

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

Crl. Appeal No.S-1270-SB of 2002 (O&M)

Date of Decision: April 27, 2018

Jagsir Singh @ Seera and another

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sidhu, Advocate
for the appellants.

Ms.Seena Mand, Deputy Advocate General, Punjab
for the respondent-State.

None for the complainant.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against respondent State of Punjab, challenging the judgment of conviction and order of sentence dated 08.08.2002 passed by learned Addl. Sessions Judge, Bathinda, whereby they were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one year each under Section 307 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of two years each under Section 324 IPC and to undergo rigorous imprisonment for a period of one and half year each under Section 324 read

with 34 IPC. Accused-appellant Jagsir Singh was further convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of four months whereas accused-appellant was convicted under Section 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of three months.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Bathinda, are as under:-

“2) As per commitment order, the case of prosecution is that on receipt of ruqa from the hospital, Investigating Officer went to hospital and moved application Ex.PD to the Medical Officer to know whether injured Sukhdev Singh is fit for statement or not, and doctor through endorsement Ex.PD/1 declared injured unfit for statement. Again, the Investigating Officer moved application Ex.PE on 5.1.2000 and doctor through endorsement Ex.PE/1 declared injured fit for statement. Thereafter, complainant Sukhdev Singh son of Gurbachan Singh, Caste Mehra Sikh r/o Tungrali, aged 19 years, got recorded his statement Ex.PF on 5.1.2000, stating therein that he is resident of Tungrali and they are three brothers and four sisters. Two brothers were younger to him and he is labourer. He is working as a Siri with Baltej Singh son of Jang Singh, Jat, r/o Tungrali. 10-15 days earlier, Jagsir Singh alias Seera s/o Gurdial Singh, Jat r/o Tungrali had stopped his mother when she was returning from the fields and had used bad language and he had complained about that to Jagsir Singh due to which hot words were exchanged but respectables had separated them. On 4.1.2000, he and his father Gurbachan Singh alongwith Baltej Singh son of Jang Singh were going to his fields to irrigate the fields, at about 10.00 p.m. when he and his father Gurbachan Singh had gone to see the khaal and his father was behind him at a distance of 10-15 karams and when he reached near the Pahi, where the field of Janta Singh son of Chhota Singh is, then at the turning of Khal, Jagsir Singh alias Seera son of Gurdial Singh, armed with Kulhari and another person with him to whom he did not know, armed with Takua, were standing and Jagsir Singh raised lalkara stating that Sukhdev Singh will not be allowed to go, as he had complained about him in the village for teasing his mother. Stating so, Jagsir Singh gave a Kulhari blow from direct side on his head and other person gave two direct blows on his head and he fell down on the ground and Jagsir Singh gave more Kulhari blows which fell on his left elbow and right shoulder, from reverse side, and his father Gurbachann Singh raised raula of 'Marta-Marta'. Then Jagsir

Singh and the other person ran away from the spot, with their respective weapons. The occurrence was witnessed by his father Gurbachan Singh and his father Gurbachan Singh and Baltej Singh got him admitted in the hospital where he was under treatment of doctor. The motive behind the occurrence is stated to be that 10-15 days earlier to occurrence Jagsir Singh alias Seera son of Gurdial Singh after stopping mother of the complainant Tej Kaur, when she was returning from the fields, had used bad language and for that he had complained to Jagsir Singh in the village and due to that reason Jagsir Singh and the person accompanying him with common intention caused injuries to him with Kulhari and Takua, with intention to kill and injured him. The Investigating Officer made endorsement over the same as Ex.PF/1, on the basis of which formal FIR Ex.PF/2 under Section 307/324 read with Section 34 of the IPC was registered.”

During investigation, blood-stained shirt and *parna*, pair of chappals were taken into police possession. Accused were arrested. *Kulhari* and *Takua* were recovered on the basis of disclosure statements suffered by accused-appellants. Statements of witnesses were recorded. Rough site plan was prepared. After necessary investigation, challan was presented against accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding *prima facie* case, the accused-appellants were charge-sheeted under Sections 307, 324 and 324 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Mohan Lal, who medico legally examined Sukhdev Singh on 05.01.2000 and found following injuries:-

1. *Incised wound 5½ cm x ½ cm on the right parieto occipital region 10 cm. behind and above the pinna of right ear. Advised X-ray.*
2. *Incised wound 5 cm x ½ cm x ½ cm on the right side of*

occipital region running anterior, posteriorly, anterior end 2 cm. behind the left end of injury No.1. X-ray advised.

3. *Incised wound 4½ cm x ½ cm running parallel to injury No.2, 2½ cm below and right to injury No.2. Advised X-ray.*
4. *Abrasion 2 cm x 2 cm on the dorsal aspect of left elbow.*
5. *Contusion 6 cm x 2 ½ cm on the upper surface of right shoulder reddish in colour.*

PW-2 Sukhdev Singh, complainant, deposed as per prosecution version. PW-3 Gurbachan Singh, father of the complainant, also deposed as per prosecution version. PW-4 Head Constable Darshan Singh, formal witness, tendered into evidence his affidavit Ex.PJ. PW-5 Head Constable Kulwant Singh deposed regarding investigation, arrest of accused and disclosure statements suffered by the accused in the present case. PW-6 Constable Krishan Singh, also formal witness, who tendered into evidence his affidavit Ex.PT. PW-7 Boota Singh did not support the prosecution version and was got declared hostile. PW-8 Nattha Singh, proved scaled site plan Ex.PU. PW-9 ASI Balwinder Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. Accused-appellant Jagsir Singh further pleaded that case has been falsely planted against him. Sukhdev Singh complainant, was working as Siri with Baltej Singh, who is inimical towards them as Baltej Singh was challaned under Section 107/151 Cr.P.C. on the application moved by him and the present case is registered against him at

the instance of Baltej Singh. He and his co-accused did not cause any injury to Sukhdev Singh. Similar plea was taken by accused Sher Singh.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants accused as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that no case under Section 307 IPC is made out as none of the injury has been declared grievous or dangerous to life. Even injured Sukhdev Singh himself has not deposed that injuries were given with intention to kill him. He further argued that PW-1 Dr.Mohan Lal has declared all the injuries as simple in nature. Even as per the evidence, the *lalkara* was only that Sukhdev Singh should not be allowed to go without harm. Learned counsel for the appellants next argued that all these facts show that no offence under Section 307 IPC is made out. At the most the case is covered under Sections 323 and 324 IPC. He further contended that accused have been falsely implicated in the present case as accused have dispute with Baltej Singh and injured Sukhdev Singh was working as Siri with Baltej Singh and accused have been falsely implicated in the present case at the instance of Baltej Singh. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved for offence under Section 307 IPC. There

are repeated blows on the head with deadly weapons, which is vital part of

the body. He further argued that PWs have consistently deposed regarding prosecution version, which is supported by medical evidence. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record.

The perusal of the record shows that PW-1 Dr.Mohan Lal, in his chief-examination has stated that injuries No.1 to 3 were kept under observation and injuries No.4 and 5 were simple. Injuries No.1 to 3 were with sharp edged weapon whereas injuries No.4 and 5 were with blunt weapon. He further stated that injuries No.1 to 3 were also declared simple in nature vide his endorsement Ex.PE/1. In cross-examination, PW-1 stated that all the injuries were simple in nature. As per his MLR, no injury was dangerous to life individually or collectively.

In view of the medical evidence produced by the prosecution, none of the injury was grievous or dangerous to life. PW-2 Sukhdev Singh, is the injured witness. In chief-examination, he stated that when he and his father Gurbachan Singh reached near the land of Janta Singh, Jagsir Singh armed with *kulhari* raised *lalkara* that Sukhdev Singh should not be allowed to go without harm. I have gone through the statement of injured Sukhdev Singh minutely and carefully. There is no allegation by the injured that injuries were given with intention to kill him. Rather, as per *lalkara* also, it looks that the intention of the accused was to cause injuries and not to kill Sukhdev Singh.

Further, I find that accused have not caused any injury to father of Sukhdev Singh. In cross-examination, Sukhdev Singh admitted that he is

working as *Siri* with Baltej Singh but he denied the suggestion that there was dispute between Baltej Singh and Janta Singh. From the statement of injured PW-2 Sukhdev Singh also, it cannot be held that intention of the accused was to kill him.

From the evidence on record, I find that offence under Section 307 IPC has not been proved by the prosecution by bringing cogent evidence. The conviction of the appellants under Section 307 IPC is not as per evidence and law. Therefore, the appellants are acquitted of the charge under Section 307 IPC and their conviction under Section 307 IPC is set aside.

As regarding the argument that accused-appellants have been falsely implicated in this case, I find that no defence evidence has been produced on the record by the accused. There is nothing on the record to prove the defence of the accused that they have been falsely implicated in the present case. I have gone through the statements of the witnesses. They have consistently deposed regarding prosecution version. There are no material contradictions or material improvements in their statements which may go to the root of the case. There is also nothing in their cross-examinations, which may make their statements unreliable. The oral statements of the PWs are duly supported with medical evidence. Therefore, the conviction of the appellants under Sections 323, 324 and 34 IPC is correct, as per evidence and law and the same is upheld.

Learned counsel for the appellants, in the alternative, prayed for reduction of sentence.

From the record, I find that FIR in the present case is of the year 2000 and eighteen years have already passed. Appellant Jagsir Singh

has already undergone imprisonment of 3 years 4 months and 3 days including remission of 2 years 3 months and 3 days whereas appellant Sher Singh, when released on bail, has already undergone more than 1 year.

Keeping in view the above facts and in view of the nature of injuries and the fact that appellants have suffered a lot due to long protracted criminal proceedings, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same. The appellants is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellants Jagsir Singh @ Seera and Sher Singh, are on bail, their bail/surety bonds stand discharged.

April 27, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE
Yes
No