

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

Crl. Appeal No. 2256-SB of 2003

Date of Decision : 05.12.2015

Harkishan

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.Amandeep Singh, Advocate
for the appellant.

Mr. Ajaib Singh, Addl.AG, Punjab.

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

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment dated 05.06.2003, vide which appellant Harkishan was held guilty and convicted for the offence punishable under Section 307, 324, 323 of Indian Penal Code, 1860 (for short I.P.C) and the order on the quantum of sentence of the even dated, vide which the appellant has been sentenced as under:-.

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Harkishan Singh	307 IPC	5 years	1000/-	two months
	324 IPC	1 year	500/-	Two months
	323 IPC	6 months	500/-	Three months

All the sentences were ordered to run concurrently.

2. The brief facts giving rise to this prosecution are that Shinderpal, the husband of complainant-injured Narinder Kaur was working as a labourer to earn the livelihood. On 07.06.2001, at about 11.30. a.m, the complainant was standing outside the gate of her house. Appellant-accused Harkishan was standing in his 'Haveli', which is situated in front of the house of complainant. Harkishan was to recover some money from the husband of complainant. Accused-appellant Harkishan demanded the money from the complainant. She asked that they were undergoing the financial hardship and will return the money after one or two days. At this, appellant Harkishan got enraged and started abusing her. He took out a knife from his *dab* and started giving repeated blows. Due to which, complainant suffered injuries on various parts of her body. She raised alarm hearing which her nephew Deepa and her husband Shinderpal were attracted to the spot and rescued her from the clutches of the assailant. The complainant was taken to Civil Hospital, Phagwara by her husband

Shinderpal and she was got admitted there. Where, she received the treatment. She further stated that appellant has given knife blows to her with intention to kill her. On receiving the written information from Civil Hospital, Phagwara, ASI Ajit Singh reached Civil Hospital, Phagwara and after obtaining the opinion of the doctor regarding the fitness of injured-complainant Narinder Kaur recorded her statement Ex.PB. On the basis of which, the formal FIR EX.PB/2 was registered and the investigation was started.

3. The Investigating Officer visited the place of occurrence and prepared the site plan Ex.PW6/A. He also lifted the blood stained earth, which was kept in a sealed parcel. On 28.06.2001, accused-appellant appeared before the Investigating Officer and produced the knife after preparing the sketch thereof, the same was taken into possession vide memo Ex.PA. On completion of the formalities of investigation, the report under Section 173 of Code of Criminal Procedure 1973 (for short Cr.P.C) was presented in the Court of learned Ilaqa Magistrate.

4. The case was committed to the Court of Sessions for trial by the learned Sub-Divisional Judicial Magistrate, Phagwara, vide order dated 08.12.2001.

5. Accused-appellant was charge sheeted for the offences punishable under Section 307, 324, 323 IPC vide

order dated 03.01.2002, to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as six witnesses.

7. When examined under Section 313 Cr.PC, accused-appellant pleaded that he has been falsely implicated due to party faction in the village. No recovery of weapon was effected from him. The case was registered against him when he was not present in the village and has gone to take medicine from Government Hospital, Phagwara. He is 62 years of age and is not having good health.

8. In the defence evidence, accused-appellant himself stepped into the witness box as DW-1 and deposed in support of his plea raised in his statement under Section 313 Cr.P.C. He also produced affidavit of complainant Narinder Kaur Ex.D-1. Thereafter, the defence evidence was closed.

9. On appreciating the material on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty and convicted for the offences punishable under Sections 307, 324, 323 IPC and was awarded the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of

conviction and order of sentence, the present appeal has been preferred.

11. I have heard Mr. Amandeep Singh, Advocate, learned Legal Aid Counsel for the appellant, Mr. Ajaib Singh, learned Additional Advocate General, for the State of Punjab and has meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that he does not assail the conviction of the appellant, however, he has assailed the order on the quantum of sentence. He contended that the occurrence is alleged to have taken place on 07.06.2001 i.e. more than 14 years back. All the injuries suffered by complainant-Narinder Kaur were declared simple in nature. The appellant is more than 74 years of age. He has already undergone the sentence of three years seven months and sixteen days including remission. He was never involved in any other criminal case, which is evident from even the custody certificate produced by the learned State counsel. Thus, he contended that the sentence awarded to appellant should be reduced to the period already undergone by him.

13. On the other hand, learned State counsel contended that accused-appellant has caused 13 injuries with knife to complainant-Narinder Kaur. Thus, he does not deserve any leniency and the sentence awarded to him by

the learned trial Court is just and appropriate.

14. I have duly considered the aforesaid contentions.

15. Learned counsel for the appellant has contested this appeal only qua the quantum of sentence. Even otherwise, there is no legal infirmity in the conviction of appellant as recorded by learned trial Court. Complainant-Narinder Kaur has stepped into the witness box as PW-3 and has categorically deposed that the accused-appellant has caused injuries with a knife on her head, left ear, left chest, left shoulder, right shoulder, left hip, right leg, right side of the chest, left knee, right arm and right knee. Her statement is also corroborated from the testimony of PW-5 Shinderpal, her husband, who had rushed to the spot on receiving the information from Deepa. The aforesaid oral evidence is fully corroborated from the medical evidence i.e. PW-4 Dr. Rajesh Sood and the medico-legal report Ex.PC prepared by him which shows that complainant has suffered 13 injuries on her person. Though, all the injuries were declared simple in nature. Even, the weapon of offence was recovered from the possession of appellant. Thus, the conviction of appellant is well founded.

16. However, I found considerable substance in the contentions raised by learned counsel for the appellant on the quantum of sentence. This fact is not disputed that the

appellant and complainant are residing in the same locality. The house of complainant was situated in front of the 'Haveli' of the appellant. The occurrence has also taken place on trifle matter i.e. the loan of Rs. 1000/-taken by Shinderpal, the husband of complainant from the appellant. It is also not disputed that all the injuries suffered by complainant-Narinder Kaur were declared simple in nature. So, she has not suffered any grievous injury on her body. The occurrence has taken place on 07.06.2001. The appellant has faced the agony of these proceedings for the last more than 14 years. As per the impugned judgment dated 05.06.2003, the age of appellant was 62 years. In this manner, now the age of appellant is more than 74 years. So, he is an old man. The custody certificate shows that appellant is not involved in any other criminal case. The custody certificate placed on record by the learned State counsel further shows that the appellant has already undergone three years seven months and 16 days of the sentence including remission out of the maximum sentence of five years awarded to the appellant for the offence punishable under Section 307 IPC. Keeping in view the antecedents of the appellant, his old age, the nature of injuries suffered by the victim and the agony of the protracted proceedings faced by appellant. It will suffice the

ends of the justice, if the substantive sentence awarded to the appellant is reduced to the sentence already undergone by him including the remission.

17. Thus, keeping in view my aforesaid discussion, the conviction of appellant as recorded by the learned trial Court for the offences punishable under Sections 323, 324, 307 IPC does not suffer from any legal infirmity and is hereby maintained and confirmed. However, the substantive sentence awarded to the appellant is hereby reduced to that of already undergone by him including remission i.e. three years seven months and sixteen days. However, the sentence of fine and in default thereof, shall remain intact. The appellant will deposit the amount of fine as imposed by the learned trial Court within one month from the date of this judgment with the learned trial Court. In default thereof, he will be liable to undergo the sentence as awarded by the learned trial Court in default clause. With this modification in the matter of sentence, the present appeal has no merits and the same is hereby dismissed.

18. Before parting with this judgment, it is pertinent to mention that complainant-Narinder Kaur has suffered 13 injuries in this case. She was not awarded any compensation by the learned trial Court for the injuries suffered by her under Section 357 Cr.P.C. Before awarding

the compensation, it is the duty of the Court to take into consideration the financial position of the accused-appellant to pay the amount of compensation. Otherwise, the awarding of compensation shall be a futile exercise if the same could not be recovered due to the weak financial position of the convict. In the instant case, the appellant is an old man of 74 years of age. He is being represented in the present appeal by the Legal Aid Counsel as he was not even able to engage his counsel to defend him in the present appeal and was provided the Legal Aid Counsel. Thus, the appellant has no sound financial position to pay the compensation. However, the injured complainant-Narinder Kaur can still be granted compensation under the Victim Compensation Scheme as provided under Section 357-A Cr.P.C, by the District Legal Service Authority, Kapurthala. Thus, the case of complainant-Narinder Kaur is referred to the District Legal Service Authority, Kapurthala to consider for grant of compensation to her under the Victim Compensation Scheme as per Section 357(A) Sub Section (2) Cr.P.C.

December 05, 2015**s.khan****(DARSHAN SINGH)
JUDGE**