

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

**Criminal Appeal S-1500-SB of 2008
Date of Decision: May 17, 2017**

Harvinderpal and others	Versus	Appellants
The State of Punjab		 Respondent

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

Present : Mr. Paras Talwar, Advocate
for the appellants.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

Mr. H. S. Gill, Senior Advocate, with
Mr. Vivek Goyal, Advocate for the complainant.

T.P.S.MANN, J. (Oral)

The appellants were tried for committing offences punishable under Sections 307/325/323/342/34 IPC. Vide judgment and order dated 9.8.2008, learned Additional Sessions Judge, Jalandhar, convicted and sentenced them as follows:-

- (i) Harvinderpal under Section 307 IPC whereas Bhupinder Singh, Sukhwinder Singh, Dilbagh Singh and Surinderpal under Sections

307/34 IPC to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months;

- (ii) Harvinderpal under Section 325 IPC whereas Bhupinder Singh, Sukhwinder Singh, Dilbagh Singh and Surinderpal under Sections 325/34 IPC to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month;
- (iii) All the appellants under Section 323 IPC to undergo rigorous imprisonment for six months each; and
- (iv) All the appellants under Section 342 IPC to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month.

All the sentences awarded to them were ordered to run concurrently. The period of detention already undergone by

them during the investigation and trial was ordered to be set-off against the period of imprisonment awarded to them.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and all of them are presently on bail whereas complainant Garib Dass filed CRR 2134 of 2008 for enhancement of sentence of imprisonment of the convicts and grant of compensation.

The case of the prosecution, in brief is that on 5.1.2005, complainant-Garib Dass and his son Balwinderpal were present in their house in village Pandori Nijjran. At about 7.30 p.m., Harvinderpal, Surinderpal, Sukhwinder Singh and Bhupinder Singh, appellants who were also residents of the same village came in the street in front of their house. The complainant and his son Balwinderpal also came out from the gate of their house. The aforementioned four appellants started abusing them. Balwinderpal stopped them from doing so. Thereafter, Harvinderpal appellant raised a lalkara that Balwinderpal be caught hold of and taught a lesson for laying pipes for water. He also gave a blow with a brick on the left ankle of Garib Dass, who fell down on the ground. In the meantime, Harvinderpal-appellant took Balwinderpal in his grip whereas Bhupinder Singh, Sukhwinder Singh and Surinderpal appellants caught hold of him from his legs and arms. All of them dragged him to their house.

On hearing the commotion, Tejinderpal and Narinder Kumar, son and nephew, respectively, of complainant Garib Dass came forward to rescue Balwinderpal. Bhupinder Singh appellant gave a brick blow on the head of Narinder Kumar. Surinderpal and Sukhwinder Singh appellants tried to strangulate Tejinderpal. The complainant approached Baldev Singh, village Sarpanch, who managed to secure the release of Balwinderpal from the aforementioned four appellants. The complainant, his sons Balwinderpal and Tejinderpal and nephew Narinder Kumar were taken to Civil Hospital, Adampur. The condition of Balwinderpal was serious and, accordingly, he was referred to Civil Hospital, Jalandhar. Complainant-Garib Dass made statement Ex.PA before ASI Dilbagh Singh, on the basis of which, FIR Ex.PA/2 was registered against the aforementioned four appellants.

During the investigation of the case, Balwinderpal was medico-legally examined by Dr. Kamal Paul on 5.1.2005 at 9.35 p.m., at Primary Health Centre, Adampur, where following injuries were noticed on his person:-

- “1. A lacerated wound in the scalp in its middle. Size 6 cms x 1 cm. Wound was freshly bleeding.
2. A lacerated wound in the middle of scalp 6 cm x 1 cm obliquely placed.
3. A lacerated wound 4 cm x 1 cm in the lateral

side of scalp. Wound was freshly bleeding.

4. Patient was having swelling in his upper lip. Small 4 cm x 1 cm lacerated wound was present on inner surface of lip.”

All the injuries were declared to be simple in nature having been caused by blunt weapon and duration was within three hours. On 8.1.2005, Balwinderpal was once again medically examined as earlier on account of his irrelevant behaviour and non-cooperation, being under the effect of alcohol, his proper examination could not be done. In the subsequent examination, the doctor found the following injury:-

- “1. Patient examined and complained of dizziness, nausea, vomiting and headache. The patient showed signs and symptoms of congestion of brain (Oedema). Advised X-ray skull. Patient complained generalized pain all over the body”.

The aforementioned injury was subjected to X-ray and duration was 3 to 4 days. Weapon used was blunt. After receipt of CT Scan report the aforementioned injury noticed during the subsequent medical examination was declared as grievous. Later on, on the basis of CT scan and general condition of the patient, this injury was declared dangerous to life.

On 5.1.2005 Tejinderpal was also medico-legally examined and following injury was noticed on his person:-

“ Patient was under the effect of alcohol. He was having swelling on the neck of the size 8 cms x 2 cms. He also complained of generalized pain in the neck. The injury was simple in nature caused by a blunt weapon and was within three hours”.

On the same day at 9.55 p.m., complainant Garib Dass was medico-legally examined and following two injuries were noticed on his person:-

- “1. The patient had swelling on the left ankle joint.
Advised X-ray AP and LP.
2. Complaint of pain all over the body.”

The injuries were subjected to X-ray examination and on receipt of the report of the Radiologist, fracture of left foot was found. Accordingly, it was declared grievous.

On the same day, Narinder Kumar, nephew of the complainant was also medico-legally examined and following injuries were noticed on his person:-

- “1. Lacerated wound 6 cms x 1 cm on the front of the tibia. Wound was freshly bleeding and was skin deep.
2. Lacerated wound 3 cm x 1 cm on middle of skull. Wound was skin deep.”

The injuries were simple in nature caused within three hours.

The doctor had also medico-legally examined Shakuntla Devi wife of the complainant, who found her to be complaining of generalized pain all over the body though there was no mark of injury.

During further investigation of the case Dilbagh Singh appellant was found to have participated in the occurrence and, accordingly, he was also arrayed as an accused. After completing the investigation, final report under Section 173 Cr.P.C. was submitted against Harvinderpal, Bhupinder Singh, Sukhwinder Singh and Dilbagh Singh whereas Surinderpal was found to be innocent and his name was placed in the column No. 2 of final report under Section 173 Cr.P.C. Subsequently, Surinderpal appellant was summoned under Section 319 Cr.P.C., as additional accused and, thereafter, all the five appellants were charged for the offences, as mentioned above.

At the trial of the case, the prosecution examined Balwinderpal as PW1, Garib Dass as PW2 and Narinder Kumar as PW6. All of them deposed about the ocular account and supported the prosecution case. The medical evidence was brought on record by producing Dr. Kamal Paul as PW7, Dr. Vinay Gupta as PW8, Dr. Jasmeet Walia, Radiologist as PW9 and Dr. Guru Dutt as PW11 whereas the investigation part of the case was brought on record by way of the testimonies of SI

Dilbagh Singh as PW5, Constable Sukhwinder Singh as PW10 and Head Constable Swaran Singh as PW12. Besides, the prosecution examined Baldev Singh, Sarpanch as PW4, who had been instrumental in getting Balwinderpal released from the captivity of the appellants.

When examined under Section 313 Cr.P.C., all the appellants denied the incriminating evidence appearing against them and pleaded their false implication. They claimed to be innocent. According to them, complainant-Garib Dass had laid latrine pipes of his house in the street, which was objected to by the residents of the mohalla. On 5.1.2005 at about 7.30 p.m., all the inhabitants of the mohalla went to the house of the complainant for requesting him to remove the pipes as they were emanating foul smell. Instead of agreeing to the request of the people, complainant-Garib Dass started abusing them. He was joined by his son Balwinderpal. A scuffle took place between Garib Dass and his son Balwinderpal on the one hand and residents of the mohalla, on the other. Garib Dass and his son besides the residents of the mohalla received injuries. Later on Garib Dass and his son Balwinderpal falsely implicated the appellants suspecting that they were the ones, who were instigating the residents of the mohalla.

In defence, the appellants examined Tirath Singh as

DW1.

The trial Court, after hearing learned counsel for the parties and on going through the evidence, accepted the prosecution case and convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that the prosecution has led cogent and convincing evidence to prove that it were the appellants, who had caused injuries to complainant Garib Dass, his sons Balwinderpal and Tejinderpal and his nephew Narinder Kumar. The injuries caused to the aforementioned three persons have been duly corroborated by the medical evidence by way of the testimonies of various doctors. Merely because, Surinderpal was found innocent during the investigation of the case and later on summoned under Section 319 Cr.P.C. as additional accused is no ground to hold that he has been falsely implicated in the case.

As regards the offence, it may be noticed that all the injuries received by the complainant party were found to be caused by blunt weapons, to be precise by use of bricks by hurling them at the complainant party. In the FIR, one of the appellants, namely, Harvinderpal was also attributed raising of lalkara and, thereafter, giving a brick blow on the left ankle of

Garib Dass. However, at the trial of the case, the prosecution tried to improve upon its case by alleging that Harvinderpal was armed with a datar, which he had used in inflicting injury No. 1 on the person of Balwinderpal which was noticed during his subsequent medico-legal examination. The said injury was declared to be dangerous to life. However, going by the nature of the said injury, it cannot be said with certainty that it had been caused by Harvinderpal appellant with datar. As the remaining injuries were the result of hurling of brick, even aforementioned Injury No. 1 noticed in the subsequent medico-legal examination of Harvinderpal could also be the result of a brick landing on the head of Balwinderpal.

From the above, it cannot be said that the appellants attempted to commit the murder of PW1 Balwinderpal. On the other hand, keeping in view the fact that the injuries were the result of hurling of bricks, at the most, it may make out commission of an offence, viz, attempt to commit culpable homicide not amounting to murder and punishable under Section 308 IPC and not under Section 307 IPC and consequently the conviction of Harvinderpal appellant under Section 307 IPC cannot be sustained and so also the conviction of the remaining appellants for the offence under Sections 307/34 IPC. Instead, Harvinderpal is liable to be convicted under Section 308 IPC

whereas the remaining appellants under Sections 308/34 IPC. At the same time, no case is made out for any interference in the conviction of the appellants for the offences under Sections 325, 325/34, 323 and 342 IPC. The conviction of all the appellants for the offences under Sections 325, 325/34, 323 and 342 IPC is upheld.

As per the custody certificates produced by the learned State counsel, Harvinderpal appellant has undergone actual sentence of one year, six months and four days besides earning remission of eight months and twenty seven days, Sukhwinder Singh appellant has undergone one year, one month and seventeen days besides earning remission of seven months and eighteen days, Bhupinder Singh appellant has undergone one year and ten days as actual sentence and also earned remission of seven months and fourteen days while Dilbagh Singh appellant has undergone actual sentence of one year and ten days besides earning remission of seven months and fourteen days. Surinderpal appellant, who was found innocent during the investigation of the case has undergone actual sentence of five months and twenty seven days besides earning remission of six months and twenty days. None of them is shown to be either involved or convicted in any other case.

Resultantly, the conviction of Harvinderpal appellant

under Section 307 IPC and that of the remaining appellants under Sections 307/34 IPC is set-aside. Instead, Harvinderpal appellant is convicted under Section 308 IPC whereas the remaining appellants are convicted under Sections 308/34 IPC. The conviction of Harvinderpal appellant under Section 325 IPC and that of the remaining appellants under Sections 325/34 IPC is upheld. Similarly, the conviction of all the appellants under Sections 323 and 342 IPC is also upheld. The sentences of imprisonment imposed upon all the appellants by the trial Court are reduced to the one already undergone by them. The sentence of fine of Rs.500/- imposed upon Harvinderpal appellant for the offence under Section 325 IPC and that of Rs.500/- on all the remaining appellants for the offence under Sections 325/34 IPC, besides the fine of Rs.500/- imposed upon all the appellants under Section 342 IPC alongwith their default clauses are maintained. The fine of Rs.1,000/- imposed upon Harvinderpal appellant for the offence under Section 307 IPC which may now be treated to be the one for the offence under Section 308 IPC is enhanced to Rs.50,000/- and in default of payment of fine, he shall undergo rigorous imprisonment for one year. Similarly, the fine of Rs.1,000/- imposed upon Bhupinder Singh, Sukhwinder Singh, Dilbagh Singh and Surinderpal appellants for the offence under Sections 307/34 IPC which may now be treated to be the

one for the offence under Sections 308/34 IPC is enhanced to Rs.40,000/- each and in default of payment of fine, they shall undergo rigorous imprisonment for one year. The entire fine amount shall be deposited by the appellants in the Court of learned Chief Judicial Magistrate, Jalandhar, within three months from today. Once the necessary fine is deposited, the entire amount shall be paid to Balwinderpal injured as compensation.

The present appeal No. CRA-S-1500-SB of 2008 and Criminal Revision 2134 of 2008 filed by complainant-Garib Dass are disposed of.

May 17, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No