

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 2289-SB of 2003(O&M)

Date of Decision: May 20 , 2015.

Nirmal Singh and others

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. D.S.Pheruman, Advocate
for the appellants.

Mr. Ashish Sanghi, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants Nirmal Singh son of Hazara Singh and Paramjit Kaur, his wife have preferred the instant appeal impugning judgment and order dated 29.11.2003 passed by learned Additional Sessions Judge, Amritsar. Vide the impugned judgment and order, both the appellants have been convicted for offence punishable under Section 307 IPC and sentenced to undergo rigorous imprisonment for four years each, besides, pay a fine of ₹1,000/- each and in default thereof, to further undergo simple imprisonment for two months.

As per prosecution version, MLR dated 22.06.2001 (Ex.DA)

pertaining to injured Bakhshish Singh son of Mukhtiar Singh was received through Tarlok Chand, an employee of Civil Hospital, Patti. On receipt of this information, ASI Hardeep Singh proceeded to Civil Hospital, Patti on 23.06.2001. Injured Bakhshish Singh was declared unfit to make a statement. ASI Baldev Singh again proceeded to Civil Hospital on 24.06.2001. On the doctor declaring the injured fit to make statement, ASI Baldev Singh got recorded the statement Ex.PD of injured Bakhshish Singh.

Complainant Bakhshish Singh in the said statement revealed that on 22.06.2001, he alongwith his wife Sarabjit Kaur had gone to their fields for cutting fodder. When they reached the ploughed land, accused Nirmal Singh armed with a Kirpan and his wife Paramjit Kaur armed with Kasia came running towards them from their fields. Appellant-accused Paramjit Kaur raised a lalkara that Bakhshish Singh should be caught hold of and be not allowed to escape, to teach a lesson for not allowing them to pass through his fields. Complainant's wife Sarabjit Kaur retracted out of fear. Balwinder Singh came to the spot. Accused Nirmal Singh inflicted a Kirpan blow on the left side of the head of complainant due to which he fell down. Accused Paramjit Kaur inflicted a Kasia blow on the left side of his head. Nirmal Singh then inflicted another Kirpan blow on his right hand. Paramjit Kaur gave a Kasia blow on his chest with its backside and another one on the waist. Nirmal Singh inflicted another Kirpan blow on his right thigh. When he raised alarm, appellants-accused ran away with their respective weapons. Occurrence is stated to be witnessed by Sarabjit Kaur wife of the complainant-injured and one Balwinder Singh. Kuldeep Singh came to the spot, arranged a conveyance and got him

admitted in the hospital.

On the basis of this statement, FIR No.92 dated 24.06.2001 (Ex.PC/2) was registered under Sections 326/324/323/34 IPC.

PW1 Dr. Sukhwinder Singh Sandhu, Medical Officer, Civil Hospital, Patti medico-legally examined injured Bakhshish Singh and found seven (7) injuries on the person of Bakhshish Singh. Description of injuries as given by him is as under:-

- “1) An incised wound 3.5cm x .5cm oblique on the left parietal of scalp, 2.5cm from the mid line. Wound was bone deep and fresh bleeding was present. X-ray was advised.
- 2) An incised wound 4.5cm x .5cm almost transverse in direction on left parietal region of scalp, 2.5cm from injury No.1. Wound was bone deep, fresh bleeding was present, x-ray advised.
- 3) An incised wound 7.5cm x 1cm slightly oblique on the middle of the right hand palm and lateral part of middle finger. Wound was bone deep, fresh bleeding was present, third metacarpal bone was cut and third metacarpal parietal joint was cut open. Underlying tendon was also cut.
- 4) A reddish contusion 3cm x 2cm on back of left side of chest, 2cm from mid line.
- 5) A reddish contusion 8 x 2cm transverse on right scapular region, x-ray advised.
- 6) A reddish contusion 2.5cm x 1.5cm on lumbar point.
- 7) A linear superficial incised wound 11cm x .25cm transverse on front and lateral side of right thigh, middle portion, wound was skin deep.

Injury Numbers 1, 2 and 5 were subject to x-ray examination. Injury No.3 was grievous in nature. Injury No.4, 6

and 7 were simple in nature. Probable duration was within six hours. Kind of weapon used sharp edged for injury Numbers 1, 2, 3 and 7 and other injuries were caused with blunt weapon.”

Appellant Nirmal Singh was arrested on 25.06.2001. He allegedly suffered disclosure statement (Ex.PF) in pursuance to which a Kirpan (Ex.P1) was recovered and taken in possession vide memo Ex.PH. Site plan (Ex.PJ) of the place of recovery was prepared. Accused Paramjit Kaur produced the Kasia on 04.08.2001 allegedly used by her, which was taken in possession vide Ex.PK. Offence punishable under Section 307 IPC was included in the FIR on 06.07.2001 on the basis of opinion rendered by Dr.Sukhwinder Singh Sandhu Ex.PB, which noted as under:-

“Injury No.5 declared as simple. As signs of symptoms of head injury present, possibility of Injury No.1 and 2 dangerous to life cannot be ruled out, without treatment.”

As per x-ray report dated 30.06.2001 (Ex.PM), no fracture was detected.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against the accused on 10.11.2001. Charge under Sections 307/326/323/34 IPC was framed against the accused on 28.11.2001 to which they pleaded innocence and claimed trial.

Prosecution examined as many as seven witnesses to prove its case.

Accused while denying incriminating material and evidence put to them, pleaded innocence and false implication in their statements under Section 313 Cr.P.C. Two witnesses were examined in defence.

Learned trial court on considering the facts and circumstances as well as the evidence on record, found the appellants guilty of the offence punishable under Section 307 IPC and sentenced them as mentioned above.

Learned counsel for the appellants submits that appellant Nirmal Singh is the real uncle of injured-complainant Bakhshish Singh i.e., the brother of Bakhshish Singh's father. Appellant Paramjit Kaur is the aunt of injured-complainant. Dispute is regarding a passage and the appellants have been falsely implicated in this case. It is submitted that there is a considerable and unexplained delay in the lodging of FIR. Therefore, possibility of embellishment and concoction cannot be ruled out. Incident has allegedly taken place in the morning of 22.06.2001 and the FIR has been registered on 24.06.2001 at about 1.30 p.m. Explanation that the injured had been declared unfit to make statement and there was no other relative of the injured, is belied from the record itself. Specific reference is made to the statement of PW3 Sarabjit Kaur wherein she admits in her cross-examination that she remained in the hospital alongwith her husband as long as he remained admitted. It is submitted that Sarabjit Kaur in all probability did not witness the occurrence. Balwinder Singh the other person who is alleged to have witnessed the occurrence has also not been examined having been given up by the prosecution. In fact, Balwinder Singh son of Hazara Singh i.e., real brother of the injured, has appeared as defence witness DW2. PW3 Sarabjit Kaur has stated in her cross-examination that DW2 Balwinder Singh was not present at that time.

It is vehemently argued that rigors of Section 307 IPC are not

attracted in the present case. As set forth by injured Bakhshish Singh, the injuries received by him would at best fall under Section 326 IPC.

In the alternate, Sh. D.S.Pheruman, learned counsel for the appellants submits that appellant No.1 Nirmal Singh is about 65 years of age and appellant No.2 Paramjit Kaur is about 60 years of age. They are not involved in any other criminal case. There has been no untoward incident between the parties since the alleged incident. Parties are closely related. Complainant Bakhshish Singh has admitted that the ancestral land in question stand partitioned. They are separate in residence and there is no pending litigation between the parties. Therefore, it would be in the interest of justice and to reduce the sentence imposed upon the appellants to that of having already undergone.

Learned counsel for the State while refuting the abovesaid averment has supported the impugned judgment and order. It is submitted that the intention to kill is clearly made out from the receipt of the injures. There is no question of Section 307 IPC not being attracted in the present case. Fact that there is no fracture neither any operation etc. was required consequent to infliction of injuries No.1 and 2 does not detract from the prosecution case. He prays for upholding the conviction and sentence imposed upon the appellants.

I have heard learned counsel for the parties and gone through the record.

Perusal of the record reveals that the injured complainant Bakhshish Singh has given a graphic description of the manner in which injuries were inflicted upon him by the appellants. His account is corroborated

by the medical evidence on record. Seven injuries as described above was detected on his person by PW1 Dr.Sukhwinder Singh Sandhu. Balwinder Singh not having supported the prosecution version would not be very material keeping in the fact that he is the real brother of appellant Nirmal Singh.

However, there is merit in the contention of learned counsel for the appellants that rigors of Section 307 IPC would not be attracted in the present case. Incident took place on 22.06.2001. Bakhshish Singh was medico-legally examined on 22.06.2001 itself at about 10.00 a.m. at Civil Hospital, Patti which is evident from Medical Report (Ex.PA) and testimony of PW1 Dr. Sukhwinder Singh Sandhu.

No opinion was given at the outset regarding injuries No.1, 2 and 5 they being subject to x-ray. X-ray report (Ex.PM) was received on 30.06.2001 though the x-ray report No.65/HK1/337/2001 is dated 28.06.2001. No fracture of the skull was detected. It appears that the x-ray of the chest was also conducted. However, no fracture was found therein as well. Ex.PB i.e., the opinion of the doctor in respect to the nature of injuries No.1, 2 and 5 is admittedly undated. It mentions that the possibility of injuries No.1 and 2 being dangerous to life without treatment cannot be ruled out.

A Division Bench of this Court in Atma Singh v. State of Punjab, 1980 Cri.LJ 1226 has observed as under:-

“17. We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life

the Court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the facts that should weigh with the Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as 'grievous hurt' of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code.”

Learned counsel for the appellants has duly placed reliance on judgments of this Court in Pritam Singh and another v. State of Punjab, 2010(3) RCR (Criminal) 395 and Jaswant Singh v. State of Haryana, 1996 (3) RCR (Criminal) 439. Contention of the learned counsel for the State that the seat of injuries by itself is sufficient to attract the applicability of Section 307 IPC, is untenable in the peculiar facts and circumstances of the case. Had it been the intention of the appellants to, in fact, kill the accused they would not have left the accused in this condition but would have ensured his death. Therefore, in the facts and circumstances of the present case conviction of the appellants under Section 307 IPC is set aside.

However, the appellants are liable for the offence punishable under Section 326 IPC having caused the injuries which would endanger life. The weapon used, intention of the accused and knowledge thereof that they were likely to cause grievous hurt to the injured brings the offence within the parameters specified under Section 320(7) IPC punishable under Section 326 IPC.

Keeping in view the facts and circumstances as above, the appellants are held guilty for the commission of offence punishable under

Section 326 IPC.

It is confirmed by learned counsel for the State that the appellants are not involved in any other case, either before or after the present case. Appellant Nirmal Singh aged about 65 years has undergone actual imprisonment of one (1) year and sixteen (16) days. Appellant Paramjit Kaur aged about 60 years has undergone actual imprisonment of three months and thirteen days. Both of them are aged persons. Admittedly accused and the injured belong to the same family and are co-existing peacefully in the same village ever since. They have undergone the agony of trial for fourteen years. In these circumstances, it is considered just and expedient to reduce the sentence imposed upon the appellants to that already undergone by them.

Learned counsel for the appellants fairly submits that as per Section 357 Cr.P.C. and the observations of Hon'ble Supreme Court in **Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770**, a duty is cast upon the court to apply its mind to the question of awarding compensation in every criminal case. In the facts and circumstances of the case, it is considered appropriate to direct both the appellants to pay a sum of ₹25,000/- each to the injured within a period of four months from the receipt of certified copy of this decision, failing which they shall both undergo rigorous imprisonment for two years.

With the abovesaid modification, this appeal is disposed of.

May 20, 2015.
'om'

(LISA GILL)
JUDGE