

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-S No.1591-SB of 2011
Date of Decision:- August 18, 2017

Rachhpal Singh

.....Appellant

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. T.S. Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate for the applicant-appellant.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Rachhpal Singh has filed this appeal challenging judgement dated 21.3.2011 passed by Sessions Judge, Faridkot, vide which he has been held guilty for committing offences punishable under section 307 and 324 IPC.
2. The present case arises out of one of the two separate chargesheets filed by the police in FIR No.51 registered at Police Station Jaitu, Faridkot on 7.6.2009. While one chargesheet was filed for offence u/s 302 IPC relating to murder of Jagtar Singh, the present chargesheet was filed for offences u/s 307 and 323 of IPC regarding injuries caused to Ravinder Singh and Sikander Singh.

3. The prosecution story, as per complainant Jagtar Singh's statement(Ex.P-1) recorded by ASI Amarjit Singh, is that he has two sons namely Harpal Singh aged about 25 years and Kulwinder Singh aged about 22 years who are both unmarried and cultivating land measuring 4 killas which they had taken on lease from Balbir Singh of their village. Balbir Singh was having a dispute with his brother Karnail Singh relating to passage on this land which was pending in the courts but the same was lying dormant since the last about 2 years. The complainant alleged that Rachhpal Singh son of Karnail Singh had threatened to kill him and his sons and used to say as to why they have taken his uncle's land on lease. The complainant alleged that on the day of occurrence at about 10 A.M. he had gone to the fields with meals for his son which he kept near the room of the motor and called his son to take meals and upon which his son kept his *Kahi* on the edge of the water course and came near him empty handed and sat by his side to have his meals. The complainant alleged that Rachhpal Singh son of Karnail Singh who was irrigating the adjacent fields came near them carrying *Kirch* (knife like weapon) and raised *lalkara* that he would teach them a lesson for taking the land of his uncle on lease. The complainant and his sons stood up and Rachhpal Singh gave a blow with '*Kirch*' on the head of his son Harpal Singh which hit him on his left temporal region. Rachhpal Singh gave another blow on his head on the left side above the ear. The complainant raised alarm "*na maar - na maar*" (*do not kill-do not kill*) and being scared, he jumped over the water course towards the village. It is stated that the complainant's son fell on the ground and then Rachhpal Singh gave another blow with his *Kirch* on the head of his son hitting him on the back of his head on the left side. The complainant, being

frightened, ran towards the village and narrated the occurrence to his uncle's son namely Ranjit Singh son of Gurdev Singh. Both of them along with other respectables reached at the spot where they found that his son Harpal Singh had been thrown in the well of the motor and when they took him out, they found him to be dead. Harpal Singh was found to be having several injuries on both sides of his head; eye-brows; abdomen; left leg; left elbow; and on left hand. It is further stated therein that later on they came to know that Rachhpal Singh, while running towards village Ghanyawala, had also caused injuries to Harwinder Singh son of Sakander Singh and his father Sakander Singh son of Sarban Singh of their village with the help of his *kirch*. The motive alleged is that Rachhpal Singh was annoyed with them for having taken his uncle Balbir Singh's land on lease and due to which Rachhpal Singh in connivance with his brother Jagtar Singh and his father Karnail Singh had murdered his son by causing injuries.

4. Upon lodging of FIR, the police conducted investigation into the matter and during the course of investigation, statements of injured Ravinder Singh and Sikander Singh were also recorded. As per version of injured Ravinder Singh, he along with his father Sikandar Singh were present in their fields on 07/06/2009. At about 11:30 AM when Sikandar Singh had gone to fetch water, then accused Rachhpal Singh came there and stood in front of tractor of Ravinder Singh and raise a '*lalkara*' that he would teach him a lesson for not exchanging his plot. Rachhpal Singh inflicted a blow with '*kirch*' on the left thigh of Ravinder Singh. Ravinder Singh got down from the tractor and the accused gave another blow with a '*kirch*' on the left side of chest of

Ravinder Singh with an intention to kill him. Sikandar Singh, upon seeing this raised the alarm "*na maar - na maar*". Accused gave another blow with "*kirch*" hitting left elbow of Ravinder Singh followed by another blow on his back. When Sikandar Singh stepped forward to save his son and attempted to snatch the "*kirch*", the accused gave a blow with "*kirch*" to Sikandar Singh on the left side of his chest. During the scuffle, Ravinder Singh sustained injuries on his hands. The accused after inflicting injuries on the left eye of Ravinder Singh with his weapon, ran away from the spot.

5. During investigation, a rough site plan of the place of occurrence was prepared; opinion of the doctors who had medico legally examined the injured was also sought as regards the nature of injuries; blood stained earth was lifted from the place of occurrence and prepared into separate parcels and duly sealed. The accused was arrested on 8.6.2009. Upon interrogation, the accused made a disclosure statement (Ex.P-22), and in pursuance thereof he got recovered the blood stained "kirch" which was taken into possession vide Recovery Memo Ex. P-24.
6. Upon conclusion of investigation, chargesheet was filed in the court of learned Additional Chief judicial Magistrate, Faridkot on 17.8.2009. It may here be mentioned that the police after investigation filed 2 separate chargesheets in respect of both the incidents. While one chargesheet pertained to murder of Harpal Singh, the other chargesheet pertained to the injuries inflicted by accused upon Ravinder Singh and Sikandar Singh. Accordingly the trial court also conducted to separate trials in respect of

both the aforesaid incidents.

7. The learned Additional Chief Judicial Magistrate, Faridkot, on finding that the facts prima-facie disclosed commission of offences punishable under Sections 302 and 323 of IPC, exclusively triable by the Court of Sessions, committed the case to the Court of Sessions vide order dated 28.8.2009.
8. The Sessions Judge, Faridkot, upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 302 and 323 framed charges against the accused on 1.10.2009 to which the accused pleaded not guilty and claimed trial.
9. The prosecution in order to establish charges framed against the accused examined as many as 8 witnesses. PW-1 Dr Sumitoj Singh Assistant Professor, General Surgery, G.G.S. Medical College, Faridkot proved the original Bed-head ticket regarding treatment of Ravinder Singh as Ex. P-1. The prosecution examined PW-2 Dr. Ram Gopal, Demonstrator, G.G.S. Medical College and Hospital, Faridkot, who stated that he had medico-legally examined Ravinder Singh and Sikander Singh on 7.6.2009, and proved their MLRs as Ex.P-3 and Ex.P-5. PW-3 Ravinder Singh deposed that about 4½ months back, he along with his father Sikandar Singh had gone to their fields to cultivate the land. At about 11:30 AM when he was cultivating land with his tractor and his father had gone to fetch water, then Rachhpal Singh came out of the adjacent drain and stopped his tractor and raised a '*lalkara*' that he would teach him a lesson for not exchanging his plot. PW-3 stated that accused gave a blow with '*kirch*' on his left thigh while he was

sitting on the tractor and when he alighted from the tractor, the accused gave second blow with '*Kirch*' on left side of his chest with an intention to kill him. He deposed that his father who was at a distance of about 10-12 Karams at the time of occurrence raised alarm '*na maar – na maar*'. The accused gave another blow with '*kirch*' hitting him on left elbow and another blow on his back. PW-3 further deposed that when his father tried to save him by snatching '*kirch*' from the accused, the accused gave a blow with '*kirch*' on the left side of chest with an intention to kill him. PW-3 further deposed that when he tried to save his father and tried to snatch the '*kirch*' from the accused he sustained injuries on his hand. The accused after giving injuries with '*kirch*' on left eye of his father ran away from the spot along with the '*kirch*'. PW-3 stated that Darshan Singh of Malla came there and took them to Civil Hospital, Bajakhana where they were provided first-aid and were referred to G.G.S. Medical College and Hospital, Faridkot for further treatment. He further stated that in the hospital they came to know that the accused on the same day had murdered Harpal Singh with '*kirch*'.

10. PW-4 Sikandar Singh father of Ravinder Singh stated in corroboration to the testimony of PW-3 Ravinder Singh and specifically deposed that on the day of occurrence when his son was cultivating land at about 11:30 AM, he had gone to fetch water for him and when he was returning back he saw Harpal Singh coming from the side of the drain and who asked his son to stop the tractor and raised '*lalkara*' that he would teach him a lesson for not exchanging land and gave a blow with '*Kirch*' hitting his son on his right thigh while he was sitting on the tractor and thereafter his son alighted from tractor and they had a

scuffle during the course of which the accused gave second blow to his son on left side of his chest with '*Kirch*' with an intention to kill him. PW-4 further deposed that the accused gave 5-6 blows with '*Kirch*' hitting Ravinder Singh on his back, thumbs of his hands and left elbow and when he came near his son to save him the accused gave a blow with '*Kirch*' towards his chest with intention to kill him and thereafter gave another blow with '*Kirch*' hitting him below his left eye and ran away from the spot with his '*Kirch*'.

11. PW-5 Baltej Singh, Patwari, stated that he had prepared the scaled site-plan Ex.P-15 of the place of occurrence. PW-6 S.I. Amarjit Singh who had investigated the case stated in detail as regards the entire investigation conducted by him right from lodging of the FIR upto the filing of the challan. PW-7 Head Constable Ranjit Singh and PW-8 Head Constable Kahan Singh are formal official witnesses who have tendered their affidavits Ex.P-28 and Ex.P-29 in evidence.
12. Upon conclusion of the prosecution evidence, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein the entire incriminating evidence against him was put to him to enable him to explain the same but the accused denied the prosecution case in toto and pleaded false implication. He further pleaded that he has been falsely implicated at the behest of Jarnail Kaur wife of Balbir Singh who is real brother of his father Karnail Singh as there is a land dispute and Balbir Singh is in illegal possession. He further pleaded that Harpal Singh son of Jagtar Singh complainant had died due an accidental fall in a well and a false murder case has been registered against him, his borther and his father and in order to strengthen that case Sikander

Singh and Ravinder Singh had fabricated false injuries on their person in connivance with their aunt Jarnail Kaur. The accused was afforded an opportunity to lead evidence but no evidence has been led on behalf of the accused.

13. The learned Trial Court, upon appreciation of the evidence on record held Rachhpal Singh guilty for committing offences punishable u/s 307 and 324 of IPC, vide judgment dated 17.3.2011. Rachhpal Singh, aggrieved by the same, has challenged the judgment by filing the present appeal.
14. The learned counsel for the appellant, while assailing the impugned judgment has submitted that he has been falsely implicated in the present case and that the falsity of the case would be evident from the fact that though the prosecution alleges that a large number of injuries had been caused by the appellant to Ravinder Singh with the help of '*kirch*' but not even a single injury on the person of Ravinder Singh was found to have been caused by a sharp edged weapon. The learned counsel has further submitted that in any case since none of the injuries on any of the two injured was declared to be dangerous to life, therefore, offence under Section 307 IPC cannot be said to be made out under any circumstances. It has further been submitted that there is delay in lodging the FIR which clearly shows that the complainant party took their time in concocting a false version to implicate the appellant. The learned counsel has thus submitted that in view of the infirmities in the case of prosecution, the conviction of the appellant could not sustain and he is entitled to be acquitted.

15. On the other hand, learned counsel representing the State has submitted that the impugned judgment is a well reasoned judgment passed after proper appreciation of the evidence on record and has thus prayed for dismissal of the appeal.
16. We have considered the rival submissions addressed before this Court and with the assistance of the learned counsel, have also perused the record of the case.
17. As far as the factum of existence of injuries on the person of both the injured is concerned, the prosecution relies upon the testimony of PW-2 Dr. Ram Gopal, Demonstrator, G.G.S. Medical College and Hospital, Faridkot who had medico-legally examined both the injured on 7.6.2009. PW-2 has described the injuries found on the person of Ravinder Singh as follows:-

- “1) Lacerated wound 0.7 X 0.1 cms on the right thigh, 11 cms from the right knee. Advised X-Ray right thigh.
- 2) Lacerated wound 1.5 X 0.2 cms on the back of the right forearm, 7 cms from the right elbow. Advised X-Ray right forearm.
- 3) Lacerated wound 1. X 0.2 cms on the left side of the chest 6.5 cms from the left nipple, fresh bleeding present. Advised X-Ray Chest.
- 4) Lacerated wound 0.8 X 0.2 cms on the back of the left chest, 8 cms from the left shoulder, fresh bleeding present. Advised X-Ray Chest.
- 5) Lacerated wound 0.4 X 0.1 cms on the palmar aspect of the left thumb, 5 cms from the back of left thumb, fresh

bleeding present, Advised X-Ray left hand.

- 6) Linear abrasion 1.2 X 0.1 cms on the distal aspect of right thumb intra phalangeal joint, fresh bleeding present, advised X-Ray right hand.”

18. PW-2 further deposed that the weapon used for causing the injuries No.1 to 6 was blunt and that after X-ray examination the same were opined to be simple in nature. He proved the MLR in respect of Ravinder Singh as Ex.P-3.

19. PW-2 Dr. Ram Gopal further described the injuries found on the person of Sikandar Singh upon medico-legal examination as follows:

“1) Incised wound 2.5 X 0.1 cms on the left side of chest, 1.5 cms from the left nipple, fresh bleeding present, advised X-ray chest.

2) Linear abrasion 0.5 X 0.1 cms on the left chest, 5.5 cms from the left cheeks, fresh bleeding present.”

20. PW-2 opined that the weapon used for causing injury No.1 was sharp and for causing injury No.2 was blunt, and that upon receipt of X-ray examination reports, both the injuries were declared to be simple in nature. During the course of cross-examination he stated that none of the injuries on the person of injured was dangerous to life. Despite cross-examination of the witness wherein questions were put to him regarding the manner in which the injury may have been caused, we find that nothing substantial could be elicited during his cross-examination so as to doubt his credibility or his opinion.

21. We do find that all the six injuries found on the person of Ravinder Singh have

been described as lacerated wounds and none of the injuries is stated to be an incised wound. The learned counsel for the appellant has attempted to capitalize on the said fact by submitting that the said injuries could not have been possibly inflicted with a '*Kirch*' as '*Kirch*' is a sharp edged weapon. However, in the present case, the case of the prosecution can not be thrown out merely for the reason that the injuries have been described to be lacerated wounds despite the fact that as per prosecution the accused was armed with a '*Kirch*' which is a sharp edged weapon. One of the injury found on the person of Sikander Singh is in the nature of an incised wound which is in tune with the case of the prosecution regarding the nature of weapon used for inflicting the injuries. There can well be a possibility that the blade of '*Kirch*' hits the body in such a manner that the skin is not cut or is simply scraped. Furthermore, it is well settled that where there is a conflict between ocular version and medical version, the ocular version should be given preference. The Hon'ble Apex Court in a judgment reported as (2016) 4 SCC 357, *Sadhu Saran Singh Vs. State of Uttar Pradesh* held that in a case of variance between medical evidence and ocular version, the oral evidence has to get primacy as medical evidence is opinionative. In another judgement reported as (2012) 10 SCC 476 *Darbara Singh Vs. State of Punjab*, the Hon'ble Apex Court held as follows:

"... So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and

ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.”

22. The prosecution version regarding use of '*Kirch*' is duly established from the nature of injury found on the person of Sikander Singh and in these circumstances, causing of injuries by the appellant on the person of other injured Ravinder Singh in the same occurrence, with the help of '*Kirch*' cannot be doubted.
23. As regards the ocular version, the prosecution relies upon the testimonies of the injured witnesses namely PW-3 Ravinder Singh and PW-4 Sikander Singh who have both stated consistently regarding the occurrence. Both have specifically stated that on the day of occurrence at about 11:30 AM when Ravinder Singh was tiling his land with the help of tractor then Rachhpal Singh stopped his tractor and raised a '*lalkara*' that he would teach him a lesson for not effecting the exchange of his plot and gave a '*Kirch*' blow on his left thigh while he was sitting on his tractor. Both the witnesses have further stated that when Ravinder Singh alighted from his tractor then Rachhpal Singh gave the second blow with his '*Kirch*' on his chest on the left side with an intention to kill him and thereafter the accused inflicted more injuries on the person of Ravinder Singh with his '*Kirch*' and when PW-4 Sikander Singh came near his son in order to save him, then the accused inflicted a blow with

'Kirch' on his chest in order to kill him and gave another blow hitting him below his eye. Both the witnesses were cross examined at length but the witnesses did not budge from their statements. The said witnesses cannot be termed to be false witnesses as the existence of injuries on their person bears testimony to their presence at the spot. The plea of false implication raised by accused in his statement u/s 313 Cr.P.C is not substantiated from any evidence on record. In any case the testimony of a stamped witness rests on a very higher pedestal and in the absence of any strong evidence to discredit him, his testimonies cannot be doubted. In this context, reference may be made to a judgment of Hon'ble the Supreme Court rendered in Balwan and others versus State of Haryana (2014)13 SCC 560, wherein it has been held as follows:-

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.

24. In view of the discussion made above, we have no hesitation in affirming the finding of the trial Court to the effect that accused Rachhpal Singh had caused injuries to Ravinder Singh and Sikander Singh with the help of 'Kirch'.
25. The case of the prosecution is also strengthened from the disclosure statement made by the accused on 8.6.2009 (Ex.P-22) in pursuance of which he led the police party to the disclosed place where he had kept concealed a 'Kirch' and got the same recovered which was taken into possession vide recovery memo Ex.P-24.

- 26 The next and the most material question before this Court is as to whether the facts would attract an offence under Section 307 IPC or 324 IPC or 323 IPC. Undoubtedly, all the injuries were declared to be simple in nature. None of the injuries was opined to be dangerous to life. In view of the fact that the injuries had been caused with a sharp edged weapon i.e. a '*Kirch*' it is Section 324 IPC, in any case which would be attracted and not Section 323 IPC as '*Kirch*' being a sharp edged weapon has the potential of proving lethal.
27. The material question before this Court is as to whether on the basis of the injuries caused to the injured by the accused, it can be said that the same have been caused in an attempt to murder the complainant. While considering the said question, it is apposite to bear in mind the definition of 'attempt to murder' as spelt out in section 307 of the Indian Penal Code which for the sake of ready reference is reproduced herein below:

“307. Attempt to murder:-

Who ever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned.”

28. A perusal of section 307 of the Indian Penal Code indicate that in order to constitute an offence under this section, the primary ingredient is the *mensrea* of the accused. In other words, it is the 'intention' of the accused which is one of the essential ingredient required to be established and in the absence of any

such 'intention', section 307 of the Indian Penal Code would not be made out.

29. An act even though sufficient in ordinary course of nature to cause death, would not constitute an offence under section 307 of the Indian Penal Code if necessary 'intention' or 'knowledge' is lacking. If however, 'intention' or 'knowledge' is present, the offender would be guilty of an offence under section 307 of the Indian Penal Code, even if the result of his act might be only to cause some injury or results in no injury at all. Intention and knowledge are a man's state of mind and direct evidence thereof except through his own confession cannot be had but apart from confession these can be proved by circumstantial evidence. In other words, these are matters for inference from all the circumstances of the case such as the motive, the preparations made; the declarations of the offender; and in the case of homicide, the weapon used, the persistence of the assault, and the nature of the injuries actually inflicted as also their location.
30. In this context a reference may be made to a judgment of Hon'ble Supreme Court reported as (2015) 11 SCC 366, Jage Ram vs. State of Haryana, wherein while discussing term “intention” as occurring in section 307 of the Indian Penal Code, it was held as follows:

“For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under

Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

31. In the present case, the accused was armed with a '*Kirch*'. As per the sketch of the recovered '*Kirch*', the length of the blade has been described as four fingers only which is roughly about three inches long. No doubt '*Kirch*' is in the nature of a sharp-edged knife and is capable of causing incised wounds but is not as lethal as a '*kirpan*' or a '*gandasa*' having a large blade and which is heavy, whose single blow itself can prove fatal. In the present case, though as per prosecution as many as six injuries were found on the person of Ravinder Singh but as per MLR(Ex.P-3) of Ravinder Singh all the said injuries are in the nature of lacerated wounds and none is an incised wound. All the injuries are simple in nature and none of the injuries has been opined to be dangerous to life. In these circumstances, the intention of the accused to cause injuries in an attempt to murder the injured cannot be gathered. Similarly the other injured namely Sikander Singh was caused only two injuries out of which one is a lacerated wound on the chest and the other is an incised wound on the chest. Both the said injuries have been opined to be simple injuries and none of the injuries is stated to be dangerous to life. Thus even in the case of

Sikander Singh it cannot be said with certainty that the accused had caused these injuries in an attempt to murder Sikander Singh. Consequently, the conviction of the accused for offence under Section 307 IPC cannot sustain and is hereby set aside.

32. No other argument has been raised or urged before this Court. As an upshot of our aforesaid discussions, appeal filed by the accused is partly accepted to the extent that his conviction under Section 307 IPC is set aside. However, his conviction under Section 324 IPC is maintained. The sentence of imprisonment in respect of offence under Section 324 IPC i.e. rigorous imprisonment for a period of two years and to pay a fine of ₹2,000/- as imposed by the trial Court is also maintained. The appeal stands partly allowed in the above mentioned terms.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

August 18, 2017
pankaj/mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No