

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-S-693-SB-2002 (O&M)
Date of decision : 16.11.2017

...

Hazara Singh and others

.....Appellants

vs.

State of Punjab

.....Respondent

2) CRA-S-896-SB-2002 (O&M)

...

Hazura Singh and others

.....Appellants

vs.

State of Punjab

.....Respondent

3) CRR-1198-2002 (O&M)

...

Jangir Singh

.....Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. P.S. Ahluwalia, Advocate for the appellants
in CRA-S-693-SB-2002

Ms. Amanpreet Kaur, Advocate for
Mr. H.N.S. Gill, Advocate for appellants in
CRA-S-896-SB-2002 and
for for petitioner in CRR-1198-2002.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

...

H. S. Madaan, J.

Vide this judgment I propose to dispose of two criminal appeals i.e. CRA-S-693-SB-2002 filed by Hazara Singh, Surat Singh, Balbir Singh and Jaswant Singh, CRA-S-896-2002 filed by Hazura Singh, Jangir Singh and Sat Pal Singh and one criminal revision i.e. CRR-1198-2002 filed by the complainant in the main case – Jangir Singh, seeking enhancement of sentence awarded to accused-convicts in the main FIR.

Briefly stated, facts of the case as per prosecution story are that Hazara Singh, Surat Singh, Balbir Singh and Jaswant Singh, accused in FIR No. 55 dated 28.4.1998, registered at Police Station Dirba, faced trial by Additional Sessions Judge, Sangrur, who vide judgment and order dated 4.6.1999, convicted and sentenced all of them as follows :-

<i>Name of accused</i>	<i>U/s</i>	<i>Sentence</i>
Hazara Singh	U/s 307 IPC	Rigorous imprisonment for 7 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for three months.
	U/s 325 IPC	Rigorous imprisonment for 2 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for two months.
	U/s 323 IPC for injury to Hazura Singh	Rigorous imprisonment for six months.
	U/s 323 IPC for injury to Satpal Singh	Rigorous imprisonment for six months.
	U/s 323/34 IPC	Rigorous imprisonment for six months
	U/s 323/34 IPC	Rigorous imprisonment for six months

<i>Name of accused</i>	<i>U/s</i>	<i>Sentence</i>
Surat Singh & Jaswant Singh	U/s 307/34 IPC	Rigorous imprisonment for 7 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for three months each.
	U/s 325/34 IPC	Rigorous imprisonment for 2 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for two months each.
	U/s 323 IPC	Rigorous imprisonment for six months each
	U/s 323/34 IPC	Rigorous imprisonment for six months each
	U/s 323/34 IPC	Rigorous imprisonment for six months each
	U/s 323/34 IPC	Rigorous imprisonment for six months each
Balbir Singh	U/s 307/34 IPC	Rigorous imprisonment for 7 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for three months
	U/s 325/34 IPC	Rigorous imprisonment for 2 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for two months
	U/s 323/34 IPC	Rigorous imprisonment for six months
	U/s 323/34 IPC	Rigorous imprisonment for six months
	U/s 323/34 IPC	Rigorous imprisonment for six months
	U/s 323/34 IPC	Rigorous imprisonment for six months

All the substantive sentences of imprisonment were ordered to run concurrently.

As the prosecution story goes, on 27.4.1998, information was received at Police Station Dirba that complainant Jangir Singh, Lakhwinder Kaur, Hazura Singh and Satpal Singh, in injured condition were admitted in Civil Hospital, Sangrur. A Police Party from the said Police Station went to Civil Hospital, Sangrur. However, the attending doctor had declared injured Jangir Singh, Lakhwinder Kaur and Hazura Singh unfit to make statement. On 28.4.1998 ASI Harminder Singh from the said Police Station again went to Civil Hospital, Sangrur and sought medical opinion regarding the fitness of injured for the purpose of recording their statements. Complainant-injured Jangir Singh was declared fit by the doctor, as such his statement was recorded. Inter alia, he stated that on

27.4.1998, he alongwith his cousin brother Hazura Singh was going to fields. At about 6.00 A.M., when they had reached near the house of Hari Singh Mistri, then accused Balbir Singh and Hazara Singh, Surat Singh and Jaswant Singh having sticks were standing there. Balbir Singh accused raised *lalkara* (extortion) that they should not escape and then Balbir Singh caught hold of Hazura Singh. Accused Hazara Singh gave *soti* blows to Hazura Singh. Jaswant Singh caught hold of the complainant and accused Surat Singh gave stick blows on the person of the complainant, as a result of which the complainant received injuries on his forehead, chin, left thumb, left flank, left side of hip, left ankle, right leg, right knee and right elbow. Hazura Singh also received multiple injuries on his person. In the meanwhile, Sat Pal Singh, Lakhwinder Kaur, Gurdeep Singh and Kehar Singh arrived at the spot and they intervened. In the process, Jaswant Singh gave stick blow on the head of Lakhwinder Kaur, while accused Hazara Singh gave stick blows which hit on the left foot and left wrist of Sat Pal Singh. After causing injuries, the accused assailants ran away from the spot alongwith their respective weapons. The motive for the incident was stated to be that complainant party had taken one house on lease from late Assa Singh for 99 years. The accused party wanted to take its possession forcibly. Civil litigation had been pending between the parties in this Court. According to statement of complainant made to the police, after receipt of injuries, he and Hazura Singh had become unconscious and were removed to the Civil Hospital, Sangrur by Dalip Singh and Gurdip Singh by arranging a vehicle. The statement was thumb marked by the complainant. The

Investigating Officer ASI Harminder Singh appended his endorsement below such statement sending *ruqa* to the police station, which formed basis of the FIR.

Investigation in this case started. The Investigating Officer went to the spot and prepared rough site plan of the place of incident. He recorded statements of witnesses i.e. of Lakhwinder Kaur and Sat Pal Singh on 28.4.1998. Statement of Hazara Singh injured was recorded on 30.4.1998. Hazara Singh, Balbir Singh, Surat Singh were arrested in this case on 2.5.1998. Accused Hazara Singh, while in police custody on 4.5.1998, had suffered a disclosure statement and got recovered *soti* Exhibit P1, which was taken into police possession. Jaswant Singh was formally arrested in this case on 10.5.1998.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, Sunam. On presentation of challan, copies of documents relied thereupon were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. and then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions, committed the case there. It was assigned to the Court of Additional Sessions Judge, Sangrur.

After making consideration, the accused were charge sheeted i.e. accused Hazara Singh for offence under Section 307 and 325 IPC, whereas remaining accused for offence under Sections 307 read with Section 34 IPC and under Section 325 read with Section 34 IPC, against Surat Singh and Jaswant Singh offence under Section

323 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined PW-1 Dr. Ravinder Kaur, PW-2 Dr. Suresh Kumar Singhal, SMO, PW-3 Jasvir Singh, Patwari, PW-4 Dr. Prabhat Kumar, Medical Officer, Civil Hospital, Sangrur, PW-5 Jangir Singh – complainant, PW-6 Hazura Singh, PW-7 ASI Jaswant Singh, PW-8 Dr. Om Parkash Medical Officer, PW-9 HC Nirmal Singh and PW-10 ASI Harminster Singh. With that the prosecution evidence was closed.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused was put to them, but they denied the allegations pleading innocence. They have stated that on 27.4.1998 at about 6.00 A.M. Hazura Singh armed with *gandasa*, Jangir Singh armed with *gandasi*, encircled them and then Hazura Singh and others caused injuries to Kala Singh, Jaswant Singh and Gurjit Singh with their respective weapons and on this Balbir Singh, Hazura Singh and Surat Singh raised hue and cry, on hearing which people gathered there and caused brick bat blows and *soti* blows to Jangir Singh and Hazura Singh. During their defence evidence, the accused tendered affidavit Exhibit D1. With that the defence evidence was closed.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have knocked at the door of this Court, by way of filing the present appeal, i.e. CRA-S-693-SB-2002.

The cross version was recorded on the basis of statement

of complainant Jaswant Singh. In his such statement which he got recorded with the police on 30.4.1998, he stated that on 27.4.1998, he alongwith Balbir Singh, Hazura Singh and Surat Singh was going to the fields at about 6.00 A.M. When they had reached near residential house of Hari Singh Mistri, then accused Jangir Singh, Hazura Singh and Satpal Singh armed with *gandasi* came from the front side. Then Hazura Singh raised *lalkara* 'be prepared as they had come'. Then accused Jangir Singh gave *gandasa* blow which hit on the right side of the forehead of the complainant on which the complainant raised alarm '*marta marta*'. Then immediately Kala Singh, Surjit Singh came forward to rescue the complainant. Then accused Hazura Singh gave two *gandasa* blows which hit on the right little finger and left arm of Kala Singh. Hazura Singh gave another *gandasa* blow from reverse side on the right knee of Kala Singh. Accused Sat Pal Singh who was armed with stick gave its blow thrustwise on the testicles of Gurjit Singh. Then Balbir Singh, Hazara Singh and Surat Singh rescued the complainant Kala Singh and Gurjit Singh from the hands of accused. That the motive behind the incident was stated to be the dispute between Balbir Singh, brother of the complainant and accused Jangir Singh pending in this Court. Injured Jaswant Singh, Gurjit Singh and Kala Singh had been taken to hospital at Dirba. On getting information regarding their admission, the police party from Police Station, Dirba had gone there on 27.4.1998, but the doctor concerned had declared injured unfit to make a statement. When the police party again went there on 29.4.1998, no doctor was available at the hospital and it was only on

30.4.1998, when the police had gone to the said hospital again after getting the medical opinion in affirmative with regard to Jaswant Singh, being fit to make the statement, his statement had been recorded. The said statement of Jaswant Singh was got thumb marked from him. The police officer appended police proceedings on it, sending *ruqa* to the police station, on the basis of which entry in the DDR was made on 30.4.1998. Thereafter, the cross version was investigated. The police officer by going to the place of occurrence, had prepared the rough site plan, recorded statements of witnesses. Accused Jangir Singh and Satpal Singh were arrested in this case on 12.5.1998, whereas Hazura Singh was arrested on 20.5.1998.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Ilaqa Magistrate, Sunam. On presentation of challan, copies of documents relied thereupon were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. Since the connected matter had been committed to the Court of Sessions, this case being cross version was also sent there.

The Additional Sessions Judge, Sangrur, framed charge under Section 324 IPC against Hazura Singh and Jangir Singh and under Section 324 read with Section 34 IPC against remaining accused and under Section 323 IPC against Satpal Singh and under section 323 IPC read with Section 34 IPC against the remaining accused to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined the following witnesses:-

PW-1 Gurjit Singh, PW-2 Dr. Maghar Singh, Medical Officer, Mini Health Centre Dirba, PW-3 Jaswant Singh – complainant, PW-4 HC Nirmal Singh and PW-5 ASI Harminder Singh. With that the prosecution evidence was closed.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused was put to them, but they denied the allegations pleading innocence. They have stated that in fact the complainant party had caused injuries on the person of Jangir Singh, Hazura Singh, Lakhwinder Kaur and Satpal Singh, regarding which case under Sections 307/325/323/34 IPC was pending against them in the said Court; that this case had been created by concocting false story just to counter blast the said case registered under Section 307 IPC etc. against the complainant party. The accused did not lead any defence evidence and closed their defence evidence by making statement.

After hearing arguments, the accused were convicted and sentence as under:-

<i>Name of accused</i>	<i>U/s</i>	<i>Sentence</i>
Jangir Singh	U/s 324 IPC	Rigorous imprisonment for 2 years and to pay a fine of Rs.500/- and in default to further undergo rigorous imprisonment for two months.
Hazura Singh & Satpal Singh	U/s 324/34 IPC	Rigorous imprisonment for 2 years each and to pay a fine of Rs.500/- each and in default to further undergo rigorous imprisonment for two months each.

Feeling aggrieved and they have knocked at the door of this Court, by way of filing CRA-S-896-SB-2002.

I have heard learned counsel for the parties, besides

going through the record.

CRA-S-693-SB-2002

From the ocular version of the incident provided by PWs Jangir Singh and Hazura Singh, duly corroborated by the medical evidence, the prosecution had successfully proved its version on the record.

In this case, as per copies of death certificate and writing by Panchayat, accused Hazara Singh and Balbir Singh have since expired. Resultantly, proceedings against them have got abated.

Learned trial Court vide impugned judgment in paragraph No. 32 of the judgment has observed that is not possible to find out as to which of the party was aggressor and the court was of the view that a free fight took place between both the parties at about 6 A.M. on 27.4.1998 and in the said free fight all the accused persons of this case were armed with sticks and they caused injuries on person of Hazura Singh, Jangir Singh, Lakhwinder Kaur and Satpal Singh. It being so, then every accused assailant is responsible for the part played by him in the incident and cannot be convicted for the role played by his co-assailants by invoking the provisions of Section 34 IPC or Section 149 IPC, as there cannot be any common intention between the assailants in case of a free fight, which takes place at the spur of moment without any pre-planning or pre-meditation.

Learned counsel for the appellants has referred to authority **Gurmit Singh and others vs. State of Punjab 1995 (3) RCR (Criminal) 685**, by the Apex Court, which was a case of free fight between opponent groups, resulting in death of one person. It

was observed that accused could not be convicted under Section 302 IPC read with Section 34 IPC, since the assailants will have to be convicted for offences committed by them individually. In support of that contention, he further referred to authorities **Bhagel Singh vs. Swaran Singh 1992 (1) RCR (Criminal) 391, Kanwarlal and another vs. State of M.P. 2002 (4) RCR (Criminal) 107** and **State of Haryana vs. Chandvir and others 1996 (2) Crimes 187**, by the Apex Court.

The trial Court clearly fell in error in convicting accused Surat Singh and Jaswant Singh for offences under Section 307/34 IPC and 325/34 IPC when injury found dangerous to life and grievous in nature had been attributed to Hazara Singh accused, who has since died. Hazara Singh alone could be held responsible for offences under Section 307 IPC and 325 IPC and his co-accused could not be convicted for offences under Sections 307/34 and 325/34 IPC.

Similarly, conviction of Hazara Singh could not be based for offence under Section 323/34 IPC, though he was accountable for offence under Section 323 IPC for causing injuries to Hazura Singh and again under Section 323 IPC for causing injuries to Satpal Singh. For same reasons, conviction of Balbir Singh for offence under Section 307/34, 325/34, 323/34 (four times) IPC could not be sustained.

In that way conviction of Surat Singh and Jaswant Singh for offence under Sections 307/34, 325/34 and 323/34 IPC is set aside being not sustainable, whereas their conviction for offence under Section 323 IPC is maintained.

As per custody certificate placed on file by the State counsel, Jaswant Singh has undergone total sentence of 3 months and 7 days, whereas Surat Singh has undergone 3 months and 15 days of imprisonment. In my considered view, ends of justice would be adequately met if they are sentenced to imprisonment already undergone by them in this case, whereas fine part remains intact. With such modification, the appeal is partly allowed.

CRA-S-896-SB-2002

PW-1 Gurjit Singh and PW-3 Jaswant Singh – complainant, both injured provided eye witness account of the incident, deposing in consonance with the prosecution story, though they were cross examined at length on behalf of the accused, but they could not be shattered at any material point. They having suffered injuries are stamped witnesses and their presence at the spot cannot be doubted. I find the account given by them to be cogent and convincing and worthy of reliance. This eye witness account find dully corroboration from legal evidence in the form of testimony of PW-2 Dr. Maghar Singh. The investigation in this case has been conducted in a fair and impartial manner. Thus the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. Therefore, there is no illegality or infirmity in the impugned judgment as regards conviction part.

As regards sentence of the accused convicts - Hazura Singh, Jangir Singh and Satpal Singh, considering the fact that all the three convicts having no previous criminal record, having families, and convicts Hazura Singh and Jangir Singh, were aged about 60

years at the time of conviction, benefit of probation should have been granted to them. The trend of modern penology is towards reform, rather than retribution. The criminals are treated like patients and their rehabilitation in the society is tried for. The theory of retribution is no longer in vogue.

In my considered view, all the three accused convicts in this case deserve to be granted benefit of probation, as such they are ordered to be released on probation, subject to their furnishing personal and surety bonds, for a period of one year to the satisfaction of Chief Judicial Magistrate, Sangrur, with an undertaking to appear in the Court to receive sentence as and when called upon during the period of next one year and in the meantime to keep peace and be of good behaviour. The fine of Rs.500/- each imposed upon them, which they are stated to have paid, is converted into costs of proceedings.

With such modification, the appeal stands partly allowed.

CRR-1198-2002

For the detailed reasons given above, I do not find any reason to enhance the sentence imposed upon the accused-convicts. The request in that regard is declined.

The revision petition stands dismissed accordingly.

(H.S. Madaan)
Judge

16.11.2017

chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No