

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

**Crl. Appeal No. S-252-SB of 2004 (O&M)
Date of decision : 14.01.2015**

Balbir Kaur alias Veer Kaur and another
....Appellants
versus
State of Punjab
...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surinder Garg, Advocate,
for the appellants.

Mr. Gurvir Sidhu, AAG, Punjab.

RITU BAHRI, J.

This appeal has been filed against the judgment dated 12.01.2004 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Faridkot, whereby accused-appellants namely Balbir Kaur @ Veer Kaur and Gurmail Singh @ Mela Singh have been convicted and sentenced as under:-

<i>Name of Convict</i>	<i>Offence</i>	<i>Sentence</i>
Gurmail Singh @ Mela Singh	U/S 307 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/-. In default of payment of fine, to further undergo rigorous imprisonment for two months.
	U/S 324 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-. In default of payment of fine, to further undergo rigorous imprisonment for one month.
Balbir Kaur	U/S 307/34 IPC	Rigorous imprisonment for a period of five years and to pay a fine of Rs.1000/-. In default of payment of fine, to further undergo rigorous imprisonment for two months.
	U/S 324/34 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-. In default of payment of fine, to further undergo rigorous imprisonment for one month.

In brief, the facts of the case are that on 25.06.1999, Shinderpal Singh had exchanged his turn of water with Joginder Singh. The turn of Joginder Singh, which was to be availed by Shinderpal Singh, was to start from 6.00 A.M. Accordingly, when Shinderpal Singh along with his father, Nirbhai Singh and Joginder Singh reached the field in order to take the turn of water from Mela Singh, accused Mela Singh, armed with Barcha (spear), Gurdas Singh alias Das, armed with Gandali, Binder Singh, armed with *soti* and Balbir Kaur, mother of Mela Singh and Gurdas Singh, empty handed, were present there. Balbir Kaur gave a lalkara that since they had been taking the water before the start of their turn, therefore, they be taught a lesson. Upon this, Mela Singh gave a spear blow to Shinderpal Singh, which hit on his chest. Gurdas Singh alias Dass gave a *gandali* blow, which hit in the abdomen of Shinderpal Singh, as a result of which, Shinderpal Singh fell down. Thereafter, Binder Singh gave a *soti* blow, which struck on his left index finger. Shinder Pal Singh raised an alarm, upon which Nirbhai Singh and Joginder Singh rescued him from the clutches of the accused. Thereafter, the assailants ran away from the spot along with their respective weapons. After arranging a vehicle, Shinderpal Singh was taken to Civil Hospital, Muktsar, where his medical examination was conducted. Earlier also, the parties had a dispute with regard to the turn of water, but the matter was got compromised with the intervention of village Panchayat. Thereafter, ASI Achhar Singh visited the hospital and recorded the statement of Shinderpal Singh, on the basis of which, the present FIR was registered. After completion of necessary investigation, challan was prepared and presented in the Court.

The Illaqa Magistrate committed the case to the Court of Sessions. Consequently, charges under Sections 307, 324, 323 read with Section 34 IPC were framed against the accused, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Dr. M.L. Ashwani (PW-1), Shinderpal Singh (PW-2), Nirbhai Singh (PW-3), Darshan Singh, Patwari (PW-4) and SI Achhar Singh (PW-5), Thereafter, the evidence of the prosecution was closed.

On conclusion of the prosecution evidence, statements of the accused-appellants, along with their co-accused, under Section 313 Cr.P.C., were recorded, wherein entire incriminating evidence appearing on the record was put to them. However, they denied the same and pleaded false implication. In defence, accused examined Kuldeep Singh (DW-1).

The trial Court, after going through the entire evidence led by the prosecution, acquitted accused-Gurdas Singh and Binder Singh of the charges framed against them. While acquitting them, it has been observed that as per the deposition of Shinderpal Singh (PW-2), he had admitted that Binder Singh had got no land at the spot and he resided in the village. It had also been admitted that Gurdas Singh-accused resided at his *Dhani* i.e. Farm House in the fields. Accordingly, their presence became doubtful. In the present case, a *lalkara* was attributed to Balbir Kaur-appellant No.1 and she herself had admitted her presence at the spot. As per the statement of Dr. M.L. Ashwani (PW-1), injury No.2 was dangerous to life, whereas injury No.1 was declared as simple in nature. Injury No.2 was attributed to Gurmail Singh @ Mela Singh-appellant No.2. Accordingly, appellants-Gurmail Singh @ Mela Singh and Balbir Kaur were convicted in the

aforesaid terms.

Learned counsel for the appellants, at the outset, does not challenge the conviction on merits and restricts his prayer to quantum of sentence.

The incident in the present case relates back to the year 1999. As per the custody certificate, Balbir Kaur @ Veero-appellant No.1 has undergone 2 months and 3 days out of 5 years and she is not facing any other criminal trial. At the time of suspension of her sentence vide order dated 04.03.2004, it was observed that she was 70 years of age. As of today, she is almost 80 years old. Moreover, no injury has been attributed to her. As per custody certificate of Gurmail Singh @ Mela-appellant No.2, he has undergone 1 year, 8 months and 11 days. He was also convicted in case FIR No. 53 dated 16.03.2003, under Section 13-A/3/67 of Gambling Act and was sentenced to pay fine vide judgment dated 02.04.2005. In the present case, he was released on bail vide order dated 08.09.2005 and he has not misused the concession of bail. After going through the facts of the case, it transpires that there was no previous enmity between the parties and the incident had taken place on account of turn of water. Gurmail Singh-appellant No.2 was armed with spear, therefore, the injuries No. 1 and 2 were attributed to him. One of the injuries i.e. injury No.2 was declared as 'dangerous to life', therefore, offence under Section 307 IPC was made out. Since there was no previous enmity between the parties and the dispute arose on account of turn of water, therefore, intention to kill Shinderpal Singh is not made out. Moreover, the appellants have faced the agony of protracted criminal trial for almost 15 years.

In these circumstances the judgment passed by the trial Court

does not require any interference and the same is, accordingly, upheld. Resultantly, the appeal is dismissed. However, a lenient view can be taken on the quantum of sentence of the appellants.

Keeping in view that the appellants have been facing criminal trial for the last more than 15 years, the sentence of imprisonment awarded to appellants is reduced to the period already undergone. However, since the complainant had received injuries, the amount of fine is being enhanced to Rs.25,000/-, which shall be paid to injured-complainant as compensation. The appellants are directed to pay enhanced amount of fine/compensation to the complainant.

With the above modification/direction, the present appeal stands disposed of.

(RITU BAHRI)
JUDGE

14.01.2015
ajp