

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

1. CRA-S No.1214-SB of 2001 (O&M)

Charan Dass & others

... Appellants

Versus

State of Punjab

... Respondent

2. CRM-M No.32890 of 2018

Charan Dass & others

... Petitioners

Versus

State of Punjab & others

... Respondents

Date of decision: 14th September, 2018

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Girdhar, Advocate
for the petitioners/appellants No.1, 2 and 4.

Appellant No.3 – Expired.

Appellant No.5 – Deleted, being acquitted by the trial Court.

Mr. H.S. Sullar, Dy. Advocate General, Punjab
for the respondent/State.

Mr. R.S. Chouhan, Advocate for the complainant
(respondents No.2 and 3 in CRM-M No.32890 of 2018)

FATEH DEEP SINGH, J.

A criminal case by way of FIR No.47 dated 22.08.1993 under Sections 307, 324, 323, 148, 149 IPC was got registered with Police Station Narot Jaimal Singh against the appellants/convicts namely Charan Dass, his sons Jasbir Singh and Rakesh Kumar (now deceased), Jagdish Singh along with Sandhla Devi wife of Charan Dass, the latter

having since been acquitted. Vide impugned judgment dated 28.09.2001 passed in Sessions Case No.1/RBT No.50, convicts Jagdish Singh, Rakesh Kumar (since deceased), Jasbir Singh and Charan Dass were convicted under Sections 307/324/323/149 IPC and sentenced as follows:

1. Jagdish Singh (a) to undergo rigorous imprisonment for three years and to pay a fine of Rs.800/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 307 IPC for causing injury being dangerous to life to Bhoop Singh.
(b) to undergo rigorous imprisonment for two years and to pay a fine of Rs.700/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 324 IPC for causing simple injuries with sharp edged weapon to Vishal Singh.
(c) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 324/149 IPC being vicariously liable for causing simple injury with sharp edged weapon to Bhoop Singh by Charan Dass.
(d) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days u/s 323/149 IPC being vicariously liable for causing simple injury with blunt weapon by Rakesh Kumar to Bhoop Singh.
(e) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days

u/s 323/149 IPC being vicariously liable for causing simple injury by Jasbir Singh to Bhoop Singh.

2. Rakesh Kumar (a) to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 307/149 IPC being vicariously liable for causing grievous injury being dangerous to life to Bhoop Singh by Jagdish Singh.
- (b) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months u/s 324/149 IPC for causing simple injury by sharp edged weapon by Jagdish Singh to Vishal Singh.
- (c) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months being vicariously liable for causing simple injury with sharp edged weapon to Bhoop Singh by Charan Dass.
- (d) fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for one month u/s 323 IPC for causing simple injury with blunt weapon to Bhoop Singh.
- (e) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days u/s 323/149 IPC being vicariously liable for causing simple injury by blunt weapon to Bhoop Singh by Jagdish Singh.

3. Jasbir Singh (a) to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 307/149 IPC being vicariously liable for causing grievous injury being dangerous to life to Bhoop Singh by Jagdish Singh.
- (b) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months u/s 324/149 IPC for causing simple injury by sharp edged weapon by Jagdish Singh to Vishal Singh.
- (c) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months u/s 324/149 IPC being vicariously liable for causing simple injury with sharp edged weapon to Bhoop Singh by Charan Dass.
- (d) Fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for one month u/s 323 IPC for causing simple injury with blunt weapon to Bhoop Singh.
- (e) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days u/s 323/149 IPC being vicariously liable for causing simple injury by blunt weapon to Bhoop Singh by Jagdish Singh.
4. Charan Dass (a) to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous

imprisonment for three months u/s 307/149 IPC being vicariously liable for causing grievous injury being dangerous to life to Bhoop Singh by Jagdish Singh.

(b) to undergo rigorous imprisonment for two years and to pay a fine of Rs.700/- and in default of payment of fine to further undergo rigorous imprisonment for three months u/s 324 IPC for causing simple injury by sharp edged weapon on the person of Bhoop Singh.

(c) to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months u/s 324/149 IPC being vicariously liable for causing simple injury with sharp edged weapon to Vishal Singh by Jagdish Singh.

(d) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days u/s 323/149 IPC being vicariously liable for causing injury with blunt weapon by Rakesh Kumar on the person of Bhoop Singh.

(e) Fine of Rs.100/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days u/s 323/149 IPC being vicariously liable for causing injury with blunt weapon by Jasbir Singh to Bhoop Singh.

Whereas, accused Sandhla Devi was acquitted of the charges.

Against these findings, the convicts have filed criminal appeal bearing CRA-S No.1214-SB of 2001. By another petition bearing CRM-M No.32890 of 2018 filed under Section 482 Cr.P.C., convicts

namely Charan Dass, Jasbir Singh and Jagdish Singh have sought quashing of the FIR and the judgment of conviction so passed against them by the Court of learned Additional Sessions Judge, Gurdaspur on the basis of compromise dated 20.07.2018.

Since both these matters are in respect of the same set of persons, arising out of the same very case, are thus being disposed off together by this common judgment.

Upon hearing Mr. R.K. Girdhar, Advocate representing the petitioners/appellants No.1, 2 and 4; Mr. H.S. Sullar, Dy. Advocate General, Punjab on behalf of the respondent/State and Mr. R.S. Chouhan, Advocate for the complainant Bhoop Singh and injured eye-witness Vishal Singh.

The brief facts of the case are that on 22.08.1993 around 7.30 a.m. while complainant Bhoop Singh was returning to his house after his night-duty and when he reached near his land, it is alleged that accused Jasbir Singh alias Jassi, Rakesh Kumar and Sandhla Devi were found throwing wood upon his plot, to which the complainant objected and it is alleged that Sandhla Devi raised lalkara exhorting her co-accused to teach a lesson to the complainant. In the meantime, as per the allegations, accused Charan Dass and Jagdish Singh, both armed with dattars, came and Jagdish Singh raised lalkara that the complainant who is brother of the Sarpanch, be taught a lesson for registering a case against them and regarding execution of the illegal sale deed in his favour. It is alleged that

Jagdish Singh gave a dattar blow hitting in the middle of head of the complainant. Rakesh Kumar gave a dang blow hitting on the head of the complainant whereas Jasbir Singh gave another dang blow on the head of the complainant followed by a dattar blow by Charan Dass on the left eyebrow of the complainant, who fell down. Accused Jagdish Singh at this juncture gave another dattar blow hitting on the right hand of the complainant. On raising of noise, Vishal Singh, nephew of the complainant was attracted, who too was given injuries when he intervened to save the complainant and thereafter, the accused ran away with their weapons. The injured were rushed to Civil Hospital, Pathankot. Statement of the complainant Ex.PA was recorded by ASI Balkar Singh after obtaining medical opinion by making application Ex.PB as to the fitness of the injured, leading to registration of the FIR Ex.PA/2 by ASI Kashmiri Lal. Thereafter, ASI Balkar Singh went to the place of occurrence and prepared rough site plan Ex.PG. Statements of the witnesses were recorded and after necessary formalities and completion of investigations, challan against the accused was submitted in the Court. The motive behind the occurrence was a criminal litigation instituted by the brother of complainant against the accused regarding forcible possession of a piece of land.

Prosecution, at the trial, examined PW1 Dr. Balbir Singh, medical officer, who medico legally examined Bhoop Singh and proved five injuries on the person of the complainant out of which injury No.2 to

5 were declared as simple. Injuries No.1, 4 and 5 were opined to have been caused by sharp-edged weapon while injuries No.2 and 3 by blunt weapon. He proved the MLR of the complainant as PW1/A. On receipt of report of the x-ray examination in respect of injury No.1, it was declared as grievous in nature. Subsequently, on 03.10.1993, on police application Ex.PW1/J, the doctor declared injury No.1 on the person of the complainant to be dangerous to life vide his opinion Ex.PW1/K. This witness further proved MLR of injured Vishal Singh as PW1/L opining injury No.1 on the person of Vishal Singh to be grievous in nature and proved his medical opinion to this effect as PW1/M having been caused by a sharp-edged weapon. Thereafter, the injured complainant Bhoop Singh testified as PW2 and serialized the events attributing role to each of the accused followed by PW3 injured eye-witness Vishal Singh. Thereafter, ASI Balkar Singh PW4 underlined his investigations and also proved certain documents besides other documents placed on record during the investigations. PW5 Dr. Harsh Mahajan, Radiologist, who conducted x-ray examination on the person of complainant, proved his report PW5/A, and lastly PW6 Dalbir Singh, Registration Clerk from the record room proved sale deed dated 06.08.1990 as PW6/A. Thereafter, the prosecution evidence was closed.

The accused in their stand taken under Section 313 Cr.P.C. denied the allegations and took a plea of false implication. In their defence, they examined DW1 Dr. Bhupinder Singh, Medical Officer who

proved three injuries on the person of Charan Dass, out of which injuries No.1 and 2 were opined to have been caused by sharp-edged weapon whereas injury No.3 by a blunt weapon. Injury No.1 on the person of Charan Dass was declared grievous and rest as simple in nature. He proved the MLR as Ex.DB. DW2 Dr. Sudha Ram, medical officer, who medico legally examined Sandhla Devi, proved two injuries on her person opining injury No.1 to be grievous whereas injury No.2 as simple in nature and both were caused by blunt weapon and proved MLR as Ex.DC. DW3 Dr.Jagjivan Lal, Radiologist proved the documents on the basis of Court orders Ex.DD, as Ex.DD/1 to Ex.DD/3. DW4 HC Bashambar Dass through DW4/A proved copy of FIR No.24 dated 19.03.1995, and lastly, DW5 Raghbir Kumar, Constable proved FIR Ex.DW5/A bearing No.19 dated 29.06.2001 of Police Station Narot Jaimal Singh. Thereafter, the defence evidence was closed leading to passing of the impugned findings and that is how the parties are before this Court in these matters.

The first and the foremost submission that has been made by Mr. R.K. Girdhar, learned counsel representing the appellants, revolves around the non-applicability of Section 307 IPC and which has been countered with much vehemence by the learned State counsel.

Appreciating the submissions, the occurrence has taken place on 22.08.1993 and it is only on 03.10.1993 injury on the person of injured complainant Bhoop Singh has been opined to be dangerous to life

when it is the own stand of the prosecution as per the testimony of PW1 Dr. Balbir Singh that on receipt of x-ray examination he has opined injury No.1 through opinion Ex.PW1/K to be grievous in nature and has proved the skiagrams as Ex.PW1/D to Ex.PW1/I. It is quite strange, as is reflected from the record that it was subsequently on police application Ex.PW1/J the doctor belatedly after 42 days of the occurrence has opined it to be dangerous to life when to the very specific query of the Court, there is nothing tangible brought on the record by the prosecution, onus of which lay upon it, to prove that during this period the injured was in a state of poor medical health and it was by mere providence he escaped death by this injury. The prosecution has not proved that the case of the complainant was covered under any of the eventualities provided in Section 320 of the Indian Penal Code. Neither there was emasculation; permanent privation of the sight of either eye; permanent privation of the hearing of either ear; privation of any member or joint; destruction or permanent impairing of the powers of any member or joint; permanent disfiguration of the head or face; fracture or dislocation of a bone or tooth; nor any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain. None of these necessities have been brought about to bring the case of the prosecution under the ambit of Section 307 IPC. More so, nothing tangible has been brought about that there was an attempt to cause death of the injured and which was in consequence of the act attributed to any of the accused and

which act was done with the intention of causing death or an intention of causing such bodily injury which the accused knew was likely to cause death in the ordinary course of nature. There is no medical evidence worth naming to bring about the offence under Section 307 IPC together with the fact that it is an injury on the left side of the head of parietal region and which is a simple fracture if we go through the opinion Ex.PW1/C based on x-ray skiagrams Ex.PW1/D to Ex.PW1/I. The trial Court has wrongly drawn the conclusion that the injury on the person of injured Bhoop Singh stood covered under the provisions of Section 307 IPC and rather being a simplicitor fracture by means of a sharp-edged weapon, the case squarely falls within the definition of Section 326 IPC and therefore, in the light of these discussions, conviction under Section 307 IPC is modified and is converted to Section 326 IPC. The impugned judgment stands modified to that extent.

Learned counsel for the appellants has taken the stand that since parties have effected a compromise and the remaining offences for which the appellants have been convicted are under Sections 324, 323 and 149 IPC, he does not want to argue on the same and has rather made a humble prayer that keeping in view the agony undergone by the appellants, they may be given concession of probation.

Learned counsel for the appellants as well as the learned State counsel do not dispute the fact that in CRM-M No.32890 of 2018 parties had appeared before the learned Judicial Magistrate 1st Class,

Pathankot and as per the report submitted vide No.615 dated 23.08.2018, which is based on the statements of Charan Dass, Jasbir Singh and Jagdish Singh appellants and Bhoop Singh injured complainant as also the injured eye-witness Vishal Singh, they have effected a compromise between themselves and with a view to maintain peace and harmony in the village with the intervention of respectables, they have compromised and which is without any coercion and out of their free will and accord and they do not object if the FIR is quashed against them. The parties have also placed on record the original compromise deed as Annexure A1 along with an application bearing CRM No.23423 of 2018 moved in the present criminal appeal to this effect and which is not disputed by any of the sides.

Keeping in view that the parties are litigating since the day of occurrence i.e. 22.08.1993, for a period of almost 25 years, and belong to the same very village being neighbours, this compromise would certainly go a long way in bringing about peace, harmony and sense of goodwill and brotherhood between the parties and if such a plea of both sides is rejected, would lead to more disharmony, ill-will, vengeance and revenge, which would not be conducive for the society at large. Thus, in view of the theory of reformation, sending the accused behind bars would reap further enmity. Therefore, it would subserve the ends of justice, especially in view of the settled position of law laid down in '**Gian Singh v. State of Punjab and another**' 2012(4) RCR (Criminal) 543 and

‘Kulwinder Singh and others v. State of Punjab and another’ 2007

(3) RCR (Criminal) 1052, and the fact that appellants No.1 and 2 have undergone incarceration for a period of two weeks each, appellant No.3 has expired, whereas appellant No.4 has undergone more than two months and therefore would have cast an adverse impact on the family as well as on the personal life of the appellants. Since the offences for which the appellants have been found guilty, are not of heinous nature and therefore, in the exercise of powers under Section 360 Cr.P.C. which is for the attainment of a definite social and welfare purpose, the appellants are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on their entering into a bond in the sum of Rs.10,000 each with one surety of the like amount to the satisfaction of the trial Court undertaking therein that they shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period. Further, keeping in view that the injured have suffered injuries and have been hospitalized and must have undergone pain, agony and sense of wrong; it would subserve the ends of justice, if each of the appellants namely Charan Dass, Jasbir Singh and Jagdish Singh, is ordered to pay a compensation of Rs.10,000/- each totalling to Rs.30,000/- out of which 70% of the amount shall go to the complainant injured Bhoop Singh and remaining 30% will go to the injured eye-witness Vishal Singh.

Learned counsel for the petitioners Mr.R.K. Girdhar has made a statement withdrawing CRM-M No.32890 of 2018 filed under Section 482 Cr.P.C., which prayer of the petitioners is allowed and the petition stands dismissed as withdrawn.

In the light of foregoing discussions, both these matters stand disposed off.

(FATEH DEEP SINGH)
JUDGE

September 14, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No