

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA S 766 – SB of 2002 (O&M)

Date of decision : 26.2.2016

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Arpinder Singh

.....Appellant

vs.

State of Punjab

.....Respondent

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

Present: Mr. Vikas Gupta, Advocate and
Mr. Vivek Salathia, Advocate for the appellant.

Mr. Y.K. Gupta, Assistant Advocate General, Punjab.

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

P.B. Bajanthri, J.

Appellant - Arpinder Singh is aggrieved by the judgment dated 23.4.2002 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, by which he has been sentenced for 5 years rigorous imprisonment and fine of Rs.1,000/- and in default 2 months rigorous imprisonment under Section 307 IPC and 1 year rigorous imprisonment and fine of Rs.1,000/- and in default one month rigorous imprisonment under Section 25 of the Arms Act. All the sentences were ordered to run concurrently.

2) In CRR No. 2373 of 2003, Hira Singh – petitioner has questioned the aforesaid sentence, that the sentence ordered against appellant Arpinder Singh be enhanced and the other co-accused are to be punished and further prayed for grant of compensation to the victim, in the aforesaid case service of notice to respondents is not complete. Therefore CRR No. 2373 of 2003 is de-linked from this case.

3) Brief facts of the case giving rise to this prosecution are that the appellant and the petitioner – complainant belong to a common village. Both of them are claiming a portion of Shamlat land in the Abadi of village Johal Raju Singh. They are claiming that they were utilizing Shamlat land for storing some agriculture materials. There was a rift among them on 6.6.1998 at about 3.00 P.M. and in altercation the appellant and another fired with a 12 bore gun on the father of the petitioner. Accused Lali fired a shot with a double barrel gun towards Shamsher Singh, who ducked down, in result the shot could not hit him. Simultaneously, accused Arpinder Singh fired a shot with his double barrel gun aiming at Shamsher Singh and Shamsher Singh was injured at his thigh. There was a hue and cry due to the gun shot. Consequently, accused Arpinder Singh and others ran away from the scene. Shamsher Singh was removed to the Civil Hospital, Tarn Taran. Since Shamsher Singh was not in a position to make a statement on the date of alleged incident, his statement was recorded on 7.6.1998. Consequently, a case was registered against the appellant and others vide FIR No.90/98 under Section 307 IPC read

with Section 25/27/59 of Arms Act, at Police Station City, Tarn Taran. Accused Arpinder Singh was arrested on 17.6.1998. Double barrel gun and 12 bore gun were taken into possession. The other accused were also arrested.

4) Challan was presented in the jurisdiction at Magistrate. Thereafter, the matter was committed to the Sessions Court.

(5) The prosecution examined Dr. Jagjit Singh as PW-1, Hira Singh as PW-2, Shamsher Singh as PW-3, Dr. Karanjit Singh as PW-4, Kuldip Singh HC as PW-5, Simarjit Singh as PW-6, Nirmal Singh C. as PW-7, Janak Raj MHC as PW-8, Mohinder Singh HC as PW-9, Harinder Singh C. as PW-10, Shamsher Singh - Inspector as PW-11, and produced medical records and other exhibits in support of the charges against the appellant and four others.

6) Statement of the accused under Section 313 Cr.P.C., was recorded in which the accused denied the charges. It was contended that Shamsher Singh came armed with a gandasi and provoked him and others by hurling abuses. It was further contended that in private defence, the appellant had fired his gun when Shamsher Singh tried to assault the appellant and others.

7) The prosecution side examined complainant and doctor in support of the charges. The same was analyzed by the trial Court. The Sessions Court appreciated the evidence and convicted the appellant while acquitting Charan Singh, Varinder Singh, Hardip Singh and Harbhajan Singh.

8) Learned counsel for the appellant aggrieved by the

sentence, contended that as per the deposition and opinion of PW-1 Dr. Jagjit Singh, injury caused on Shamsher Singh was simple, therefore, sentencing the appellant under Section 307 IPC is incorrect. Moreover, intention and motive has not been proved with corroborative evidence. Hence sentencing the appellant under Section 307 IPC is liable to be set aside. There is a discrepancy in the statement made by the complainant PW-2 and Shamsher Singh PW-3. Therefore, the evidence adduced by them are to be discarded. It was further contended that it was complainant – PW-2 and PW-3 Shamsher Singh who provoked the appellant and others in respect of utilization of portion of shamlat land for keeping agriculture materials etc. Therefore, in a fit of anger the appellant has fired a gun shot. Thus there was no motive to murder either complainant or Shamsher Singh PW-3. It was further contended that in order to take a private defence, the gun shot was fired. The said facts and circumstances has not been appreciated by the trial Court while sentencing the appellant under Section 307 of IPC.

9) Learned counsel for the appellant further contended that the appellant has undergone imprisonment for 3 years 8 months and 8 days. The maximum period of sentence under Section 324 IPC is 3 years. Since, the prosecution has failed to make out charge under Section 307 IPC, sentence under Section 307 IPC be set aside. It was also contended that the matter relates to of the year 1998 and the appellant is not facing any other criminal proceedings. Therefore, a lenient view be taken in the matter.

10) Learned State counsel vehemently contended that having regard to the rift between the appellant and complainant and others, with reference to the fight for a portion of *shamlat* land for its utilization, there was an altercation. Therefore, a presumption shall be drawn that there was a motive to murder the complainant or his son. Thus, it is evident from the facts of the case that there was a motive and intention to murder. Hence, the trial Court has rightly convicted the appellant under Section 307 IPC read with Section 26 of the Arms Act and the appellant has not made out a case so as to interfere with the sentence awarded by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, dated 23.4.2002.

11) Learned State counsel further contended that even though doctor has given his opinion that it was a simple injury, however, the weapon used to cause injury is 12 bore double barrel gun. Therefore, opinion given by the doctor PW-1 may be for the purpose of opinion. However, the fact remains that gun shot fired has caused injury on a person has to be treated as grievous hurt.

12) It is undisputed fact that the appellant and others and complainants were disputing to utilize the portion of the *shamlat* land. There was a rift between complainant and others and the accused, it was a free fight on 6.6.1998 at about 3.00 P.M., which resulted in firing by the appellant herein and causing injuries on Shamsher Singh with his 12 bore double barrel gun. PW-1 Dr. Jagjit Singh has opined that injury was simple. The intention of the appellant was not to murder Shamsher Singh, since corroborative

evidence are not available to demonstrate the intention of the appellant to kill. Therefore, the prosecution has not made out a case under Section 307 IPC against the appellant. It is to be noted that nature of injuries is not necessarily to be examined while holding the accused guilty under Section 307 IPC, but it requires that the act must be done with such an intention or knowledge or under such circumstances that if the death is caused by that act, the offence of murder will emerge. In the present case, the ingredients constituting the offence under Section 307 IPC are not made out. No evidence has been led in order to establish if the appellant had requisite intention to commit murder of the injured. In the absence of proof of any intention to commit murder and attempt made pursuant thereto, the appellant could not be said to have committed the offence under Section 307 IPC. Hence, the contention of State counsel is rejected, as well as finding of the trial Court in convicting the appellant under Section 307 IPC and the same is modified and the appellant is deemed to have been convicted under Section 324 IPC. The appellant has already undergone imprisonment of 3 years, 8 months and 8 days. In view of the above finding the sentence already undergone by the appellant is sufficient under Section 324 IPC. The injured Shamsheer Singh is entitled to victim compensation or his legal heirs. A sum of Rs.50,000/- compensation towards physical and mental agony undergone by Shamsheer Singh is to be paid. The same shall be paid by the appellant in the Court of Chief Judicial Magistrate, Amritsar within a period of three months. The Chief Judicial Magistrate,

Amritsar, is directed to take necessary steps to release the compensation of Rs.50,000/- to the injured Shamsheer Singh or his legal heirs at the earliest. If the appellant fails to deposit the victim compensation of Rs.50,000/- within the stipulated period, the Chief Judicial Magistrate, Amritsar, is directed to take coercive steps to recover the amount.

13) The criminal appeal is disposed of accordingly.

February 26, 2016.
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(P.B. Bajanthri)
Judge