

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

(1)

**CRA-S-1870-SB-2003**  
**Date of decision:-21.3.2018**

Gurjit Singh and others

...Appellants

Versus

State of Punjab

...Respondent

(2)

**CRR-253-2004**

Jaswinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM : HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.J.B.S. Gill, Advocate  
for the appellants in **CRA-S-1870-SB-2003**.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Pawan Kumar, Senior Advocate with  
Mr.Rohit Kumar, Advocate  
for the petitioner/complainant in **CRR-253-2004**.

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**H.S. MADAAN, J.**

Vide this judgment, I propose to dispose of **CRA-S-1870-SB-2003** filed by accused Gurjit Singh, Jagjit Singh, Hoshiar Singh and Sarabjit Singh, who were tried and convicted by the Court of learned Additional Sessions Judge, Hoshiarpur for the offences under Sections 323/324/325/326 IPC vide judgment dated 23.9.2003 and vide order of the same date, they were sentenced as follows:

| <b>Name of accused</b>                                       | <b>Under Section</b> | <b>Sentence Awarded</b>                                                                                                                                                   |
|--------------------------------------------------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Gurjit Singh, Jagjit Singh, Hoshiar Singh and Sarabjit Singh | 326/34 IPC           | Rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month each. |
| Jagjit Singh                                                 | 325 IPC              | Rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.           |
| Gurjit Singh, Hoshiar Singh and Sarabjit Singh               | 325/34 IPC           | Rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month each. |
| Gurjit Singh                                                 | 324 IPC              | Rigorous imprisonment for one year.                                                                                                                                       |
| Jagjit Singh, Hoshiar Singh and Sarabjit Singh               | 324/34 IPC           | Rigorous imprisonment for one year each.                                                                                                                                  |

|                                                |            |                                            |
|------------------------------------------------|------------|--------------------------------------------|
| Jagjit Singh, Hoshiar Singh and Sarabjit Singh | 323 IPC    | Rigorous imprisonment for six months each. |
| Gurjit Singh                                   | 323/34 IPC | Rigorous imprisonment for six months.      |

All the substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court in **CRA-S-1870-SB-2003** pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Whereas complainant Jaswinder Singh has brought **CRR-253-2004** craving for conviction of accused under Section 307 IPC and enhancement of sentence.

Briefly stated, the facts of the case as per prosecution story are that on 7.10.2000 at about 4:00 p.m., complainant Jaswinder Singh driving motorcycle bearing registration No.PB-07-H-3048 on which his father Dilbagh Singh was pillion rider, were going to Garhshankar; that Mehar Singh a brother-in-law of complainant was also going with them on his separate scooter; that when they had reached near Cement Pipe Factory a little ahead of village Nariala, a Maruti Van bearing registration No.PB08-E-0072 came from the back side and was suddenly brought to a halt in front of the motorcycle of the complainant, resultantly motorcycle struck against the car, then accused Gurjit Singh armed with a kirpan and accused Hoshiar Singh, Jagjit Singh and Sarabjit Singh armed with iron rods came out of the said Maruti van;

that Gurjit Singh raised a *lalkara* (exhortation) that complainant should be taught a lesson and should not be spared for beating him and by saying that Gurjit Singh accused opened the attack with his kirpan aiming at forehead of the complainant but complainant had raised his right hand to ward off the blow and in the process received injury on his right hand; that the second kirpan blow given by Gurjit Singh hit on the finger of right hand of the complainant; that thereafter accused Hoshiar Singh gave iron rod blow hitting the complainant on the back of his head, whereas another rod blow given by accused Jagjit Singh hit the complainant on his right elbow; that thereafter another blow given by such accused Jagjit Singh hit the complainant on left elbow, whereas Sarabjit Singh accused gave an iron rod blows hitting the complainant on the chest, right and left thigh; that when the complainant fell down after receipt of injuries, then accused Gurjit Singh gave a kirpan blow to him hitting on his left elbow; that another kirpan blow from its blunt side given by Gurjit Singh found its target on the right leg of complainant; that accused Hoshiar Singh gave an iron rod blow hitting the complainant on right elbow and left flank, whereas iron rod blow given by Jagjit Singh hit the complainant on the left side of his abdomen and on the back of his left thigh; that Sarabjit Singh gave an iron rod blow hitting the complainant on left knee; that the complainant raised an alarm; and on Dilbagh Singh and Mehar Singh intervening and a bus of Punjab Roadways coming there, which got stopped and some passengers alighted therefrom along with driver, the assailants ran away from the spot along with their respective weapons in the Maruti van; that injured was taken to Civil Hospital, Mahilpur where he was medico legally

examined and 19 injuries were found on his person. Formal FIR was registered on the basis of statement of complainant – injured Jaswinder Singh, which was recorded on the next day of incident i.e. 8.10.2000. The motive behind the occurrence as per prosecution story is that on 30.9.2000, Gurjit Singh accused had gone to the house of complainant in his absence and had misbehaved with his sister Surinder Kaur, who was all alone at home at that time. The complainant had also reached there and he had given beatings to Gurjit Singh. Bearing that grudge, Gurjit Singh, accused along with his co-accused had attacked the complainant. During investigation, the accused were arrested. However, Hoshiar Singh and Sarabjit Singh were found to be innocent, as such only Gurjit Singh and Jagjit Singh were challaned, whereas names of Hoshiar Singh and Sarabjit Singh were kept in column No.2 of the challan.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Hoshiarpur, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Hoshiarpur vide his order dated 19.7.2001 committed the case to the Court of learned Sessions Judge, Hoshiarpur from where it was entrusted to the Court of learned Additional Sessions Judge, Hoshiarpur.

On receipt of the case, learned Additional Sessions Judge, Hoshiarpur, observing that charge for offences under Sections 307/34, 326/34, 325/34, 324/34, 323/34 IPC was disclosed against accused Gurjit Singh and Jagjit Singh, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then

fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined complainant – Jaswinder Singh as PW1 and thereafter an application under Section 319 Cr.P.C. for summoning of Hoshiar Singh and Sarabjit Singh as additional accused was filed, which was allowed and additional accused had put in appearance and then charge for the offences under Sections 307, 326, 325, 324, 323 read with Section 34 IPC was framed against all the accused, namely, Gurjit Singh, Jagjit Singh, Hoshiar Singh and Sarabjit Singh, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as five witnesses, namely, Jaswinder Singh as PW1, Dilbagh Singh as PW2, Des Raj as PW3, Dr.Jagmohan Singh as PW4 and ASI Dildar Singh as PW5.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

During their defence, accused examined Dr.Gurpal Singh as DW1 and HC Lakhwinder Singh as DW2.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed CRA-S-1870-SB-2003.

I have heard learned counsel for the appellants-accused-convicts, learned Assistant Advocate General for the State of Punjab as well as learned counsel representing the petitioner/complainant besides going through the record.

Learned counsel for the appellants has argued that there is delay of 27 hours in reporting the matter to the police. Though as per the prosecution story after the incident the injured was unfit to make statement and he was declared fit to make statement after a considerable time. But the fact remains that as per prosecution story there were other two eye-witnesses of the incident, namely Dilbagh Singh, father and Mehar Singh, a brother-in-law of the injured, who could have reported the matter to the police at the earliest. However, they did not do so.

Needless to say prompt lodging of the F.I.R. unlike this case here provides spontaneous and blemish version of the incident and with the passage of time the element of truth gets diluted and chance a coloured version being introduced after due deliberation and consultations come out to be there.

Furthermore, there is a tendency amongst people of this region to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature.

Thus delay in lodging the report to the police create some doubt in the mind about truthfulness of the prosecution story putting a question mark over presence at the spot of Dilbagh Singh and Mehar Singh at the relevant time since if they had been there at the spot on Jaswinder Singh receiving injuries in natural course, their first action would have been to report the matter to the police, which was not so

done by them.

Another reason for doubting the presence at the spot of such witnesses is that they did not intervene to save Jaswinder Singh from the assailants. Dilbagh Singh being father and Mehar Singh a brother-in-law of Jaswinder Singh observing Jaswinder Singh being subjected to a merciless assault and suffering as many as 19 injuries without these two trying to intervene so as to save him from the clutches of the assailants seems highly improbable and if they had intervened in a natural course, they would have also suffered some injuries, which was not to be. However, presence at the spot of Jaswinder Singh is established since he is a stamped witness having suffered injuries in the incident. He had supported the prosecution story on material aspects naming all the four accused as assailants.

But as it comes out from the record involvement of Hoshiar Singh and Sarabjit Singh in the incident is somewhat doubtful. The police during investigation had found them not to be involved in the incident. This fact is further corroborated if we go through testimony of DW2 HC Lakhwinder Singh from Commando Training School, Bahadurgarh, who had brought the attendance register stating that accused Hoshiar Singh is serving in their unit having No.261 and as per attendance register, Hoshiar Singh was present in their unit on 7.10.2000 undergoing Commando course and he could not go therefrom without leave. He proved correct copy of the attendance register as Ex.DB. There being documentary evidence showing that Hoshiar Singh was present at Commando Training School, Bahadurgarh on the day of incident, he could not possibly had been present at the spot on that very

day and caused injuries to the complainant. The trial Court has not considered that aspect of the case properly.

Furthermore, investigation in this case seems to have been carried in an impartial manner. PW5 ASI Dildar Singh, the Investigating Officer of this case in his cross-examination admitted that Hoshiar Singh was serving in the police department at that time and he is still in police service and that he was not present at the spot at the time of occurrence. This admission takes wind out case of the prosecution as regards involvement of Hoshiar Singh in the incident. Similarly the involvement of Sarabjit Singh also becomes doubtful considering that the police had given clean chit to him after investigating the matter. Accused Hoshiar Singh while being examined under Section 313 Cr.P.C. has taken up a specific plea in that regard, whereas in his said statement, accused Sarabjit Singh stated that he was not present at the spot and has been falsely involved in this case.

With presence at the spot of two other eye-witnesses becoming improbable, we are left with deposition of complainant – injured Jaswinder Singh, who seems to have inflated the number of assailants as per the tendency noticed above.

There appears to be some variation in medical evidence and ocular evidence since injuries No.5 and 8 on the person of complainant are mentioned to be punctured wounds, which could be caused with pointed weapons, whereas according to prosecution story no such pointed weapon had been used in the incident. The defence counsel did not get the clarification from PW3 Dr.Desraj, Medical Officer, who had medico legally examined the complainant – injured in that regard, rather

a suggestion was given to him that such punctured wounds can be suffered if a person falls on a broken glass lying vertically on the ground.

The involvement of accused Gurjit Singh in the incident stands proved. From the cross-examination of complainant Jaswinder Singh, involvement of Gurjit Singh in the incident is admitted indirectly. Gurjit Singh has also suffered injuries. DW1 Dr.Gurpal Singh, Medical Officer, Civil Hospital, Garhshankar, who had medico legally examined Gurjit Singh on 7.10.2000 at Civil Hospital, Garhshankar deposed in that regard, which rather goes to show involvement of Gurjit Singh in the occurrence. However, towards the prosecution one more point of blemish comes out to be there since injuries on the person of Gurjit Singh have not been explained. Though DW1 Dr.Gurpal Singh in his cross-examination stated that possibility of injuries on the person of Gurjit Singh having been self suffered or by different falls could not be ruled out but then some sort of explanation should have come from the prosecution side in that regard. It seems that genesis of the incident was tried to be suppressed by the prosecution. During the cross-examination of PW5 Dildar Singh, Investigating Officer, clarification in that regard should have been obtained by the defence but defence failed to do so and to build up a case of counter version, which was not investigated.

However, the maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood. Merely because a witness has deposed wrongly regarding certain aspects of the case does not mean that his

statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects. Thus, separating chaff from grain, I find that the prosecution had successfully proved its charge against accused Gurjit Singh and Jagjit Singh, whereas it is not so with regard to accused Hoshiar Singh and Sarabjit Singh since a reasonable doubt arises in the mind about their participation in the incident and criminal acts attributed to them.

Therefore, conviction of Gurjit Singh and Jagjit Singh is upheld, whereas that of Hoshiar Singh and Sarabjit Singh is set aside and they are acquitted of the charge framed against them.

Regarding the sentence part, the trial Court has already shown leniency to the accused/convicts by awarding substantive sentence of only two years for the offences under Sections 326 and 325 IPC. There is no scope for reduction of sentence.

In that way **CRA-S-1870-SB-2003** filed by appellant – accused – convict Hoshiar Singh and Sarabjit Singh is allowed, whereas that of appellants – accused – convicts Gurjit Singh and Jagjit Singh is dismissed.

Appellants – accused – convicts Hoshiar Singh and Sarabjit Singh are on bail. Bonds and sureties furnished by them are discharged.

Appellants – accused – convicts Gurjit Singh and Jagjit Singh are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Hoshiarpur is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

As far as, **CRR-253-2004** is concerned, I do not find any

material to justify framing of charge for offence under Section 307 IPC against the accused or enhancement of the sentence of imprisonment imposed upon Gurjit Singh and Jagjit Singh.

Therefore, CRR-253-2004 stands dismissed.

21.3.2018  
Brij

(H.S.MADAAN)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No