

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

**CRA-S No.329-SB of 2004
Date of decision: 06.02.2015**

Nachhattar Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH.

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

Present: Mr. H.S. Rakhra, Advocate
for the appellant.

Ms. Shivali, AAG, Punjab.

DARSHAN SINGH J.

1. The present appeal has been directed against the judgment of conviction dated 30.01.2004, vide which the appellant-Nachhattar Singh was held guilty and convicted for the offence punishable under Section 307 Indian Penal Code (hereinafter called 'IPC') and the order of sentence of the even dated, vide which he was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.2,000/-, in default of payment of fine he was to further undergo rigorous imprisonment for a period of 6 months.

2. The brief facts of the prosecution case are that on 03.09.2001, (PW-8) ASI Bakhtaur Singh, went to Civil Hospital,

Bathinda after obtaining the opinion of the doctor regarding the fitness of injured-complainant, Surjit Singh, to make the statement, recorded his statement Ex.PH, wherein complainant-injured, Surjit Singh, stated that his daughter Bindarpal Kaur is married to Satnam Singh, resident of village Khadar Patti Tapa and he has kept him in his house as resident son-in-law. That accused-Nachhattar Singh is serving in CRPF and is married to Jaswinder Kaur. Jaswinder Kaur had strained relations with her in-laws as they were harassing her due to that reason she was putting up in the farm house along with her mother Jasmail Kaur and sister-in-law (Bhabhi) Jaspreet Kaur. On 25.08.2001, beatings were given to Jaswinder Kaur by the family members of in-laws and insecticides was administered to her. Jaswinder Kaur was getting treatment in Civil Hospital, Rampura. Jasmail Kaur was looking after her in the hospital. Jaspreet Kaur was alone in the house. She requested the complainant saying that she was all alone and he should sleep in their house to take care of. Accordingly, on 02.09.2001, he and Jaspreet Kaur were lying on the roof of the house. Since, it was hot he put off his shirt. It was moon-lit night. At about 09:00 p.m. accused came on the roof of the house after climbing over the projection and he was armed with an axe. Accused remarked that he would make him to take care of the house, thereafter he gave the axe blows to complainant-Surjit Singh, while he was lying on the cot. Three axe blows were given on the left side below his chest. Other axe blows were given by him on his left side of jaw, left shoulder, left arm, right hand and right finger. He raised hue and cry, accused ran away with the axe from the spot. Jaspreet Kaur gave information of this occurrence to Satnam

Singh, the son-in-law of the complainant, who brought him to the Civil Hospital, Rampura, where he was medico legally examined and thereafter referred to Civil Hospital, Bathinda. The motive for this occurrence was stated to be that Nachhattar Singh and his family members were not rehabilitating Jaswinder Kaur in their house and was being harassed for the demand of dowry. Jaswinder Kaur had got registered two cases against family members of her in-laws. He was suspecting that the complainant was helping Jaswinder Kaur. On the statement of injured-Surjit Singh Ex.PH, FIR Ex.PH/2, was registered and investigation was started.

3. PW-8, ASI Bakhtaur Singh, inspected the spot and prepared the Rough Site Plan Ex.PR. He lifted the blood-stained earth and simple earth from the place of occurrence which were kept in two separate sealed parcels and were taken into possession vide Memo Ex.PK. On the opinion of the doctor, the offence punishable under Section 307 IPC was added. Accused-Nachhattar Singh was arrested by PW-6, ASI Atma Singh, on 26.07.2002. On the basis of his disclosure statement Ex.PL, he got recovered the axe i.e. the weapon of offence which was taken into possession vide Memo Ex.PM after preparing its sketch. The case property was deposited with the Moharir Head Constable of the Police Station and on completion of the formalities of investigation the report under Section 173 of the Code of Criminal Procedure, was presented in the Court.

4. Accused-appellant was charge-sheeted for the offence punishable under Section 307 IPC by the learned trial Court vide order

dated 15.11.2002, to which the appellant pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as 8 witnesses. The report of the Forensic Science Laboratory Ex.PD, was also tendered in evidence.

6. When examined under Section 313 of the Code of Criminal Procedure, the appellant pleaded that he is innocent. He has been falsely implicated in this case due to party faction in the village. He and his family members had old enmity with Surjit Singh and his family members.

7. However, the accused-appellant did not lead any evidence in his defence.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the appellant was held guilty and convicted for the offence punishable under Section 307 IPC and was awarded the sentence as mentioned in the upper part of the judgment.

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

10. I have heard Sh. H.S. Rakhra, learned counsel for the appellant, Ms. Shivali, AAG, Punjab, and have carefully examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that initially FIR was registered under Section 326 IPC.

Section 307 IPC has been added later on vide DDR No.11 dated 26.09.2001, i.e. after more than 23 days of the occurrence without any basis.

12. He further contended that there was no motive with the appellant for the commission of the offence. It is alleged that appellant was having strained relations with his wife and she was administered poison then why the appellant will have any grudge due to the complainant sleeping in the house of his brother-in-law when his wife Jaspreet Kaur was alone. If the accused had any grudge against the family of her in-laws, he would have caused injuries to Jaspreet Kaur and not to complainant-Surjit Singh.

13. He further contended that the occurrence is alleged to have taken place in the night on the roof top. It was pitch dark. There was no light so, the identity of the assailant is also not established. It was alleged that Satnam Singh, the son-in-law of the complainant, had arrived at the spot, but he has not been examined. It is also alleged that the complainant and Jaspreet Kaur had raised hue and cry. They were sleeping on the roof top. It is also alleged that the villagers were also performing the duty of night watchman, but even then no independent person or inhabitants of the locality has been examined which renders the prosecution version doubtful. He further contended that even Jaspreet Kaur the witness of the occurrence has not supported the prosecution version so, there is no corroboration to the testimony of the complainant-Surjit Singh.

14. He further contended that PW-2, Dr. B.D. Gupta, has

stated that the injuries on the person of the appellant could be the result of more than one weapon like sword, etc. so, it is not established that the injuries to the complainant were caused with the axe.

15. He further contended that the offence punishable under Section 307 IPC is not made out at all. No injury on the person of the complainant has been declared as dangerous to life. PW-2, Dr. B.D. Gupta, has stated that injured could have died if the medical aid would not have been given which will not attract the offence punishable under Section 307 IPC. Thus, the learned counsel for the appellant pleaded that the conviction of the appellant has been wrongly recorded. He also pleaded that the sentence awarded to him is also very harsh. He has already lost his job due to the conviction and is facing the litigation for the last more than 13 years.

16. On the other hand, learned State Counsel contended that the case of the prosecution is based on direct evidence. The testimony of the complainant is fully corroborated from the medical evidence. The doctor has also given the opinion that the injuries on the person of the complainant could have been caused with the *kulhari* recovered from the appellant. She further contended that the nature of injuries is immaterial to attract Section 307 IPC. It is the intention of the assailant which has to be seen. In the instant case, the appellant has caused injuries to the complainant on his vital part of the body with a dangerous weapon like *kulhari*, which clearly shows his intention to kill the complainant. There is no doubt about the identity of the assailant as he was already known to the complainant thus she

contended that the conviction of the appellant has been rightly recorded.

17. I have duly considered the aforesaid contentions. The case of the prosecution is based on the direct evidence i.e. the statement of the complainant corroborated by the medical evidence. The motive for the commission of crime is generally embedded in the mind of an accused. The motive is psychological phenomenon and the mind of the accused cannot be seen. Motive is the emotion which impels a man to do a particular act. It is sometime very difficult for the prosecution to prove the real motive for the commission of the offence. The Hon'ble Supreme Court in case "*Sheo Shankar Singh Vs. State of Jharkhand and another*" 2011 (2) RCR (Criminal) 634, has laid down that where a case rests upon the deposition of the eye-witnesses, the absence of the motive would not by itself make any material difference. Again, in case "*Birendra Das and another Vs. State of Assam*" 2014 (1) RCR (Criminal) 272, the Hon'ble Apex Court has laid down that motive loses all its importance in the cases where direct evidence of eye-witnesses is available. It was further laid down that even if there may not be an apparent motive but if the evidence of eye-witnesses is clear and reliable, the absence or inadequacy of the motive cannot stand in the way of conviction. In the instant case, it is even the plea of the appellant in his statement under Section 313 of the Code of Criminal Procedure that he and his family had old enmity with complainant-Surjit Singh and his family. The enmity is a double edged weapon. It can be a motive for the occurrence as well as the false implication.

Whether the enmity is the motive for the occurrence or the false implication has to be judged on the basis of the factual matrix of the each case. It is also evident from the testimony of the complainant that he was close to the family of the in-laws of the accused and accused was having strained relations with his wife and her family members. Thus, it cannot be said that the present occurrence was without any motive.

18. Complainant-Surjit Singh, has categorically deposed that he knows accused-Nachhattar Singh present in the Court. Jaswinder Kaur is his wife, Jaspreet Kaur is the wife of his brother-in-law. That about 1 3/4 years ago, Jaspreet Kaur came to her and told that she was all alone in the house and he should sleep in her house. Jaswinder Kaur was admitted in hospital at Rampura as poison was administered to her by her in-laws and her family members were attending Jaswinder Kaur in the hospital. He went to the house of Jaspreet Kaur. At about 08:45 p.m., he was sleeping after putting off his shirt as it was summer season. They were sleeping on the roof of the house. Thereafter he deposed that appellant-Nachhattar Singh came on the roof of the house after climbing over the projection. He was armed with an axe. He called bad names to him saying that he would teach him lesson of looking after the house of Jaspreet Kaur. Accused gave four axe blows from sharp side on his abdomen, two blows on his right hand, one blow was given below the elbow of the left side and another blow was given on the left shoulder and his neck. He raised hue and cry. Jaspreet Kaur also raised hue and cry. Satnam Singh his son-in-law came from his

house as his house was about 100 yards away from the house of Jaspreet Kaur. Accused jumped from the roof of the house and ran away with the axe.

19. PW-4, Surjit Singh, complainant is the injured witness.

Due to the injuries on his person he is the stamped witness whose presence cannot be doubted at all. The Hon'ble Supreme Court in case ***"Chittar Lal Versus State of Rajasthan"*** 2003 Criminal Law Journal 3548, held as under:-

“The other plea was that conviction should not have been made on the basis of a single witness (PW3)'s testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of Justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which

has become locus classicus is Mohamad Gugal Esa Mamasan Ger Alalah V. The King, AIR 1946 PC 3. The privy counsel focused on the difference between English Law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in *Vadivelu Thevar V. The State of Madras*, AIR 1957 Supreme Court 614, *Guli Chand and others V. State of Rajasthan*, AIR 1974 Supreme Court 276, *Vahula Bhushan @ Vehuna Krishnan V. State of Tamil Nadu*, AIR 1989 Supreme Court 236, *Jagdish Parsad and others V. State of M.P.*, AIR 1994 Supreme Court 1251, and *Kartik Malhar V. State of Bihar*, 1996 (1) RCR (Crl.) 308 (SC) : 1996 (1) SCC 614.”

20. The same legal position has been reiterated by the Hon'ble Apex Court, in case “*Mohindra Singh Vs. State of M.P.*” 2007 (2) RCR (Criminal) 439, wherein the Hon'ble Apex Court has observed that it is now a well settled principle of law that conviction can be based on the basis of the testimony of a sole eye-witness.

21. PW-5, Jaspreet Kaur, the witness of occurrence has not supported the prosecution version. PW-5, Jaspreet Kaur was closely related to the appellant. She happens to be the wife of his brother-in-law, so it is natural that she will not come forward to support the prosecution version. Thus, the fact that PW-5, Jaspreet Kaur has not supported the prosecution version is no ground to discard the testimony of PW-4, Surjit Singh, the complainant injured. The testimony of PW-4, Surjit Singh, the complainant injured is natural cogent and reliable.

Similarly, the non-joining of the inhabitants of the locality and other

independent persons is also no ground to discard the cogent and reliable statement of the complainant. It is a fact of common knowledge that in such disputes generally the inhabitants of the locality avoid to get themselves involved. Satnam Singh, the son-in-law of the complainant was in fact not the eye-witness of the occurrence. He had reached at the spot after hearing the alarm from his house which was situated at about 100 yards from the place of occurrence. So, he had come at the spot after the actual occurrence and the non-examination of such a witness will not create any dent in the prosecution case.

22. The testimony of the complainant is further corroborated from the medical evidence. PW-2, Dr. B.D. Gupta, has medico legally examined injured Surjit Singh and found the following injuries on his person:-

1. An incised wound 18 cm. x 5 cm. on the left hypochondrium of abdomen. The intestine and the omentum was coming out of the wound. Clotted blood was present and oozing blood was also present.

2. An incised wound 15 cm. x 2 cm. left side of the chest, muscle deep and 5 cm. below the nipple of the chest. Clotted blood in the wound was present.

3. An incised wound 14 cm. x 3 cm. left side of the abdomen at the level of umbilicus and 5 cm. from the midline. The wound was muscle deep. Clotted blood was present.

4. An incised and slashed wound 8 cm. x 2 cm. on the top of the left shoulder. It was muscle deep and clotted blood was present in the wound.

5. An incised wound 6 cm. x 1 cm. muscle deep on the left side of face, on the ramus of the mandible clotted blood was present in the wound.

6. An incised wound 5 cm. x 1 cm. on the right hand on its palmar aspect 4 cm. below the base of little finger. Clotted blood was present in the wound.

7. An incised wound 4 cm. x 1 cm. bone deep was present on the base of right ring finger. Clotted blood was present in the wound.

8. An incised wound 4 cm. x 1 cm. muscle deep present on the ventral aspect of the left fore-arm, almost in the centre. Clotted blood was present.

23. Thus, the injured was having number of serious injuries on the vital part of his body. The presence of so much injuries on the person of the complainant corroborates his testimony.

24. There is absolutely no doubt about the identity of the appellant to be the assailant. The appellant was previously known to the complainant. The complainant was sleeping on the roof at the time of occurrence. Before doing the assault, he has called him bad names and asked that he will teach him a lesson for looking after the house of Jaspreet Kaur. So, before initiation of the assault, the appellant had also uttered the aforesaid words. A known person can be easily identified even from the voice. Moreover, in the FIR it has been mentioned that it was moon-lit night, thus, PW-4, injured complainant, Surjit Singh had full opportunity to identify the appellant.

25. It is a case of the single accused. The false implication of the accused in the case of single accused is not known to the criminal

law as the injured will never spare the real culprit and will falsely implicate some innocent person. So, there is no question of the false implication of the appellant.

26. The plea raised by learned counsel for the appellant that the axe was not the weapon of offence, carries no substance. PW-2, Dr. B.D. Gupta, has categorically stated in the examination-in-chief that possibility of the injury with sharp edged *kulhara* cannot be ruled-out. The application Ex.PQ, shows that after the recovery of the weapon of offence i.e. the *kulhara* from the possession of the appellant, it was presented before doctor for seeking his opinion as to whether injuries on the person of complainant could be possible with this *kulhara* or not. Doctor has given his opinion Ex.PQ/1, that possibility of all injuries sustained by above-said instrument cannot be ruled-out. In the cross-examination PW-2, Dr. B.D. Gupta, had simply stated that the possibility of the injuries on the person of Surjit Singh having been caused with more than one weapon cannot be ruled-out. He has further stated that possibility of injury No.1 and 2 cannot be ruled-out with sword. Similarly, possibility of injury Nos.2 and 4 with a *gandasa* and injury No.5 and 6 with any other sharp edged weapon than *kulhara* cannot be ruled-out. There can be no dispute with the aforesaid opinion of the doctor as the incised wound can be caused with variety of the sharp weapons. But the medical evidence has to be appreciated in the light of the ocular evidence. In the instant case, the complainant has categorically stated that the appellant was armed with an axe and caused injuries to him with the said axe. Axe has also been recovered

from the possession of the appellant on the basis of his disclosure statement. So, there can be no doubt about the injuries having been caused on the person of the complainant by the appellant with the axe.

27. I do not find any substance in the contentions raised by learned counsel for the appellant that the offence punishable under Section 307 IPC, is not made out. Mere this fact that initially the case was registered under Section 326 IPC and Section 307 IPC has been added later on, is no ground to negate the application of Section 307 IPC. Similarly, the nature of the injury itself cannot determine the applicability of Section 307 IPC. The material factor is the intention of the assailant. To support this view reference can be made to cases **"Girija Shankar Vs. State of U.P." 2004 Criminal Law Journal 1388** and **"R.Parkash Vs. State of Karnataka" AIR 2004 Supreme Court 1812**. In the instant case from the medical evidence it comes out that complainant, Surjit Singh, has suffered the serious injuries on the vital part of his body. Injury No.1 on his body was an incised wound measuring 18 cm. x 5 cm. on the left hypochondrium of abdomen. Even the intestine and the omentum was coming out of the wound. Injury No.2 was again an incised wound measuring 15 cm. x 2 cm. on the left side of the chest, muscle deep and 5 cm. below the nipple of the chest. Injury No.3 was also an incised wound measuring 14 cm. x 3 cm. on the left side of the abdomen at the level of umbilicus. Injury No.4 was again an incised and slashed wound 8 cm. x 2 cm. on the top of the left shoulder. Injury No.5 was also an incised wound 6 cm. x 1 cm. muscle deep on the left side of face, on the ramus of the mandible

clotted blood was present in the wound. PW-2, Dr. B.D. Gupta, has given his opinion Ex.PE/1 that keeping in view all the injuries and condition of the patient. The possibility of death in this case cannot be ruled-out, if medical help is not given to the patient. It shows that the injuries suffered by the complainant could have caused his death if the medical aid would not have been given in time. The appellant was armed with an axe a deadly weapon. He gave repeated blows of the axe at the vital part of the body of the complainant which has resulted in serious injuries. This act of the appellant clearly establishes his intention to commit murder of the complainant and will clearly attract Section 307 IPC.

28. Therefore, if the facts of the natural and probable story of the prosecution, coupled with medical and ocular evidence are taken together the conclusion is inevitable that prosecution has brought on sufficient, acceptable and reliable evidence to prove the charges beyond shadow of reasonable doubt and the learned trial Judge has rightly held guilty and convicted the appellant for the offence punishable under Section 307 IPC. Thus, the conviction of the appellant deserves to be and is hereby maintained.

29. I also do not find any substance in the contentions raised by learned counsel for the appellant with respect to the reduction of sentence. At the time of occurrence, the appellant was armed with a lethal weapon i.e. an axe. He targetted the vital part of the body of complainant-Surjit Singh and by giving repeated blows caused eight injuries. Even the intestine and omentum was coming out of the

abdominal wound. He also caused muscle deep injuries on the left side of chest, left side of abdomen at the level of umbilicus, left shoulder and left side of the face on the arms of mandible. The use of lethal and heavy weapon and giving of repeated blows depicts the clear intention of the appellant to eliminate complainant Surjit Singh. Appellant was also involved in another criminal case bearing FIR No.24 dated 14.03.2001, under Sections 498-A, 312, 323, 148, 149 IPC, Police Station Phul, District Bathinda. Thus, the reduction in the sentence is not justified and the sentence awarded by the learned trial Court is just and appropriate.

30. Thus, keeping in view my aforesaid discussion the conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him are hereby maintained and affirmed.

31. Resultantly, the present appeal has no merits and the same is hereby dismissed.

32. The appellant is directed to surrender within 15 days of this judgment before the learned Chief Judicial Magistrate, Bathinda, to undergo the remaining part of his sentence failing which the learned Chief Judicial Magistrate, Bathinda, will take the coercive steps to secure the presence of the appellant and to send him to jail for undergoing the remaining part of sentence.

(DARSHAN SINGH)
JUDGE

06.02.2015
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