

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

CRA No.S-1774-SB-2003 (O&M)
Date of decision:02.12.2015

Baljinder Singh

...Petitioner

Versus

State of Punjab

... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

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

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Navjot Singh, Advocate for the appellants.

Mr. Yogesh Gupta, AAG, Punjab.

P.B. Bajanthri, J.

Accused Baljinder Singh, challenged the conviction and sentence passed by the trial Court under Section 307 of IPC to rigorous imprisonment for a period of 3 years and to pay fine of Rs. 3000/- and in default of payment of fine he would further undergo RI for a period of 6 months, under Section 324 of IPC, rigorous imprisonment for a period of one year and to pay fine of Rs.1000/- in default payment of fine he has to undergo rigorous imprisonment for a period of 4 months. Both the sentences shall run concurrently.

2. Brief facts of the case presented by the prosecution are that one

Varinder Kaur daughter of Rajinder Singh made a statement to the police on 20.09.2001 that she and her brother Lakhvir Singh are students of 9th standard in Teja Singh School Shimlapuri Ludhiana. On the said date at about 3 p.m both Varinder Kaur and Lakhvir Singh were returning from the school and when they reached near Quality factory, Baljinder Singh @ Ballu son of Mehar Singh came out from the premises of Sharomani Committee. He was carrying a naked sword in his right hand and was also carrying one five litre cane of kerosene oil in his left hand. On reaching there, the said Baljinder Singh made a lalkara to the effect that mother of Varinder Kaur does not allow the matrimonial alliance between Varinder Kaur and Baljinder Singh and for that reason he was going to kill Varinder Kaur. He further stated that he would first kill both Varinder Kaur and her brother Lakhvir Singh and then he would pour kerosene oil upon them and would burn them so that their dead bodies could not be identified. On raising this lalkara he first caused the sword blow to Varinder Kaur which hit on the back side of her head. He also gave another blow to her which hit on the left hand fingers of Varinder Kaur. He also gave a third blow with the sword to Varinder Kaur towards her head but she slightly slipped and the sword hit on her shoulder. Lakhvir Singh brother of Varinder Kaur intervened and the accused also gave him a sword blow which hit on his left arm. During this time Inderjit Singh khalsa reached the spot and brother of the complainant was saved from the third blow. The students of the school also collected there and raised an alarm. Principal Gurbachan Singh of the school also reached there and he informed the police on telephone. The accused then ran away from the spot after leaving the sword and cane there

on the spot. The motive behind the incident was that the accused wanted to marry Varinder Kaur but her parents did not yield and the accused wanted to blackmail the complainant on the strength of some letters and photographs of Varinder Kaur which were in his possession.

3. Prosecution have examined 8 witnesses and documents Ex. PA to Ex.PJ in support of the prosecution case.

4. Accused in his statement under Section 313 Cr.P.C. urged that he has been implicated falsely in the case. The trial Court having adverted to the evidences on record come to the conclusion that the prosecution has established offences under Section 307 and 324 of IPC beyond reasonable doubt. PW1 and PW2 have categorically stated that the accused has grievously caused injuries on both PW1 and PW2 on 20.09.2001 at about 3.00 pm while they were returning from the school. Motive behind attacking PW1 is that the accused/appellant sought matrimonial alliance with the mother of PW1-Varinder Kaur which was not entertained by mother of PW1 and therefore, in a fit of anger appellant uttered that he would kill both PW1 and PW2 and then he would pore kerosene oil upon them and would burn them so that their deadbodies could not be identified. In this background, the prosecution has filed FIR and registered a case against the appellant under Section 307/324 of IPC.

5. Learned counsel for the appellant submitted that there was a love affair between PW1 and appellant which is evidence from Ex.D1-photograph and Ex.D2-letter. The appellant had no grouse against PW1 or PW2 for the reasons that mother of PW1 refused to entertain matrimonial alliance as sought by the appellant. If at all any grouse or anger it should

have been against mother of PW1. Learned counsel for the appellant submitted that having regard to the nature of injuries suffered by PW1 and PW2 and opinion of the Doctor-PW7, it is a case of simple injuries therefore, Section 307 is not attracted in the case. Therefore, the prosecution has not made out a case so as to sentence the appellant under Section 307 of IPC.

6. It was further contended by learned counsel for the appellant that there is a delay of 12 hours in submitting special report by PW3-Head Constable Hari Singh to the Illaqa Magistrate as is evident from deposition of PW3. Learned counsel for the appellant contended that the appellant is having only 2 fingers namely little finger and ring finger on his left hand. Therefore he cannot lift 5 litres of kerosene cane. Consequently, statement of PW1 and PW2 that the appellant was holding sword and kerosene cane, is unimaginable. Moreover, case property was not marked and seized. Therefore, there are no corroborative evidence indicating that the appellant has caused injuries on PW1 and PW2 and the prosecution has falsely implicated appellant.

7. Learned counsel for the appellant in support of not attracting Section 307 of IPC in this case, has relied on following 4 judgments:-

- a. 2012(4) RCR (CrI.)214 titled as ***Mohinder Singh and others versus State of Punjab***. Relevant extract of the judgment is as follows:-

45. There is another aspect of the matter which can be viewed from a different angle. As per medical evidence, there was only one incised wound with sharp edged weapon on the person of PW3-Hamir Singh. This injury was kept under observation and X-Ray was advised.

*Subsequently, as per X-Ray report, there was a fracture of the left frontal bone on the person of PW3-Hamir Singh. In the wake of police request, PW1-Dr.Sat Pal gave his opinion on 10.04.1995 to the effect that as there was a fracture of the left frontal bone, so injury No. 1 could have proved dangerous to the life of the patient. But in the cross-examination, PW1 admitted that if there would have been no fracture on the skull, then the injury would not have been dangerous to life. He also admitted that unless the injury affects the brain and only bone is fractured (as in the present case), it cannot be termed as dangerous to life. It means, the words "dangerous to life" are equivalent to "endangering life" and such acts squarely covered within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. The distinction between the words "dangerous to life" and "endangering life" came to be determined by a Division Bench of this Court in **Atma Singh v. The State of Punjab, 1982(2) CLR 496** and it was held as under :-*

"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' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in term of clause 8 of Section 320 Indian Penal Code, 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."

- B) 1995(3) Crimes 843 titled as **Hazar and others versus State of Haryana**. Relevant extract of the judgment is as follows:

7. *From the injuries it can be seen that the injuries were not dangerous to life. Injuries Nos. 2 and 3 are only simple in nature. Injury No. 1 is a punctured wound on the left side of the chest 0.5 cm. x 0.5 cm. chest deep. There is no evidence on the record to show that the accused intended to kill P.W. 4. Therefore, on a consideration of the material on record, I am of the opinion that the conviction under Section 307 read with Section 34 Indian Penal Code cannot be maintained. On the facts of the case, I am of the opinion that the accused is guilty of the offence under Section 324 Indian Penal Code I accordingly convert the conviction of the accused to Section 324 read with Section 34 Indian Penal Code instead of under Section 307 and 307 read with Section 34 Indian Penal Code as the accused was armed with a ballam. The accused had already undergone imprisonment for more than three months. The offence took place more than nine years back. I am, therefore of the opinion that the sentence of imprisonment and fine imposed by the learned Additional Sessions Judge are liable to be set aside and that the interest of justice would be met if the sentence of imprisonment is reduced to the period already undergone.*

8. *I accordingly allow the appeal in part and the conviction and sentence imposed by the learned Additional Sessions Judge for the offence under Section 307 and 307 read with Section 34 Indian Penal Code are hereby modified and converted to one under Section 324 read with Section 34 Indian Penal Code and the accused-appellants are convicted under Section 324 read with Section 34 Indian Penal Code and are sentenced to the period already undergone.*

C) 1991(3) RCR (Crl.)422 titled as **State of Punjab versus Parveen Kumari and others**. Relevant extract of the judgment is as

follows:-

6. As regards the offence committed by Rajneesh Kumar, the learned trial Court had come to the conclusion that Rajneesh Kumar, had fired a shot at Ram Parkash with revolver Exhibit P1. But by firing that shot he had not committed an offence under Section 307, Indian Penal Code but the offence came under the purview of Section 324, Indian Penal Code, as there was no intention to commit, murder of the deceased. Dr. Sunil K. Singh stated that the injury on the person of Ram Parkash was simple in nature and it could not have resulted in death. The injured was fit to make a statement on the same evening and he was discharged on the third day. As per site plan prepared by the Draftsman, the fire was shot from a distance of 22 feet. When the revolver was seized it had still three bullets in it. Only one shot was fired which did not hit any vital part of the body. **In the case of Bhagwan Din and others v. State, AIR 1967 Allahabad 580**, it was held :-

"The mere fact that a firearm was used to cause injuries to the victim will not necessarily bring the case under Section 307. There can be no presumption that the accused intended to cause the death merely because he used a firearm to cause hurt. The intention of the accused person has to be established from either the nature of his act actually committed by him or from other surrounding circumstances. Where the injury has actually been caused to the victim, the prosecution, while attempting to establish that the real intention of the accused was to cause an injury of the nature which was sufficient in the ordinary course of nature to cause death or was so imminently dangerous that it would cause death, had further to establish the intention or Knowledge of the accused as contemplated in Section 307 Indian Penal Code. The burden of proof is on the

prosecution and not on the accused."

7. In the instant case, the shot was fired from a distance and it did not hit any vital part of the body. A simple injury was caused and no further shots were fired although the revolver contained three more bullets. There was no evidence to establish with certainty the existence of requisite intention or knowledge of the respondent. Rajneesh Kumar respondent was, therefore, rightly convicted of the offence under Section 324, Indian Penal Code. As he was a boy of the age of 15 years, he was given the benefit of probation.

*D) 2009(3)RCR (CrI.)455 titled as **Sarida versus The State of Haryana**. Relevant extract of the judgment is as follows:-*

13. The Counsel for the appellant, submitted that no offence, punishable under Section 307 of the Indian Penal code, was constituted, from the evidence, produced by the prosecution, but the trial Court, was wrong, in recording conviction, and awarding sentence for the said offence. The submission of the Counsel for the appellant, in this regard, appears to be correct. Dr. Jagmohan Mittal, Medical Officer, PW 1, medico-legally examined Akbar son of Deenu, and found the following injuries, on his person: "Incised wound of 2 1/2 cm x 1/2 cm x. muscle deep on left side of neck, transversally on middle 1/3rd of neck. The margins were clear cut. The direction of wound was from back to forward and interiorly. Fresh bleeding was present (profused)."

During the course of cross-examination, it was stated by him, that on the application DA moved by the Police, he gave the opinion DA/1 to the effect that injury on the person of Akbar, was simple in nature. There is nothing, on the record, that the injury which was found on the person of

Akbar, was subjected to x-ray examination. There is also nothing, on the record, that the depth of the injury was probed. No doubt, the injury aforesaid was on the neck of Akbar, yet it having been declared simple, in nature, by the doctor, it could not be said that the same was caused by the accused, with such intention, or knowledge that if she by that act had caused death, she would have been guilty of murder. Even the dimensions of the injury, on the person of the injured, clearly showed that there was no intention of the accused do cause such injury, as would have caused death. Had the doctor given the opinion, to the effect, that the injury on the person of Akbar, would have endangered his life, but for timely medical aid, it would have been said that the offence, punishable under Section 307 of the Indian Penal Code, was constituted. Since the injury was simple, in nature, it fell within the purview of the offence, punishable under Section 324 of the Indian Penal Code. The trial Court, was, thus, wrong in holding, that the offence, punishable under Section 307 of the Indian Penal Code, was constituted. The finding of the trial Court, to this extent, being not based, on the correct appreciation of evidence, is reversed.

17. The order of sentence is set aside. Keeping in view the nature of offence, the antecedents of the appellant, the factum that she has been facing the protracted criminal proceedings; for the last more than 15 years, and that she has not committed any offence, after her conviction, in this case, she is ordered to be released on probation of good conduct, for a period of 02 years, on her furnishing a personal bond, in the sum of Rs. 5000/-, with one surety in the like amount, to the satisfaction of the Chief Judicial Magistrate, to appear and receive sentence, as and when, called upon, during this period and, in the meantime, to

keep the peace and be of good behaviour. She shall also furnish an undertaking, that she shall not commit any offence of the like nature, during, the aforesaid period. The appellant shall also pay costs of the proceedings, to the tune of Rs. 10,000/-. In case, she has already deposited the amount of fine, to the tune of Rs. 500/-, that shall the amount of costs, referred to above. The probation bonds, alongwith the undertaking, shall be furnished and the costs, referred to above, less than the fine, if already paid, shall be deposited, in the Court of Chief Judicial Magistrate, within a period of 2 months, fail the Court concerned, shall proceed, in accordance with the provisions of law, for compliance of the judgment”.

8. While citing the aforesaid decisions the learned counsel for the appellant submitted that sentencing appellant under Section 307 is highly arbitrary and contrary to the evidence read with the aforesaid decisions. It was further contended that the alleged incident relates back to 2001 when the appellant was aged about 21 years. He has undergone imprisonment for a period of 8 months therefore, he be released on probation.

9. Learned State counsel vehemently contended that the appellant's contention that if at all the appellant's grouse was against mother of PW1 and not PW1 and PW2, is not tenable for the reasons that mother of PW1 refused to entertain proposal of the appellant for matrimonial alliance with PW1. Consequently, the appellant has taken revenge against PW1 and PW2 may be in a fit of anger. It was contended that with a deadly weapon of sword, the appellant hit on the head of PW1 which was slipped into causing minor injury, therefore, the motive and attempt to caused serious injury i.e. on the head of PW1, Section 307 is attracted. Therefore, rightly

the trial court convicted the appellant under Section 307/324 of IPC. He also contended that trial Court has taken the medical evidences and statement of PW1 and PW2 while sentencing the appellant under Section 307/324 of IPC. Therefore, it was contended that there are no infirmities in the trial Court proceedings so also the evidence adduced by the prosecution. Thus, he requested this Court not to interfere with the decision of the trial Court.

10. Heard learned counsel for the parties.

11. Learned counsel for the appellant contended that there is a delay of 12 hours in submitting special report to the Illaqa Magistrate resulted in vitiating of entire proceedings. Delay in submitting special report Ex.PB to Illaqa Magistrate on 21.09.2001 at about 9.30 am is not a fatal to the proceedings. Contentions of the appellant that having regard to the fact that PW1's mother refused to entertain matrimonial alliance and the appellant's motive should have been against mother of PW1 and there is no enmity against PW1 and PW2. Such presumption of the appellant is without any basis and evidence and it is incorrect for the reasons that the appellant in a fit of anger might have an attempt to hurt grievously both PW1 and PW2 for the reasons that mother of PW1 refused to entertain the request of the appellant for matrimonial alliance with PW1. Therefore, there is no motive of the appellant to hurt PW1 and PW2 cannot be accepted. Learned counsel for the appellant contended that the appellant had only 2 fingers namely little finger and ring finger therefore, it is unimaginable that he can hold 5 litres kerosene cane. It is on record that 2½ litres of kerosene was filled in 5 litres cane. Therefore, contention of the appellant is only imaginary one.

12. Learned counsel contended that there are simple injuries caused

on PW1 and PW2 therefore, Section 307 IPC is not attracted. One of the injury is caused on the head which indicates that motive of the appellant to cause severe injury or made an attempt to kill PW1 as contended by learned counsel for the State. However, as opined by the Doctor-PW7 i.e. Injuries were minor therefore, there is a substance in the argument of learned counsel that Section 307 is not attracted. Hence, sentencing the appellant under Section 307 is incorrect and it is arbitrary in the absence of medical evidence. Consequently, the contention of the appellant's sentencing him under Section 307 is allowed and sentence under Section 307 is to be set aside.

13. Question of considering the appellant's contention that he should be released on probation cannot be considered for the reasons that time and again the Supreme Court has held that delay in concluding proceedings would not be given benefit of probation to an accused. The said principle has been laid down in recent decision of the Apex Court, reported in ***State of M.P. versus Mohan and others*** 2013(14) SCC 116. Therefore, the contention of the appellant releasing the appellant on probation is rejected. Thus, the appellant has not made out a case so as to interfere with the sentence ordered by the trial Court under Section 324 IPC. Hence, sentence ordered under Section 324 IPC to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default of payment of fine he would further undergo rigorous imprisonment for a period of 4 months is upheld and sentencing under Section 307 IPC is set aside.

14. The accused/appellant is on bail, therefore, bail bond stand

cancelled. He shall surrender within 15 days from the date of this judgment before the CJM, Ludhiana shall take coercive steps to secure his presence and send him to jail to undergo the remaining sentence.

15. In terms of the above order, decision of the trial Court is modified in the above terms.

Appeal stands dismissed.

2nd December, 2015
pooja saini

(P.B.BAJANTHRI)
JUDGE