

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-833-SB of 2003 (O&M)

Date of decision : 01.09.2015

Albel Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Daldeep Singh, Advocate for the appellants.

Mr. Mehardeep Singh, DAG, Punjab

Mr. A. K. Walia, Advocate for the complainant.

JITENDRA CHAUHAN, J.

1. This appeal is directed against the judgment of conviction and the order of sentence dated 07.04.2003, passed by the learned Additional Sessions Judge, Faridkot whereby the appellants were ordered to undergo rigorous imprisonment as follows:-

Name of convict	Offence	Imprisonment	Fine	Indefault of payment of fine
Jugraj Singh	U/S 308 IPC	RI 6 years	Rs.1000/-	Six months RI
	U/S 325 IPC	RI 4 years	Rs.800/-	Four months RI
	U/S 323 IPC	RI 6 months	Rs.500/-	One month RI

Name of convict	Offence	Imprisonment	Fine	Indefault of payment of fine
Albel Singh, Balkar Singh @ Kaur	U/S 308/149 IPC	RI 6 years	Rs.1000/-	Six months RI
	U/S 325/149 IPC	RI 4 years	Rs.800/-	Four months RI
	U/S 323 IPC	RI 6 months	Rs. 500/-	One month RI
Dalip Singh, Zora Singh, and Babu Singh	U/S 308/149 IPC	RI 6 years	Rs. 1000/-	Six months RI
	U/S 325/149 IPC	RI 4 years	Rs.800/-	Four months RI
	U/S 323/149 IPC	RI 6 months	Rs.500/-	One month RI

2. Brief facts of the case is that an FIR No.61 under Sections 308/325/333/148/149 IPC was registered at Police Station City (Kotwali) Faridkot on 29.07.1997 which took place on 23.07.1997 at about 9.00 AM. As per the allegations, the complainant/injured Jagroop Singh @ Jupa (PW-7) was having some land dispute with Gurmel Singh @ Gela and the matter was pending before the Court of Commissioner, Faridkot. On 23.07.1997, the date fixed for appearance in the said case, the complainant/injured Jagroop Singh @ Jupa (PW-7) at around 9.00 AM was going along with Darshan Singh (PW-8) and was sitting on the carrier of the bicycle, which was being peddled by Darshan Singh. When they reached near the house of Preetwallian Di Kothi, a Jeep and Maruti Car were seen parked facing towards the city and on seeing the complainant and Darshan Singh above said, the accused Gurmail Singh @ Gela (PO), Albel Singh @ Labela (appellant No.1), Jagraj Singh @ Gaji (appellant No.6) and Balkaur Singh @ Kaura (appellant No.2), all armed with 'Sottas' and Dalip Singh

(appellant No.3 now deceased), Babu Singh (appellant No.4) and Zora Singh (appellant No.5), all empty handed, came out of these vehicles. Dalip Singh gave Lalkara, upon which Jagraj Singh @ Gaji gave Sotta blow hitting the complainant on the left leg below the knee. Gurmail Singh @ Gela gave one Sotta blow below the knee on the right leg. Upon which the complainant fell-down. While lying on the ground, the complainant raised both arms and Albel Singh gave two Sotta blows on the right hand of the complainant. Thereafter, Gurmail Singh @ Gela gave a Sotta blow on the left hand of the complainant and Jagraj Singh @ Gaji gave a Sotta blow on the right wrist of the complainant. When Darshan Singh (PW-8) tried to save the complainant/injured, Dalip Singh, Babu Singh and Zora Singh, who were empty handed used force to desist Darshan Singh in coming to the rescue of the complainant/injured. Thereafter, Balkaur Singh @ Kaura inflicted two blows of Sotta on the right buttock and left side of the back of the complainant, Gurmail Singh @ Gela gave a Sotta blow on the left arm while Jagraj Singh gave a Sotta blow on the left shoulder and Albel Singh gave a Sotta blow hitting on the left thigh of the complainant. On raising Raula, hearing the commotion, Neela Singh (PW-4) arrived at the spot and he along with Darshan Singh took the complainant/injured to GGS Medical College and Hospital, Faridkot, where he was admitted for treatment.

3. After completion of investigation, the accused-appellants were sent for trial. Out of the seven persons, named as accused, only six persons faced trial i.e. Albel Singh @ Labela appellant No.1, Balkaur Singh @ Kaura appellant No.2, Dalip Singh appellant No.3, Babu Singh appellant No.4, Zora Singh appellant No.5 and Jagraj Singh appellant No.6. whereas, the seventh accused Gurmail Singh @ Gela absconded and was declared Proclaimed Offender by the trial Court.

4. Appellants No.1 to 6 were convicted and sentenced as under:-

<i>Sr. No.</i>	<i>Name of the appellants</i>	<i>Conviction under Sections</i>	<i>sentence</i>
1	Albel Singh @ Labela	308/149 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325/149 IPC	RI-4 yrs. Fine Rs.800/- in default 4 months RI
		323 IPC	RI-6 months Fine Rs. 500/- in default 1 month RI
2	Balkaur Singh @ Kaura	308/149 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325/149 IPC	RI-4 yrs. Fine Rs. 800/- in default 4 months RI
		323 IPC	RI-6 months Fine Rs. 500/- in default 1 month RI
3	Dalip Singh	308/149 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325/149 IPC	RI-4 yrs. Fine Rs. 800/- in default 4 months RI
		323/149 IPC	RI-6 months Fine Rs. 500/- in default 1 month RI
4	Babu Singh	308/149 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325/149 IPC	RI-4 yrs. Fine Rs. 800/- in default 4 months RI
		323/149 IPC	RI-6 months Fine Rs. 500/- in default 1 month RI

<i>Sr. No.</i>	<i>Name of the appellants</i>	<i>Conviction under Sections</i>	<i>sentence</i>
5	Zora Singh	308/149 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325/149 IPC	RI-4 yrs. Fine Rs. 800/- in default 4 months RI
		323/149 IPC	RI-6 months Fine Rs. 500/- in default 1 month RI
6	Jagraj Singh	308 IPC	RI-6 yrs. Fine Rs. 1000/- in default 6 months RI
		325 IPC	RI-4 yrs. Fine Rs. 800/- in default 4 months RI
		323 IPC	RI- 6 months Fine Rs. 500/- in default 1 month RI

All the sentences were ordered to run concurrently.

It is brought to the notice of this Court that Dalip Singh appellant No.3 had died during the pendency of the appeal and therefore, the appeal abates qua him.

5. Feeling aggrieved against the same, the appellants preferred this appeal, which was admitted on 01.05.2003.

6. The learned counsel for the appellants contended that there is unexplained delay of six days in lodging the FIR. The incident took place on 23.07.1997 at 9.00 am, whereas, the FIR was registered on 29.07.1997, after due deliberations and consultations after increasing the number of accused on twisted version. It is next contended that no offence under Section 308 IPC is made out and at the most it is a case of Section 325 IPC. On quantum of sentence, he contended that the sentence is on the higher side.

7. On the other hand, the learned State counsel has contended that there is no illegality or infirmity in the impugned judgment. He contended that the learned trial court has rightly convicted the accused under Section 308 IPC and sentenced the appellants. He further contended that all the injuries on the person of complainant/injured Jagroop Singh @ Jupa (PW-7) are on the non vital parts of the body i.e. legs, hands, wrist joint, forearm, arms and thigh inflicted with blunt weapons as stated by Dr. K. K. Aggarwal (PW-1), who conducted Medico Legal Examination of the complainant/injured vide MLR Ex.PA. Injuries No.1 and 2 were declared grievous in nature and the remaining injuries 3 to 11 were stated to be simple. Keeping in view the surgical opinion given by Dr. Sohan Singh (PW-3), injuries No.1 and 2 were collectively declared as dangerous to life. He urge for dismissal of the appeal.

8. I have heard the counsel for the parties and have gone through the record with their able assistance.

9. Section 320 IPC defines 'Grievous Hurt'-The following kinds of hurt only are designated as "grievous":—

xx xx xx xx xx

(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.

Section, “Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

11. A Division Bench of this Court in the case of **Atma Singh Vs. The State of Punjab**, 1982(2)CLR 496 “ Held, that the expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life', he means an injury which endangers life in term of clause 8 of Section 320 IPC, for it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life' described it as 'dangerous to life' meaning both the time the same thing.”

12. The above observation was followed by this Court in Para No.45 in the case of **Mohinder Singh and others VS. State of Punjab**, 2012 (4) RCR (Criminal) 214, while acquitting the appellant therein of offence under Section 307 IPC and convicting him for lessor offence under Section 326 IPC and reducing sentence from 5 years S.I. to 5 months i.e. period of sentence undergone by the said appellant.

13. In **Parusuraman alias Velladurai and ors. Vs. State of Tamil Nadu**, 1991(3) RCR (Criminal) 641 (SC), it was observed that

there were eleven injuries on lower legs and arms and thus, keeping in view the nature of injuries and circumstances of the case, offence falls within the mischief of Section 325/34 of IPC.

14. In this case, the ocular evidence is corroborated by medical evidence which is trustworthy. The trial Court has rightly relied upon the prosecution evidence, which proves that the accused-appellants have given injuries to the injured Jagroop Singh @ Jupa. The only point for determination is to what is the nature of injuries and what offence is made out in the given circumstances.

15. Before dealing with the question as to what offence, is made out, it is necessary to discuss the nature of injuries received by complainant/injured Jagroop Singh @ Jupa (PW-7), PW-1, Dr. K. K. Aggarwal, who has proved the medico legal report as Ex.PA and pictorial diagram Ex.PA/1 has examined the injured with promptitude as the record shows that on 23.07.1994 itself at 10.00AM and this witness has enumerated the injuries on the person of Jagroop Singh as follows:-

1. Lacerated wound L shaped 4x2 cms 0.5 cms on left leg on anterior aspect in upper half. Swelling was present underneath. Fresh bleeding was present.
2. Four lacerated wound 1.5 x 0.5 cms on anterior aspect of right leg in middle 1/3rd. Swelling of middle 1/3rd of right leg. Fresh bleeding was present.

3. Lacerated wound 3 x 1 cms on palmer aspect of right middle finger over terminal phalanx. Fresh bleeding and swelling was present.
4. Lacerated wound 1.5 x 0.5 cms was present on the palmer aspect of right ring finger over terminal phalanx. Fresh bleeding and swelling was present.
5. Lacerated wound 1.5 x 0.5 cms on back of right hand laterally. Fresh bleeding and swelling was present.
6. Reddish brown abrasion in area of 5 x 2 cms on later aspect of right wrist joint.
7. Reddish brown abrasion 1 x 0.5 cms on tip of right little finger. Swelling was present.
8. L-shaped lacerated wound 4 x 0.5 cms on back of left hand. Swelling was present.
9. Reddish brown abrasion 1.5 x 0.5 cms was present on posterior lateral aspect of left forearm in middle 1/3rd. Swelling was present.
10. Reddish contusion 7 x 1 cms on antero-lateral aspect of left upper arm.
11. Reddish contusion 8 x 1 cm on lateral aspect of right thigh in middle one-third.

And all these injuries were opined to be within six hours caused by blunt weapon.

16. PW2 Dr. Navkiran Kaur had conducted X ray examination of the injuries which were kept under observation and for X ray examination and she had proved the X ray report Ex.PD, wherein she had specifically stated that X ray of right leg showed fracture of tibia

and fibula bones and X ray of right leg including knee joint showed fracture of tibia, fibula fumer and patella bone and had opined that in rest of the injuries no fracture had been seen and also proved the X ray films as ExP1 to Ex.P6 and PW3 Dr. Sohan Singh, the Orthopaedician had given his opinion as Ex.PE/1 whereby he had opined that on account of injuries No.1 and 2 collectively were dangerous to life and had also proved the bed head ticket of the patient as Ex.PE.

17. Thus, in the facts and circumstances of the case since all the injuries on the person of the complainant/injured were admittedly on non vital parts of the body and had been inflicted with blunt weapons, therefore, it is clear that the appellants had no intention of causing the death or such bodily injury as was likely to cause death or with the knowledge that they by such act were likely to cause death. Resultantly, it cannot be said that the appellants had committed an offence punishable under Section 308 IPC i.e. attempt to commit 'Culpable homicide'. Their intention was to cause 'grievous hurt' only. Therefore, at the most, they can be said to have committed offence under Section 325/326 IPC instead of Section 308 of the Indian Penal Code. The conviction of the appellants is converted to Section 325/326/323/149 IPC. Ordered accordingly.

18. The learned counsel for the appellants contended that the appellants are not previous convicts, they are first offenders, at this

stage to send them in jail will cause great hardship not only to the accused-appellants but also to their families.

19. The details of the period of custody undergone by the appellants is as under:-

<i>Sr. No.</i>	<i>Name of the appellant</i>	<i>Actual sentence undergone</i>			<i>Remissions earned</i>			<i>Total custody including remissions</i>		
		<i>Y</i>	<i>M</i>	<i>D</i>	<i>Y</i>	<i>M</i>	<i>D</i>	<i>Y</i>	<i>M</i>	<i>D</i>
1	Albel Singh @ Labela	1	9	17	2	2	15	4	0	2
2	Balkaur Singh @ Kaura	1	3	3	1	1	6	2	4	9
3	Dalip Singh	Died, appeal abated								
4	Babu Singh	0	7	24	1	0	12	1	8	6
5	Zora Singh	0	7	22	1	0	12	1	8	4
6	Jagraj Singh	1	5	19	1	1	10	2	6	29

20. Thus, keeping in view the period already undergone by them; there is no injury on the vital part of the body; the occurrence is 18 years old; not involved in any other criminal case; both the parties are of the same village and have been living peacefully and that appellants Albel Singh @ Labela, Balkar Singh @ Kaura, Dalip Singh, Babu Singh and Zora Singh have been convicted with the aid of Section 149 IPC, this Court feels that it is a fit case, where by taking a lenient view, the sentence of these appellants deserved to be modified/reduced as under subject to enhancement of fine to be paid as compensation to the injured Jagroop Singh @ Jupa:-

1. Appellant-Albel Singh is directed to deposit a sum of Rs.75,000/- as fine to be paid as compensation to the injured-Jagroop Singh @ Jupa (PW7). and the sentence is ordered to be reduced to the period already undergone.

2. Appellants-Balkaur Singh alias Kaur; Dalip Singh, Zora Singh and Babu Singh are directed to deposit fine of Rs.50,000/- each to be paid to the injured-Jagroop Singh @ Jupa (PW7) as compensation and their sentences are ordered to be already undergone.

3. The fine shall be deposited with the Chief Judicial Magistrate, Faridkot, within four months from the receipt of certified copy of this judgment, failing which their appeals shall be dismissed in toto without notice and in that event, they have to surrender to undergo the remaining part of the sentence.

4. The fine be deposited within the stipulated period, the same shall be treated as compensation and will be disbursed to the complainant/injured-Jagroop Singh @ Jupa (PW7).

With the above reduction/modification in the sentence the appeal of the appellants Albel Singh @ Labela; Balkaur Singh @ Kaur; Dalip Singh; Zora Singh and Babu Singh is, hereby, dismissed on merits.

21. However, there is no merit in the appeal of appellant-Jugraj Singh. Appellant-Jugraj Singh is the main accused, who had inflicted

grievous repeated blows on the person of Jagroop Singh @ Jupa (PW7). Though this Court, has converted the offence from Section 308 IPC to Section 325/326/323/149 IPC but the role played by this accused deserves no leniency. Accordingly, the sentence imposed upon the appellant-Jugraj Singh @ Jupa is just and reasonable. He deserve no leniency. His appeal is dismissed. He is directed to surrender to undergo the remaining part of the sentence.

22. It is made clear that in the eventuality of non-deposit of the fine within the stipulated period, this appeal shall be deemed to be dismissed without further notice.

23. Allowed to the extent indicated above.

01.09.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**

whether referred to reporter? Yes/No.