

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-519-SB-2012 (O&M)

Date of decision: 05.05.2018

Jaswinder Singh

...Appellant

V/s.

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Arshdeep Bhullar, Legal Aid counsel,
for the appellant.

Mr. Sandeep Kumar, DAG, Punjab.

RITU BAHRI, J. (Oral).

The appellant has come up in appeal against the judgment dated 11.11.2011 whereby he has been convicted under Section 307 IPC for a period of 5 years with fine of Rs. 5,000/- for causing grievous injuries to Darshan Singh son of Basant Singh on 04.11.2010. The injuries were grievous and dangerous for life and the injured was admitted to Civil Hospital Raman. ASI Rajpal Singh visited the said hospital, Raman. But the injured had already been referred to some other hospital. On 05.11.2010, injured Darshan Singh was admitted to Adesh Hospital, Bhucho. But on account of Diwali festival, ASI Rajpal Singh could not visit on the same day and on 06.11.2010, he visited the said hospital and on application filed by him the injured was declared unfit to make statement by the doctor concerned. On 07.11.2010, he again visited the said hospital and after taking opinion of the doctor regarding fitness of the injured to make statement, injured Darshan Singh made a statement that he was a resident of

Village Pakka Kalan and were four brothers and all were married. His brothers were doing agriculture and he was doing business of sale of buffaloes. On 04.11.2010 at about 04:00 p.m. he was standing near motor-cycle at bus stand, accused Jaswinder Singh who was running barber shop, demanded motor-cycle from complainant Darshan Singh to which the complainant refused on the ground that he had to go to make some payment in connection with his business of sale of buffaloes. Then at about 08:00 p.m. complainant along with his nephew Jaskaran Singh son of Avtar Singh Jat, resident of village Jassi Pau Wali was going on his TVS Motor Cycle towards village Jassi Bagh Wali. Jaskaran Singh was driving motor-cycle and the complainant was sitting on the pillion. When they reached at bus stand Gurthali Wala of their village, accused Jaswinder Singh along with an other unidentified person who was armed with Soti were found standing there and stopped the complainant's motor-cycle. Complainant alighted from the motor-cycle and made enquiry to accused why he stopped him. Thereupon, accused Jaswinder Singh hurled abuse on him and threatened him. He took out a Kirch type sharp edge weapon from his dubb and gave a blow in the left side of abdomen of the complainant. Complainant raised alarm *Marta - Marta* and fell down. His nephew also raised alarm and Jaswinder Singh along with unidentified person ran away from the spot along with the weapon. Jaswkaran Singh brought Darshan Singh to his house on a motor-cycle and Basant Singh, the father of the complainant arranged a vehicle and took him to hospital where he was given first aid and was referred to Civil Hospital, Bathinda from where he was further referred and was admitted to Adesh Hospital, Bhucho, where he was medically examined. The main motive behind this occurrence was that the

complainant had refused to give motor-cycle to accused Jaswinder Singh. ASI Rajpal Singh made endorsement on the statement of the complainant and sent ruqa to the police station for registration of formal FIR. Thereafter, FIR was registered and investigation was carried out by ASI Rajpal Singh. Blood stained clothes were taken in possession by police and were converted into a sealed parcel.

Challan was presented alongwith the documents in the Court of Sessions by the learned Sub Divisional Judicial Magistrate, Talwandi Sabo, vide order dated 03.03.2011. The accused was charge-sheeted on 05.04.2011 for the offence punishable under Section 307 IPC.

In order to prove its case prosecution examined the following witnesses:-

No. & name of witness	Documents proved
PW1 Darshan Singh injured/complainant	Ex.PA - Statement dated 7.11.2010.
PW2 Jaskaran Singh eye witness	Ex.PW2/A - recovery memo of blood stained cloths of the injured. Ex.PW2/B - disclosure statement of the accused. Ex.PW2/C - recovery memo of Knife MO1. Ex.PW2/D - sketch of Knife MO1.
PW3 Dr. Mayank Jyot Singh	Ex.PW3/A – affidavit. Ex. PW3/B – medico legal report of Darshan Singh. Ex.PW3/C – pictorial diagram. Ex.PW3/D – police application dated 19.12.2010. Ex.PW3/E – opinion regarding nature of the injury. Ex.PW3/F – police application dated 19.12.2010. Ex.PW3/G – opinion regarding weapon used for causing the injury.
PW4 Dr. Gurmail Singh	PW4/A – Bed Head Ticket of Civil Hospital, Bathinda.
PW5 Dr. B.S. Dhaliwal	Ex.PW5/A - information sent to the police on 5.11.2010.

PW6 Harcharan Singh	
PW7 Satpal Garg Pharmacist	Ex.PA – Bed Head Ticket of Civil Hospital, Raman.
PW8 Dr. Vireshwar Chawla	Ex.PW4/A – Bed Head Ticket of Civil Hospital, Bathinda. Ex.PW8/A – affidavit.
PW9 ASI Rajpal Singh	Ex.PW9/A – application dated 6.11.2010. Ex.PW9/A1 – opinion of the doctor declaring Darshan Singh unfit to make statement. Ex.PW9/B - application dated 7.11.2010. Ex.PW9/B1 – opinion of the doctor declaring Darshan Singh fit to make statement. Ex.PW9/C – endorsement on statement Ex.PA. Ex.PW9/D – FIR recorded by SI Beant Singh. Ex.PW9/E – site plan of place of occurrence. Ex.PW9/F – site plan of place of recovery of Knife MO1. Ex.PW9/G – personal search memo of the accused. Ex.PW9/H – information memo of the accused. Ex.PW9/J – report of Forensic Science Laboratory.
PW10 HC Gurcharan Singh	Ex.PW2/A to Ex.PW2/D and Ex.PW9/G and Ex.PW9/H, as detailed herein above.
PW11 HC Surinder Pal A/MHC	Ex.PW11/A – affidavit
PW12 HC Kuldeep Singh	Ex.PW12/A – affidavit
PW13 Dr. Anil Kumar Sharma	Ex.PW13/A – Bed Head Ticket of Adesh Hospital, Bathinda.

The Trial Court after going through the evidence led by prosecution held that the appellant was suffering from grievous injuries and the that the injury No.1 was grievous in nature and the possibility of this injury endangering to life cannot be ruled out, as per the deposition of PW-3 Dr. Mayank Jyot Singh, who had examined medico legal report of the complainant at Civil Hospital, Raman on 04.11.2010 that. This finding was based on the affidavit given by Dr. Mayank Jyot Singh as Ex. PW3/A where

he proved the medico legal report, Ex.PW3/B and pictorial diagram Ex.PW3/C. Ex.PW3/D he gave opinion and Ex.PW3/E that the injury No. 1 was grievous and endangering to life. In his cross-examination, Dr. stated that when the patient/complainant was brought to hospital on 04.11.2010 at 10:50 p.m., the injury No. 1 was the result of sharp edge glass at least more than 2 cms length and 1 cm width cannot be ruled out. There is note regarding seriousness of injury on Bed Head Ticket Ex.DA. PW4 Dr. Gurmail Singh produced Bed Head Ticket of Darshan Singh regarding his admission to Civil Hospital, Bathinda on 05.11.2010. In cross-examination, he stated that Darshan Singh was conscious when he was admitted to the hospital. The other formal witnesses in the form of PW7 Satpal Garg and PW8 Dr. Vireshwar Chawla submitted with regard to nature of injuries and admission to Civil Hospital, Bathinda. PW5 Dr. B.S. Dhaliwal of Adesh Hospital and PW6 Harcharan Singh, record keeper of the said hospital stated that Darshan Singh was admitted on 05.11.2010 and was operated upon by Dr. Sorabh Gupta and was discharged on 16.11.2010. During operation free fluid was found in peritoneal cavity, 1x1 cm perforation was found in the Jejunum, small tear was found in the omentum. Perforation was closed and tear was sutured. He proved Bed Head Ticket Ex. PW13/A. ASI Rajpal Singh was the formal witness who conducted the investigation. Ex.PW5/A was information letter sent by the Adesh Institute of Medical Science and Research Centre, Bathinda to the police on 05.11.2010 at 1.10 p.m. regarding admission of complainant in the said hospital. Ex.PW13/A was the file/Bed Head Ticket of this hospital. Recovery of the knife/kirch has been effected from the accused on 10.11.2010 on the basis of a disclosure statement made by him under Section 27 of the Evidence Act.

PW3 Dr. Mayank Jyot Singh stated that injuries were grievous in nature and the accused has been convicted under Section 307 IPC.

After arguing for some time, learned counsel for the appellant pressed the appeal on merit and restricted the period already undergone by the appellant. As per the custody certificate filed, the appellant has undergone 02 years 11 months and 22 days when he was released on bail on 16.09.2013 vide order dated 23.08.2013 passed by this Court. As per the custody certificate, no other criminal case is pending against the appellant

After going through the judgment, it transpires that the immediate cause for inflicting injuries on the person of Darshan Singh was that the appellant had made a request on 04.11.2010 to borrow his motor-cycle and his request was refused by the complainant Darshan Singh. On the same day at about 08 p.m. when he was going back to his village with one Jaskaran Singh, the accused Jaswinder Singh along with one unidentified person inflicted injuries with the knife/kirch. The surgery conducted and the nature of injuries transpire that 1x1 cm perforation was found in the Jejunum, small tear was found in the omentum. Perforation was closed and tear was sutured.

Keeping in view that the refusal to give motor-cycle itself would not be intention to commit murder and the nature of injuries and the surgery conducted show that even though injuries were grievous, the intention was not to kill. There is no history of any other criminal case.

Keeping in view that there was no intention to commit murder, the appeal is being partly allowed. The conviction under Section 307 IPC is being set aside and is being converted into 326 IPC. As per the custody certificate dated 31.03.2018, the appellant has undergone 02 years 11

months and 22 days in custody and is not facing any other criminal trial, the conviction is being reduced to the period already undergone. However, the fine is enhanced from Rs.5,000/- to Rs.20,000/- and in default of payment of fine, he is ordered to further undergo imprisonment for a period of one month.

(RITU BAHRI)
JUDGE

May 05, 2018
Divyanshi

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