

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Criminal Appeal No. S-1950-SB of 2003

Bikkar Singh

...Appellant

Versus

State of Punjab

...Respondent

2. Criminal Appeal No. S-2222-SB of 2009

Dalip Singh

...Appellant

Versus

State of Punjab

...Respondent

Date of Pronouncement: 25.01.2016

Coram: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Mr. S. S. Narula, Advocate
for appellant-Bikkar Singh.**

**Mr. Anil Chaudhary, Advocate
for appellant-Dalip Singh.**

**Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab for the respondent(s)-State.**

Raj Rahul Garg, J.

This judgment shall decide the above mentioned two appeals filed by Bikkar Singh son of Harnam Singh and the other filed by Dalip Singh son of Gurdial Singh. Both the appellants were accused in one FIR No. 139 of

04.07.2000 under Section 307/506 read with Section 34 of the IPC. As accused Dalip Singh was declared proclaimed offender at the time accused Bikkar Singh faced trial, therefore, the learned trial Court had to record separate judgments regarding both the accused. In fact, Dalip Singh was arrested after the decision of the case of appellant-accused Bikkar Singh. Vide judgment dated 08.10.2003 rendered by learned Additional Sessions Judge, Sangrur, accused-appellant was held guilty for committing offence punishable under Section 307, 324, 506/34 of the IPC and was sentenced to undergo rigorous imprisonment for a period of six years and a fine of Rs. 5000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for committing offence punishable under Section 307 IPC; to undergo rigorous imprisonment for one year for committing offence punishable under Section 324 IPC and to undergo rigorous imprisonment for a period of six months for committing offence punishable under Section 506 IPC. All the sentences were ordered to run concurrently. However, vide judgment dated 11.08.2009, rendered by learned Additional Sessions Judge (Adhoc), Fast Track Court, Sangrur, appellant-accused Dalip Singh was held guilty for committing offence punishable under Sections 307/506 IPC. Vide order on sentence of the even date, he was sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs. 5000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for committing offence under Section 307 IPC; to undergo rigorous imprisonment for six months for committing offence under Section 506 IPC. Both the sentences were ordered to run concurrently.

2. Brief facts of the case are like this; that on 04.07.2000, on receipt of wireless message from SHO, Police Station-Malerkotla, ASI Ashwani Kumar, Incharge Police Post-Sandhaur had gone to Civil Hospital, Malerkotla. The wireless message was about admission of Mohd. Ismail in Civil Hospital, Malerkotla after sustaining injuries at the hands of accused Bikkar Singh and Dalip Singh. From there, he was referred to Rajindera Hospital, Patiala. However, he was admitted to New DMC, Ludhiana. On reaching there, application Ex. PO, was moved to the doctor to know as to if injured Mohd. Ismail was fit to make statement, whereupon, the doctor gave his opinion, Ex. PO/1, that the victim was unfit to make statement. Thereafter statement of Paramjit Singh was recorded as Ex. PP and the same was sent to police station for registration of the case, whereupon formal FIR Ex. PP/2 was registered. Site plan of the spot was prepared as Ex. PQ. Blood stained earth from the spot was lifted and made into a parcel. The same was sealed with the seal of 'AK' and was taken into possession, vide memo Ex. PR.

3. On receipt of MLR of victim Mohd. Ismail by ASI Ashwani Kumar, he came to know that he had sustained 17 injuries in all. In the MLR, it was recorded that the nature and extent of injuries would be declared later on. Paramjit Singh, in his statement Ex. PP, asserted that Mohd. Ismail was employed with him as a servant. During night of 03.07.2000, at about 10.00 pm, Mohd. Ismail was sleeping on the roof of the electric motor tube-well whereas he himself was sleeping outside the electric motor room. Suddenly, he heard Mohd. Ismail shouting "**Maarta Maarta**". On hearing his shrieks, he got up and saw Dalip Singh son of Gurdial Singh (accused) armed

with *dagger* in his right hand accompanied by Bikkar Singh son of Harnam Singh armed with knife in his right hand inflicting blows with their respective weapons on the body of Mohd. Ismail. As a result, he was seriously injured. He raised hue and cry and asked the assailants not to inflict injuries on the person of Mohd. Ismail. Taking benefit of dark night, Dalip Singh and Bikkar Singh succeeded in making good their escape stating that '*that day Mohd. Ismail was saved and in case he did not stop working with Paramjit Singh, he will be done to death*'. Complainant further alleged that Dalip Singh and Bikkar Singh have attacked his servant with an intention to kill him. Mohd. Ismail became unconscious on account of injuries suffered by him. As such, after arranging some vehicle, he was taken to Civil Hospital, Malerkotla where he was got admitted. As the condition of Mohd. Ismail deteriorated, he was taken to New DMC, Ludhiana where he remained under treatment. The motive behind the attack was given like this that Bikkar Singh wanted to employ Mohd. Ismail as servant with him but on refusal of the victim, Bikkar Singh and Dalip Singh, with common intention to kill, attacked Mohd. Ismail.

4. Statements of witnesses were recorded. Accused were searched. ASI Ashwani Kumar again went to New DMC, Ludhiana and sought the opinion of the doctor as to if victim Mohd. Ismail was fit to give statement or not. After obtaining certificate of fitness, statement of Mohd. Ismail was recorded. From 11.07.2000 to 17.07.2000, investigations of the case remained with Inspector Joginder Singh. He also kept on looking for the accused. Thereafter, vide order dated 17.07.2000, Senior Superintendent of Police, Sangrur entrusted the investigations of this case to Inspector Davender Singh,

Incharge CIA, Bahadur Singh Wala, who during his investigations from 18.07.2000 to 23.10.2000 found accused Bikkar Singh and Dalip Singh 'as innocent'.

5. Thereafter, complainant Paramjit Singh filed a writ petition in this Court seeking directions for arresting accused. This Court, vide order dated 20.12.2000, directed Sh. Kulshinder Singh, DSP to conduct the investigations of this case, who after conducting investigations from 05.01.2001 to 25.01.2001 found both the accused guilty. ASI Gurmeet Singh of Police Station-Malerkotla have arrested accused Bikkar Singh on 05.01.2001 and obtained non-bailable warrants of accused Dalip Singh. Clarification regarding injuries sustained by Mohd. Ismail was also sought from the doctor, who declared all the injuries on the person of Mohd. Ismail as 'simple' and having been caused by sharp-edged weapons. As Dalip Singh could not be arrested, therefore, proclamation proceedings were got conducted against him and challan under Section 307/506 IPC read with Section 34 IPC was filed against accused Bikkar Singh showing accused Dalip Singh as proclaimed offender.

6. Later on, ASI Inderjit Singh, Incharge Police Post-Sandhaur arrested accused Dalip Singh on 24.08.2005 and produced before Illaqa Magistrate. Under these circumstances, supplementary challan was filed against accused Dalip Singh whereby he faced trial in this case.

7. Finding a prima-facie case against accused Bikkar Singh, he was charge-sheeted for committing offence punishable under Sections 324/307/506/34 IPC whereas accused Dalip Singh was charge-sheeted for committing offence punishable under Sections 307/506 IPC. PW-1 Dr. Kapil

Dua, PW-2 Amit Modi, PW-3 Dr. Vymesh Bansal, PW-4 Palwinder Singh, PW-5 injured Mohd. Ismail, PW-6 Paramjit Singh (complainant), PW-7 MHC Gurdarshan Singh, PW-8 HC Harnek Singh, PW-9 ASI Ashwani Kumar, PW-10 Constable Gurjant Singh, PW-11 SI Gurmeet Singh, PW-12 Kulshinder Singh, PW-13 Hari Singh appeared as witnesses against appellant-accused Bikkar Singh. Report Forensic Science Laboratory, Ex. PX, was also tendered in evidence. However, against accused-appellant Dalip Singh prosecution examined PW-1 Paramjit Singh, PW-2 Hari Singh, PW-3 ASI Gurdarshan Singh, PW-4 Dr. Kapil Dua, PW-5 HC Harnek Singh, PW-6 Dr. Amit Modi, PW-7 ASI Inderjit Singh, PW-8 ASI Ashwani Kumar, PW-9 HC Gurjant Singh, PW-10 Kulshinder Singh, PW-11 Palwinder Singh, draftsman. Report Forensic Science Laboratory was also tendered in evidence as Ex. PX. Presence of Mohd. Ismail, injured witness, could not be procured as he shifted his residence outside Punjab. As such, evidence of prosecution was closed by order on 29.07.2009.

8. Statements of accused under Section 313 Cr.P.C. were recorded wherein accused denied each allegation of the prosecution and pleaded their innocence and false implication. Though, Dalip Singh did not opt to lead any evidence, yet, accused Bikar Singh examined Jagdev Singh as DW-1, Mukhtiar Singh as DW-2, Amar Singh as DW-3, Davinder Singh, Incharge CIA Samana as DW-4 in his defence.

9. After hearing learned counsel for both the sides on behalf of the aforesaid appellants-accused and appraising the entire evidence and material on record, the learned trial Court recorded the impugned judgment of

conviction dated 08.10.2003 & 11.08.2009 respectively and orders on sentence dated 08.10.2003 & 11.08.2009 respectively as set out in the earlier part of this judgment.

10. At the very outset, counsel for the appellants-accused contended that they do not assail the findings recorded by learned trial Court on merits. However, in the matter of sentence, their sentence be reduced to the one already undergone as the case is very very old i.e. of the year 2000. The appellants have already suffered a lot. As per custody certificate appellant-Bikkar Singh has undergone total of 2 years 10 months and 12 days sentence including remissions whereas appellant-accused Dalip Singh has already undergone 4 years 2 months and 26 days total sentence including remissions. The sentence awarded to them under Section 307 IPC is six years rigorous imprisonment besides fine. As the appellants-accused have already undergone sufficient period of sentence and further from the date of alleged commission of the offence till date there is no dispute between the parties. Even, victim Mohd. Ismail has already left Punjab and did not appear as witness in case against appellant-accused Dalip Singh, therefore, sentence of appellants-accused be reduced to one already undergone. They have also cited case law on the point “*Chanan Singh and others vs. State of Haryana, 2010 (3) RCR (Criminal) 692*” of this very Court. That case was also under Section 307 IPC. Accused was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5000/-. Incident was 15 years old. Their sentence was reduced to one year and fine enhanced to Rs. 20,000/-, out of which Rs. 15,000/- was ordered to be disbursed to the victim. Another judgment cited is from Delhi

High Court titled as ***“Somesh Pal vs. State, 2010 (6) RCR (Criminal) 137”***.

That case was also under Section 307 IPC. Total sentence was five years.

Appellant of that case suffered detention for 1 year 10 months and 21 days.

Keeping in view the conduct in jail which was found to be satisfactory and further as per his nominal role, his sentence was reduced to the period already undergone.

However, fine was enhanced. Another judgment cited is from

Hon'ble Apex Court titled as ***“Tarak Nath Singh & Another vs. State of West Bengal, 1997 (4) Crimes 368”***. In that case, accused were sentenced to 8 years

imprisonment for offence under Section 307 IPC. Considering the fact that

accused and victim were close relatives and incident is 18 years old, his

sentence was reduced to the period already undergone. Other judgments cited

on the point are ***“Surjit Singh vs. State of Punjab, 2008 (1) RCR (Criminal)***

600” and ***“Binder Singh vs. State of Punjab, 2007 (2) RCR (Criminal) 618.***

11. In the case in hand, the alleged occurrence is of 04.07.2000. As per prosecution Bikkar Singh wanted to employ Mohd. Ismail-victim as servant with him. This Mohd. Ismail has left Punjab. Even his presence could not be secured at the time of recording of evidence in the trial against Dalip Singh who was earlier remained proclaimed offender. As such, now the bone of contention also is not there between the parties. Injury No. 1 for which the learned trial Court concluded the offence under Section 307 IPC even without the opinion of the doctor that the injury was dangerous to life, Dalip Singh has already undergone sufficient period of sentence and has faced protracted trial for the last 15 years. Bikkar Singh is convicted for the offence under Section 307 IPC with the aid of Section 34 IPC. He has also faced protracted trial and

has undergone substantive sentence of 2 years 10 months and 12 days. Under the given facts and circumstances of the case as well taking into consideration the afore-cited judgments on the point, I am of the considered view that the end of justice would be met if sentence of both the appellants-accused is reduced to the one already undergone.

12. For the reasons recorded above, the sentence of appellant-accused Bikkar Singh is reduced to 2 years 10 months and 12 days i.e. the period of sentence he has already undergone. However, the sentence of fine shall remain intact. Likewise, the sentence of appellant-accused Dalip Singh is reduced to 4 years 2 months and 26 days which he has already undergone. His sentence of fine shall also remain intact. Accordingly, maintaining the judgments of conviction dated 08.10.2003 & 11.08.2009 respectively, orders on sentence dated 08.10.2003 & 11.08.2009 respectively, are modified as indicated above.

13. Disposed of accordingly.

(Raj Rahul Garg)
Judge

25.01.2016
Waseem Ansari