

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

**CRA-S-919-SB-2016
DECIDED ON:14.12.2018**

SOMI

..APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. V.S. Bedi, Advocate for the appellant.

Mr. A.S. Gill, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this appeal challenge has been laid to order dated 05.02.2016 of the trial court, whereby appellant has been held guilty and convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of three years and pay fine of Rs.5000/-. In default thereof, to further undergo rigorous imprisonment for two months.

Briefly, on receipt of information that injured- Kulwinder Singh @ Mohni was referred to PGI, Chandigarh, ASI Sukhwinder Singh after collecting ruqa from Police Station Sadar, Khanna, when was proceeding to PGI, Chandigarh, complainant-Lakhbir Singh @ Gogi met him on the main gate of aforesaid police station and got recorded his statement that he was doing the work of welding. His

brother Kulwinder Singh @ Mohni and Rajvir Singh were working with him in his welding workshop. On 03.10.2013, injured Kulwinder Singh @ Mohni was going ahead of them. Around 9:30 p.m. when, he reached near the house of Somi, accused Somi stopped his cycle and dragged him inside his house. Thereafter, appellant-accused gave axe blow on the head of Kulwinder Singh @ Mohni. As a result thereof, he fell on the ground. Appellant-accused also gave blows of Axe on both side of his neck, mouth and right arm with an intention to kill him. On raising alarm by his brother Lakhbir Singh @ Gogi, appellant-accused fled away from the spot, leaving behind the Axe on the spot. The motive behind the occurrence was that accused suspected that injured-Kulwinder Singh @ Mohni was having illicit relation with his wife. The above statement of complainant-Lakhbir Singh was converted into FIR No.202 dated 04.10.2013 under Section 307 IPC.

After completion of necessary investigation, final report under Section 173 (2) Cr.P.C. was filed against the appellant. On committal of Court of Sessions by Id. Judicial Magistrate, appellant was charge sheeted under Section 307 IPC.

Prosecution in support of its case examined as many as 12 witnesses.

While recording the statement of appellant under Section 313 Cr.P.C., the entire incriminating circumstances, appearing in prosecution evidence were put to him, to which, he denied and pleaded his false allegation. In his defence, appellant examined his wife Gurdip

Kaur as DW1 and closed evidence.

After hearing both the sides, trial court held guilty and sentenced the appellant in the manner as narrated above in the opening part of the judgment.

Learned counsel for the appellant contends that no x-ray report was produced by the prosecution on record to show that injured Kulwinder Singh @ Mohni had received any grievous injury. Therefore, in the absence of any x-ray report, appellant could not have been convicted under Section 324 IPC. Referring to para 22 of the impugned judgment, learned counsel contends that trial court itself discarding the testimony of the prosecution witnesses held that injuries suffered by Kulwinder Singh @ Mohni were simple in nature. This fact was also proved from discharge of injured from hospital on the same day.

On the other hand, learned State counsel opposing the above submissions of learned counsel for the appellant, pleaded the legality and validity of impugned judgment of conviction and order of sentence.

Having given anxious consideration to the rival submissions, this Court finds the instant appeal completely devoid of any merit for reasons to follow:-

1. PW-12, Dr. Dinesh Kumar of PGI, Chandigarh testified that on examination of injured Kulwinder Singh @ Mohni on 07.10.2013 vide CR No.201304302545, he found a comminuted symphysis fracture of mandible on the person of injured and he was

operated and ORIF (open reduction internal fixation) was done under general anesthesia. The aforesaid injury suffered by injured was grievous in nature, vide medico legal summary Ex.PY of Kulwinder Singh @ Mohni, bearing his signature.

Since, there is definite medical opinion given by medical expert i.e. PW-12 Dinesh Kumar, who had operated the injured, about the nature of injury suffered by Kulwinder Singh, therefore, in the considered opinion of this Court, there was no necessity of any x-ray report.

(2) The appellant was charge-sheeted under Section 307 IPC, whereas, he has been convicted under Section 324 IPC. Since, there was no concrete evidence against the appellant for committing offence under Section 307 IPC, therefore, the trial court, in its wisdom has rightly reduced the offence allegedly committed by him and held him guilty under Section 324 IPC instead of Section 307 IPC.

Considering the above factual aspect of the case, the impugned judgment of conviction dated 05.02.2016 is upheld. However, the appellant deserves some leniency in the matter of sentence for the following reasons:-

By now, he has already faced protracted trial for around 5 years. He has already undergone 4 months and 7 days out of the total sentence of 3 years. There is no other case pending against the appellant. Maximum punishment under Section 324 IPC, is 3 years and fine or both. The appellant has been given full dose by the trial court.

Considering the fact that appellant is first offender and caused injury to Kulwinder Singh @ Mohni, on suspicion that he had illicit relation with his wife, sentence of the appellant, is reduced from three years to two years, subject to the condition that appellant would deposit Rs.20,000/- in Court within two months from today, for onwards payment to injured- Kulwinder Singh @ Mohni as compensation.

Order of sentence is modified accordingly.

Copy of this order be sent to ld. Chief Judicial Magistrate/Duty Magistrate, Ludhiana for issuance of arrest warrants of the appellant to undergo remaining sentence of imprisonment awarded by the trial court vide judgment dated 05.02.2016.

14.12. 2018

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**(RAMENDRA JAIN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**