

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

**Crl. Appeal No. S-600-SB of 2004
Date of decision : 15.07.2015**

Gurcharan Singh	versus	... Appellant
State of Punjab		... Respondent
and		Crl. Appeal No. S-716-SB of 2004
Dhira Singh & Ors.	versus	... Appellants
State of Punjab		... Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. P.S. Ahluwalia, Advocate for
appellant Gurcharan Singh.**

**Mr. Chanan Singh, Advocate for
appellants Dhira Singh, Joginder Kaur and
Kashmir Kaur.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

Both the above appeals have arisen out of judgment of conviction and order on dated 03.03.2004, rendered by Additional Sessions Judge, Bathinda. Both are proposed to be decided by this common order passed in Crl. Appeal No. 600-SB of 2004.

The factual matrix. Prosecution in this case was launched at the instance of PW2 Khushdial Kaur, who alleged that on the night intervening 12/13.09.2000 accused Gurcharan Singh and Dhira Singh, armed with kirpans entered their house after scaling the wall and opened the main door

of the house through which accused Kashmir Kaur, her mother Joginder Kaur and three unknown persons trespassed into their house. Dhira Singh and Gurcharan Singh gave kirpan blows to her father Natha Singh; Kashmir Kaur and Joginder Kaur and one unknown person started giving fist blows to her mother Nirmal Kaur. The other two unknown persons picked up her nephews, Amninder Jit Singh and Avarinder Jit Singh and ran away from the spot. The injured were brought to the hospital for treatment.

It is relevant to mention here that accused Kashmir Kaur was married to Bhupinder Singh, brother of complainant Khushdial Kaur. A case under Section 306 IPC was registered against Kashmir Kaur for abetting suicide by Bhupinder Singh. Amninder Jit Singh and Avarinder Jit Singh are their sons. There was a custody dispute between the grand parents Natha Singh etc. and mother Kashmir Kaur over the custody of the children.

On the basis of statement made by Khushdial Kaur, FIR No. 123 dated 13.09.2000 was registered under Sections 307, 364, 450, 323, 148 and 149 IPC at Police Station Rampura Phul. After investigation challan against six persons, namely, Gurcharan Singh, Dhira Singh, Joginder Kaur, Kashmir Kaur, Mukhtiar Singh and Gurbaz Singh.

Charge under Section 450 and 364 IPC was framed against all the accused. Accused Gurcharan Singh and Dhira Singh were charge-sheeted under Section 307 IPC whereas other accused were charge-sheeted under the said head with the aid of Section 149 IPC. Charge under Section 323 IPC was framed against accused Joginder Kaur and Kashmir Kaur whereas the other accused were charge-sheeted under Section 323 read with Section 149 IPC.

During trial, the prosecution produced seven witnesses, including the complainant, injured, medical experts and the investigating officers.

The case of the accused in their statements under Section 313 Cr.P.C. was of denial and false implication on account of the custody dispute.

In their defence the accused examined Amninder Jit Singh and Avarinder Jit Singh as DW1 and DW2. They denied that they were ever kidnapped by the accused. Gurdial Singh son of Gurcharan Singh stepped into the witness box as DW3.

On conclusion of trial, the Court below acquitted Mukhtiar Singh and Gurbaz Singh of all the charges. Remaining accused were also acquitted of the charges under Section 364 IPC. Appellant Gurcharan Singh and Dhira Singh were held guilty under Sections 307 IPC and sentenced to undergo rigorous imprisonment for four years and six months and to pay a fine of Rs.1000/- each. In default of payment of fine, further rigorous imprisonment for six months was awarded. Accused Joginder Kaur and Kashmir Kaur were held guilty under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and three months each and to pay fine of Rs.1000/- each, failing which they were to undergo rigorous imprisonment for five months. Accused Joginder Kaur and Kashmir Kaur were also held guilty under Section 323 IPC and awarded rigorous imprisonment for three months each, whereas accused Dhira Singh and Gurcharan Singh were held guilty under the same head with the aid of Section 34 IPC and sentenced to undergo rigorous imprisonment for two

months each. All the accused were sentenced to rigorous imprisonment for three years and fine of Rs.500/- each under Section 450 IPC. For default in payment of fine, they were to undergo rigorous imprisonment for four months. All the sentences were ordered to run concurrently.

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

The main submission on behalf of the appellants is that the offence under Section 307 IPC is not made out and only on account of the fact that the injury was on the head, it cannot be inferred that the intention of the appellant was to cause death of Natha Singh and the size of the injury has to be seen. It was urged that the injury was found to be simple in nature. Elaborating his arguments, it had been urged that once the conviction of the appellants under Section 307 IPC is not sustainable, as a consequence, their conviction under Section 450 IPC cannot survive.

Let us first examine, whether the offence under Section 307 IPC is made out or not.

The ingredients sine quo non to bring the offence within the ambit of Section 307 IPC are (i) the nature of the act done, (ii) the intention or knowledge of the accused; and (iii) the circumstances under which the act is done. What is material is the intention or the knowledge and not the consequence of the act done for the purpose of carrying out the intention.

PW4 Dr. Narinder Kumar Bansal, Medical Officer examined the injured Natha Singh and found the following injuries on his person:-

- (i) *incised wound 4cm X .4 cm horizontally placed 6 cms above right pina in the right temporal region of skull. Fresh bleeding was present.*

(ii) *Incised curved wound with convexity towards palm on the ventral aspect of terminal phalanx of right middle finger. Dimension of wound 2 cm X 3 cm.*

(iii) *Incised curved wound 2 cm x .3 cm on the ventral aspect of middle phalanx of left ring finger convexity of wound towards palm and*

(iv) *Superficial incised wound on the terminal phalanx of left middle finger on the ventral aspect.*

The medical evidence produced on record shows that the injuries were caused with sharp edged weapon. First two injuries were kept under observation and rest were declared simple in nature. There is no opinion by any doctor that the injury on the head of Natha Singh could be dangerous to life or sufficient to cause death. Rather, the doctor later declared both the injuries No.1 and 2 simple in nature.

The statements of injured Natha Singh, his wife Nirmal Kaur and daughter Sukhdial Kaur have been perused minutely. There is nothing which is suggestive of the fact that the assault was opened by the accused on Natha Singh to cause his death. The witnesses nowhere deposed that the intention of the appellants was to cause death of Natha Singh. The other mitigating circumstance which is indicative of the fact that their intention was to cause bodily injuries to Natha Singh, which may result into his death, is that none of the accused repeated the blow on the vital part.

In this view of the matter, this Court is of the considered opinion that the conviction of the appellants under Section 307 IPC is not sustainable. The ocular testimonies of injured coupled with the medical evidence, clearly establish that at the most the offence under Section 324

IPC is proved against the appellants. Consequently, the conviction of the appellants Dhira and Gurcharan Singh under Section 307 IPC is altered to Section 324 IPC. Likewise, conviction of appellants Joginder Kaur and Kashmir Kaur is altered to Section 324 IPC read with Section 34 IPC.

The appellants have been further convicted under Section 450 IPC, as they were held guilty under Section 307 IPC. Since their conviction under Section 307 IPC has been altered to Section 324 IPC, their conviction under Section 450 IPC is also not sustainable and their conviction could only be under Section 452 IPC. It is ordered accordingly.

Simple injury with blunt weapon was found on the person of injured Nirmal Kaur. The conviction of the appellants Joginder Kaur and Kashmir Kaur under Section 323 IPC and that of appellants Gurcharan Singh and Dhira Singh under Section 323 with the aid of Section 34 IPC is maintained.

Coming to the sentence part, it has been contended by learned counsel for the appellants that the occurrence took place in the year 2000 and the appellants have undergone the agony of a protracted trial for fifteen long years. He further submits that appellant Dhira Singh is about 60 years of age, Gurcharan Singh is about 70 years old, Joginder Kaur is aged 75 years, Kashmir Kaur is about 50 years of age. He further submits that appellant Dhira Singh has remained in custody for about eleven months; appellant Gurcharan Singh one year and two months while appellants Joginder Kaur and Kashmir Kaur have remained in custody for about five and a half months. He further submits that the appellants are first offenders and during all these years they did not indulge in any similar offence.

In view of the circumstances appearing in this case, it will be appropriate if the sentence of the appellants is reduced to the one already undergone by them. The sentence of fine is maintained. Ordered accordingly.

With the above modification, the instant appeals stand disposed of.

July 15, 2015
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(ANITA CHAUDHRY)
JUDGE