

CRA-S-265-SB of 2003 &
CRR-1049 of 2003

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-265-SB of 2003**

DATE OF DECISION: JULY 27, 2015

HARJINDER SINGH & ANOTHER ...APPELLANTS

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRR-1049 of 2003**

LAKHBIR SINGH ...PETITIONER

VERSUS

HARJINDER SINGH & OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ATUL LAKHANPAL, SR.ADVOCATE
WITH MR. R.S.CHAHAL, ADVOCATE
FOR THE APPELLANTS IN CRA-S-265-SB OF 2003
AND FOR THE RESPONDENTS IN CRR-1049 OF 2013.

MR. R.N.KUSH, ADVOCATE
FOR THE PETITIONER IN CRR-1049 OF 2003.

MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Harjinder Singh, Sohan Singh, Harbans Singh, Hardayal Singh, Gurcharan Singh and Sukhdev Singh faced the trial before the Addl. Sessions Judge, Fatehabad. However, Harbans Singh, Hardayal Singh, Gurcharan Singh and Sukhdev Singh were acquitted of the charges framed by the trial Court. The present appeal has been preferred by accused

Harjinder Singh and Sohan Singh who were convicted under Section 307 read with Section 34 IPC and were sentenced to undergo 4 years R.I. and to pay a fine of ₹2000/- each and in default, to undergo a further period of 3 months imprisonment.

2. It is the brief case of the prosecution that all the accused joined together in furtherance of their common intention and attacked PW12 Lakhbir Singh, PW13 Sucha Singh and PW16 Sohan Singh. Accused Sohan Singh exhorted his son to bring a gun and kill the complainant party. Accused Harjinder Singh brought .12 bore gun and shot at PW12, PW13 and PW16 and caused injuries. Land dispute was the origin of the occurrence, it has been projected by the prosecution.

3. As many as 18 witnesses were examined on the side of the prosecution. PW12 Lakhbir Singh who sustained pellet injuries lodged the first information report. He has categorically deposed that a panchayat was convened to demand back the land given by PW17 Bhajan Singh to accused Sohan Singh to avoid any decree in a motor accident claims case. But accused Sohan Singh and Harjinder Singh refused to part with the land. On 4.9.1994 at about 5.00 P.M., there was a panchayat in the dhani of the rival parties. When the talks in connection with the land were going on, there was some altercation between the complainant party and the accused party. There was an exchange of blows between them. Accused Sohan Singh asked his son Harjinder Singh to bring the rifle from his house. PW7 and his wife closed the door of the room in which accused Harjinder Singh entered. Accused Harjinder Singh fired 3-4 shots through the window

aiming at the complainant party which hit PW12 Lakhbir Singh, PW13 Sucha Singh and PW16 Sohan Singh. Thereafter, accused Sohan Singh ran away on boarding his jeep.

4. PW13 Sucha Singh who also sustained pellet injuries supported the evidence of PW12. PW17 Bhajan Singh also corroborated the evidence of PW12 and PW13. PW16 Sohan Singh, of course, turned hostile to the case of the prosecution.

5. PW4 Dr.Pawan Jain, Medical Officer, General Hospital, Hisar radiologically examined injured Sucha Singh and Lakhbir Singh on 5.9.1994. PW9 Dr.Ramesh Jindal treated PW16 Sohan Singh for the fire arm injuries he sustained on his abdomen, chest and both the upper limbs on 4.9.1994. He also conducted operation on very same day. Sohan Singh was discharged from the hospital only on 22.9.1994.

6. PW10 Dr.J.B.Batra, Medical Officer, examined PW13 Sucha Singh and found the following injuires:-

“1. 9 oval lacerated wound with inverted margin of the size 0.8 cm x 0.6 cm were present over the lateral aspect of left thigh and just above the iliac crest on lateral aspect. One pellet was removed from the wound and sealed. There were corresponding abertures in the kurta and underwear. Kurta and underwere were blood stained. Both were sealed. Fresh bleeding was present. Advice x-ray, AP and lateral view and surgeon's opinion.

2. Oval lacerated wound with inverted margin of the size

0.8cm x 0.6cm was present over the back of the elbow joint. Corresponding abertures were present in the shirt. Shirt was blood stained. Fresh bleeding was present. Advice x-ray left arm AP and lateral view.

3. *2 oval lacerated wound with inverted margin of the size of 0.8cm x 0.6cm was present over the medical of the right knee. Fresh bleeding was present. Advice x-ray right leg AP and lateral view.”*

7. He also medico-legally examined PW12 Lakhbir Singh and found the following injuries:-

- “1. *3 lacerated wound with inverted margin 0.6cm x 0.4cm were present over the left nakle joint on lateral aspect. On the back of the left leg lower part and lateral aspect of the left foot in the middle. Fresh bleeding was present and x-ray was advised of the left foot including the lower part of the left leg AP and lateral view.*

2. *A lacerated wound with inverted margin of the size 0.6cm x 0.4cm was present over the lateral aspect of the left leg below the knee joint. Fresh bleeding was present. Advised x-ray left leg AP and lateral view.”*

8. PW11 Dr.Suresh Kumar, Medical Officer, General Hospital, Hisar examined PW16 Sohan Singh and found the following injuries on his person:-

- “1. *A lacerated punctured wound of nail head size circular*

on left later side of chest in posterior axillary line in the middle of the chest, a dark collar of abrasion was present all around of the wound. Oozing of the blood was present. Depth and direction of the wound was not measured. X-ray of the chest both AP and lateral view was advised.

2. *Similar lacerated punctured wound of nail and head sized with a collar of abrasion dark in colour was present on anterior lateral part of upper half of left side of abdomen. These were 9 in number and placed in 8"x4" in area. Oozing of the blood was present. X-ray was advised in standing position.*
3. *A similar lacerated punctured wound on the back of middle of the left upper arm. X-ray was advised.*
4. *Siimilar lacerated punctured wound on the posterior medial part of left forearm just below the elbow. Three in number and placed in 2x1½ in area. X-ray was advised.*
5. *A similar lacerated punctured wound in the posterior lateral part of left forearm just above the elbow. X-ray was advised.*
6. *There were similar five lacerated punctured wound at various levels on medial aspect of right forearm arm. X-ray of the right forearm was advised."*

9. PW18 S.I. Raja Ram was the investigating officer in this case.
10. The accused have set up a plea that it was only the complainant party who were the aggressors attacked Gurcharan Singh and Richpal Kaur causing injuries to them.
11. DW1 Dr.B.B.Lal medico-legally examined accused Gurcharan Singh and found the following injuries on his person:

- “1. There was an incised wound of the size of 2x5x0.5cm present over the left lower lateral side of chest. The patient was feeling pain. There was also swelling and tenderness. X-ray was advised for this injury.*
- 2. There was a reddish contusion of the size of 3.5cm x 1cm present horizontally over the left side of the abdomen. Patient was complaining of pain, swelling and tenderness and present. The injury was kept under observation.*
- 3. There was a diffused swelling present around the left wrist joint. X-ray was advised.*
- 4. There was an incised wound of the size of 1.5cm x 0.5cm present over the right shoulder.”*

12. He also medico-legally examined DW2 Richpal Kaur and found the following injuries on her person:-

- “1. There was a lacerated wound of the size of 1/4th x 1/4th present in the inner side of the left side of upper lip. Clotted blood was present.*

2. *The left upper lateral incised tooth was broken at its middle part. The pup was exposed and blood clots were present. The gum around it was tender and painful.*
3. *There was a lacerated wound of the size of 1x0.5cm present over the left side of chin. Clotted blood was present.*
4. *Patient was complaining of pain over the back of the cervical and both scapular region. Pain and tenderness was present at the site of the injury. X-rayn was advised.”*

13. The trial Court having thoroughly adverted to the evidence on record, came to the conclusion that the accused-appellant Sohan Singh, in furtherance of the common intention, exhorted his son accused Harjinder Singh to bring a gun for killing the complainant party. Accused Harjinder Singh opened fire from inside his house through a window and made an attempt to kill PW12, PW13 and PW16.

14. I critically examined the entire evidence of PW12, PW13, PW16 and PW17. They have deposed in one voice that there was a land dispute between the accused party and the complainant party. PW16 has turned hostile to the case of the prosecution. However, PW12, PW13 and PW17 have stated that a Panchayat was convened at the phirni. But there was violent altercation between the parties. Except PW16 who had turned hostile, the other material witnesses, namely, PW12, PW13 and PW17 have categorically deposed that accused Harjinder Singh opened fire from his .12

bore gun and caused pellet injuries on the person of PW12, PW13 and PW16.

15. True it is, PW16 chose not to support the case of the prosecution. But the injured witnesses, namely, PW12, PW13 and the eye witness PW17 have deposed without any trace of contradiction that it was only accused Harjinder Singh who opened fire through his .12 bore gun from inside his house and caused injury to PW12, PW13 and PW16. The injuries on the person of PW12 and PW13 are found to be simple in nature. But the injuries on the person of PW16 are found to be grievous in nature, inasmuch as he had sustained pellet injuries not only on his chest, but also on his stomach. In other words, it is found that accused Harjinder Singh had in fact aimed at the complainant party to cause death.

16. The medical evidence discussed above completely corroborates the ocular testimony of PW12, PW13 and PW17. Therefore, I am of the considered view that the prosecution has established that the accused Harjinder Singh opened fire from his .12 bore gun and made an attempt to kill the complainant party.

17. Coming to the charge of exhortation attributed to accused Sohan Singh, it is an admitted case that he was 67 years at the time when the occurrence took place. PW12 has stated in the first information report that accused Sohan Singh asked his son to fetch a gun to eliminate the complainant party. In his evidence, PW12 has deposed that accused Sohan Singh exhorted that the complainant party should be taught a lesson for demanding back the land. He also asked accused Harjinder Singh to bring

the rifle. PW13 deposed that accused Sohan Singh asked his son to bring a rifle to kill the complainant party. PW17 also speaks in a similar voice.

18. If accused Sohan Singh had been present in the midst of the complainant party, the pellets from the gun used by accused Harjinder Singh would have also fallen on the person of accused Sohan Singh. Therefore, the very presence of Sohan Singh in the midst of the complainant party, when gun shot fire was opened by accused Harjinder Singh is found to be doubtful. The benefit of doubt will have to be given to accused Sohan Singh.

19. Learned senior counsel appearing for the appellants would submit that the complainant party had no house in the field. They had actually come as aggressors to the phirni of the accused. Therefore, the evidence of PW16 who turned hostile will have to be accepted. It was submitted by learned AAG, Haryana that if the complainant party had appeared as aggressors at the phirni of the accused, they would have come prepared with weapons.

20. In my considered view, there is some substance in the submission made by learned AAG, Haryana. The prosecution witnesses have spoken unambiguously that they had come to participate in the panchayat at the phirni of the rival parties, but unfortunately, an altercation broke out which resulted in the fire. Further, aggressors would definitely come prepared to launch the murderous attack. There is no material to show that the prosecution witnesses were armed with any weapon.

21. Learned senior counsel for the appellants would further submit

referring to the evidence of PW16 and the defence plea set up by the accused-appellants that somebody else who accompanied the complainant party opened indiscriminate firing and as a result of which PW12, PW13, PW16 sustained injuries. He also drew the attention of this Court to the evidence of PW18 who investigated the case and the FSL report to support his submissions.

22. PW18 had never recorded in any of the proceedings conducted by him that there were bullet holes on the western side of the wall of the house from where the gun shot fire was opened by accused Harjinder Singh. It appears that the defence had developed a story that somebody else who accompanied the complainant party opened fire after PW16 was won over to speak in the same line, PW18 is not supposed to speak from his memory. The rough site plan does not disclose that there was any bullet mark found on the western wall of the house of accused Harjinder Singh. Therefore, the evidence of PW18 that there were bullet marks on the western wall of the house accused Harjinder Singh is found not believable.

23. If at all the persons who accompanied the complainant party had opened gun shot fire all of a sudden, the accused party also would have suffered gun shot injuries. The persons who accompanied the complainant party would not have opened fire aiming at their own persons.

24. It was further submitted that collar of abrasion dark in colour noticed on the left side chest and abdomen on the person of PW16 Sohan Singh would go to show that the gun shot was fired at a close range.

25. PW16 had turned hostile without disclosing the range at which

he received the pellet injuries. Further, PW11 who medico-legally examined accused Sohan Singh has categorically deposed during the course of cross-examination that he did not notice any blackening around the wound. The gun shot injuries were caused to Sohan Singh from a considerably long distance. In view of the above, I find that there is no merit in the submissions made by learned senior counsel appearing for the appellants that PW16 had received close range injury.

26. Lastly, it was submitted by learned senior counsel for the appellants that accused Harjinder Singh had allegedly caused gun shot injuries to PW12 and PW13. PW16 who allegedly received grievous injuries on the vital parts of the body chose not to support the case of the prosecution. Therefore, the sentence may be reduced to the period already undergone by him.

27. PW12 and PW13 have received only simple pellet injuries. It was only PW16 who received grievous injuries on his chest and stomach. But he virtually supported the accused by turning hostile to the case of the prosecution. The occurrence had taken place about 21 years ago. Accused Harjinder Singh is none other than the son of the brother of PW13 and PW17 and the cousin brother of PW12. Land dispute in the very same family was the genesis of the crime. For all these reasons, I have proposed to reduce the substantive sentence imposed on accused Harjinder Singh from 4 years R.I. to 3 years R.I. for the offence under Section 307 IPC.

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28. In the above facts and circumstances, accused Sohan Singh is

acquitted of the charge under Section 307 read with Section 34 IPC. Consequently, the conviction and sentence passed by the trial Court against accused Sohan Singh stands set aside. The appeal qua accused Sohan Singh is allowed. Since appellant Sohan Singh is on bail, his bail bond stands discharged.

29. The conviction recorded by the trial Court against accused Harjinder Singh under Section 307 IPC is confirmed. The substantive sentence imposed on him is reduced to 3 years R.I. However, the fine awarded and the default sentence imposed on accused Harjinder Singh for the said offence stand confirmed.

30. The accused-appellant Harjinder Singh is on bail. His bail bond stands cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Fatehabad who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Fatehabad shall take coercive steps to secure his presence.

31. With the above modification in the matter of sentence, the appeal qua Harjinder Singh stands dismissed.

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32. PW16 had chosen to support the accused having turned hostile to the case of the prosecution. Accused Harjinder Singh had caused only simple injuries to PW12 and PW13 on non-vital parts. The accused party as well as the complainant party are closely related to each other. The occurrence had taken place about 21 years ago. In the above facts and

circumstances, I am of the considered view that the plea for enhancement of sentence is found to be totally unjustifiable. Further, inasmuch as PW16 had chosen to sail with the accused and PW12 and PW13 have sustained only simple injuries, the question of awarding compensation as sought for in the revision does not arise. Therefore, the revision fails and it stands dismissed.

July 27 , 2015
Gulati

(M. JEYAPPAUL)
JUDGE