

CRA-S-2519-SB-2016
Date of decision : 03.03.2017

State of Punjab ...Respondent

Mr. Meherdeep Singh, Additional Advocate General, Punjab,
for the respondent.

JITENDRA CHAUHAN, J. (Oral)

By way of this appeal, appellant challenges his conviction and award of punishment vide judgment of conviction and order of sentence dated 23.05.2016 passed by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib (hereinafter referred to as 'the trial Court'), in Sessions Case No.RT 02 of 24.12.2014/06.11.2015, convicting and sentencing the appellant as under:-

Name of convict	Offence U/S	Sentence of imprisonment and fine	In-default of payment of fine
Babbu Singh	307 IPC	RI for 03 years and a fine of Rs.10,000/-	RI for 06 months
	459 IPC	RI for 03 years and a fine of Rs.5,000/-	RI for 03 months
	380/511 IPC	RI for 01 year and a fine of Rs.1,000/-	RI for 01 month

All the sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the

judgment passed by the trial Court is as under:-

“Briefly stated, the facts of prosecution story are that Harnavjot Singh son of Mohinderpal Singh resident of village Gurusar suffered statement before the police on 15.07.2014 alleging that he is aged about 18 years and resident of village Gurusar and is student of B.A. Part-I. He further stated that on 15.7.2014, at about 2:30 AM, while he was sleeping in his house, someone knocked at the door of their house and when his father Mohinderpal Singh opened the door and caught hold of that person and the complainant after switching on the light of the courtyard saw that said person was Babbu Singh son of Gurmel Singh of their village. When the complainant went near to him, then he took out a knife from his dub and gave blow in the chest of complainant with intention to kill him and the complainant sat on the ground. The complainant further stated that the accused trespassed into their house with intention to commit theft and he being a young person succeeded in escaping from the complainant and his father. Then, the father of the complainant after making arrangement for conveyance got the complainant admitted at Civil Hospital Bathinda, but, the injury being grievous, he was referred to Badial Hospital, where he was got medically treated. The complainant prayed for initiating action in the matter. On the basis of this statement, the present case was got registered against the accused and the investigation was initiated in the matter and spot was inspected and rough site plan of the place of occurrence was prepared. Statements of witnesses were recorded. During investigation, accused was arrested and on interrogation, the accused suffered disclosure statement on the basis of which he got the weapon of offence i.e. knife recovered, which was also taken into police possession through recovery memo attested by witnesses. Medical papers were taken into possession and after completion of necessary formalities and investigation, challan against the accused was presented before the learned Area Magistrate.”

Injured were medico-legally examined, statements of witnesses were recorded and on conclusion of investigation, a report in terms of sub-section (2) of Section 173 of the Code was filed before the jurisdictional Magistrate, who complied with provisions of Section 207 of the Code, perused the report and its annexures, having found offences involved in the matter to be triable by the Court of Session, committed the case to the Court

of Session and it was entrusted for trial to the trial Court.

The learned trial Court after hearing the prosecution and the defence, found sufficient grounds to proceed against the appellant under Sections 307, 459 and 380/511 of the Indian Penal Code (for short, 'IPC') and, accordingly, charged the appellant.

On a plea of not guilty put up on behalf of the appellant, he was put to trial.

During the course of trial, prosecution examined Harnavjot Singh complainant as PW1, Dr. Kailash Chandra Joshi Badial Hospital, Bathinda as PW2, Mohinderpal Singh, eye-witness as PW3, Major Singh as PW4, ASI Mohan Singh, the investigating officer, as PW5, Constable Rajwinder Singh as PW6, HC Baj Singh as PW7, Inspector narinder Singh, another investigating officer, as PW8 and Dr. G.S.Shekhawat, Radiologist, Pioneer Imaging and Diagnostic Centre, bathinda as PW9 and thereafter, closed its evidence.

On closure of case on behalf of prosecution, the learned trial Court examined the appellant under Section 313 of the Code so as to enable him to explain the incriminating circumstances coming on record in the prosecution evidence. Appellant denied all the circumstances as false and incorrect and reiterated plea of his innocence and false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial Court, vide impugned judgment and order dated 23.05.2016, convicted and sentenced the accused, as narrated above.

Feeling aggrieved against the judgment and order dated

23.05.2016 passed by the trial Court, the accused has filed the instant appeal.

It is submitted by the learned counsel for the appellant that in the instant case, there is no cogent evidence against the accused that he had caused any injury on the person of complainant-Harnavjot Singh with an intention to kill him or that the accused had ever trespassed into the house of the complainant or that he attempted to commit theft by entering into the dwelling house of the complainant. He further refers to the cross-examination of the complainant PW1 to contend that he did not support the case of the prosecution and had specifically stated that he had seen the accused today only in the Court and the appellant did not gave a knife blow to him in the intervening night of 14/15.07.2014. Furthermore, complainant in his cross-examination also stated that one unknown person with muffled face entered into his house on that night and gave him knife blow and his statement was never recorded by the police. Learned counsel refers to the statements of PW3-Mohinderpal Singh, father of the complainant, and PW4-Major Singh to submit that they did not support the version of the prosecution and were declared hostile. Learned counsel further submits that the order passed by the learned trial Court is illegal, unjust and based on conjectures and surmises and prays that order passed by the learned trial Court be set aside and appellant may be acquitted of the charges.

Learned counsel for the appellant also refers to judgment of Hon'ble the Supreme Court of India passed in **Shahid Khan Vs. State of Rajasthan**, 2016 (4) SCC, 96 and a judgment passed by this Court in **Kulwant Singh @ Kanti Vs. State of Punjab**, 2010 (24) R.C.R. (Criminal)

68, in support of his case.

On the other hand, the learned State counsel supports the judgment and the order passed by the learned trial Court.

I have heard the learned counsel for the parties and have gone through the case file.

In the instant case, although PW3-Mohinderpal Singh, alleged an eye-witness and PW4-Major Singh have not supported the case of the prosecution, however, PW1-Harnavjot Singh injured-complainant has supported the version of prosecution and has even identified the appellant/accused in Court. The version of the prosecution was further fortified by the recovery of the weapon of offence which was based upon disclosure statement of the accused himself. The weapon of offence and other articles recovered at the behest of the accused were duly proved on record. Even though in his cross-examination, the complainant had stated that the accused had not given a knife blow to him, his entire evidence cannot be treated as effaced or washed off the record. Furthermore, the medical evidence on record was proved by the testimony of PW2-Dr. Kailash Chandra Joshi, Ex.PW2/A, the bed head ticket and Ex.PW2/C report of the doctor specifically stating that injured was “attacked by knife over right side of the chest”

Keeping in view the above facts and circumstances, the instant appeal is dismissed. However, since the appellant has suffered agony of criminal trial, the sentence awarded to the appellant is ordered to be reduced from three years to 2½ years, subject to payment of fine of Rs.50,000/- to be deposited with the District Legal Services Authority concerned within three

months from the date of receipt of certified copy of the order. It is made clear that if the amount of fine is not paid within the stipulated period, the sentence awarded to the appellant shall be maintained. The bail/surety bonds furnished by the appellant stands discharged.

Ordered accordingly.

03.03.2017
adhikari

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No