

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

**Criminal Appeal S-1237-SB of 2004
Date of Decision: January 20, 2017**

Balbir Singh	Versus	Appellant
State of Haryana		 Respondent

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

Present : Mr. Jitender Singh Chahal, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

Mr. Deepak Gupta, Advocate
for the complainant.

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

The appellant alongwith his father Budh Singh was tried for committing offences punishable under Sections 307/34 IPC. Vide judgment and order dated 21.5.2004, learned Additional Sessions Judge, Yamunanagar at Jagadhri, acquitted Budh Singh of the charges against him. However, the appellant was held guilty under Section 307 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for

one year.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which stood admitted and the appellant granted the concession of suspension of sentence. At the same time, complainant Satbir Singh had filed Criminal Revision 2113 of 2004 with the prayer that the acquittal of Budh Singh be set aside and the sentence of imprisonment and fine imposed upon Balbir Singh be enhanced. The revision qua the acquittal of Budh Singh was, however, disposed of on 17.2.2016 as having abated on account of his death. The revision survived qua the prayer made by the complainant for enhancement of sentence of imprisonment and fine of appellant Balbir Singh. As the appeal as well as the revision arise out of the same judgment of conviction and sentence by the trial Court, they are being disposed of by a common judgment.

According to the prosecution, on 15.3.2000 complainant Satbir Singh was returning home in a car after attending the Court proceedings and when he alighted from the car at Bus Stand Khizrabad, the appellant caught hold of him from his arm and dragged him to a considerable distance. Thereafter, the appellant took out a small kirpan (sword) and gave

blows with the same to the complainant. Budh Singh, co-accused of the appellant had proclaimed that the complainant be finished. He was, however, saved by Gajanfar and Mangat Singh. Both the accused then ran away from the spot.

It is further the case of the prosecution that initially the case was registered under Sections 324/506/34 IPC against the two accused on the basis of statement made by complainant Satbir Singh. Later on, after receipt of the X-ray report, the injury on the person of complainant Satbir Singh was declared dangerous to life and, accordingly, offence under Section 307 IPC was added to the case.

At the trial of the case, the prosecution examined complainant Satbir Singh as PW4 and Mangat Singh as PW5. Both of them deposed about the manner, in which, the occurrence had taken place. The medical evidence was brought on record by examining PW11 Dr. M. R. Passi, who, on 15.3.2000, had medico-legally examined complainant Satbir Singh and noted the following injury on his person:-

“There was an incised wound 5 cm x 1 cm depth could not be ascertained. Margin of the wound was clear cut and profuse bleeding was present, in the left axillary region of chest. X-ray chest in standing position was advised and patient was referred to

surgeon for management and nature of injury.”

PW6 Dr. D.P.Singh testified that he had radiologically examined complainant Satbir Singh and found his left lung as having collapsed with pneumothorax. He also deposed that he had checked the injury, which was cavity deep and the cavity was 3 to 4 centimetres deep from the chest wall.

The remaining witnesses, who all were police officials and examined by the prosecution, deposed about the various steps taken by them during the investigation of the case.

In defence, the accused had examined DW1 Harnam Singh and DW2 D. S. Panjeta, Advocate.

After going through the evidence and hearing learned counsel for the parties, the trial Court acquitted Budh Singh accused of the charges against him. However, the appellant was held guilty and sentenced, as mentioned above.

After hearing learned counsel for the parties and on going through the evidence, which has come on the record, this Court finds that on the date of the occurrence, complainant Satbir Singh was returning from the Court after attending the proceedings in the case registered earlier at his instance against Budh Singh and his family members for setting his house on fire. When he had reached Bus Stand Khizrabad, he alighted from the car, in which, he was travelling. He was then overpowered by the

appellant and dragged upto a considerable distance. Thereafter, the appellant took out a small kirpan, which he wielded in giving a blow in the left axillary region of his chest. The complainant was examined at length but the defence could not elicit any material, from which, it could be indicated that he had been deposing falsely. His testimony also stands corroborated by PW5 Mangat Singh, who had rescued the complainant from the assault. The ocular account was duly corroborated by PW11 Dr. M.R.Passi, who had medico-legally examined complainant Satbir Singh and found an incised wound measuring 5 cm x 1 cm in the left axillary region of chest. The margin of the wound was clear cut and profuse bleeding was present. The injury was subjected to radiological examination by PW6 Dr. D.P.Singh who deposed before the learned trial Court that he had found his left lung collapsed. He also deposed that though the depth of the injury had not been mentioned in the record, yet he had checked the injury, which was cavity deep and the cavity was 3 to 4 centimetres deep from the chest wall. On the basis of the radiological examination, PW6 Dr. D.P. Singh opined that the injury was dangerous to life. Under these circumstances, no case is made out for any interference in the conviction of the appellant for the offence under Section 307 IPC.

As regards the question of sentence, it may be

noticed that the appellant is facing the agony of criminal prosecution for the last about seventeen years. He had pleaded before the learned trial Court that he had three children to support and excepting him there was no other male member in the house, who could look-after his children. He had also pleaded that he had old parents, who were totally depending upon him. It may also be mentioned here that even according to the prosecution the appellant had caused only a solitary blow, though in the chest area of Satbir Singh injured. As per the custody certificate already brought on record by the learned State counsel, the appellant has undergone sentence of one year, two months and twenty nine days besides earning remissions of two months and twenty two days. He is also not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail for the last about eleven years need not go behind the bars, once again, for undergoing the remaining sentence of imprisonment imposed upon him. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine imposed upon him by the learned trial Court can be suitably enhanced so as to compensate Satbir Singh, injured.

Resultantly, the conviction of the appellant under Section 307 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. However, the fine of Rs.5,000/- imposed by the trial Court is enhanced by Rs.50,000/-. The fine amount shall be deposited by him with the learned Chief Judicial Magistrate, Yamunanagar at Jagadhri, within three months from today, failing which, he shall be required to undergo simple imprisonment for one year. The enhanced amount of fine, if deposited by the appellant shall be disbursed in favour of Satbir Singh injured, as compensation.

The appeal filed by Balbir Singh appellant and revision filed by Satbir Singh complainant are, accordingly, disposed of.

January 20, 2017
amit rana

(T.P.S. MANN)
JUDGE

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