

In the High Court of Punjab and Haryana at Chandigarh

CRA-S- 205-SB of 2003
Date of Decision:4.2.2015

Joginder Singh and others

---Appellants

versus

State of Punjab

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Daldeep Singh, Advocate
for the appellants**

**Mr. Gazi Mohammad,DAG, Punjab
for the respondent-State**

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

REKHA MITTAL, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 22.1.2003 passed by the Additional Sessions Judge, Bathinda whereby the appellants have been convicted and sentenced for commission of offence punishable under Sections 307, 325, 323, 148 and 447 of the Indian Penal Code (in short “IPC”), detailed

hereinbelow:-

Mohinder Singh

<i>Under Section</i>	<i>Sentence imposed</i>
148 IPC	To undergo Rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-. In default of payment of fine to undergo further rigorous imprisonment for a period of one week.
307/149 IPC	To undergo Rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 15 days.
325 IPC	To undergo Rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 15 days.
323/149	To undergo Rigorous imprisonment for a period of six months and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.
447	To undergo Rigorous imprisonment for a period of one month and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.

Bara Singh

<i>Under Section</i>	<i>Sentence imposed</i>
148 IPC	To undergo Rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-. In default of payment of fine to undergo further rigorous imprisonment for a period of one week.
307/149 IPC	To undergo Rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 15 days.
325/149 IPC	To undergo Rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.
323/149	To undergo Rigorous imprisonment for a period of six months and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.
447	To undergo Rigorous imprisonment for a period of one month and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.

Tarjit Singh

<i>Under Section</i>	<i>Sentence imposed</i>
148 IPC	To undergo Rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-. In default of payment of fine to undergo further rigorous imprisonment for a period of one week.
307/149 IPC	To undergo Rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 15 days.
325 IPC	To undergo Rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 15 days.
323/149	To undergo Rigorous imprisonment for a period of six months and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.
447	To undergo Rigorous imprisonment for a period of one month and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.

Sukhpal Singh

<i>Under Section</i>	<i>Sentence imposed</i>
148 IPC	To undergo Rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-. In default of payment of fine to undergo further rigorous imprisonment for a period of one week.
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323/149	To undergo Rigorous imprisonment for a period of six months and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.
447	To undergo Rigorous imprisonment for a period of one month and to pay a fine of Rs. 100/-. In default of payment of fine to undergo further rigorous imprisonment for a period of 07 days.

The facts relevant for disposal of the present appeal noticed

from the judgment of the trial court are that on 20.9.1995, Jangir Singh, complainant got recorded his statement (first information) that his father are four brothers and eldest of them is Ajmer Singh and the youngest is Banta Singh. All of them are residing separately and doing agriculture. They owned 26 acres of land. Nidhan Singh, his grand father had 9½ acres of land and land of Puran Singh (brother of his grand father) was cultivated by them. Puran Singh used to reside at Patiala and he passed away about six years ago. The sale deed of land of Puran Singh was got executed by Joginder Singh and his sons namely Bara Singh, Tarjit Singh, Malkiat Singh and Jit Singh residents of village Chak Ram Singhwala but possession of land is with them (complainant party). Civil cases are pending at Talwandi Sabo and Bathinda. The land was being cultivated by Janta Singh, Banta Singh and his uncle Sher Singh.

On 20.9.1995, Janta Singh, Banta Singh, Ajmer Singh, Paramjit Kaur, Amarjit Kaur, Binder Kaur, Kulwant Kaur, Jasmel Kaur his wife and the complainant were there in the land and picking up cotton crop. At about 2-00 p.m., two tractors, one driven by Tarjit Singh and other by Pali Singh came there. Bara Singh and Joginder Singh were sitting on the tractor driven by Pali Singh while Bara Singh was armed with gandas and Joginder Singh was armed with kasia. Jagrup Singh armed with Kasia and Mohinder Singh armed with gandas were sitting on the other tractor. The accused started cultivating the land, which was lying vacant, with the discs and the said land was under possession of Ajmer Singh, Janta Singh and Banta Singh. They tried to stop the accused from cultivating the land but the accused started raising lalkaras and Joginder Singh etc. told that they

will teach a lesson and opened attack, with their respective weapons, at Janta Singh. Bara Singh gave gandasa blow from reverse side which hit Janta Singh on his left hand, left waist and left arm and his fingers were broken. They also caused injuries on head, shoulder, arms and back of his father, to Banta Singh on his arm, chest and back. Kulwant Kaur, his Bua, Paramjit Kaur his sister, Binder Kaur and Amarjit Kaur his aunts and Jasmel Kaur, his wife came to rescue the injured and raised alarm. Kulwant Kaur received injury on her head and abdomen, Paramjit Kaur on her head and left arm, Amarjit Kaur on her shoulder and head, Binder Kaur on her left leg and his wife received injury on her head. They also caused injuries in their self defence to the accused. On their raising alarm, the accused left the spot throwing away their weapons at the spot and ran away on their tractors. The injured were shifted to hospital at Talwandi Sabo by Karnail Singh and Jangir Singh in a jeep. Jangir Singh (complainant) and Amrik Singh went to the police station to lodge the report. Motive behind the occurrence is that there was land dispute between the accused and them and litigation was pending in the court and the accused wanted to take possession by cultivating the land which was in possession of the complainant party.

On the basis of statement of complainant, ruqa was sent to the Police Station on the basis whereof, formal FIR was registered. The investigating officer visited the hospital to know condition of the injured but the doctor declared the injured unfit to make statement. He went to the spot, prepared rough site plan Ex. PW11/A, lifted blood stained earth and plain earth and converted it into separate parcels and took the same into possession. On 21.9.1995, statement of injured victims were recorded in

the hospital after they were declared fit except injured Kulwant Kaur. Blood stained clothes of injured were taken into possession vide separate memos. On 22.9.1995, statement of Kulwant Kaur was recorded in the hospital. The accused were arrested in the case, weapons of offence and tractors were recovered and taken into possession. The injury sustained by Kulwant Kaur was declared to be dangerous to life on 16.10.1995 and offence under Section 307 IPC was added. On completion of investigation, challan was presented in the Court for commencement of trial.

The accused were supplied with copies of documents as envisaged under Section 207 of the Code of Criminal Procedure (in short "Cr.P.C.") and the case was committed to the Court of Sessions as offence under Section 307 IPC is exclusively triable by the said court.

After hearing counsel for the parties and finding a prima facie case, the accused were charged for committing offence punishable under Sections 148/307/325/323/149 and 447 IPC to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined Dr. Balwinder Singh Bhatti PW1, Jangir Singh PW2, Ajmer Singh, injured PW3, Janta Singh, injured PW4, Paramjit Kaur, injured PW5, HC Darshan Singh PW6, Des Raj PW7, ASI Paramjit Singh PW8, Jarnail Singh, Steno from the o/o DTO, Bathinda PW9, Constable Bhola Singh PW10, SI Harpal Singh PW11 and Kulwant Kaur, injured PW12. Reports of the Chemical examiner Ex. PX and Serologist Ex. PY were tendered into evidence.

On evidence of the prosecution being closed, statements of the accused under Section 313 Cr.P.C. were recorded through which they

denied incriminating circumstances appearing in evidence against them and pleaded their innocence and false implication. Tarjit Singh and Mohinder Singh raised the plea that they purchased the land and Mohinder Singh purchased the land in the year 1998 from Kaka Singh and Puran Singh but the land was partitioned by the Court and they came in possession in the year 1994. On 20.9.1995, Tarjit Singh and Mohinder Singh were working in the fields. Janta Singh, Ajmer Singh, Amarjit Kaur and Binder Kaur came to their fields with weapons, attacked them and caused injuries. Jangir Singh complainant was not present there and other accused were also not there. Joginder Singh accused took the plea that they had purchased the said property by way of sale deed and were in active possession from the date of purchase. They also got the said land partitioned. However, the accused did not adduce any evidence in defence.

The learned trial court bestowed its thoughtful consideration to the rival submissions made by counsel for the parties in the light of charge framed against the accused and evidence adduced by the prosecution and eventually held the accused guilty of the offence charged against them and accordingly, they were convicted and sentenced, noticed hereinbefore.

Counsel for the appellants has submitted that Joginder Singh and Jagrup Singh have passed away during pendency of the appeal, therefore, appeal filed by them may be dismissed having been abated.

Ordered accordingly.

Counsel has assailed the judgment of the trial court primarily on two counts, (i) conviction of the appellants for offence punishable under Section 307 IPC is liable to be modified to offence under Section 325 IPC;

(ii) the learned trial court has failed to take into consideration plea of self defence which exonerates the appellants of their alleged culpability of inflicting injuries to the victims.

To substantiate his first contention, counsel has submitted that as per case of the prosecution, the assailants were armed with gandas and karias but none of them used sharp side of the weapons to cause injuries which negates plea of the prosecution that the accused caused injuries with an intention to commit murder. It is further argued that the appellants have been convicted of offence under Section 307 IPC in regard to injury sustained by Kulwant Kaur on her head which is statedly declared dangerous to life in view of medical opinion. The opinion that the injury was dangerous to life, at best, falls within the purview of clause Eighthly of Section 320 IPC. In support of his contention, he has relied upon judgment of this Court **Pritam Singh and another vs. State of Punjab 2010(3) RCR (Criminal)395**.

So far as the plea that the assailants caused injuries in exercise of right of self defence, counsel has submitted that plea of private defence is open to be considered by the Court if the same arises from the materials on record even if the accused had not taken such a plea in their statements under Section 313 Cr.P.C. For this purpose, he has referred to judgment of the Hon'ble Supreme Court of India ***State of Rajasthan vs. Manoj Kumar 2014(3)RCR(Criminal) 755*** wherein the Court has referred to its earlier decisions ***Munshi Ram vs. Delhi Administration 1968(2)SCR 455***, ***Salim Zia vs. State of Uttar Pradesh (1979) 2 SCC 648***, ***Mohd. Ramzani vs. State of Delhi 1980 Supp. SCC 215***.

To substantiate his contention that there are sufficient materials on record to establish such a plea of private defence of person, counsel has invited attention of the Court to cross examination of Dr. Balwinder Singh Bhatti PW1 wherein he has admitted that on 20.9.1995 at about 3.30 p.m., Mohinder Singh and Tarjit Singh (appellants-accused) were admitted in the hospital and their medico legal examination was conducted and as per their examination, as many as 08 injuries were found on the person of Mohinder Singh and 10 on the person of Tarjit Singh. Counsel has further submitted that as a matter of fact, land belonging to Puran Singh, brother of grand father of the complainant was purchased by the accused party and they were in possession of the said land. As the complainant party nourished grudge against the accused for their having purchased land belonging to Puran Singh, the complainant party came to the spot, caused injuries to Mohinder Singh and Tarjit Singh and in the occurrence, some of the members of the complainant party also sustained injuries. It is further argued that whatever injuries were sustained by the complainant party, the same were caused in exercise of right of private defence of person and property.

Counsel has also made a vain attempt to point out certain contradictions and discrepancies in the case of the prosecution though has fairly conceded that those discrepancies may not seriously affect the case.

Counsel for the State has supported the judgment passed by the trial court with the submissions that the accused came to land in possession of the complainant party, while laced with weapons with a pre-mediated mind to cause injuries. 08 persons from the complainant party sustained injuries and some of the injuries sustained by the victims were grievous as

well as dangerous to life. Further dilating, it is argued that in the occurrence, Ajmer Singh, Janta Singh, Banta Singh sons of Nidhan Singh sustained 06 injuries each, Paramjit Kaur daughter of Ajmer Singh sustained 04 injuries, Kulwant Kaur received 06 injuries, Jasmel Kaur got one injury on her scalp, Amarjit Kaur received 12 injuries and Balwinder Kaur received 02 injuries. Besides grievous/dangerous to life injury sustained by Kulwant Kaur in regard to fracture of left parietal bone, injuries No. 2 and 5 sustained by Janta Singh, 3 to 6 of Ajmer Singh and injury No. 6 of Banta Singh i.e. fracture of 02 lower ribs were declared to be grievous in nature. It is argued with vehemence that there is no evidence on record to probablize the defence plea that it was accused party who was in possession of land where the occurrence in question took place. The simple injuries sustained by Tarjit Singh and Mohinder Singh by no stretch of imagination can substantiate plea of the accused that they caused large number of injuries to 08 persons in exercise of right of private defence of person. The injuries sustained by Tarjit Singh and Mohinder Singh have been sufficiently explained by the complainant in his version given to the police. It is further argued that there is no evidence on record that the complainant party had any weapons with them or wielded those weapons to cause injuries to Tarjit Singh and Mohinder Singh. It is vehemently argued that the plea of private defence of person raised for the first time before this Court is unfounded and is not worthy of consideration, therefore, the appellants cannot seek any aid to their contentions from the judgment cited by their counsel.

I have heard counsel for the parties and perused the records.

Before dealing with the question if conviction of the accused for offence punishable under Section 307 IPC is untenable, it is appropriate to advert to the second submission as to if any such plea of right of private defence of person or property arises from the materials on record, if so, whether the accused have been able to discharge the burden to establish such a plea.

With regard to plea of private defence of person, it is pertinent to mention that the complainant in his first version has given an explanation that some of the assailants also sustained injuries in the occurrence. Dr. Balwinder Singh Bhatti PW1, of course, has proved that Mohinder Singh and Tarjit Singh accused sustained 08 and 10 injuries respectively, detailed in their medico legal reports. A cursory look at the injuries sustained by Mohinder Singh and Tarjit Singh would make it evident that all these injuries are bruises and contusions which were declared to be simple in nature and result of blunt weapon. There is nothing on record to suggest that the complainant party opened the attack and caused injuries to Mohinder Singh and Tarjit Singh and thereafter in order to save them, the accused party inflicted injuries to as many as 08 persons from the side of the complainant party. There is no evidence as to who caused these injuries, in what manner and what was the weapon used for causing the injuries. In this view of the matter, I find myself unable to accept contention of the accused that they caused injuries to the complainant party in exercise of right of private defence of person. This apart, assuming that the accused caused injuries to the complainant party in exercise of right of private defence of person, in the light of injuries sustained by Mohinder Singh and

Tarjit Singh, they have exceeded their right of private defence and, therefore, they cannot escape their liability for causing injuries to the complainant party.

The plea in regard to private defence of property is misconceived and is not borne out from record. There is no such fact elicited during cross examination of the prosecution witnesses that the complainant party came to the spot to recover possession of the land. Counsel for the appellants in an effort to substantiate his plea in regard to private defence of property has invited attention of this Court to testimony of Ajmer Singh son of Nidhan Singh PW3. A relevant extract from his testimony reads as follows:-

“It is incorrect that partition proceeding had been taken up at Talwandi Sabo Court. I cannot tell as to how much time was consumed in that partition case. We had contested that partition case. That partition case matured and separate possessions were delivered by the Tehsildar. I cannot tell when the partition had matured and possessions were delivered. It is correct that on 13.1.1994 possessions were delivered.”

Further deposed:-

“It is correct that the accused had further sold that land and the possession is that of vendees.”

It appears from the evidence adduced by the prosecution that there was dispute between the parties in regard to land which was owned by Puran Singh, brother of father of Ajmer Singh as the said land was purportedly purchased by the accused party. It further appears that

occurrence in question took place on the land which was earlier owned by said Puran Singh, claimed to be in cultivating possession of the complainant party. Though Ajmer Singh has admitted during cross examination that partition proceedings got matured and separate possession in pursuance thereof was delivered by the Tehsildar and the accused have further sold that land and possession is that of the vendees but no document has been produced on record in respect of partition proceedings much less sanad taksim to prove as to which land had fallen to share of which co-sharer or the land which was previously owned by Puran Singh and purchased by the accused party had actually fallen to share of accused party or they had been delivered possession of the said land. The accused have miserably failed to establish their plea of private defence of property even on the basis of preponderance of probabilities. Under these circumstances, I find no merit in contention of the appellants that either the plea of right of private defence of person or property arises from the materials on record or any such plea has been so established.

This brings the court to another important issue if conviction of the appellants under Section 307 IPC in respect of injury sustained by Kulwant Kaur warrants modification.

The Hon'ble Supreme Court of India in ***Hari Singh vs. Sukhbir Singh and others*** 1988 SCC (Crl.) 984 while dealing with essential preconditions sufficient to constitute offence of 'attempt to murder' punishable under Section 307 IPC has held in para 07, a relevant part thereof is quoted thus:-

“Under Section 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.”

Counsel for the appellants has referred to judgment of this Court *Pritam Singh and another's case (supra)* in support of his plea that opinion of doctor in respect of injury sustained by Kulwant Kaur is not sufficient to hold the appellants guilty of offence under Section 307 IPC. In the referred authority, this Court while relying upon certain judgments referred to therein has held that the words “dangerous to life” are equivalent to “endangering life” and such acts are squarely covered within the ambit of clause Eighthly of Section 320 IPC punishable under Section 326 IPC. However, the Court has further adverted to the question, whether appellant Pritam Singh had the requisite intention to cause murder of PW1 or had requisite knowledge that his act in all probabilities would be sufficient to cause death in the ordinary course of nature, in para 31. A relevant extract from para 31 reads thus:-

Admittedly, there was no previous enmity between the parties.

It is not the case of the prosecution that the appellant came to the spot with pre-planning and meeting of mind to commit the crime armed with deadly weapon. The incident originated at a spur of moment, which enraged appellant-Pritam Singh to inflict an injury to PW1 with his small size 'kirpan'(Gatra), which is ordinarily and commonly worn by the persons having faith in Sikh religion. The appellant did not repeat the injury. He(Pritam Singh) and PW1 are earning their livelihood by running their respective shops in the same market.”

Keeping in view sequence of events taken note of in para 31 of the judgment, this Court held that it cannot possibly be inferred that all the essential ingredients of offence under Section 307 IPC are complete but on the contrary, same are totally lacking and completely missing in the present case and as a consequence, conviction of the appellants for offence under Section 307 IPC was converted to one under Section 326 IPC.

Reverting to the case at hand, there was a dispute between the parties in regard to land previously owned by Puran Singh, a family member of the complainant party. The parties had locked horns in litigation i.e. civil and partition proceedings. On the fateful day i.e. 20.9.1995, Joginder Singh and others (06 persons in all) came to the spot on two tractors, armed with *kasias* and *gandasas*. They inflicted 06 injuries to Ajmer Singh son of Nidhan Singh PW3, 06 injuries to Janta Singh son of Nidhan Singh PW4, 06 injuries to Banta Singh son of Nidhan Singh, 04 injuries to Paramjit Kaur daughter of Ajmer Singh PW5, 06 injuries to

Kulwant Kaur PW12, 01 injury to Jasmel Kaur, 12 injuries to Amarjit Kaur and 02 injuries to Balwinder Kaur. As has been mentioned hereinbefore, some of the injuries sustained by Janta Singh, Ajmer Singh and Banta Singh were found to be grievous in nature on X-ray examination. Kulwant Kaur sustained injury No. 1 which was declared to be grievous in nature and opined dangerous to life. The said injury sustained by Kulwant Kaur is described as follows:-

“A lacerated wound 6 cm x ½ x ½ cm present on left parietal bone. 7 cm above the left eye brow and 13 cm above the left ear lobule. Fresh bleeding was present. Advised X-ray skull AP and left lateral view.”

Injury No. 1 sustained by Kulwant Kaur has been attributed to Joginder Singh and is the result of blunt side of sharp edged weapon. The very fact that this injury was caused on vital part of the body and has resulted in fracture of left parietal bone would make it evident that the assailant dealt blow with lot of force. Keeping in view the sequence and gravity of situation, I find myself unable to accept plea of the appellants that Joginder Singh caused injury to Kulwant Kaur without an intention to commit murder. The accused came to the spot with a pre-mediated mind and caused injuries to all the members of the complainant party present at the spot. In view of the above, the appellants cannot derive any advantage to their contentions from the observations in *Pritam Singh's case (supra)*. From the discussion aforesaid, I do not find any error much less infirmity in the findings of the learned trial court holding the accused guilty of committing offence punishable under Section 307 IPC in respect of injury

sustained by Kulwant Kaur.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. The appellants (except Joginder Singh and Jagroop Singh), if on bail, be taken into custody to suffer the remaining sentence.

(REKHA MITTAL)
JUDGE

4.2.2015
PARAMJIT