

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 07.01.2015

1. CRA-S-1748-SB-2003

Sulakhan Singh

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-S-1849-SB-2003

Guriqbal Singh @ Goldi

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-S-1873-SB-2003

Balwant Raj

... Appellant

Versus

State of Punjab

... Respondent

4. CRA-S-1890-SB-2003

Avtar Singh

... Appellant

Versus

State of Punjab

... Respondent

5.

CRR-218-2004

Balwinder Singh

... Petitioner

Versus

Balwant Raj and others

... Respondents

6.

CRM-M-24278-2014

Avtar Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.P.S.Deol, Senior Advocate
with Ms.Sagarika, Advocate
for the appellants (in CRA-S-1748-SB-2003) &
for respondent No.3(in CRR-218-2014).

Mr.H.S.Gill, Senior Advocate
with Mr. R. C. Dhiman, Advocate
for the appellant (in CRA-S-1849-SB-2003)&
for respondent No.4(in CRR-218-2014).

Mr.Surinder Garg, Advocate
for the appellant (in CRA-S-1873-SB-2003) &
for respondent No.1(in CRR-218-2014).

Mr.Vishal Deep Goyal, Advocate
for Mr.Suvir Sidhu, Advocate
for the appellant (in CRA-S-1890-SB-2003) &
for respondent No.2(in CRR-218-2014).

Mr.Karan Pathak, Advocate
for the petitioner (in CRR-218-2004).

Mr.Gazi Mohammad, DAG, Punjab.

Mr.A.S.Mann, Advocate
for Mr.Deepinder Brar, Advocate
for respondents No.2 & 3(in CRM-M-24278-2014).

REKHA MITTAL, J.

This order will dispose of the aforementioned appeals and petition as these have emerged out of judgment dated 11.09.2003 passed by the Additional Sessions Judge, Mansa pertaining to FIR No.47 dated 20.05.1998 registered in Police Station City Mansa for offence punishable under Sections 307, 326, 324, 323 read with Section 34 of the Indian Penal Code (in short 'IPC') and Section 25 of the Arms Act.

However, for the sake of convenience, facts are taken from CRA-S-1748-SB-2003.

Balwinder Singh(PW3) father of injured Balraj Singh got recorded his statement that his son Balraj Singh appeared in B.A. final examination held at Nehru Memorial College, Mansa. On 20.05.1998, he along with Balraj Singh went to the college for obtaining certificate of 10+2 of his son. After inquiring about the certificate, they were returning on a scooter, driven by his son. When they reached near gate of the college, it was 12.30 PM and a Commandar jeep was already parked in front of main gate of the college. Avtar Singh, who had also appeared in B.A. final examination with his son, alighted from the jeep. Sulakhan Singh who was appearing in B.A. Part I examination in the college and Goldy @ Guriqbal Singh were known to him as they were on visiting terms with Balraj Singh. Avtar Singh and Sulakhan Singh were armed with kirpans and Goldy was armed with Lathi. Ranjit Singh PW was also studying with his son and he was standing there for boarding bus. Avtar Singh, President of Punjab

Students Union of the College came in front of their scooter and stopped them. He told his son that he should be taught a lesson as he did not take part in the strikes and rallies organised by them. He intervened and advised them not to quarrel on petty matters. Avtar Singh remarked that he should not be allowed to go scot free. He (Avtar Singh) gave a kirpan blow which struck thumb of hand of his son raised to ward off the attack. He gave another blow on middle finger of his hand and his son fell down. Sulakhan Singh gave a kirpan blow on the back of the right shoulder and another blow on his right elbow. Then Avtar Singh gave a kirpan blow on his left elbow. Balraj Singh and Ranjit Singh raised rouna. Goldy gave a lathi blow on the right hand of his son and another blow hit on his right elbow. Another person (later identified as Balwant Raj) came out of the jeep and fired shots from his gun with an intention to kill but none hit them. The accused ran away in the jeep with their respective weapons.

On the basis of statement of the complainant, formal FIR was registered; site plan Ex.PW6/A of the place of occurrence was prepared, simple earth and blood stained earth were lifted from the spot, converted into separate sealed parcels and taken into possession vide memo Ex.PH. The clothes of the injured were taken into possession vide memo Ex.PG. The injured was declared fit to make statement on 21.05.1998 and his statement was recorded. Raid was conducted at the house of Balwant Raj and in presence of Harjiwan Singh, Sarpanch, DBBL gun along with 13 cartridges was recovered lying on the double bed in the house of Balwant Raj and taken into possession vide memo Ex.PW5/B. Avtar Singh was arrested on 12.06.1998 and during interrogation, he suffered disclosure

statement Ex.PJ in regard to his exclusive knowledge of the weapon of offence i.e. Sword and got recovered the said weapon in pursuance of his disclosure statement which was taken into possession vide memo Ex.PL after preparing sketch Ex.PK. On completion of necessary investigation, challan was presented in the Court against Balwant Raj and Avtar Singh while Sulakhan Singh and Guriqbal Singh @ Goldy were kept in column No.2.

After necessary compliance with the provisions of Section 207 Cr.P.C., the case was committed to the Court of Sessions as offence under Section 307 IPC being exclusively triable by the said Court.

Charge under Sections 307, 326, 324/34 IPC was framed against accused Balwant Raj and Avtar Singh to which they pleaded not guilty and claimed trial.

After examining PW Balwinder Singh, Sulakhan Singh and Guriqbal Singh @ Goldi were summoned under Section 319 Cr.P.C. to face trial. After securing their presence, a fresh charge was framed for offence under Sections 307, 326, 324, 323/34 IPC against the accused to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined Dr.S.P.Bansal PW1, Dr.Tarlok Singh PW2, Balwinder Singh complainant PW3, Balraj Singh injured PW4, ASI Gurtej Singh PW5, SI Suraj Bhan, Investigating Officer PW6 and SPO Puran Singh PW7.

The statements of accused were recorded under Section 313 Cr.P.C. through which they denied the incriminating circumstances appearing in evidence against them and pleaded their innocence. Balwant

Raj raised the plea of alibi that on 20.05.1998, he was on duty in PSEB Sub Urban Sub Division, Rampura from 9 AM to 5 PM. The accused examined Charanjit Singh DW1, Ashok Kumar Junior Engineer DW2, Ram Singh, ALM DW3, Ajmer Singh DW4, Akabar Singh DW5, Darshan Singh DW6, Sunil Kumar DW7. Avtar Singh also tendered into evidence death certificate of Sukhpal Singh Ex.DD.

The learned trial Court, on appreciation of evidence adduced by the prosecution, the accused and rival submissions made by their respective counsels held the appellants guilty of the offence charged against them except offence under Section 307 IPC and accordingly, they were convicted and sentenced, extracted hereinbelow:-

Name of Convict	Under Section	Sentence (R.I.)	Fine(in Rs.)	In Default (R.I.)
Avtar Singh	326 IPC	2 years	500/-	3 months
	326/34 IPC	2 years	500/-	3 months
	324 IPC	1 year		
	324/34 IPC	1 year		
Sulakhan Singh	326 IPC	2 years	500/-	3 months
	326/34 IPC	2 years	500/-	3 months
	324 IPC	1 year		
	324/34 IPC	1 year		
	323/34 IPC	1 year		
Guriqbal Singh @ Goldi	326/34 IPC (on two counts)	2 years	500/-	3 months
	324/34 IPC (on two counts)	1 year		
	323 IPC	1 year		
Balwant Raj	326/34 IPC (on two counts)	2 years	500/-	3 months
	324/34 IPC (on two counts)	1 year		

Name of Convict	Under Section	Sentence (R.I.)	Fine(in Rs.)	In Default (R.I.)
	323/34 IPC	1 year		

Feeling aggrieved by the verdict of the learned trial Court, separate appeals have been preferred by all the four convicts. Avtar Singh, Harlakhan Singh and Guriqbal Singh have also filed the petition for quashing of the aforesaid FIR and proceedings emanating therefrom on the basis of compromise (Annexure P2) effected between the parties.

Counsel representing appellant Sulakhan Singh, Sh. A.P.S.Deol, Senior Advocate has made twofold submissions to challenge judgment of the trial Court. The first submission made by counsel is that the accused have been convicted of the offence punishable under Section 326 IPC in regard to injury No.2 sustained by Balraj Singh on his arm. It is argued with vehemence that in view of medical evidence produced by Dr. Tarlok Singh PW2, it is difficult to concur with the findings of the trial Court that the prosecution has established the charge of committing offence under Section 326 IPC. For this purpose, counsel has carried me through the statement of Dr. Tarlok Singh PW2 and Balraj Singh injured PW4. It is further argued that conviction of the appellants for offence punishable under Section 326 IPC is liable to be set aside and in regard to injury No.2, the appellants, at best, can be convicted and sentenced for offence punishable under Section 324 IPC.

Counsel has further argued that once the conviction of the appellants under Section 326 IPC is set aside and they are convicted for offence under Section 324 IPC in regard to the injury at the arm of Balraj

Singh, in view of compromise between the parties and the provisions of Section 320 Cr.P.C., the appellants may be acquitted of the offence established against them.

Counsel for the State has supported the judgment passed by the trial Court but conceded the fact that dispute between the parties has been settled by way of compromise in view of report submitted by the Chief Judicial Magistrate, Mansa in CRM-M-24278-2014 (Avtar Singh and others Vs. State of Punjab and others). Counsel for the complainant and injured (respondents No.2 & 3 therein) has admitted that dispute between the parties has been compromised and the complainant and injured have got no objection if the appellants are allowed the relief, prayed for.

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

Before dealing with the submissions in regard to dispute being settled by way of compromise as reported- by the Chief Judicial Magistrate, Mansa in CRM-M-24278-2014, it is appropriate to advert to the submissions in regard to conviction of the accused for committing offence punishable under Section 326 IPC, the only offence which is not compoundable in the circumstances of the present case.

Dr.Tarlok Singh PW2 conducted medico legal examination of Balraj Singh on 20.05.1998 and found following injuries on his person:-

1. An incised wound on the right side of scapular region 5 cm x 1 cm lying vertically underlying muscles were cut. Advised X-ray. Fresh bleeding was present on the wound overlying shirt bears the cut.
2. An incised wound on the right forearm on the dorsal aspect lying horizontally. Underlying muscle was cut. Size 4 cm x 1 cm. Fresh bleeding was present. Patient was not able to

- extend the wrist. Advised X-ray and kept under observation.
3. An abrasion on the right elbow over the lateral condyle 1.5 cm x 1 cm. Fresh bleeding was present.
 4. An abrasion the right wrist over the right ulnar styloid process. Swelling around the wound present. Fresh bleeding was present. Advised X-ray.
 5. An incised wound splitting left thumb on lateral aspect through IP joint underlying bone was fracture. Fresh bleeding was present.
 6. An incised wound on the left middle finger. Over the middle phalanx starting from dorsal to ventral aspect 2 cm x 1 cm was present. Fresh bleeding was present.
 7. An incised scratch about 7 cm x .02 cm on the left side of left forearm on dorsal aspect only starting at left elbow to forearm. Fresh bleeding was present.

He proved medico legal report Ex.PB, pictorial diagram Ex.PB/1, his opinion in regard to nature of injuries Ex.PC/1.

Dr.S.P.Bansal PW1 conducted X-ray examination of injury No.2 and proved his report Ex.PA and as per statement of Dr.S.P.Bansal, none of the X-rays showed any bone injury.

Dr.Tarlok Singh declared injury No.2 to be grievous in nature after receipt of X-ray report whereas injury No.5 was opined to be grievous without any X-ray examination. With regard to injury No.2, a relevant extract from the statement of Dr.Tarlok Singh reads as follows:-

“ I gave my opinion Ex.PC/1. According to this opinion, injury No.2 was grievous in nature because patient was not able to extend his wrist due to paralysis posterior and interosseous. It is not a permanent disability as there was chances of improvement. There could be improvement in nerve injury from six months to two

years and during this period he could pursue his ordinary pursuits.”

From cross-examination of Dr. Tarlok Singh by defence counsel representing appellant Avtar Singh, a relevant part of his testimony reads as follows:-

“I have not mentioned name of bone which was fractured vide finding injury No.5. Thumb consists of metacarpal proximal phalanx and distal phalanx. I did not advise x-ray of injury No.5.”

Section 320 IPC defines grievous hurt. A relevant extract therefrom is quoted thus:-

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—XXX XXX

Secondly.—XXX XXX

Thirdly.—XXX XXX

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—XXX XXX

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

Indisputably, on X-ray examination of injury No.2, no bony injury was seen by Dr. S.P.Bansal PW1. The injured-victim remained hospitalized for a period of seven days. Dr. Tarlok Singh has admitted that injury No.2 has not caused permanent disability as there were chances of improvement from six months to two years and during this period, the

injured could follow his ordinary pursuits. Under these circumstances, injury No.2 cannot fit in any of kinds of hurt designated as grievous in Section 320 IPC and, therefore, conviction of the appellants for commission of offence punishable under Section 326 IPC in regard to injury No.2 cannot be sustained. They are convicted in regard to the said injury for offence punishable under Section 324 IPC.

With regard to injury No.5, it was not subject to X-ray examination and, therefore, it is not safe to rely upon opinion of the doctor that the said injury was grievous in nature constituting offence under Section 326 IPC. In this view of the matter, I am of the considered opinion that conviction of the appellants for offence punishable under Section 326 IPC on two counts is liable to be set aside and ordered accordingly. The appellants are convicted for offence punishable under Section 324 IPC in respect of injuries No.2 & 5 as well.

This brings the Court to the question of sentencing. Counsel for the appellants has submitted that offence under Section 324 IPC was compoundable prior to the amendment Act 2005 which came into force w.e.f. June 23, 2006 whereby the entry in regard to offence punishable under Section 324 IPC (voluntarily causing hurt by dangerous weapons or means) being compoundable was deleted. It is further submitted that as the offence in the present case was committed in the year 1998, long before the amending Act abovesaid came into force, there is no ground to refuse permission as sought by the parties who have compromised the offence and got recorded their statements before the Court below and a report in regard thereof has been submitted by the concerned Judicial Magistrate in CRM-

M-24278-2014. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India *Md. Abdul Sufan Laskar & Others Vs. State of Assam, 2008(4) RCR (Criminal) 115.*

Counsel for the State has not disputed that in the year 1998, offence under Section 324 IPC was compoundable with the leave of the Court.

The occurrence in question took place in May 1998 and the accused have suffered agony of criminal proceedings for the past more than 15 years. It appears that the occurrence took place due to some dispute amongst the students of Nehru Memorial College, Mansa in regard to college politics. During pendency of appeal, good sense prevailed upon the parties to resolve their differences and bury their acrimony. There is nothing on record to suggest that the appellants have ever been indicted in any other criminal case. None of the injuries sustained by the victim is on the vital part of the body. The plea of the prosecution that Balwant Raj, one of the appellants (since deceased) used a fire arm weapon was negated by the trial Court and the accused were acquitted of the offence punishable under Section 307 IPC.

Keeping in view cumulative effect of the facts and circumstances obtaining in the case, I do not find any reason to refuse permission as sought by the parties who have compromised the offence. In this view of the matter, the appellants are acquitted of the offence established against them in the light of the judgment passed by the trial Court and modified in appeal.

Accordingly, the appeals preferred by Sulakhan Singh,

Guriqbal Singh @ Goldi , Balwant Raj and Avtar Singh are allowed and they are acquitted of the offence, the revision petition filed by Balwinder Singh is dismissed and as a natural corollary, the petition (CRM-M-24278-2014) is dismissed having been rendered infructuous. No order as to costs.

(REKHA MITTAL)
JUDGE

January 07, 2015.

Davinder Kumar