

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-792-SB of 2004.
Date of Decision: 15.07.2016.**

KUKU SINGH AND ANOTHERAPPELLANTS.

VERSUS

STATE OF PUNJABRESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Kuldeep V. Singh, Advocate for the appellants.

Mr. Yogesh Gupta, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellants Kuku Singh and Mithu Singh, assailing the judgment of conviction and order of sentence dated 05.03.2004 recorded by learned Additional Sessions Judge, Mansa, in case bearing First Information Report No.79 dated 03.09.2001 registered at Police Station Sadar Mansa vide which they (appellants) were convicted for commission of offence under Section 307 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and under Section 27 and 30 of the Arms Act and were sentenced as under:-

Name of accused	Nature of offence	Sentence awarded
1. Kuku Singh	U/S 307 IPC	Sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.2000/-. In default to pay fine to further undergo rigorous imprisonment for a period of one month.

U/s 307/34 IPC Sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.2000/-. In default to pay fine to further undergo rigorous imprisonment for a period of one month.

U/S 27 & 30 of the Arms Act Sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/-. In default to pay fine to further undergo rigorous imprisonment for a period of 15 days.

2. Mithu Singh U/S 307 IPC Sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.2000/-. In default to pay fine to further undergo rigorous imprisonment for a period of one month.

U/s 307/34 IPC Sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.2000/-. In default to pay fine to further undergo rigorous imprisonment for a period of one month.

U/S 27 & 30 of the Arms Act Sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/-. In default to pay fine to undergo rigorous imprisonment for a period of 15 days.

The relevant facts gathered from the record are as under:-

Based on the statement Ex.PA of Bhola Singh son of Magar Singh, resident of village Khokhar Khurd, before ASI Lal Inder Singh, a First Information Report No.79 under Sections 307/342/34 I.P.C. read with Section 27 and 30 of the Arms Act, 1959 (Ex.PD/2) was registered at Police Station Sadar, Mansa on 03.09.2001. The allegation of complainant Bhola Singh was that on 02.09.2001 at about 3:30 p.m., he was going to his fields carrying tea to be served to his workers in the fields. When he reached near

bus stand Khokhar Khurd, he saw Kuku Singh son of Karnail Singh standing there. In the meantime, Santokh Singh son of Gobind Singh, resident of Mansa driving a scooter and armed with a Gandasa, kept in the front portion of the scooter, alongwith Mithu Singh son of Dhanna Singh, travelling as a pillion rider and armed with 12 bore double barrel DBBL gun, came from the side of Khokhar Kalan. Santokh Singh instantaneously stopped the scooter and gave a *Lalkara* that 'Bhola Singh be not spared'. To save his life, he (Bhola Singh) immediately took a back turn and started running. He entered into the house of Chand Singh, brother of the Chowkidar. While he was entering the house, Mithu Singh, with an intention to murder him, fired a gun shot which hit on the back side of his left thigh. As he went into the house, Kuku Singh, snatching the gun from Mithu Singh, entered the adjoining house of Balour Singh and from the intervening wall fired a gun shot towards him which hit on the front side of his right thigh near the private part and he fell down. Santokh Singh was hurling abuses standing outside the house and was saying that the case relating to the plot has been decided.

The complainant further stated that hearing about the occurrence, his brother Mithu Singh and Major Singh son of Kartar Singh, resident of Khokhar Khurd reached the spot. Seeing them, all the three assailants, taking their respective weapons, fled away on the scooter towards Khokhar Kalan.

The motive, as stated by the complainant, was that the daughter of sister-in-law of his brother was married with Inderjit Singh son of Mithu Singh. Inderjit Singh had been maltreating his wife. About two years back, a

Singh and Jangir Kaur and was pending in the Court. He (Bhola Singh) was the main witness in that case.

Qua Santokh Singh, the motive, stated by complainant Bhola Singh, was that he was having a dispute with him in respect of a plot situated at Mansa, regarding which a case was pending. They had also been challaned under Section 107/151 of the Code of Criminal Procedure (for short, "Cr.P.C.") 4-5 times.

The complainant added that a vehicle was arranged and he was taken to Civil Hospital, Mansa. After being given first aid, he was referred to Patiala for treatment.

On the basis of the statement Ex.PA, First Information Report Ex.PD/2 was registered. Investigation commenced. During investigation, Santokh Singh was found innocent. Statements of witnesses were recorded and after receipt of medical reports and on completion of investigation and other formalities, the appellants-accused were challaned and sent to the Court for trial.

The appellants were charge-sheeted and subjected to face trial for commission of offence under Section 307 read with Section 34 I.P.C. and sections 27 and 30 of the Arms Act, 1959.

To substantiate the charge, the prosecution examined as many as 14 witnesses namely, PW1 Dr. Yashpal Garg, PW2 Dr. Kulwant Singh, PW3 complainant Bhola Singh, PW4 Major Singh, PW5 HC Gurlal Singh, PW6 Constable Amrik Singh, PW7 Harpal Singh ASI, PW8 Lal Inder Singh ASI, PW9 Baldev Singh HC, PW10 Raghvir Singh, PW11 Dr. Surinder Jagat, PW12 Hardevinder Singh, Inspector/SHO, PW13 Dr. R.K. Saigal and

PW14 Dr. Mayank Jayant.

After closure of evidence of the prosecution, in their statements recorded under Section 313 Cr.P.C., the appellants denied the case of the prosecution and pleaded innocence and false implication. Appellant Kuku Singh stated that Santokh Singh used to visit the house of Mithu Singh. Bhola Singh used to ask Mithu Singh to stop Santokh Singh from visiting his house and on refusal to do so he has been implicated in this case.

Appellant Mithu Singh stated that his son is having strained relations with his wife and some Court cases are pending between them. Bhola Singh is relative of his daughter-in-law Darshan Kaur. He added that he has no concern with Santokh Singh or Kuku Singh and due to weakness he is unable to carry a fire arm like 12 bore gun. Earlier the complainant gave a false application under Section 107/151 Cr.P.C. against him in which he was discharged. He (complainant) has now falsely implicated him in the present case so that he may not pursue the litigation pending between his son and his wife.

In defence evidence, DW1 Daljit Singh, Deputy Superintendent of Police was examined.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants-accused, learned trial Court acquitted Santokh Singh of the charge levelled against him, but appellants Kuku Singh and Mithu Singh were convicted for the commission of offence punishable under Section 307 read with Section 34 I.P.C. and sections 27 and 30 of the Arms Act, and were sentenced by the trial Court, as indicated above.

Feeling aggrieved by the impugned judgment of conviction and

appellants preferred the instant appeal.

The submissions made by Mr. Kuldeep V. Singh, learned counsel representing the appellants and Mr. Yogesh Gupta, Assistant Advocate General for the State of Punjab have been heard and record perused.

The two star witnesses, who proved the charges against the appellants, were PW3 Bhola Singh (injured-complainant) and PW4 Major Singh, the eyewitness of the occurrence. Assailing credibility and veracity of the said witnesses, learned counsel for the appellants argued that PW3 Bhola Singh had a criminal past. As admitted by him, he was convicted and sentenced to imprisonment for 20 years for murder of one Mehar Singh and he had served the sentence. He also admitted that the case pending between him and Santokh Singh, which he referred to in the First Information Report Ex.PD/2 had been decided against him. It was also his own version that he had faught about 15 cases in all. PW4 Major Singh concededly was having friendly relations with him. In that manner, both the witnesses, on whom the prosecution case rested, were interested witnesses and had shady character, therefore, none of them deserved to be relied upon.

Learned counsel next argued that the complainant on being taken to Civil Hospital, Mansa was medico legally examined by PW1 Dr. Yashpal Garg, who proved the Medico Legal Report Ex.PA/1. The doctor gave a detail of the injuries found on the person of the injured but mentioned no history of the injuries. In his cross-examination, he stated that the history was not told to him by the complainant. It was on the next day i.e. 03.09.2001 that when the complainant was admitted in Rajendra

wherein he blamed the appellants for inflicting the injuries on him. Apparently, there was deliberate delay on his part in stating the history of the injuries. His criminal antecedents and conduct coupled with delay in lodging of the First Information Report proves that he gained time to concoct a false story to implicate the appellants with whom he had hostile relations. The injuries which were either self inflicted or had been suffered accidentally.

Learned counsel further pointed out that although, there were three residential houses at the place of occurrence as admitted by PW12 Inspector Hardevender Singh, Investigation Officer, but no independent witness to corroborate his statement was named by the complainant or could be examined by the prosecution. Learned Trial Court found the version of the complainant to be false qua Santokh Singh, who was named by him in the First Information Report to have exhorted and actively participated in the occurrence. The fact that the presence of Santokh Singh could not be proved by the prosecution and he was found to be falsely implicated also goes a long way to indicate that the complainant had cooked up a story which was untrustworthy.

Last, but not the least, learned counsel contended that as admitted by PW11 Dr. Surinder Jagat, no injury suffered by the complainant was opined to be grievous or dangerous to life and, as such, provisions of Section 307 I.P.C. were not attracted. Mithu Singh, brother of the complainant, who was also alleged to be an eyewitness of the occurrence, was not examined. PW12 the Investigation Officer added that he did not lift bloodstains from the spot for being sent for comparison with the blood of

infirmities rendered the case of the prosecution doubtful.

Indeed, PW3 complainant Bhola Singh admitted that he was convicted and sentenced to undergo imprisonment for 20 years for commission of murder and that he had fought about 15 cases in his life, but that alone by no stretch of imagination is a ground to disbelieve his testimony. His version that he suffered fire arm injuries is corroborated by medical evidence. In his statement to the police, he gave a detailed and crystal clear account of the occurrence during which he had suffered the injuries. He named the appellants as the assailants and stated that they chased him and when to save his life he was entering the house of Chand Singh, brother of the Chowkidar, Mithu Singh with an intention to murder him fired a gun shot towards him from his double barrel gun which hit on the backside of his left thigh. As he entered the house, Kuku Singh snatching the gun from Mithu Singh went to the adjoining house of Balour Singh and fired at him from over the intervening wall and the shot hit on front side of his right thigh near the private part (Bakhi) and he fell down. Hearing about the occurrence his brother Mithu Singh and PW4 Major Singh had reached the spot and seeing them the accused fled away with the weapon.

After the occurrence, the complainant was brought to Civil Hospital, Mansa by Mithu Singh and Major Singh where he was medico legally examined by PW1 Dr. Yashpal Garg. Four injuries were found on the person of the complainant, the detail of which is as under:-

“1. A lacerated wound 2½ x 1½ cms on the posterior surface of left thigh 27cm above the knee with inverted margins with collar of abrasion around it. Probing not done. Fresh bleeding

was present. Corresponding hole in the chadra.

2. *A lacerated wound 5 x 2cm on the posterior surface of left thigh, 28 cms above the knee with inverted margin. Collar of abrasion present. Probing not done. Fresh bleeding was present. Corresponding hole in the chardra.*

3. *A lacerated wound 2 x 1cm on the medial surface of right thigh, 20cm above the knee with inverted margin and collar of abrasion around it. Probing not done. Fresh bleeding was present.*

4. *A lacerated wound 1½ x 1cm on the anterior lateral surface of right flank of abdomen 5cm above the iliac crest. Fresh bleeding was present. Probing not done.”*

PW1 Dr. Yashpal Garg stated that injuries No.1 to 3 were kept under observation and for Ortho Surgical opinion. Injury No.4 was kept under observation for General Surgeon opinion. The probable duration of injuries was within six hours and the kind of weapon used was “fire arm”.

It was admitted by PW1 Dr. Yashpal Garg that Major Singh and Mithu Singh accompanied injured Bhola Singh and they were advised to take him to Rajendra Hospital, Patiala. PW1 no doubt, stated that injured Bhola Singh was conscious and was talking and also that the injured did not give him the history as to how and at what time and at what place and at whose hands he sustained the injuries, but it was also not his version that he enquired the history from the injured or from his companions but they refused to tell him. Unless the doctor enquires from the injured the history of the injuries, the injured cannot be expected to have narrated the same on

same in the medico legal report. The omission on his part is not to be used as adverse against the injured. In any case, PW1 Dr. Yashpal Garg stated that the injured had been fired at from a distance beyond 6 feet. Thus, the medical evidence corroborates the statement of the complainant on all aspects.

PW8 ASI Lal Inder Singh stated that he had received a ruka in respect of injured Bhola Singh from Civil Hospital, Mansa on 02.09.2001 but by the time he reached the hospital at 5:30 p.m., the injured had already been taken to Rajendra Hospital, Patiala on being referred by the doctor. Thereafter, on 03.09.2001 he went to Rajendra Hospital, Patiala and after obtaining opinion of the doctor regarding fitness of the injured, he recorded the statement Ex.PA of injured Bhola Singh. Since the injured had suffered fire arm injuries, the immediate and natural reaction of the companions of the complainant was to provide him medical assistance and not to run after the police to lodge a report. The information regarding arrival of the injured with fire arm injuries in the hospital was given by the doctor without any loss of time and after that it was duty of the police to approach the injured or the eyewitnesses to record their statements with regard to the occurrence. The moment the police contacted injured Bhola Singh and he was fit to make statement, the police recorded his statement and registered the case. In the above circumstances, it cannot be said that there was any intentional or inordinate delay in lodging the First Information Report on part of the injured.

The deposition of PW3 Bhola Singh stands corroborated by PW4 Major Singh, who had witnessed the occurrence. He was not related to the injured-complainant. He may be on friendly terms with the injured-

complainant, but he being an independent witness and resident of the village of which the complainant and the appellants were the residents, had no reason to falsely depose against the appellants. It is not the requirement of law to burden the file with voluminous evidence. Only the witnesses who can offer direct and material evidence are required to be examined and in the instant case when PW3 Bhola Singh-injured and PW4 Major Singh-eyewitness had been examined, non examination of Mithu Singh, brother of the complainant becomes immaterial. Santokh Singh was not resident of the village where the occurrence took place and his presence at the time of occurrence could not be proved, because of which he was given benefit of doubt by learned trial Court. But as regards presence and commission of offence by the appellants there was no reason to disbelieve the complainant.

In the First Information Report lodged by the complainant, he stated the motive of the appellants, which could not be refuted by the appellants. Inderjit Singh son of appellant Mithu Singh was having matrimonial dispute with his wife. A criminal case of dowry had been registered against appellant Mithu Singh, Inderjit Singh and Jangir Kaur in which complainant Bhola Singh was the main witness. That was the grievance nourished by the appellants for which they attacked on the complainant. In the said set of facts, the complainant may be having criminal background but that could be no ground to distrust him or reject his testimony.

In addition to the ocular evidence against the appellants, another substantive evidence against them is the report of Forensic Science Laboratory (for short, "FSL") Ex.PZ. On the basis of disclosure statement

gun No.15791-94 and cartridge case which he had kept concealed wrapped in a plastic bag in the elephant grass standing in the ditches beside the road near the link road Ramdittewala and the railway line. The gun was taken into possession by the Investigation Officer vide recovery memo Ex.PQ. The licence of the gun was also taken into possession vide recovery memo Ex.PR which was recovered from the pocket of the shirt of appellant Mithu Singh which he was wearing at the time of his interrogation on 09.09.2001. As per the licence and also as proved by PW10 Raghbir Singh, Junior Assistant of the Office of Deputy Commissioner, Mansa, the licence Ex.P9 of 12 bore DBBL gun was issued in the name of appellant Mithu Singh on 18.04.1999. During investigation, a cartridge was recovered by the Investigation Officer from the spot of occurrence. The 12 bore DBBL gun and the cartridge case were sent for forensic examination and according to the FSL report Ex.PZ, the 12 bore Shaktiman Express, cartridge case had been fired from the 12 bore DBBL gun No.15791-94. Needless to say that the said evidence further substantiates the ocular testimony of the complainant as well as the medical evidence.

Thus, from the evidence of the prosecution, it stood established that the appellants had caused fire arm injuries to complainant Bhola Singh with an intention to commit his murder.

The important thing to be borne in mind in determining the question whether an offence under Section 307 I.P.C. is made out is the intention of the offender and not the injury caused by him. It is not necessary that the injury, capable of causing death, should have been inflicted to come in the purview of Section 307 I.P.C. It is the intention or

the result, which will attract the provisions of Section 307 I.P.C. The intention or knowledge are the metals to be gathered from totality of circumstances in each case. In the case in hand, the complainant was fired at twice by both the appellants from a 12 bore DBBL licenced gun of appellant Mithu Singh in furtherance of their common intention. Out of the four injuries suffered by the complainant two were from gun shots which leave no doubt that the intention of the appellants was to murder the complainant. Accordingly, learned trial Court rightly held the appellants guilty for commission of offence under Section 307 read with Section 34 I.P.C. For the same reason, conviction of the appellants under Sections 27 and 30 of the Arms Act is also upheld.

Coming to the matter of sentence, learned counsel for the appellants submitted that as on today the appellants are 65-66 years of age and are not previous convicts. Never after the present case they have committed any offence. They are living like responsible and peace observing citizens. As such, the sentence awarded to them be reduced.

Considering the submissions made and the age, character and previous antecedents of the appellants, the sentence of rigorous imprisonment for seven years awarded to each of the appellants under Section 307 read with Section 34 I.P.C. is reduced to Rigorous Imprisonment for three years and to payment of fine of Rs.2000/- each. In default to pay fine to further undergo rigorous imprisonment for a period of one month. The sentence of Rigorous Imprisonment for one year for offence under Sections 27 and 30 of the Arms Act, 1959 shall remain the same. Both the sentences shall run concurrently. With the above modification in

The appellants are on bail in this case, their bail bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

15.07.2016.
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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**