**