

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

**CRA-S No.172-SB of 2005 (O&M)**

**Decided on: 23.09.2017**

Ram Singh

....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

**Present :** Dr. Amarpreet Sandhu, Advocate (Legal Aid Counsel)  
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

**ARVIND SINGH SANGWAN, J. (Oral)**

The appellant – Ram Singh has faced the trial in FIR No.232 dated 26.04.2000 for offence punishable under Sections 148, 149, 307, 323, 506, 120-B of the Indian Penal Code, 1860 (in short 'IPC') and 25/54/59 of the Arms Act registered at Police Station Sadar, Hisar.

The appellant has filed the present appeal against the judgment of conviction dated 18.12.2004 and order of sentence dated 20.12.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Hisar vide which the appellant was convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.2,500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months. He was also convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous

imprisonment for a period of 01 month. The appellant was further convicted under Section 25 of the Arms Act and sentence to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Brief facts of the case are that the complainant – Chhotu Ram got his statement recorded before SI Chandgi Ram on 26.04.2000 to the effect that they are three brothers. The eldest is Ajit Singh, younger to him is Abhay Singh and the complainant is the youngest brother. They all are living separately in their respective dhanis in their fields. The complainant stated that he had sown maize/fodder for cattles and the stray cows used to damage the crop. On 25.04.2000, he along with his wife were removing the stray cows from their fields at about 08:30/09:00 PM, in the meantime, from the street side, the accused/appellant – Ram Singh son of Ajit Singh, carrying a pistol, Abhay Singh son of Ram Lal also carrying a pistol, Dhapi wife of Ajit Singh carrying a hockey stick and 03 other persons out of them 02 were having guns and one was having pistol, suddenly came from the street. Dhapi attacked and gave a stick blow on his left hand wrist and raised a voice 'catch hold of Chhotu and finish him here'. On this, Abhay Singh with intention to kill him fired upon the complainant with his pistol. The complainant sat down in order to save his life and the fire hit in his waist on the right side and when he tried to run away, Ram Singh fired from his pistol which hit him on his right side arm above the elbow and the cartridge hit through and through. Thereafter, one of the three persons also fired a shot which hit him on the right side of the arm and

the pellets also hit on the waist and they also hit upon his head. The complainant raised voice to save him, he ran away towards his village while crying and his wife also raised cries but no one came from the village because of fear of the accused. The complainant also stated that he was having a torch in his hands and he has seen the accused from the light of the temple and also from the torch light. The name of the 03 other accused persons were not known but he gave description of them. The complainant further alleged that motive of enmity was that Ajit Singh, Ram Singh, Abhay Singh and their women folk has demolished the watercourse of the complainant and had cultivated the path/rasta and the complainant has filed a complaint in which Ajit Singh was arrested by the police and from his possession, a pistol, a cartridge were recovered and proceedings under Sections 107/151 Cr.P.C. were also initiated. Thus, all the accused conspired to kill the complainant and attacked him. The complainant was taken to the hospital by Ex-Sarpanch namely Hargyan and on the statement of the complainant, the FIR was registered.

During the investigation, the police involved 08 persons namely Abhay Singh son of Ram Lal, Prithvi son of Mangla Ram, Ram Kumar son of Mangla Ram, Ram Niwas son of Ram Sarup, Ajit Singh son of Ram Lal, Dhapi wife of Ajit Singh and Sajjan son of Bhagwat including Ram Singh son of Ajit Singh (the present appellant).

Thereafter, charges were framed against the accused persons under Sections 120-B/148, 307/149, 323/149. The accused Ram Singh, Ram Niwas and Prithvi were also charge-sheeted under Section 25 of the Arms Act while the accused – Ram Kumar was

charge-sheeted under Section 30 of the Arms Act vide order dated 30.07.2001.

Thereafter, the prosecution led its evidence. PW2 – Dr. R.J. Bishnoi conducted the medico legal examination of the complainant – Chhotu Ram and found the following injuries on his body:-

- 1. Wound of entry : A lacerated wound on right arm with inverted margin in the middle on posterior surface. 1 c.m. in diameter. Direction of wound was down ward and medially. There was blackening and tattooing around the margins of the wound. X-ray right arm was advised.*
- 2. Wound of exit : A lacerated wound on right arm in the middle with averted margins size of wound 1.5" x 1 c.m. X-ray right arm was advised.*
- 3. Pin head size multiple red abrasion on whole of posterior surface on right arm. X-ray right arm and ortho surgeon opinion was advised.*
- 4. Red abrasion on back in the right thoracic region in middle one third on lateral side of size 3 inch x 2 inch. Margin of abrasion were black. X-ray chest was advised.*
- 5. Multiple pin head size abrasion back over whole of right thoracic region. X-ray chest and general surgeon opinion was advised.*
- 6. A lacerated wound in the scalp in occipital region of size 1 inch x 0.2 inch. It was transversely placed and fresh bleeding was present. X-ray skull was advised.*
- 7. Red contusion on left forearm in distal 1/3, on extensor surface of size 2.5 inch x 2 inch. X-ray left forearm with wrist joint was advised.*

PW2 – Dr. R.J. Bishnoi further stated that injuries No.1 to 5 were caused by fire arm. Injury No.6 was subject to X-ray report and injury No.7 was caused by blunt weapon. This witness also proved the MLR Ex.P7, diagram showing the injuries as Ex.PW7/A. He further

stated that on police request Ex.P11, he has given the opinion Ex.PW11/A that all the injuries were simple in nature. The clothes of injured – Chhotu Ram were exhibited as Exs.P12 and P13.

In cross-examination, this witness stated that since injuries No.3 to 5 were pin head size abrasion, therefore, he has opined that these were result of fire arm injuries. He further stated that injuries No.1 to 3 were the wound of ante and wound of exit. He stated that he cannot site any authority but as the margin were blackish and the abrasion were multiple and circular, he has opined that these are fire arms injuries. He further stated that it is not necessary that only lacerated and punctured wounds are the result of fire arms injuries. This witness also stated that he cannot specify the distance from which the injuries were caused.

PW3 – Murti Devi wife of the injured/complainant proved the version as given in the FIR and stated that she had seen the accused persons as her husband was carrying a torch and she can identify 03 other persons who assaulted her husband and 02 were having guns and one was carrying a pistol. She also stated that dispute was regarding the watercourse.

PW4 – Jagdish Chander stated that he was posted in police post General Hospital, Hisar and on 26.04.2000, the medical officer handed over him a parcel and the same was handed-over to SI Chandgi Ram vide recovery memo Ex.P14.

PW5 – Jai Ram stated that he was posted in CIA Staff, Hisar and on that day, Ram Niwas was produced by his father and he disclosed that the pistol used by him was kept concealed near a tree. His

statement was recorded as Ex.P15 and on the same, the recovery of one pistol 315 bore was made, which was taken into possession vide recovery memo Ex.P17 and the pistol as Ex.P18.

PW9 – ASI Perhalad Singh also posted in CIA Staff, Hisar deposited on the same line as of PW5.

PW11 – Inspector Chandgi Ram who partially conducted the investigation stated that on receiving a rukka from the hospital Ex.P26. He recorded the statement of the complainant as Ex.P1 and an endorsement was made as Ex.P1/A and the same was sent to the Police Station on which formal FIR Ex.P27 was recorded by SI Ami Chand. This witness also proved the rough site plan prepared at the place of occurrence as Ex.P28. He further stated that he reached dhani of Ajit and Dhapi was found there, she was arrested who was having a hockey in her hand and the sketch of the same was prepared as Ex.PH. He further stated that he recorded the disclosure statement of Prithvi Ex.P29 and in pursuance thereof, he got the gun recovered which was taken in possession vide recovery memo Ex.P30 and the gun Ex.P31 and the sketch of the same was prepared as Exs.P32 and P33.

PW13 – Jagdish Chander is a witness to the recovery of a tractor vide memo Ex.P35 and he arrested Ajit Singh on 29.04.2000 and Ram Singh on 06.05.2000 and also recorded the disclosure statement of Ram Singh Ex.P36, on the basis of which country-made pistol with one live cartridge was recovered and the same was taken into possession vide recovery memo Ex.P3, the pistol as Ex.P4 and the cartridge as Ex.P5. The sketch of the same is Ex.P2 and site plan of the place of recovery is Ex.P37.

The remaining witnesses were formal witnesses who proved the other documents prepared during the course of investigation.

After closure of the prosecution evidence, the statement of the accused persons was recorded under Section 313 Cr.P.C. in which they denied the prosecution evidence and pleaded innocence.

In defence, the document Ex.D1 was tendered by the accused – Abhay Singh, however no other defence evidence was led.

The trial Court vide its judgment of conviction dated 18.12.2004 convicted the appellant/accused – Ram Singh under Sections 307, 323 IPC and 25 of the Arms Act, however, the remaining 07 accused persons were acquitted.

The operative part of judgment of the trial Court is reproduced herein as under:-

*“29. In order to prove the case against the accused for commission of offence u/s 307 IPC, what is to be seen is intention of the accused and the circumstances under which the incident took place. Further in order to attract the ingredients of Section 307, intention or knowledge is to be seen which can be gathered from the evidence, motive, injuries and repetition of attack in furtherance of common intention, which is not proved from the case of prosecution and is not borne out from the material on record on the part of all the accused except Ram Singh son of Ajit Singh.*

*It is a matter of common knowledge that there is tendency to involve innocent persons in case of group rivalries. In this case this doubt is strengthened by the fact that in his complaint Ex.P1 the complainant had mentioned only the names of the accused Abhay Singh, Ram Singh, Dhapi and three other persons were not identified by him at that time.*

*On the other hand 8 persons have been challaned and charged. During examination in Court, the complainant has stated that the accused Sajjan, Ram Kumar and Ajit Singh were not present at the place of occurrence. Prithi accused, who has been charged in this case had not been named in the complaint. Similarly, Ram Niwas has not been attributed any shot or even possession of a fire weapon. The presence of Dhapi under the circumstances of the present case with the other accused who were allegedly armed with fire arms also becomes doubtful at the place of occurrence at night at about 9.00 p.m.*

*The implication of accused Abhay Singh is also not proved beyond reasonable doubt in view of the defence version which is revealed from Ex.D1, a case which was got registered against Abhay Singh by the driver of the present complainant Chhotu Ram u/s 307 of the Indian Penal Code and in that case the present complainant Chhotu Ram was an eye witness, who did not depose in the Court against his brother Abhay Singh and ultimately the case failed. In this case the false implication of Abhay Singh also can not be ruled out.*

*There are seven injuries caused to the complainant, as per medical report the injuries no.3 to 5 were pin head size abrasion and injuries no.1 & 2 wound of entry and wound of exit. In this case only injury no.2 which is lacerated wound on the right arm clearly seems to be a firm arm injuries which is attributed to the accused Ram Singh. However, as per medical report Ex.P11/A all the injuries are simple in nature and accordingly, the ld. defence counsel has stated that the offence u/s 307 is not made out.*

**30.** *On the other hand ld. PP assisted with Sh. Ish Kumar, Advocate has placed reliance of the law laid down*

*in case “Girija Shanker vs State of U.P. 2004(1) RCR (Crl.) 839” and “Hari Mohan Mandal vs State of Jharkhand”, 2004 Cri. L.J. 3115” wherein the Hon'ble Supreme Court has observed that to justify conviction u/s 307 IPC it is not essential that bodily injury capable of causing death should have been inflicted. It is observed that court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this Section.*

*It was also held that an attempt in order to be criminal need not be the penultimate act. It is sufficient in law if there is an intent coupled with some overt act in execution thereof. It was also held that it is not correct to acquit an accused of the charge u/s 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt since the determinate question is intention or knowledge coupled with some overt act in execution thereof and not nature of injuries.*

*In the light of above discussion I find that prosecution has fully established its case against accused Ram Singh beyond reasonable doubt hence I convict the accused Ram Singh u/s 307 of the Indian Penal Code and Section 323 and also u/s 35 of the Arms Act and as regards other accused, they stand acquitted for the offences charged because the prosecution has failed to established its case against them beyond reasonable doubt. Let the accused/convict be heard on quantum of sentence as envisaged u/s 235(2) of the Code of Criminal Procedure on 20.12.04.”*

It is submitted by counsel for the appellant that the trial Court, on the same set of evidence, on the basis of which the other 07 accused have been acquitted has convicted the appellant – Ram Singh.

It is further submitted that during the cross-examination of the

complainant – Chhotu Ram, he has stated that the accused – Ram Singh and Ajit Singh were not present at the spot. It is also submitted that since the presence of other co-accused including Dhapi could not be proved from the statement of 02 witnesses i.e. PW1 – Chhotu Ram and PW3 – Murti Devi, the conviction of the appellant is not sustainable. It is also submitted that from the medical evidence i.e. from the statement of PW2 – Dr. R.J. Bishnoi, it has come on record that all the injuries were simple in nature and, therefore, the evidence under Section 307 IPC is not made out. It is also submitted on behalf of the appellant that the appellant has already undergone 02 years, 02 months and 17 days of actual sentence which includes 01 year, 11 months and 26 days of under-trial period and 02 months and 21 days of post-conviction period.

On the other hand, counsel for the State has filed the custody certificate dated 23.09.2017 today in the Court which is taken on record. Counsel for the State has not disputed the actual sentence undergone by the appellant/accused. However, he has contested the arguments raised by counsel for the appellant/accused that the offence under Section 307 IPC is not made out.

After hearing counsel for the parties, I find that as many as 08 accused persons have faced the trial including the appellant – Ram Singh. The complainant i.e. PW1 – Chhotu Ram while recording the FIR has stated that Abhay Singh has fired a gun shot which hit on his waist and right side when he tried to ran away and Ram Singh fired from his pistol which hit on his right side of the arm above the elbow. It is also stated that one fire was also shot by one of the three persons. Thus, from the evidence led by the prosecution it is proved that injuries

were caused to complainant by the fire arm. It is proved from the statement of PW1 that the accused persons caused the injuries with intention to kill him. In view of the prosecution evidence, I find that it is proved beyond reasonable doubt that the appellant/accused has caused injuries to the complainant with intention to kill him, therefore, the judgment of conviction dated 18.12.2004 passed by the learned Additional Sessions Judge, Hisar is correct as per the law and does not require any interference of this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that the appellant is the first offender; no other case is pending against the appellant; he is facing the criminal proceedings since 2000 and also in view of the fact that he has already undergone the sentence of 02 years, 02 months and 17 days out of 07 years as per the custody certificate dated 23.09.2017, the sentence imposed upon the appellant is reduced to the period already undergone by him. However, keeping in view the facts and circumstances of the case, the appellant is directed to pay compensation of Rs.50,000/- to the injured, PW1 – Chhotu Ram.

However, the sentence of fine and in default of payment of fine, the default sentence also stands affirmed. The amount of fine shall be deposited by the appellant, if not already paid, before the trial Court within a period of one month from the date of receipt of certified copy of this order, failing which, the appellant shall have to undergo the sentence as awarded in the default clause in respect of payment of fine.

Accordingly, the present appeal is partly allowed and the order of sentence dated 20.12.2004, is modified to the extent discussed

hereinabove.

(ARVIND SINGH SANGWAN)  
JUDGE

23.09.2017  
*yakub*

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