

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1834-SB-2010

Date of decision: June 01, 2016.

Darshan Singh and others

... **Appellants**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Jitender Chahal, Advocate for the appellants.

Mr. M.S. Randhwa, Additional Advocate General, Punjab.

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?*

A.B. Chaudhari, J. (Oral):

Being aggrieved by the judgment and order dated 7.7.2010 passed by Additional Sessions Judge (Ad hoc), Fast Track Court, Rupnagar in Sessions Case No.RT-26 of 8.3.2007/5.12.2007, by which all the appellants were convicted for offences under Sections 148, 341, 307, 326, 323, 452 IPC and were sentenced to undergo RI for 3 years for offence under Section 307 IPC + fine, RI for 6 months for offence under Section 148 IPC, RI for one month for offence under Section 341 IPC and RI for 3 years for offence under Section 326 IPC, RI for 6 months for offence under Section 323 IPC and RI for 2 years + fine for offence under Section 452 IPC, the present appeal was preferred by 5 accused-appellants.

FACTS:

Briefly stated, the prosecution case is that a telephonic

message was received in the Police Station Kharar from PGI Chandigarh about a medico-legal case whereupon ASI Nirmal Singh with his staff, went to PGI Chandigarh but could not record the statement of Sikander Singh, being unfit. He, thereafter proceeded to the Civil Hospital, Kharar and recorded the statement of Sukhwinder Singh. In his statement, he stated that he with his grand-father Hakam Singh, brother Ranjit Singh and wife Sarabjit Kaur were sleeping at the roof of their house when at about 10 p.m., the door of his house was knocked. Upon opening the door, they found the appellants who asked as to where was Ranjit Singh. When they were told that Ranjit Singh along with his wife was sleeping on the roof, all of them went to the roof of the house. Darshan Singh and Jitti caught hold of Ranjit Singh and started beating him. On raising *raula*, they ran away. Thereafter, the complainant along with Ranjit Singh, Sikander Singh and his uncle Kuldeep Singh proceeded to the police station to lodge the report. After lodging the report when they were returning and were near the house of Sadhu Singh and Mohinder Singh, appellant Darshan Singh armed with kirch, appellant Jitti armed with danda, appellant Bhapla armed with danda and Parwinder Singh armed with danda and one more person were standing there. Appellant Darshan Singh raised a lalkara that they should teach a lesson to the complainant party for going to the Police Station and gave a kirch blow on the person of Ranjit Singh on his abdomen while others gave danda blows on the person of Sukhwinder Singh. Appellant Darshan Singh thereafter gave kirch

blow on the person of Sikander Singh on his abdomen. Thus Ranjit Singh and Sikander Singh received injuries. Thereafter, all the accused person ran away with their respective weapons. It is after this that the injured were admitted to the hospital.

The FIR was lodged; investigation was undertaken. Statements of the witnesses were recorded. Thereafter, the challan was filed against all the accused persons. The learned trial Judge heard the evidence and thereafter convicted the appellants, as stated above. Hence, this appeal.

ARGUMENTS:

In support of the appeal, Mr. Jitender Chahal, learned counsel for the appellants, assailing the judgment and order vehemently argued that there is no recovery of weapon, namely, kirch in this case nor the same was identified by any of the witnesses in the court. According to him, there is no further evidence about the existence of blood stains on any of the weapons, so also chemical analyzer's report in order to corroborate the prosecution evidence. He further submitted that evidence of PW1 Sukhwinder Singh, PW2 Ranjit Singh and PW3 Sikander Singh is of the interested witnesses and due to enmity, they deposed against the appellants. Their evidence should not have been accepted by the trial Judge in the absence of any independent evidence or corroboration in the form of scientific evidence which the prosecuting agency failed to collect. It is submitted that the prosecution has not at all found out or disclosed before the court the genesis of its case nor any motive has been

brought forward by the prosecution. He, therefore, submitted that the entire prosecution case is doubtful and the benefit of doubt should have been extended to the appellant-accused persons. According to him, the facts and the evidence themselves show that there was no agreement or meeting of mind of the accused persons *inter se* to arrive at a conclusion that there was unlawful assembly. He then submitted that the name of accused Harpreet is not in the FIR or anywhere in the police statement under Section 161 Cr.P.C. or even before the court. Harpreet was involved deliberately by the prosecution and therefore, he deserves to be acquitted. In the alternative, he submitted that all the accused-appellants should be sentenced to the period they have already undergone in view of the long lapse of the period, i.e., almost a decade from the date of incident.

Per contra, learned Additional Advocate General, Punjab supported the impugned judgment and order and submitted that the prosecution proved its case beyond any shadow of doubt by producing three eye witnesses, namely, PW1 Sukhwinder Singh, PW2 Ranjit Singh and PW3 Sikander Singh. According to him, the evidence of three eye witnesses as well as injured cannot be brushed aside since the same is supported by the medical evidence. Law does not require that the evidence of interested witnesses should be discarded outright. In this case, there are three eye witnesses and they are injured. No other reason has been suggested as to how the injuries were caused to them. According to

him, there is corroboration inter se amongst the witnesses, so also from the medical evidence supporting their version before the court. He fairly stated that Harpreet 's name is not in the FIR but he was identified by only one witness, namely PW3 Sikander Singh and therefore, there is no reason to acquit him. He opposed the alternative plea for reduction of sentence looking to the nature of injuries and the sentence of only three years given by the trial Judge for the serious offence under Section 307 IPC. He, therefore, prayed for dismissal of this appeal in entirety.

CONSIDERATION:

I have seen the evidence of three eye witnesses who were injured, namely, PW1 Sukhwinder Singh, PW2 Ranjit Singh and PW3 Sikander Singh, so also their cross examination. I have seen the reasons given by the trial Judge for recording the order of conviction. Upon hearing the learned counsel for the rival parties at considerable length, at the outset I find that the prosecution case about the unlawful assembly by the accused persons is required to be disbelieved and negated. The reason is that Harpreet, appellant No.5 herein, was never said to be part of the unlawful assembly when the FIR was lodged, inasmuch as his name was not mentioned in the FIR. Not only that, except for PW3 who stated that he identified him only by face in the court for the first time, there is hardly any evidence against him, either to identify him as a member of unlawful assembly at the time of the incident or for any overt act on his part during the incident. In the wake of such quality of

evidence, as stated above, it must be held that the appellant accused Harpreet was not the member of the unlawful assembly that had gone to the house of the injured. Consequently, there were only four persons. It falls short of one person to form unlawful assembly. I thus hold that the prosecution failed to prove that there was any unlawful assembly. As a sequel, conviction recorded by the trial Judge for offences under Sections 148 and 149 IPC will have to be set aside. Having thus held that there was no unlawful assembly of 5 members, as above, now I proceed to make assessment of the evidence led by the prosecution in this appeal.

It is seen from the records that appellant Darshan Singh was carrying deadly weapon, namely, kirch. Not only that, he gave stab blows by means of kirch to Sikander Singh and Ranjit Singh. I quote para 12 and 13 from the judgment of the trial court to show the injuries suffered by them, which read thus:-

“12. Similarly, the prosecution has examined PW-8 Dr. Sanad. He deposed that on 5.8.2006 he medico-legally examined Sikandar Singh s/o Didar Singh and found the following injuries on his person:

- 1. Two stab would 3x1 cm each approximately 4 cm and 8 cm from the midline on left side of abdomen, with omental prolapse.*
- 2. 5x1 cm lacerated wound over the scalp.*

He further deposed that the patient was operated immediately and the following injuries were found intra operatively:

- 1. There was blood mixed with bile and fecal matter in the abdominal cavity.*

2. *Five puncture wounds in the small intestine starting from DJ flexure to Jejunum approximately 1.3 x 1 cm each.*

In his opinion the nature of the injuries collectively was dangerous to life and were recent in nature i.e. within few hours. He proved the MLR Ex. PW8/A. He also proved his opinion regarding fitness of injured to make the statement as Ex.PW8/B. He also proved the opinion of Dr. Sonia Ex. PW8/C and that of Dr. Tanmay Tiwary ex.PW8/D regarding fitness of the injured.

13. *Similarly, the prosecution has examined PW-10 Dr. Naresh Kumar Medical Officer. He deposed that on 5.8.2006, at about 2.30 AM he medico-legally examined injured Ranjit Singh son of Baljinder Singh and found the following injuries on his person:*

1. *Swelling with reddish contusion 3x3 cm on the left side of the forehead near the anterior hair line. Advised X-ray.*

2. *An lacerated wound 0.5x0.5 cm on the temporal region left side, 4 cm, above the upper border of the pinna. Fresh bleeding was present. Skin deep. Advised x-ray.*

3. *An lacerated wound 0.5x0.25 cm skin deep on the neck of left side 2cm behind the pinna alongwith multiple scratches near this injury. Fresh bleeding was present.*

3-A. *An diffuse swelling extending lower border of the left eye with reddish blue contusion present. Swelling is about 4 x 2.5 cm. Advised x-ray.*

4. *A reddish abrasion irregular 1.5 x 0.5 cm with linear abrasion 1 x 0.2 cm present on the right lower quadrant of the abdomen.*

5. *A reddish abrasion 0.5 x 0.5 cm in the epigastric region.*

6. *An interrupted linear abrasion 6 x 0.25 cm present on the lateral aspect of the left fore-arm jut below the elbow joint. Oozing of blood was present.”*

Perusal of the six injuries to Ranjit Singh shows that they are not serious injuries. Therefore, for the assault on Ranjit Singh, in my opinion, offence under Section 324 IPC only is proved by the prosecution so far as the appellants No.1 to 4 are concerned.

Perusal of the injuries to Sikander Singh shows that injury No.1 is described as external injury and injury No.2 is described as internal injury which shows that the kirch that was utilized by Darshan Singh was utilized with sufficient force as a result of which 5 puncture wounds were caused to small intestine and in particular the jejunum portion. It is thus clear that the injury caused to the small intestine which resulted in puncture wound was really dangerous and had Sikander Singh not received the medical aid, the injury could have been fatal. Looking to this aspect of the matter, I think the trial court did not commit any error in convicting Darshan Singh for offence under Section 307 IPC. Analyzing the submission made by learned counsel for the appellants on the evidence of PW1 and PW3, I find that their evidence is cogent, trustworthy and most natural and they being the injured witnesses, there is no reason for disbelieving their evidence. Their cross examination has put no dent to their sworn testimony before the court and on the contrary, their evidence is trustworthy. All the other accused have also been held guilty by the trial court for the offence under Section 307 IPC but I find that it was only Darshan Singh who had given the stab blows on the vital part of the body, namely, abdomen by means of a dangerous weapon like kirch. As other persons did not have the sharp weapons but were

only armed with sticks or dandas, had caused hurt, they except Darshan Singh, have to be held to be guilty under Section 324 read with Section 34 IPC and not under Section 307 IPC. However, Darshan Singh cannot be given the said benefit as he knew that the weapon which he was using for carrying out the assault, was a dangerous weapon and, therefore, the only requisite offence which can be attributed to Darshan Singh for holding him guilty is the offence under Section 307 IPC. I therefore confirm the finding holding Darshan Singh guilty of offence under Section 307 IPC. In so far as other appellants, No.2 to 4 are concerned, I think that they should be held guilty of offences under Sections 324, 341, 452 and 323 IPC. Appellants No.2 to 4 have undergone sentence of about six months and I think looking to the lapse of a period of about a decade, they should be sentenced to the sentence they have already undergone rather than pushing them in jail at a late stage particularly when they are not shown to have criminal antecedents. In that view of the matter, I make the following order:-

ORDER

- [i] Crl. Appeal No.S-1934-SB of 2010 is partly allowed;
- [ii] Crl. Appeal No.S-1934-SB of 2010 filed by Darshan Singh is dismissed. He is allowed four weeks time to surrender to serve the remainder of the sentence.
- [iii] Crl. Appeal No.S-1934-SB of 2010 filed by appellants No.2 to 4 is partly allowed and they are acquitted of the offences under Sections 148, 149, 307, 326 IPC and their

conviction is modified by convicting them for the offences under Sections 324, 341, 452 read with Section 34 IPC and they are sentenced to undergo sentence which they have already undergone.

[v] Crl. Appeal No.S-1934-SB of 2010 filed by appellant No.5 Harpreet is allowed and he is acquitted of the offence for which he has been convicted.

[vi] Bail bonds stands discharged.

June 01, 2016.
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[A.B. Chaudhari]
Judge