

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal-S-1272-SB of 2004

Date of decision : August 07, 2018

Sahib Singh and another

....Appellants

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. D.S.Pheruman, Advocate, for the appellants

Mr. HS Sullar, DAG, Punjab for the respondent-State

Fateh Deep Singh, J.

In case bearing FIR No. 237 dated 28.12.2001 registered under sections 308/323/324/34 IPC, Police Station City Tarn Taran accused Sahib Singh along with Parkash Singh (since dead) vide judgment dated 1.6.2004 were found guilty under sections 308/323/324/34 IPC whereas Pritam Kaur was found innocent and acquitted by the court of learned Additional

Sessions Judge, Amritsar. Convicts were sentenced as follows:-

<i>Parkash Singh</i> <i>U/s 308 IPC</i>	<i>To undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs 20,000/- or in default to undergo further R.I. for a period of 6 months.</i>
<i>U/s 323 IPC</i>	<i>To undergo rigorous imprisonment for a period of 6 months</i>
<i>U/s 324/34 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year.</i>

<i>Sahib Singh</i> <i>U/s 308/34 IPC</i>	<i>To undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs 20,000/- or in default to undergo further R.I. for a period of 6 months.</i>
<i>U/s 323/34 IPC</i>	<i>To undergo rigorous imprisonment for a period of 6 months</i>
<i>U/s 324 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year.</i>

Thus two of the appellants-convicts Sahib Singh and Parkash Singh have come up in this appeal before this Court challenging these impugned findings of the court below.

Heard Mr. D.S.Pheruman, Advocate, for the appellants and Mr. HS Sullar, DAG, Punjab for the respondent-State and perused the records.

The brief allegations narrowed down are to the effect that some part of land of complainant Rachhpal Singh is at the back side of residential house of Dalip Singh situated in village Palasaur. It is alleged that on 6.12.2001 around 11.30 AM, accused Parkash Singh and Sahib Singh were

found cutting the trees thereon and when Rachhpal Singh along with his wife Baljit Kaur intervened to know the reasons why the accused were cutting the trees, it is alleged that Pritam Kaur accused came and exhorted her co-accused to teach a lesson to Rachhpal Singh and Baljit Kaur and they should not escape. It is further alleged by the prosecution that on this instigation, Sahib Singh is alleged to have given blow of sword on the head of Baljit Kaur and she fell down and accused Parkash Singh gave a blow from the reverse side of spade hitting left side of head of Rachhpal Singh who too fell down and while he was lying down accused Parkash Singh is stated to have given another blow on the left leg of Rachhpal Singh. At this juncture, Balwant Kaur wife of brother of Rachhpal Singh was attracted and on raising hue and cry, all the accused ran away with their respective weapons. The injured Rachhpal Singh and Baljit Kaur were taken to hospital where they were examined. It was only on 28.12.2001 the matter was reported to the police leading to the registration of the present case.

On completion of investigation and necessary formalities, charges were framed against the accused under sections 308, 324, 323, 34 IPC to which they pleaded not guilty and claimed trial.

The prosecution at the trial examined PW1 Dr. Ajit Singh who examined the injured and proved the MLR of Baljit Kaur as Ex. PA, pictorial diagram as Ex. PA/1 and further proved the MLR of Rachhpal Singh as Ex. PB and pictorial diagram as Ex. PB/1 and his opinion based

on the reports of Radiologist/CT scan as Ex. PC and in his cross-examination was confronted with police request Ex. PE. Thereafter, the complainant Rachhpal Singh testified as PW2 detailing the sequence of events leading to the occurrence, his statement to the police Ex. PA and thereafter examined victim Baljit Kaur as PW3. PW4 Dr. Paramjit Singh Medical Officer has proved his x-ray report Ex. PW4/A, skiagrams Ex. PW4/B and thereafter PW7 Dr. Atul Kapoor, Radiologist and C.T. Scan Specialist who proved CT scan of injured Rachhpal Singh as Ex. PW7/A and his report as Ex. PW7/B. Thereafter the prosecution examined the Investigating Officer ASI Boota Singh who proved statement of complainant as Ex. PA, his endorsement as Ex. PA/1, FIR as Ex. PA/2, rough site plan of the place of occurrence as Ex. PB, disclosure statement of accused Sahib Singh Ex. PC whereby the accused led the police party and got recovered the sword which was taken into police possession vide memo Ex. PE. Uttambir Singh PW6, a revenue Patwari proved certified copy of jamabandi for the year 1998-99 and certified copies of Fard as Ex. PF and PG respectively and thereafter prosecution evidence was closed.

The accused in their statements under section 313 of the Code of Criminal Procedure denied the allegations and in their defence examined DW1 Lakhwinder Singh to bring about their version that there was exchange of land between the two sides and that the trees had fallen to the share of the accused side. Consequent upon arguments, the impugned

findings were recorded.

Mr. Pheruman at the very on set has made two point arguments, firstly harbouring on the non-applicability of section 308 IPC and has gone through the entire medical record to show that the same does not fell under this head and of showing leniency on the grounds that since more than 17 years, the accused have faced the ignomity of trial and conviction and that lenient view be taken into the matter.

On behalf of State Mr. Sullar has sought to refute the submissions of the appellant's counsel, firstly on the ground that it is the accused side who were well armed with dangerous weapons and assaulted the complainant side and caused them injuries and that the injury on the person of Rachhpal Singh is proved to be a depressed fracture on the head and it was so providence that he has escaped death and therefore, had been rightly convicted under section 308 etc. IPC, further submitting that since the accused have taken the law in their hands over trifling which could have been easily sorted out and therefore, does not deserve any concession.

Appreciating the submissions of the two sides, the material testimony to resolve the issue of applicability of section 308 IPC, the deposition of PW1 Dr. Ajit Singh from Civil Hospital, Tarn Taran needs to be taken into account and has detailed the injuries on the person of Rachhpal Singh as follows:-

“1) A defuse swelling of 12 cm x 10 cm present on

the left side of head, extending from the interior frontal hair line and 12 cm backward and 3 cm above the external auditory meatus.

2) A defuse swelling of 10 cm x 8 cm on the middle of left thigh, 8 cm above the knee joint.

and has proved the MLR of injured Rachhpal Singh as Ex. PB and pictorial diagram as Ex. PB/1, his opinion Ex. PC declaring injury no. 1 on the head of Rachhpal Singh to be dangerous to life. Thereafter deposition of Dr. Atul Kapoor, PW7 Radiologist and CT Scan Specialist who has conducted CT scan of head of Rachhpal Singh and has proved his report as Ex. PW7/A and opinion as Ex. PW7/B whereby he has opined it to be depressed fracture on the left temporal bone. To the very specific query of the Court, learned State counsel was at loss of words as to the non-proving or bringing on record the treatment record of the injured, it is obvious that if such a life threatening injury has been caused on the head, the injured must have remained admitted in hospital for some days but it is neither there in the deposition of the Investigating Officer PW5 Boota Singh nor in deposition of any of the doctors or any of the prosecution witnesses. Another distressing feature for the prosecution is the very concluding lines of examination-in-chief of PW1 Dr. Ajit Singh whereby he has stated as follows:-

“I declared injury no. 1 on the person of Rachhpal Singh as dangerous to life and had he not been operated the injured must have died.”

However, the learned State counsel fairly concedes at the bar that there is nothing by way of semblance of evidence to show that any operation was ever conducted on the person of this injured regarding the injury on the head. Thus, the over all evidence of the prosecution regarding this, as onus is heavily on the prosecution to establish it so does, not remotely suggest beyond a depressed fracture that the life of the injured was in any manner in a difficult state and it was as per the prosecution story having been caused by reverse side of a spade, a blunt weapon and therefore, being fracture needs to be changed under the head of section 325 IPC. Sections 307 and 308 of the IPC shows that they make provision for punishment of an attempt to commit certain offence and that while section 307 IPC is linked with the offence of murder punishable under section 302 IPC, section 308 IPC is linked with the offence of culpable homicide punishable under section 304 Part-I IPC. So the offence punishable under section 308 IPC postulates doing an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. In the present case, the act of the accused had caused a grievous injury by means of blunt weapon on the head though accused is a grown up man having adequate knowledge and

intention in causing this injury on the head certainly shows necessary knowledge and intention but the inability of the prosecution to bring about the after effects of this injury certainly is to its detriment. The learned court below merely on the testimony of the doctor has taken it to be dangerous to life considering that a depressed fracture of bone had been operated but remained in-oblivion regarding the absence of any evidence of operation or examination of any doctor to that effect. Therefore, the findings holding the injury to be covered under section 308 IPC needs to be set aside and the injury clearly stands covered under section 325 IPC being grievous injury caused by blunt weapon.

No other point was raised by any of the sides.

The occurrence has taken place in the year 2001 and for almost 17 years, the accused appellants have undergone the trial and consequent upon their conviction sword of Damocles remained hanging on their heads is certainly a mitigating circumstance that needs to be considered together with the fact that it is the own admission of the complainant in his cross-examination that the land over which the trees were grown had fallen to the share of the accused side further casts a shadow that the entire story of the prosecution is not truthful which has been sought to be brought before the court. Since the principal accused who caused this injury to Rachhpal Singh has since been stated to have died, therefore, convict Sahib Singh who has been convicted under section 308 IPC with the aid of section

34 IPC and therefore, in view of the foregoing reasons, this conviction under section 308/34 IPC qua Sahib Singh is modified to one under section 325/34 IPC. However, the quantum of sentence of imprisonment and fine and in default remains the same. Thus, Sahib Singh stands convicted for offences under sections 325/34, 323/34, 324 IPC, the sentences qua sections 323/34 and 324 IPC also remains the same.

In the light of this modification in the sentence and the fact that the appellants have faced turmoil of this litigation for such a long period of 17 years shall have certainly effected their family and personal life and therefore, commensurate with the theory of reformation and the fact that if sentenced to imprisonment it may result in more ill-will and hatred between the parties and therefore to bring amity with the neighbours and relations, it would be in the fitness of things if the appellant-convict Sahib Singh is allowed concession of probation under section 360 Cr.P.C. Accordingly, appellant-Sahib Singh is ordered to be released on probation of good conduct on furnishing probation bond to the satisfaction of the concerned court in the sum of Rs 10,000/- with one similar surety undertaking to appear and receive sentence whenever called upon during the period of one year and in the meantime to keep peace and be of good behaviour. If probation bonds are not furnished within two months of the receipt of these orders by the concerned court, the instant appeal shall be deemed to have been dismissed. However, to adequately compensate the victims side, who

out of the awarded sentence of fine have already been given 75% of the amount which certainly to the mind of this Court is quite meager and it would be adequate if victim Rachhpal Singh is awarded besides the above amount so granted by the trial court a sum of Rs 20,000/- more by way of compensation by the appellant.

The appeal stands disposed of with aforesaid modification.

August 07, 2018

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**(Fateh Deep Singh)
Judge**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No