

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

**Crl. Appeal S-357-SB of 2002**

Date of Decision : September 09, 2015

Nishan Singh @ Shana

.....Appellant

**VERSUS**

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN**

Present : Mr. K.S.Dhaliwal, Advocate  
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G. Haryana.

Mr. G.C.Shahpuri, Advocate  
for the complainant.

**T.P.S. MANN, J.**

Appellant-Nishan Singh @ Shana was tried for committing the offences punishable under Sections 307, 307/34 and 323/34 IPC and Section 27 of the Arms Act with the allegations that on 21.1.2000 at about 8.30 a.m., he had fired at Raghbir Singh and caused injuries to him with an intent to murder him and also shared common intention with his co-accused Karnail Singh and Sukhvinder Singh @ Sukha in causing simple injuries to Raghbir Singh and also for using his licenced gun for an unlawful purpose. His co-accused Karnail Singh and Sukhvinder Singh @ Sukha were also charged for committing

offences punishable under Sections 307/34 and 323/34 IPC. Vide impugned judgment and order dated 22/25.2.2002, learned Additional Sessions Judge (I), Kaithal while giving benefit of doubt to accused Karnail Singh and Sukhvinder Singh @ Sukha, acquitted them of the charges against them. The appellant was held guilty under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period of sentence/detention already undergone by him during investigation and trial was ordered to be set off against the substantive sentence of imprisonment imposed upon him. He was, however, acquitted of the remaining charges.

Aggrieved of his conviction and sentence, the appellant filed the instant appeal in which he is presently on bail pursuant to order dated 14.5.2002 passed by this Court.

Briefly stated, the case of the prosecution is that on 21.1.2000 at about 8.30 a.m., complainant-Surinder Singh alongwith Kashmir Singh, Buta Singh and Kasturi Lal was sitting around a bonfire in the cattle shed of Kashmir Singh. At that time, appellant-Nishan Singh and his brothers Sukhvinder Singh and Karnail Singh came there and also sat around the bonfire. There was exchange of hot words between the parties on the issue of stray cow, which was abandoned by Dalip Singh, father-in-law of

accused-Karnail Singh about four months earlier. The said cattle was tethered by Hira Singh, who started looking after her. After some time, when Dalip Singh came to know that his cattle was likely to deliver a calf, he went to Hira Singh to take the cow back by asserting that the cow belonged to him. Hira Singh replied that since he had fed the cow, he would return it only after payment of the expenses incurred by him in feeding her. After exchanging hot words, Dalip Singh had left the place. However, there was still exchange of hot words in the village between them. Raghbir Singh, Panch declared that since the cow was looked after by Hira Singh, the expenses should be paid to him. However, the matter could not be settled and both the parties went to their respective houses. After some time, complainant-Surinder Singh and his brother Raghbir Singh, Panch started for their fields. Raghbir Singh was ahead of the complainant by twenty steps. When Raghbir Singh reached the public street and was in front of the house of Nishan Singh, at that time Nishan Singh armed with his double barrel gun, Karnail Singh with a *kassi* and Sukhvinder Singh with a *lathi* came there. Nishan Singh raised a *lalkara* that lesson would be taught to Raghbir Singh for asking to pay the expenses and fired a shot from his gun which hit Raghbir Singh on his forehead. As a result, Raghbir Singh fell down with face downwards. While he lay fallen, Karnail Singh gave two blows from the reverse side of the

*kassi* on his waist whereas Sukhvinder Singh gave two *lathi* blows on the left side of the head of Raghbir Singh near his ear. Alarm raised by complainant-Surinder Singh attracted Kashmir Singh, Kasturi Lal and others to the spot. All the accused ran away from the spot while carrying their respective weapons. Injured-Raghbir Singh was, thereafter, removed to Community Health Centre, Guhla from where he was referred to Government Hospital, Kaithal. However, seeing his serious condition, he was taken to Rajindera Hospital, Patiala.

Further case of the prosecution is that on receipt of ruqa from Medical Officer, Community Health Centre, Guhla, ASI Deva Singh alongwith his fellow officials reached there but learnt about the injured having been referred to Civil Hospital, Kaithal. After reaching Cheeka, ASI Deva Singh learnt that the injured had been taken to Rajindera Hospital, Patiala. Accordingly, he also proceeded for Rajindera Hospital where the doctor declared injured not fit to make statement. Statement of complainant-Surinder Singh was, thereafter, recorded on the basis of which FIR No. 14 dated 21.1.2000 under Sections 307/323/34 IPC and 27 of the Arms Act was registered at Police Station Guhla against the three accused.

During the investigation of the case, accused-Karnail Singh was arrested on 24.1.2000 and got recovered *kassi*. Accused-Sukhvinder Singh was arrested on 18.2.2000 and got

recovered *lathi*. The appellant was arrested on 25.3.2000 and on the basis of his disclosure statement, he got recovered gun Ex.P3 alongwith one empty and one live cartridges.

Upon completion of investigation, final report under Section 173 Cr.P.,C. was submitted against the appellant and his two co-accused. The case was, thereafter, committed to the Court of Sessions where the charges, as mentioned above, were framed against them to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as nineteen witnesses.

PW1 Dr. Harbans Lal, Medical Officer, Community Health Centre, Guhla testified that he medico-legally examined Kasturi Lal on 21.1.2000 at 5.00 p.m. and found one injury on his person which was swelling and tenderness at right thumb joint. He also testified that on 21.1.2000 at 9.30 a.m. he sent ruqa to Police Station Guhla regarding injured-Raghbir Singh being referred to General Hospital, Kaithal.

PW2 Dr. Jaswinder Singh, Junior Resident, Department of Forensic Medicines, Government Medical College, Patiala deposed that on 21.1.2000 at 10.30 a.m., he medico-legally examined Raghbir Singh and found the following injuries on his person:-

“1. Multiple lacerated wounds each

measuring 0.3 x 0.3 cm on forehead, right side of face, both eyes and below right eye. Fresh bleeding was present. Advised X-ray, Surgeon's opinion and Eye Surgeon's opinion.

2. Reddish abrasion 3 cm x 0.5 cm on middle of left ear.

3. Reddish abrasion 3 x 1 cm on left scapular region of back.

4. Reddish contusion 12 cm x 7 cm over the left side of back in its middle. Advised X-ray.

5. Swelling 4 x 4 cm on left side of scalp, 4 cm above the left ear with bleeding from ear was present. Advised X-ray.”

Dr. Jaswinder Singh further testified that injuries No. 2 and 3 were simple, while injuries No. 1, 4 and 5 kept under observation. Probable duration of injuries was within 24 hours. Kind of weapon used for injury No.1 was fire arm, while it was blunt for remaining injuries.

PW3 Manoj Kumar, Record-Keeper, Dayanand Medical College, Ludhiana produced the admission record of injured-Raghbir Singh.

PW4 SI Paras Kumar testified that after necessary investigations were over, he prepared the final report under Section 173 Cr.P.C.

PW5 HC Rattan Singh tendered in evidence his

affidavit Ex. PC.

PW6 C. Ajit Kumar also tendered in evidence his affidavit Ex. PD.

PW7 ASI Sultan Singh deposed that on receipt of ruqa Ex. PE through Constable Rajbir Singh, he recorded the formal FIR Ex. PE/1.

PW8 Surinder Singh, complainant in the case and brother of injured-Raghbir Singh narrated the manner in which the occurrence had taken place. He also deposed about the motive, which impelled the accused to assault Raghbir Singh.

PW9 Raj Pal, Licencing Clerk, SDM Court, Guhla testified that arm licence Ex. P2 stood issued in the name of appellant-Nishan Singh.

PW10 Constable Amar Singh deposed that he had handed over the special report to the Illaqa Magistrate, Guhla and others.

PW11 Raghbir Singh, who had received injuries in the occurrence, corroborated the version of his brother PW8 Surinder Singh. He also stated that due to the injuries received by him, he had subsequently become blind, though prior to the occurrence his eyes worked normally. Further, he used to cultivate the fields, earlier, but on account of blindness he could not do any work.

PW12 Lachhman Singh, Draftsman proved scaled site-plan Ex. PK, which he had prepared after going to the spot.

PW13 Inspector Rajesh Kumar, who stood posted as SI/SHO, Police Station Guhla on 25.3.2000 testified that on that day he arrested the appellant.

PW14 Constable Zile Singh deposed that on 26.3.2000, he was joined by ASI Deva Singh in the investigation of the case. During investigation, appellant-Nishan Singh suffered disclosure statement Ex. PL and pursuant thereto got recovered gun Ex. P3, empty cartridge Ex. P4 and live cartridge Ex. P5 besides arm licence Ex. P2.

PW15 ASI Gurnaib Singh testified about the arrest of accused-Sukhvinder Singh and recovery of *lathi* Ex. P1 vide memo. Ex.PJ pursuant to the disclosure statement Ex. PH suffered by him.

PW16 Constable Shamsheer Singh tendered in evidence his affidavit Ex. PN.

PW17 Dr. B.B.Kakkar deposed about the re-admission of injured-Raghubir Singh in Civil Hospital, Kaithal by Dr. Iqbal Singh on 14.2.2000. He identified the signatures of Dr. Iqbal Singh on ruqa Ex. PO sent to the Police Station regarding re-admission of the injured. He also identified the signatures of Dr. Iqbal Singh on his endorsement Ex. PF/1 made on police application Ex. PF.

PW18 ASI Deva Singh deposed about the various steps taken by him during the investigation of the case.



PW19 Dr. R.K.Kaushal, Neuro Surgeon, DMC Hospital, Ludhiana testified that on 22.1.2000 at 6.00 p.m., injured-Raghbir Singh was admitted in his hospital. He was unconscious. He was seen by Eye Surgeon, who operated upon him on 27.1.2000 for repair of right eye injury. His VER done on 10.2.2000 showed no response from either side. The injured was discharged on 11.2.2000 for further consideration for eye injury from All India Medical Institute, Delhi. He proved discharge card Ex. PX. He further stated that the injured had lost eye sight from both the eyes due to the injuries.

When examined under Section 313 Cr.P.C., all the three accused denied the allegations levelled against them. They pleaded false implication. According to them, there was encounter between the Punjab Police and the villagers of Daban Kheri in the house of Jassa Singh on the night intervening 19/20.1.2000 where a number of persons including Raghbir Singh and Kasturi Lal received injuries and a case was registered against police officials of Police Station Bhawanigarh, District Sangrur. It was also alleged that appellant-Nishan Singh was a prosecution witness in that case against the Punjab Police. Further, injured-Raghbir Singh and his brothers used to smuggle poppy husk. The injured and his brothers were facing trial in many cases under the NDPS Act. One of the brothers of Raghbir Singh was recently convicted whereas another one was an

Advocate at Guhla and his wife was working as a Staff Nurse in Community Health Centre, Guhla and in connivance with the doctors, false medical report was prepared whereas Raghbir Singh did not receive any injury on 21.1.2000 nor the appellant used his gun.

In defence, the accused examined DW1 Dalip Singh, DW2 Kulwant Singh and DW3 HC Manphool Singh.

The trial Court, after hearing learned counsel for the parties and going through the evidence brought on the record and after observing that the Medical Officer had deposed about injuries No. 2 to 5 on Raghbir Singh being possible by fall on the ground as a result of injury No.1, acquitted Karnail Singh and Sukhvinder Singh-accused of the charges against them. The appellant was, however, convicted under Section 307 IPC as he was found to have fired from his double barrel gun, which hit Raghbir Singh on his forehead and he, ultimately, became blind on account of those injuries. Accordingly, he was sentenced to undergo imprisonment and to pay fine, as mentioned above.

Having heard learned counsel for the parties and going through the evidence minutely with their able assistance, this Court finds that the appellant was attributed firing of shot from his licenced double barrel gun and the shot fired hit injured-Raghbir Singh on his forehead, as a result thereof, injured-Raghbir Singh lost vision from his both eyes. In support of the

ocular account, there is testimony of complainant-Surinder Singh, who was examined by the prosecution as PW8. He stated about his brother Raghbir Singh being fired at by the appellant. The testimony of the complainant stands duly corroborated by injured-Raghbir Singh whom the prosecution examined as PW11. Said Raghbir Singh also testified that before the occurrence, he had normal eye sight and used to cultivate. However, on account of losing vision completely from both the eyes, he has not been able to even cultivate the land. The testimonies of complainant-Surinder Singh PW8 and injured-Raghbir Singh PW11 are duly corroborated by PW2 Dr. Jaswinder Singh, who medico-legally examined the injured on 21.1.2000 at 10.30 a.m. in Rajindera Hospital, Patiala. Apart from four blunt weapon injuries, he noticed multiple lacerated wounds, each measuring 0.3 cm x 0.3 cm on the forehead, right side of face, both eyes and below right eye. Evidence has already been brought on record by the prosecution to establish that on account of the firing resorted to by the appellant, injured-Raghbir Singh lost vision from his both eyes. After the arrest of the appellant on 25.3.2000, the appellant had suffered disclosure statement Ex. PL, pursuant to which he got recovered gun Ex. P3, one empty cartridge Ex. P4, one live cartridge Ex. P5 and arm licence Ex. P2.

As regards the plea of the defence that there was inordinate delay in lodging of the FIR, it would be worthwhile to

notice that the occurrence was shown to have taken place at about 8.30 a.m. on 21.1.2000 in village Daban Kheri, the village of the parties. Soon after the occurrence, injured-Raghbir Singh was taken to Community Health Centre, Guhla from where PW1 Dr. Harbans Lal sent ruqa Ex. PA/1 to Police Station Guhla about the arrival of the injured and being referred to General Hospital, Kaithal. It is the prosecution case that as the condition of the injured was serious, he was not taken to General Hospital, Kaithal, instead, he was taken to Government Medical College, Patiala where he was medico-legally examined by PW2 Dr. Jaswinder Singh on 21.1.2000 at 10.30 a.m. PW18 ASI Deva Singh has testified that after receipt of ruqa from Community Health Centre, Guhla, he recorded DDR No. 6 and started for Community Health Centre, Guhla. At Cheeka, he learnt about injured-Raghbir Singh having been taken to Rajindera Hospital, Patiala though he stood referred to General Hospital, Kaithal. Accordingly, he reached Rajindera Hospital, Patiala where he moved application Ex. PO to find out as to whether the injured was fit to make statement. Once the injured was declared unfit, ASI Deva Singh recorded statement Ex. PE of his brother Surinder Singh. The said statement came to be completed on 21.1.2000 at 2.00 p.m. and on its basis, FIR No. 14 dated 21.1.2000 was registered at Police Station Guhla at 3.35 p.m. Special Report was, thereafter, sent through Constable Amar

Singh, which was received by the Sub Divisional Judicial Magistrate, Guhla at 6.00 p.m. on the same day. Going by these facts, it cannot be said that there was any delay whatsoever in the lodging of the FIR. Whatever insignificant delay occurred has been satisfactorily explained by the prosecution.

The plea of the defence is that no such incident as alleged by the prosecution had taken place, rather, on the night intervening 19/20.1.2000, there was encounter between the Punjab Police and the villagers of Daban Kheri at the house of Jassa Singh wherein various persons including Raghbir Singh and Kasturi Lal received injuries. However, according to PW2 Dr.Jaswinder Singh, who had medico-legally examined injured-Raghbir Singh on 21.1.2000 at 10.30 a.m. in Government Medical College, Patiala, the probable duration of the injuries was within 24 hours. That fits in well with the prosecution case according to which, the occurrence had taken place on 21.1.2000 at about 8.30 a.m. In any case, injured-Raghbir Singh would not have received injuries before 10.30 a.m. on 20.1.2000 whereas according to the defence, those injuries were received by him on the night intervening 19/20.1.2000. Therefore, no benefit can be extended to the defence in this regard.

Another plea taken by the defence is the non-production of Kasturi Lal, Dalip Singh, Kashmir Singh, Hira Lal and Buta Singh. However, none of these persons was present at

the time of the occurrence. They were, however, attracted only when complainant-Surinder Singh had raised an alarm after his brother Raghbir Singh was fired at by appellant-Nishan Singh. Moreover, there is no requirement that whosoever was present at the spot at the time of the occurrence should be examined as it is the quality of the evidence which matters and not the quantity. Regarding the occurrence in which he himself had received injuries, PW11 Raghbir Singh had stated in detail that he was fired at by the appellant. His testimony is duly corroborated by his brother Surinder Singh.

Coming to the motive which could have impelled the appellant to fire at Raghbir Singh, it may be noticed that it was Raghbir Singh being the Panch of the village, who was insisting upon the payment of the expenditure incurred by Hira Singh in rearing the cow and this had led to exchange of hot words between the parties. Soon after the said development, when complainant-Surinder Singh and his brother Raghbir Singh were proceeding for their fields and were in front of the house of the appellant, the appellant alongwith his brothers confronted him. The appellant raised a *lalkara* to teach a lesson to him for insisting for the payment of the expenses and on saying so, he fired from his licenced gun, which hit Raghbir Singh on his forehead.

As regards the factum of injured-Raghbir Singh losing

vision from his two eyes, it would be worthwhile to refer to the testimony of PW19 Dr. R.K.Kaushal. He stated that injured-Raghbir Singh was admitted in DMC Hospital, Ludhiana on 22.1.2000 at 6.00 p.m. and was found to be unconscious. He was examined by the Eye Surgeon, who operated upon him on 27.1.2000 for repair of right eye injury. His VER done on 10.2.2000 showed no response from either side. The injured was discharged on 11.2.2000 for his examination at All India Medical Institute, Delhi. He further deposed that the injured lost vision from both the eyes due to the injuries. In cross-examination, he testified that the injured was admitted by Dr. Deepak Goel and was operated upon by Dr. G.S.Bajwa. He stated that whatever was narrated by him about loss of vision was an impression after test recorded by Dr. A.K.Dhanuka, D.M. Neurology, who conducted VER test. He also stated that in the discharge card, it was mentioned that the injured stood referred to All India Medical Institute for eye injury. He denied that he had given incorrect report regarding vision.

It is true that it was Dr. G.S.Bajwa, who had operated upon the injured and it was Dr. A.K.Dhanuka, D.M. Neurology, who had conducted VER test and both those doctors have not been examined by the prosecution, but no benefit in this regard can be extended to the defence as no objection was raised when PW19 Dr. R.K.Kaushal stated about the operation conducted by

Eye Surgeon and the VER test done by Dr. A.K.Dhanuka. Thus, it stands duly established that because of the firing resorted to by the appellant, injured-Raghbir Singh had lost vision/sight from his both eyes and as a result thereof, injured-Raghbir Singh cannot even cultivate his land.

In view of the above, no fault can be found with the impugned judgment of conviction passed by the trial Court.

As regards the sentence which can be imposed upon the appellant, it may be noticed that the appellant has been facing the agony of criminal prosecution for the last more than fifteen years. As per the custody certificate already brought on record by the State counsel, the appellant has undergone total sentence of two years, one month and twenty six days. There is no mention any where in the custody certificate that the appellant is involved in any other criminal case. It is the plea of the appellant that he has two children whereas his wife generally remains ill. At the same time, this Court cannot overlook the fact that the appellant had fired at the injured with intent to kill him and on account of the firing resorted to by the appellant, the injured has lost vision from both of his eyes.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the sentence of seven years imposed upon the appellant is on the higher side. Ends of justice would be amply met by reducing the



same to five years. At the same time, the amount of fine of Rs.5,000/- imposed upon the appellant needs to be enhanced to Rs. 50,000/- so as to compensate the injured for losing vision from both of his eyes.

Resultantly, the conviction of the appellant under Section 307 IPC is upheld. His substantive sentence of imprisonment is reduced from seven years to rigorous imprisonment for five years. The amount of fine is enhanced from Rs. 5,000/- to Rs. 50,000/- and in default of the same, the appellant shall undergo rigorous imprisonment for 1½ years. The entire amount of fine, if deposited by the appellant, be paid to injured-Raghbir Singh, as compensation.

The appeal is, accordingly, disposed of.

**( T.P.S. MANN )  
JUDGE**

**September 09, 2015**  
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