

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

**Criminal Appeal S-1453-SB of 2004
Date of Decision: July 22, 2016.**

Harpreet Singh and another		Appellants
	Versus	
The State of Punjab		 Respondent

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

Present : Mr. Bipan Ghai, Senior Advocate with
Mr. Mandeep Kaushik, Advocate
for the appellants.

Mr. Vikram Bishnoi, Asstt. Advocate General, Punjab.

None for the complainant.

T.P.S.MANN, J.

The appellants, namely, Harpreet Singh and Balwinder Kumar @ Kala alongwith Surjit Singh, Hardeep Singh and Jaspal Singh were tried for committing offences punishable under Sections 148, 307/149, 324/149, 323 and 506 IPC. Vide judgment and order dated 22.7.2004, learned Additional Sessions Judge (Adhoc) Patiala, acquitted Surjit Singh, Hardeep Singh and Jaspal Singh of the charges against them. At the same time, appellant Harpreet Singh was convicted under Section 307 IPC

while appellant Balwinder Kumar @ Kala under Section 307/34 IPC and sentenced to undergo imprisonment for four years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo imprisonment for one year. The previous period of custody, if any, was ordered to be set off against their substantive sentence. Hence, the present appeal, in which, both the appellants are currently on bail.

Similarly, complainant Harbans Singh has preferred Criminal Revision 610 of 2005, praying therein that the acquittal of Surjit Singh, Hardeep Singh and Jaspal Singh be set aside and for enhancement of sentences of imprisonment of the two appellants. Vide order dated 19.7.2005, the Court had directed the listing of the said revision alongwith the present appeal. As the appeal and the revision arise out of the one and same judgment of conviction and order of sentence, they are being disposed of by a common judgment.

In nutshell, the prosecution case is that on 31.5.2001 at about 10.25 a.m., in the area of Sanauri Bus Adda near petrol pump, the appellants and their co-accused had caused injuries to Swaran Singh with swords besides criminally intimidating him and complainant Harbans Singh.

During the investigation of the case, the three co-accused of the appellants were found innocent and their

names were shown in column No. 2 of report under Section 173 Cr.P.C. Subsequently, the trial Court allowed the application filed by the prosecution under Section 319 Cr.P.C. and summoned them to also face trial.

In order to prove its case, the prosecution examined PW1 Harbans Singh complainant, PW2 Swaran Singh, injured, PW3 Binder Singh an eye witness, PW4 Indresh Khanna Draftsman, PW5 Dr. Karamjit Singh, who conducted medical examination of Swaran Singh, injured, PW6 Jaswant Singh, Junior Assistant of Regional Transport Authority, PW7 SI Tara Singh, who arrested Balwinder Kumar on 19.2.2002, PW8 Dr. Amritpal Singh, who conducted X-ray examination of Swaran Singh and observed fracture of left frontal bone and PW9 ASI Sat Pal, the Investigating Officer.

When examined under Section 313 Cr.P.C., all the accused denied the allegations and claimed their innocence. The plea of main accused Harpreet Singh which was also adopted by his co-accused Balwinder Kumar, reads as under:-

“I am innocent and have been falsely involved in this case. No such occurrence as alleged by the prosecution had occurred. In fact, an altercation in the market of Sanauri Adda took place where various persons gathered and one of them hurled a weight of one kilogram of iron, which hit on the forehead of

Swaran Singh accidentally and due to which Swaran Singh fell down on the ground while his head was touching ground from back side and in that process he received injuries. But due to business rivalry, the complainant and other witnesses have falsely foisted this case upon me. It is pertinent to mention here that in the present case all the three witnesses, namely, PW1 Harbans Singh, PW2 Swaran Singh and PW3 Binder Singh are engaged in the same business with me and Swaran Singh nursed a grudge against me as I was giving him a stiff competition in the business.”

In their defence, the accused examined DW1 Ranjit Singh, DW2 Mohd. Nissar, DW3 Satish Kumar and DW4 Harinder Singh, fruit seller.

The trial of the case ended with the acquittal of three co-accused of the appellants whereas the appellants were convicted and sentenced, as mentioned above.

After hearing learned counsel for the parties and on going through the impugned judgment of conviction, this Court finds that the prosecution has been successful in bringing home guilt of the appellants. PW1 Harbans Singh, complainant, PW2 Swaran Singh, injured and PW3 Binder Singh, an eye witness have testified that it were the two appellants, who were armed with swords who had caused injuries to Swaran Singh. All three of them withstood the test of cross-examination. The defence could

not elicit any material to even prima-facie establish that the appellants had not committed the crime. The testimonies of the aforementioned three witnesses is duly corroborated by the medical-evidence consisting of the testimony of PW5 Dr. Karamjit Singh, who had medico-legally examined Swaran Singh and found the following injuries on his person:-

- “1. An abrasion wound 3 x 0.5 cm on left side of scalp. Profusely bleeding, X-ray was advised.
2. Swelling and tenderness right shoulder joint including clavicle. X-ray was advised.
3. An incised wound 3 cm x 0.5 cm in middle on back of scalp profusely bleeding. X-ray was advised.”

Dr. Karamjit Singh also testified that injury No.1 was dangerous to life whereas injuries No. 2 and 3 were simple in nature. PW8 Dr. Amritpal Singh, who had conducted X-ray examination of the injured testified that he found fracture of the left frontal bone and proved X-ray report Ex.PW8/A.

The occurrence in question had taken place on 31.5.2001 at about 10.25 a.m. Soon thereafter, i.e. at 1.15 p.m., the statement of complainant Harbans Singh was recorded by ASI Sat Pal and on its basis FIR No. 395 dated 31.5.2001 under Sections 307/324/323 IPC was registered at Police Station

Kotwali, Patiala. Thus, there was no delay in lodging of the FIR. This lends independent corroboration to the case of the prosecution.

Injury No. 1 on the person of Swaran Singh, injured, when subjected to X-ray examination revealed fracture of left frontal bone. Accordingly, PW5 Dr. Karamjit Singh had declared the said injury to be dangerous to life. Therefore, the appellants cannot escape the charge under Section 307 read with Section 34 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court. At the same time, no case is made out for upsetting the acquittal of Surjit Singh, Hardeep Singh and Jaspal Singh as during the investigation of the case, they were found innocent and, accordingly, not challaned. It is another thing that they were, later on, summoned under Section 319 Cr.P.C. as additional accused. Moreover, Surjit Singh and Hardeep Singh happened to be real brothers of Harpreet Singh appellant and possibility of their false implication on that account cannot be ruled out.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than fifteen years. When the

appellants were heard by the trial Court on the quantum of sentence, they had pleaded that they had three children and they were the only bread winners of their respective families. As per the custody certificates produced by the learned State counsel, Harpreet Singh appellant had already undergone total sentence including remission of one year and six months and one day whereas Balwinder Kumar @ Kala appellant had undergone total sentence of one year and two months out of the sentence of four years imposed upon them. None of them is shown to be either involved or convicted in any other case. They are presently on bail for the last about twelve years. There is no material on the record that after being released on bail, any of the appellants has misused the concession.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentence of imprisonment imposed upon them. Ends of justice shall be suitably met, if their substantive sentence of imprisonment is reduced to the one already undergone by them. At the same time, the fine of Rs.1,000/- imposed upon each of them can be enhanced to Rs.20,000/- so that the same, on its deposit by them, may be disbursed to Swaran Singh injured, as compensation.

Resultantly, the conviction of the appellants, as recorded by the trial Court, is upheld. Their substantive sentence of imprisonment is reduced to the one already undergone by them. The fine of Rs.1,000/- imposed upon each of the two appellants is, however, enhanced to Rs.20,000/-. The amount of fine be deposited by the appellants before the Chief Judicial Magistrate, Patiala, within three months from today, failing which, they shall undergo imprisonment for one year. The entire amount of fine, when deposited by the appellants, be disbursed to PW2 Swaran Singh injured, as compensation. At the same time, the judgment passed by the trial Court to the extent of acquitting Surjit Singh, Hardeep Singh and Jaspal Singh of the charges against them is upheld.

Criminal Appeal No.S-1453-SB of 2004 preferred by the appellants, namely, Hardeep Singh and Balwinder Kumar @ Kala is disposed of, whereas Criminal Revision No.610 of 2005 filed by complainant Harbans Singh is dismissed.

July 22, 2016
amit rana

(T.P.S. MANN)
JUDGE