

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

**Criminal Appeal S-1614-SB of 2005  
Date of Decision: December 6, 2017**

|                   |        |                  |
|-------------------|--------|------------------|
| Balwan and others |        | .....Appellants  |
|                   | Versus |                  |
| State of Haryana  |        | ..... Respondent |

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

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Present : Mr. Rajesh Lamba, Advocate  
for the appellants.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

The three appellants, namely, Balwan, Surender and Ramesh, who are sons of Dalip Singh and residents of village Khera Kheri, District Fatehabad have filed the present appeal against the judgment and order dated 13/17.8.2005 passed by learned Sessions Judge, Fatehabad, whereby, they stood convicted under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo simple imprisonment for three months. They were also convicted under Section 324 read with Section 34 IPC and sentenced to undergo rigorous

imprisonment for one year and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo simple imprisonment for fifteen days. Both the sentences were ordered to run concurrently. The period of custody already undergone by them during the trial of the case was ordered to be set off as per the provisions of Section 428 Cr.P.C.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 16.9.2005. Subsequently, vide order dated 28.4.2006, Balwan appellant was granted concession of bail whereas Surender and Ramesh appellants were granted the same relief on 24.7.2006.

According to the prosecution, on 3.6.2002 at about 10.15 p.m., complainant Ram Lal and his son Daya Nand were sitting in front of their house in an open space and street light was on. The other members of the family were sleeping inside the house. In the meantime, Balwan and Ramesh accused armed with a gandasi each and Surender accused armed with a lathi came there. Balwan accused raised a lalkara that the complainant be taught a lesson for quarreling with him on that day. Thereafter, he gave a

gandasi blow on the head of the complainant. Surrender accused gave a lathi blow on his nose. Ramesh accused gave a gandasi blow to the complainant on his head. As a result, the complainant fell down on the cot. Balwan and Ramesh, thereafter, gave gandasi blows on his head. The alarm raised by Daya Nand attracted Pawan and Jai Bhagwan, sons of Ram Lal, and other persons from his neighbourhood. Seeing them, all the three accused ran away while carrying their respective weapons.

It is also the case of the prosecution that on the day of the occurrence, Balwan accused had come in front of the house of the complainant while under the influence of liquor and started hurling abuses by using filthy language. The complainant had slapped him. Accordingly, Balwan and others nursed a grudge against him.

Complainant Ram Lal was medico-legally examined by Dr. Rajiv Chauhan on the same day at 11.50 p.m. and the following injuries were noticed on his person:-

- “1. 4 cm x 1cm x bone deep incised wound on right side forehead.
2. 2 cm x 1 cm x skin deep incised wound 4 cm

below right eyelid (lower)

3. 2 cm x 1 cm x skin deep incised wound 3.5 cm below right lower eyelid.
4. 7 cm x 1.5 cm bone deep incised wound on vertex.
5. Swelling of upper eyelid left sided.
6. 1 cm x 5 cm x bone deep stab wound on right upper part of nose”.

Probable duration of injuries was within six hours and kind of weapon used was sharp. Subsequently, the police moved application and produced the gandasi, which was recovered from Balwan accused before the doctor, who opined that the injuries could be caused by the said weapon.

At the trial of the case, the prosecution had examined Rajender Singh @ Kalu as PW2 and complainant Ram Lal as PW5, who deposed about the ocular account of the occurrence. PW3 Dr. Rajiv Chauhan and PW4 Dr. Gian Parkash brought on record the medical evidence. PW1 Balwant Singh, Draftsman, proved the scaled site plan Ex.P1 which he had prepared on visiting the spot whereas the investigation part of the occurrence was brought on record by the prosecution by examining SI Guria Ram as PW6 and

retired Sub-Inspector Hardev Singh as PW7.

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

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

Learned counsel for the appellants has submitted that the prosecution has examined only interested and relation witnesses in support of the ocular account. No independent corroboration has been sought. It is also submitted that there was delay in lodging of the First Information Report and the said delay has been used so as to make due deliberations and consultations in order to falsely rope in the appellants. It is further submitted that the medical evidence does not corroborate the ocular account in the sense that Surender appellant was said to have caused a lathi injury on the nose of complainant Ram Lal but injury No. 6 on the person of Ram Lal, which was on his nose was found to be stab wound. It is also submitted that the appellants have been facing the agony of criminal prosecution for the last more than fifteen years. None of them

is a previous convict. They have already undergone substantial portion of the sentence of imprisonment imposed upon them. Therefore, a lenient view be taken in the matter of their sentence of imprisonment.

Learned State counsel has submitted that the prosecution has led cogent and convincing evidence in support of its case and, therefore, the present appeal is without any merit and, therefore, it be dismissed.

The occurrence in question had taken place on 3.6.2002 at about 10.15 p.m. and, that too, in an open place in front of the house of complainant Ram Lal. At that point of time, there would not be people moving around who could have witnessed the occurrence. On the other hand, PW5 complainant Ram Lal and PW2 Rajender Singh @ Kalu have consistently deposed that the appellants had come to their house and after raising an alarm, caused injuries to complainant Ram Lal. The presence of complainant Ram Lal at the spot cannot be doubted as he had received injuries in the occurrence and those injuries have been brought on record by the prosecution by examining PW3 Dr. Rajiv Chauhan.

The occurrence in question had taken place on

3.6.2002 at about 10.15 p.m. Immediately, after the occurrence, the complainant was rushed to the Medical College, Agroha where he was medico-legally examined. On the same night, the complainant was taken to Shakti Neuro Care Hospital, Hisar as he had become unconscious. On receipt of V.T. Message, SI Hardev Singh went to the Medical College, Agroha from where he learnt that the patient had been referred to P.G.I.M.S., Rohtak and came to know that the patient was not there, rather, he had been taken to Hisar and was admitted in Shakti Neuro Care Hospital, Hisar. SI Hardev Singh followed the complainant to Hisar and sought opinion from the doctor about the fitness of the complainant to make statement. The complainant was declared unfit to make statement. Accordingly, SI Hardev Singh recorded statement of PW2 Rajender Singh @ Kalu, which was completed on 4.6.2002 at 9.15 p.m. The said statement was, therefore, sent to Police Station Sadar, Fatehabad, where on its basis FIR No. 287 dated 4.6.2002 under Sections 324/34 IPC was registered. Lateron, after obtaining the opinion from Dr. Gian Parkash PW4, who declared the injuries to be dangerous to life, offence under Section 307 IPC was added. Under these circumstances, it

cannot be said that there was any delay in lodging of the FIR.

Coming to the contradiction between the ocular account and the medical evidence, it may be noticed that as many as 6 injuries were found on the person of complainant Ram Lal. Four of them were incised wounds and present on the head and right lower eyelid of Ram Lal. There was swelling of upper eyelid on the left side and a bone deep stab wound on right upper part of the nose. The injury on nose was described as a bone deep stab wound, measuring 1 cm x 5 cm. Going by the dimensions, the said injury was result of use of lathi in its normal course. Merely because, it has been referred to as a stab wound is no ground to hold that the injury had been caused by using the lathi thrustwise, which is not the case of the prosecution.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by learned trial Court.

As regards the quantum of sentence, it would be relevant to refer to the order passed by the learned trial Court while awarding sentence that the appellants were three brothers and their parents had died. They claimed to be poor persons and having children to look-after. As per the custody

certificates produced by the learned State counsel, Balwan appellant has undergone total sentence of one year, six months and twenty two days inclusive of earned remissions of two months and two days whereas Surender and Ramesh appellants have undergone one year, six months and four days and one year, six months and thirteen days, respectively. None of the appellants is shown to be either involved or convicted in any other case. Even according to the prosecution, there was no previous enmity between the parties and the occurrence had erupted as during the day time. Balwan appellant had hurled filthy abuses at the complainant and the complainant had given slaps to him.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellants, who are on bail since the year 2006 need not be sent behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. At the same time, the fine imposed upon them for the offence under Section 307 read with Section 34 IPC can be suitably enhanced so as to make it payable to the complainant as compensation.

Resultantly, the conviction of the appellants under Section 307 read with Section 34 IPC and Section 324 read with Section 34 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.5,000/- imposed upon each of the appellants for the offence under Section 307 read with Section 34 IPC is hereby enhanced to Rs.10,000/- each. The sentence of fine for the offence under Section 324 read with Section 34 IPC alongwith its default clause is maintained. The entire amount of fine be deposited by them in the Court of Chief Judicial Magistrate, Fatehabad, within three months from today, failing which, they shall undergo rigorous imprisonment for six months each. The entire amount of fine, if recovered or deposited by them be disbursed in favour of complainant Ram Lal as compensation.

The appeal is, accordingly, disposed of.

**December 6, 2017**  
amit rana

**( T.P.S. MANN )**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether reasoned/speaking | Yes/No |
| Whether reportable        | Yes/No |