

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-591-SB of 2004**

DATE OF DECISION: MARCH 1, 2017

NIRMAL SINGH @ NIMMA AND OTHERS ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

2. **CRR-1178 of 2004**

MOHAN SINGH ...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

PRESENT: MR. H.S. BHULLAR, ADVOCATE
FOR THE APPELLANTS IN CRA-S-591-SB OF 2004
& FOR RESPONDENTS NO.2 TO 5 IN CRR-1178 of 2004.

MR. DHEERAJ MAHAJAN, ADVOCATE
FOR THE COMPLAINANT IN CRA-S-591-SB of 2004
& FOR THE PETITIONER IN CRR-1178 of 2004.

MR. MANOJ BAJAJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. The accused-appellants were convicted and sentenced by the trial Court as follows:-

Name	Conviction	Sentence
Nirmal Singh	307 IPC	To undergo rigorous imprisonment for 5 years and to pay a fine of ₹1000/-. In default of payment fine, to undergo further R.I. for 1 month.
	324 IPC	To undergo rigorous imprisonment for 1 year.

Name	Conviction	Sentence
Kashmir Singh	307 IPC	To undergo rigorous imprisonment for 5 years and to pay a fine of ₹1000/-. In default of payment fine, to undergo further R.I. for 1 month.
	324 IPC	To undergo rigorous imprisonment for 1 year.
Balkar Singh	307/34 IPC	To undergo rigorous imprisonment for 3 years and to pay a fine of ₹1000/-. In default of payment fine, to undergo further R.I. for 1 month.
	324 IPC	To undergo rigorous imprisonment of 1 year.
Joginder Singh	307/34	To undergo rigorous imprisonment for 3 years and to pay a fine of ₹1000/-. In default of payment fine, to undergo further R.I. for 1 month.
	324 IPC	To undergo rigorous imprisonment for 1 year.

2. All the substantive sentences were ordered to run concurrently.

3. Aggrieved by the above judgement of conviction and sentence passed by the trial Court, the accused have preferred the above appeal. Aggrieved by the quantum of sentence, the complainant has preferred the above criminal revision seeking enhancement of sentence.

4. It is the case of the prosecution that on 4.11.2000 at about 4.30 p.m., PW2 Lakhwant Singh and PW3 Hardeep Singh had been to their fields alongwith their father PW1 Mohan Singh. Suddenly, accused Joginder Singh who was armed with barchhi, accused Nirmal Singh armed with dattar, accused Balkar Singh armed with gandasi and accused Kashmir Singh armed with gandasi came over there. Accused Joginder Singh raised lalkara to catch hold of the complainant party and teach a lesson to them for dispossessing them from the land. Balkar Singh gave gandasi blow on the

right side head of Lakhwant Singh. Nirmal Singh gave a dattar blow on the left side head of Lakhwant Singh. Joginder Singh gave a barchhi blow on the left shoulder of Lakhwant Singh. Kashmir Singh caused a gandasi blow on the index finger of left hand of Lakhwant Singh. PW3 Hardeep Singh came forward to save his brother Lakhwant Singh. But Nirmal Singh gave a dattar blow on the backside head of Hardeep Singh. Then Kashmir Singh caused gandasi blow on the right side head of Hardeep Singh. Joginder Singh gave a barchhi blow near the chest of Hardeep Singh. Balkar Singh gave a gandasi blow on the right upper arm of Hardeep Singh. After receiving head injuries from the accused, Lakhwant Singh and Hardeep Singh fell down on the ground. All the accused kept on causing injuries with their respective weapons upon them. Thereafter, all the accused fled away from the scene of crime.

5. PW10 SI Karam Singh who received the intimation from Guru Nanak Devi Hospital, Amritsar on 5.11.2000 rushed to the hospital for recording statements of the injured, but the Doctor declared them unfit for making statement. Again on 7.11.2000, the Doctor opined that the injured were unfit to make statement. Therefore, PW10 recorded the statement of PW1 Mohan Singh who happened to be the eye witness to the occurrence.

6. PW12 Dr. Gur Iqbal Singh, Medical Officer, CHC Begowal, District Kapurthala examined PW3 Hardeep Singh and found the following injuries:-

“1. 2 x 1 cm incised wound on front of left thigh 25 cm above upper border of left patella.

2. *2 x 1.25 cm incised wound on left side of abdomen 13 cm away from umbilicus at 1 o'clock position.*
3. *2 x 0.5 cm incised wound on back of right upper arm 18 cm above elbow prominence.*
4. *7 x 3 cm reddish brown abrasion on back of left forearm 1 cm above wrist joint.*
5. *7 cm stitched wound on back of head horizontally placed 13 cm above and behind right ear.*
6. *5 cm stitched wound with 5 stitches 9 cm above right ear on right side of head.*
7. *7 x 0.5 cm reddish brown abrasion on the back on left side below inferior border of left scapula.”*

7. He declared injuries No.5 and 6 as dangerous to life. The original MLR of Hardeep Singh was exhibited as Ex.PW12/A.

8. PW12 also medico-legally examined PW2 Lakhwant Singh and found the following injuries on his person:-

- “1. *4 cm stitched wound with 3 stitches on outer side of upper arm 18 cm above elbow prominence.*
2. *17 x 8 cm abraded reddish bruise on front and inner side of right upper arm 10 cm above elbow prominence.*
3. *3 x 1 cm reddish brown abrasion on back of right forearm 8 cm below elbow prominence.*

4. *4.5 cm reddish brown linear abrasion on front of side of chest 5.5 cm away from right nipple at 4 O'clock position.*
5. *3 x 0.5 cm incised wound on palmer aspect of left index finger horizontally placed 3.5 cm above base.,*
6. *2.5 cm stitched wound with one stitch on outer aspect of left upper arm 10 cm below shoulder prominence.*
7. *1 cm x 0.5 cm reddish brown abrasion on medial aspect of left leg 3.5 cm above medial maleolous.*
8. *7.5 cm stitched wound with 4 stitches on right side of head 3 cm above right ear obliquely placed.*
9. *12 cm stitched wound with 7 stitches on left side of head obliquely placed 12 cm above left ear.*
10. *1 cm x 0.5 cm incised wound on left side of back 11 cm below shoulder prominence.”*

9. He declared injury No.9 as dangerous to life. PW17 Dr.Jatinderpal Singh who conducted CT Scan of the head of Hardeep Singh submitted a report as follows:-

- “1. 4th ventricle was of normal size and shape. Brain stem and both the cerebellar hemispheres show normal C.T. appearance.*
- 2. Hyperdense collection of about 45-50 CC in volume was seen beneath right parietal bone. Adjacent sulcal spaces were effaced. Right lateral ventricle was partially*

effaced alongwith contra lateral mid line shift of 4 mm.

3. *3rd and both the lateral ventricles were normal.*
4. *Basal cisterns, sylvian fissures and rest of the sulcal spaces were normal.*
5. *Comminuted depressed fracture temporo parietal bones was seen on right side.*

Impression was EDH with fractures.

10. He also conducted CT Scan of the head of Lakhwant Singh and submitted a report as follows:-

- “1. 4th ventricle was of normal size and shape. Brain stem and both the cerebellar hemispheres shown normal C.T. appearances.*
- 2. Haemorrhagic contusions were seen in left parietal lobe superiorly.*
- 3. Left sylvian fissure and left sides sulcal spaces were hyperdense.*
- 4. Basal cisterns, right sylvian fissure and rest of the sulcal spaces are normal.*
- 5. 3rd and both the lateral ventricles were normal.*
- 6. No EDH/SDH was seen.*
- 7. Comminuted fracture with small depressed fragment was seen in left parietal bone superiorly. Minimal air was also seen adjacent to it.”*

11. On the side of the prosecution as many as 17 witnesses were

examined.

12. In their statement under Section 313 Cr.P.C., all the accused denied the incriminating circumstances spoken to by the witnesses. They submitted that a false case was foisted on them. On the side of the defence, DW1 to DW2 were examined and Ex.DB dated 1.6.1993 was also exhibited.

13. PW1 Mohan Singh who lodged the complaint was the eye witness to the occurrence. He alongwith his sons PW2 and PW3 had proceeded to the fields. PW2 and PW3 were the injured witnesses. They have categorically deposed without leaving any scope for inconsistency or contradiction that the accused, who emerged with lethal weapons, launched murderous attack on PW2 and PW3. They have deposed that accused Joginder Singh raised lalkara to teach a lesson to PW1 to PW3 for having dispossessed them from the land. Accused Balkar Singh who was armed with gandasi delivered a blow on the right side head of Lakhwant Singh. Nirmal Singh who was armed with dattar delivered a blow on the left side head of Lakhwant Singh. Joginder Singh who was armed with barchhi caused injury on the left shoulder of Lakhwant Singh. Accused Kashmir Singh attacked Lakhwant Singh on his index finger of the left hand with gandasi and caused injury. Accused Nirmal Singh delivered a dattar blow on the backside head of Hardeep Singh. Accused Kashmir Singh delivered a gandasi blow on the right side head of Hardeep Singh. Accused Joginder Singh delivered a barchhi blow near the chest of Hardeep Singh. Accused Balkar Singh delivered a gandasi blow on the right upper arm of Hardeep Singh.

14. PW12 Dr. Gur Iqbal Singh who medico-legally examined PW2 Lakhwant Singh gave details of 10 injuries found on his person. Out of 10 injuries, he had certified 9th injury found on the left side of his head as dangerous to life. He having medico-legally examined Hardeep Singh noted down 7 injuries on the person of Hardeep Singh. Injury No.5 found on the backside of the head, injury No.6 found on the right side of the head were certified by him as dangerous to life. The eye witnesses have attributed the injury found on the right side head of Hardeep Singh to accused Kashmir Singh and the other injuries found on the backside head of Hardeep Singh which was also certified as dangerous to life to accused Nirmal Singh. The injury on the left side head of Lakhwant Singh which was certified as dangerous to life was attributed to accused Nirmal Singh. The other accused also joined accused Nirmal Singh and Kashmir Singh and caused injuries to them, they have deposed.

15. The evidence of PW1 to PW3 establishes that all the accused in furtherance of their common intention to cause death of PW2 and PW3 attacked them and caused injuries.

16. It is true that PW1 is the father of PW2 and PW3. But they have every reason to be present by 4.30 p.m. on the fateful day at their land. Therefore, presence of those witnesses at the scene of crime cannot be doubted. Further, the evidence of injured witnesses PW2 and PW3 cannot be ignored by the Court of Law. In my considered view, there is no contradiction or inconsistency in the evidence of PW1 and PW3 which would materially affect the case of the prosecution. Further, their testimony

is completely corroborated by PW12 Dr. Gur Iqbal Singh who examined PW2 and PW3. Apart from the certificate issued by PW12 that two injuries on the person of Hardeep Singh and one injury on the person of Lakhwant Singh were dangerous to life, the evidence of PW17 Dr. Jatinderpal Singh highlights the impact of the injuries caused by accused on the vital parts of the body of PW2 and PW3.

17. In view of the above facts and circumstances, I am of the considered view that the prosecution has established beyond reasonable doubt that accused Nirmal Singh and Kashmir Singh have committed offences punishable under Section 307 and Section 324 IPC and accused Balkar Singh and Joginder Singh have committed offences punishable under Section 307 read with Section 34 and Section 324 of IPC.

18. Coming to the sentence imposed by the trial Court, learned counsel appearing for the appellants vehemently submitted that the occurrence had taken place about 16 years ago. One of the accused is more than 74 years of age. There was no dispute between the parties either prior to the occurrence or subsequent to the occurrence. The accused had no criminal antecedents. Considering the duration of custody undergone by the accused, it was submitted, the period of custody already undergone by the respective accused may be treated as the sentence for the offences committed by the accused.

19. Learned counsel appearing for the complainant who has preferred the revision submitted that the weapon used in the crime, the seat of injury and the number of injuries delivered militate against the plea for

reduction of sentence. It is his submission that the injured witnesses PW2 and PW3 are still undergoing treatment by taking medicine as per the prescription.

20. PW3 Hardeep Singh has received as many as 7 injuries, out of which 2 injuries turned to be dangerous to life. PW2 Lakhwant Singh has sustained as many as 10 injuries out of which, one injury was certified as dangerous to life. The head of PW2 and PW3 had been aimed at by the accused Nirmal Singh and Kashmir Singh. The other accused had joined hands with the principal accused in furtherance of their common intention. The evidence of PW17 Dr. Jatinderpal Singh who conducted CT Scan of the head of Hardeep Singh discloses that there had been hyperdense collection of about 45-50 CC in volume beneath right parietal bone. Right lateral ventricle was partially effaced. There was also comminuted depressed fracture on the right side temporo parietal bone. On CT Scan examination of Lakhwant Singh, he has opined that there was haemorrhagic contusion seen in the left parietal lobe. There was left sylvian fissure. He also noted comminuted fracture with small depressed fragment in left parietal bone. Further, the evidence of PW10 SI Karam Singh discloses that PW2 and PW3 were totally unfit to suffer any statement for few days.

21. It is a well settled proposition of law that sentence shall be imposed on the offender proportionate to the gravity of the offence. Showing undue sympathy and imposing inadequate sentence would definitely undermine the public confidence. The pendency of the case for 16 long years would not take away the gravity of the offence committed.

The Court is duty bound to impose appropriate sentence.

22. In my considered view, the trial Court has rightly imposed the sentence of 5 years RI for the offence under Section 307 IPC, 3 years RI under Section 307 read with Section 34 IPC and 1 year RI for the offence under Section 324 IPC. The fine amount and the default sentence imposed are also not on the higher side.

23. In view of the above, the judgement of conviction and sentence passed by the trial Court stand confirmed and the appeal as well as the revision stand dismissed.

24. The accused-appellants Nirmal Singh, Balkar Singh, Kashmir Singh and Joginder Singh are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Gurdaspur who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Gurdaspur shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

March1, 2017
Gulati

(M. JEYAPPAUL)
JUDGE

Whether Speaking/Reasoned : Yes

Whether Reportable : Yes