

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

CRA-S No.679-SB of 2004
Date of decision: 24th July, 2018

Amrik Singh @ Ghiala Singh & others

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Tarundeep Kumar, Advocate for the appellants.

Mr. H.S. Sullar, Dy. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Present appellants, Amrik Singh alias Ghiala Singh along with his brothers Baldev Singh alias Deba (also referred to as 'Hardev Singh') Surjit Singh alias Seeta, and father Massa Singh, were put up for trial as accused in case bearing FIR No.17 dated 06.03.2001 under Sections 308/324/323/34 IPC pertaining to Police Station Ramdass (Ajnala) and through impugned judgment dated 28.02.2004 by the Court of learned Additional Sessions Judge (Adhoc), Amritsar, were convicted and sentenced as under:

<u>Name of the accused</u>	<u>Under Sections</u>	<u>Sentence to undergo</u>
Amrik Singh	308 IPC	Rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment of fine to undergo R.I. for two months.
	308 r/w	Rigorous imprisonment for four years and to

	34 IPC	pay a fine of Rs.500/- and in default of payment of fine to undergo R.I. for two months.
	324 r/w 34 IPC	Rigorous imprisonment for two years. No fine.
	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.
	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.
Massa Singh	308 r/w 34 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	308 r/w 34 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	324 IPC	Rigorous imprisonment for one year. No fine.
	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.
	323 IPC	Rigorous imprisonment for six months. No fine.
Baldev Singh (also referred to as Hardev Singh)	308 r/w 34 IPC	Rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	308 r/w 34 IPC	Rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	324 r/w 34 IPC	Rigorous imprisonment for two years. No fine.
	323 IPC	Rigorous imprisonment for six months. No fine.

	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.
Surjit Singh	308 IPC	Rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	308 r/w 34 IPC	Rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further R.I. for two months.
	324 r/w 34 IPC	Rigorous imprisonment for two years. No fine.
	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.
	323 r/w 34 IPC	Rigorous imprisonment for six months. No fine.

The same is subject matter of challenge in this appeal before this Court.

Heard Mr. Tarundeep Kumar, Advocate representing the appellants; Mr. H.S. Sullar, Deputy Advocate General, Punjab on behalf of the respondent State and perused records of the case.

The brief allegations of the prosecution came from the statement of complainant Surjit Kaur, resident of village Bhure Gill wherein she stated that on 04.03.2001 around 6.00 p.m. she was milching the buffalos in the house when her husband Jagir Singh asked his younger brother Sadha Singh about the work that was being undertaken and at that point of time accused Massa Singh armed with datar, Hardev Singh (actually referred to as 'Baldev Singh') armed with

kulhari, Seeta armed with Chavi and Ghiala armed with dang came to the house of the complainant and started giving abuses that they would put an end to the problem of demarcation of rasta. At this juncture, husband of the complainant went ahead to pacify them and to know their fault. At that time, it is alleged that Massa Singh gave a blow of datar hitting Jagir Singh on his right ear. Hardev Singh gave a kulhari blow from its reverse side on the shoulder of Jagir Singh whereas Ghiala gave a blow of dang on the upper area of eyes of Jagir Singh. Keeta gave a blow from chavi from its reverse side hitting Jagir Singh on his left shoulder. Another blow of dang was given on the upper portion of eyes of Jagir Singh. The complainant claims that she came forward to rescue her husband and at that time Massa Singh gave a blow of datar from its reverse side hitting on the shoulder of the complainant and Hardev Singh gave a blow by kulhari from reverse side hitting the complainant near the back of her hip towards the left side, whereas Massa Singh gave fist blow on the chest of the complainant and all the accused pulled the complainant from her long hair and tore her clothes. On raising of noise, attracted Sadha Singh alias Dheera Singh and others, and thereafter the accused ran away from the spot, leading to registration of the present case.

At the trial, prosecution examined PW-1 Dr. Narvail Singh, Medical Officer, who proved the MLR of Jagir Singh as Ex.PA,

pictorial diagram showing receipt of injuries as Ex.PA/1 enumerating injuries on the person of Jagir Singh as follows:

- “1. An incised wound 0.75 cm x 0.5 cm on the right ear in the middle of lobe. Blood clothes were present in the wound;*
- 2. Reddish bluish contusion 10 cm x 4 cm on the right forehead region, of skull;*
- 3. Reddish bluish contusion 8 cm x 5 cm on the left forehead region of skull;*
- 4. Reddish bluish contusion of the right eye, whole of the right eye was swollen and patient was unable to open the eye. Subconjunctival haemorrhage in the eye, advised x-ray;*
- 5. Reddish bluish contusion of left eye, whole of the left eye was swollen and patient was unable to open the eye.*
Subconjunctival haemorrhage in the eye ball.
Injury was kept under observation. Advised X-ray.”

This witness also proved the MLR of complainant Surjit Kaur as Ex.PB and the pictorial diagram as Ex.PB/1 describing the injuries on the person of complainant Surjit Kaur as under:

- “1. Reddish bluish contusion 12 cm x 9 cm on the right sacpura region. Movements of the right arm were partially restricted; the injury was kept under observation. Advised X-ray.*
- 2. Patient complained pain on the left side of the back. There was no mark of external injury.”*

The doctor further proved filing of applications Ex.C1 to Ex.C4 seeking fitness of the injured to make statement, report of CT Scan Ex.P1 and his opinion Ex.PE whereby injuries No.4 and 5 on the person of Jagir Singh were declared dangerous to life, receipt regarding bed-head ticket of injured Jagir Singh as Ex.PF and the bed-head ticket as Ex.P2.

PW-2 Dr. Amarinder Singh Dhillon, Scan Centre, Amritsar proved report of CT Scan of Jagir Singh as Ex.P1 and proved his opinion as follows:

“Bifrontal hemorrhagic contusion with Bilateral temporo parietal subdural hematomas with subarachnoid hemorrhage with mass effect and fractures as described above.”

Thereafter, prosecution examined complainant Surjit Kaur as PW-3, who underlined the role of each of the accused proving her statement Ex.PG, followed by the testimony of injured Jagir Singh as PW-4. PW-5 ASI Kuldeep Singh being recovery witness, proved documents, rough sketch of datar Ex.PH, its recovery memo Ex.PJ, rough sketch of gandasi Ex.PK which was taken into police possession through memo Ex.PL. PW-6 SI Gurbachan Singh, the investigating officer of the case, detailed the investigations conducted by him proving application written to the doctor Ex.PC/1, endorsement made on the statement of Surjit Kaur as Ex.PG/1, complaint Ex.PG, FIR Ex.PG/2,

DDR Ex.PG/3, rough site plan of the place of occurrence as Ex.PL and also proved disclosure statement of Baldev Singh (also referred to as 'Hardev Singh') as Ex.PM and recovery memo Ex.PN whereby kulhari was discovered; recovery memo Ex.PO through which blood-stained shirt was taken into police possession through parcel Ex.P2 and proved dang Ex.P3 recovered from accused Amrik Singh through recovery memo Ex.PQ, site plan of its place of recovery as Ex.PR and FSL report as Ex.PX. Thereafter, evidence of the prosecution was closed.

In defence, accused examined DW-1 Dr. Sanjay Gulati to prove the single injury on the person of Massa Singh which is detailed as below:

“Incised wound 6 cm x 1 cm transversely placed on posterior medical aspect of right forearm, 4 cm above right wrist joint, wound was bone deep, muscles were cut, clotted blood was present tenderness present, advice X-ray forearm A.P. lateral view.”

Thereafter, DW-2 Dr.A.S. Virk, Radiologist, who conducted x-ray examination on the person of Massa Singh, proved his report as Ex.DB as to fracture of shaft on the lower third part. Consequent thereupon, the impugned findings were recorded.

Appreciating the arguments of learned counsel for the appellants as well as learned counsel for the respondent/State and on perusal of the records. The appellants side has led a dual attack on the

prosecution story, firstly, on the grounds that none of the injuries on the person of Jagir Singh injured falls within the ambit of Section 308 IPC and that the prosecution has not been able to prove injury on the person of Massa Singh which is proved to be a fracture and which is countered by learned State counsel on the grounds that their own witness DW-1 Dr. Sanjay Gulati in his cross-examination has admitted that such an injury on the person of Massa Singh and which is on a non-vital part of the body, could be self-inflicted/self-suffered. Further that the injured as per the medical evidence was in a precarious state of health and it was by providence he escaped death and therefore, the offence under Section 308 IPC is made out.

Going through these submissions, as per the FIR Ex.PG/2, the occurrence has taken place on 04.03.2001 around 6:00 p.m. The injured Jagir Singh was medically examined on 05.03.2001 at 2:45 p.m. and Surjit Kaur injured eye-witness on the same very day at 3:00 p.m. as is reflected from the MLRs Ex.PA and Ex.PB and pictorial diagrams Ex.PA/1 and Ex.PB/1 respectively. Statement of Surjit Kaur as Ex.PG was recorded on 06.03.2001 at 6:00 p.m. and endorsement made by way of Ex.PG/1 leading to registration of FIR Ex.PG/2, when on police application Ex.PC/1 made on 05.03.2001 the doctor on 06.03.2001 opined Surjit Kaur fit to make a statement and whereas through opinion Ex.PC Jagir Singh was opined unfit to make statement.

The manner in which the learned lower Court had exhibited the illegible photostat copies of MLR of Massa Singh which carries overwriting on the date and is neither countersigned by the doctor to endorse its veracity and has been exhibited, leaves much in the manner of dispensation of justice. Rather, a serious doubt is created how the same is sought to be ante-dated whereby the date of examination i.e. 07.03.2001 has been cut and made to appear as 05.03.2001 without the initials of the doctor who has done it so. Even the x-ray report has not been proved in original nor by means of any attested copy and mere exhibiting of documents in the light of well settled proposition of law laid down in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam Alias Satteyya**' AIR 1971 SC 1865, does not dispenses with its proof, especially when it is nowhere mentioned by DW-2 Dr.A.S. Virk, Radiologist that he has brought the original and it was a correct photostat copy, certainly nullifies the defence of its veracity.

Thus, this argument sought to be raised by the counsel that it is a case of version and cross-version, does not find favour with the Court, especially when the accused in their stand under Section 313 Cr.P.C. have absolutely denied having caused any injury to the complainant side and rather have taken up the defence that it was the complainant side which has assaulted them and gave them injuries. It needs to be reiterated here that all the injuries on the person of Jagir Singh are on the head, a vital part of the body, and which is well

corroborated and substantiated by the CT Scan report and it could not be accepted, as has been sought to be argued by the appellants side to counter the arguments of learned State counsel, that they could be self-suffered. So this argument of the appellants side falls to the ground.

The injured Jagir Singh has received incised wounds on the right ear, on the right side of forehead, left side of fore head, right eye and left eye, which is established from the MLR Ex.PA and pictorial diagram Ex.PA/1. CT Scan has been undertaken and proved as Ex.P1, by virtue of which the medical opinion Ex.PE has come about holding that injuries No.4 and 5, which were under observation, were opined to be dangerous to life and which is corroborated from the bed-head ticket Ex.P2.

Section 308 of the Indian Penal Code is reproduced as below:

“308. Attempt to commit culpable homicide:-

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Section 308 IPC is akin to Section 307 IPC, the latter pertains to 'attempt to murder' and the wording of Section 308 IPC though is same as that of Section 307 IPC however, the only exception is that it deals with 'attempt to commit culpable homicide' and therefore, lesser severe punishment has been prescribed than the preceding Section. Apparently, as is there on the records and remained un rebutted, the occurrence took place, as per the site plan Ex.PL, in the house of the complainant and therefore, certainly, in the absence of worthwhile and acceptable explanation by the defence, the accused are certainly the aggressors when they are proved to be armed with deadly weapons and which have been recovered from their conscious possession by the police during investigations. All the injuries, which have been declared as dangerous to life are on the head, a vital portion of the body. The accused are grown-up persons, fully aware of the likely consequences of such injuries and the mode by which they have been caused. Repeated blows on the head of the injured postulates that the accused had carried-on their acts with such intention and knowledge, and that too, under such circumstances that if they had caused death they would have been guilty of culpable homicide not amounting to murder. As has been argued by the learned State counsel, it is not a case where the defence taken up by the accused is that it was as an exercise of right to private defence they have caused injuries to the other side and rather their defence is of total denial and are trying to establish that it was the

complainant side who were the aggressors and caused them injuries, whereas the accused were totally innocent and did not cause any injury, and which stand certainly, is not acceptable and probable. From the evidence of the injured eye-witness and the victim himself clearly establishes that it was the accused, who are their co-villagers, who have committed this act, and the manner in which they were armed and gave repeated blows on the victim Jagir Singh shows the likely intention and knowledge on their part and therefore, clearly covered under the ambit of Section 308 of the IPC.

In the impugned judgment, the learned Court below has given a well reasoned finding holding that it was the accused who have, with their weapons, caused five injuries to Jagir Singh and two injuries to Surjit Kaur, when the latter had come to the rescue and aid of her husband being attacked while in his own home. The conclusions drawn by the learned Court below certainly are commensurate with the ocular as well as medical evidence which support each other to the hilt. The impugned findings of learned Court below certainly need to be upheld. Finding no merit in the instant appeal, the same is hereby dismissed.

(FATEH DEEP SINGH)
JUDGE

July 24, 2018
rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No