

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

**CRA-S-957-SB-2004 (O&M)**

**Date of decision : 23.05.2019**

Didar Singh and others

..... Appellants

VERSUS

State of Punjab

..... Respondent

**2**

**CRR-1275-2004 (O&M)**

Hari Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. K.S. Kahlon, Advocate, for the appellants  
in CRA-S-957-SB-2004 and  
for respondent(s) in CRR-1275-2004.

Mr. Kulvir Narwal, Advocate for  
Mr. H.C. Rahi, Advocate, for the petitioner  
in CRR-1275-2004.

Mr. H.S. Sullar, DAG, Punjab.

Mr. Vipin Mahajan, Advocate for the complainant.

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**SUDHIR MITTAL, J.**

This judgment shall decide aforementioned appeal and revision petition as both are directed against the same judgment of conviction dated 17.4.2004 and order of sentence dated 19.4.2004, passed by the Addl. Sessions Judge (Adhoc), Fast Track Court, Gurdaspur.

2. According to the case of prosecution, on 13.5.2000 Hari Singh son of Tara Singh, his brother Joginder Singh son of Gurcharan Singh and nephew Jaspal Singh son of Joginder Singh were sitting in the fields of Joginder Singh. Their servants Goga Masih and Jeeta Masih were also present. At about 7.00 p.m., Joginder Singh sent his servants Goga Masih and Jeeta Masih to Kulwant Singh for bringing the Patta (belt) of the engine from the fields of Didar Singh. After some time Goga Masih came running and told them that Didar Singh and his son Rupinder Singh had forcibly detained Jeeta Masih and were beating him. On hearing this, Joginder Singh and his son Jaspal Singh hurriedly went to the fields of Didar Singh, where they saw Didar Singh and Rupinder Singh beating up Jeeta Masih whereas other accused Bikramjit Singh son of Gurcharan Singh was standing with a datar in his hand and Joginder Singh son of Gurcharan Singh was armed with a gandasi. On being asked why they were beating Jeeta Masih, Didar Singh raised a lalkara that these people be taught a lesson for opposing him in Sarpanch election. He caught hold of a datar and caused injuries to Joginder Singh. Rupinder Singh also caused injuries to him with a gandasi. Bikramjit Singh son of Darshan Singh caused an injury on Jaspal Singh with a datar then Bikramjit Singh son of Gurcharan Singh also caused injuries on Jaspal Singh with a datar. Rupinder Singh also caused injuries with gandasi on Jaspal Singh. This incident was witnessed by Jeeta Masih and Hari Singh. On hearing the noise, Sarpanch Sukhdev Singh also reached at the spot and thereafter, accused persons ran away. The injured were then admitted to hospital and their medico legal examination was done.

3. FIR No.61 dated 14.5.2000, was registered at Police Station Dera Baba Nanak, under sections 307, 326 324, 323, 148 and 149 of the Indian Penal Code (45 of 1860) (for short “IPC”) regarding the aforementioned incident. Five persons were named as accused. During the course of the trial accused Bikramjit Singh son of Gurcharan Singh passed away on 23.3.2004 resulting in abatement of proceedings against him. On conclusion of the trial, the remaining four accused were convicted and sentenced as follows:-

| Name of the accused                     | Section of IPC | RI        | Fine      | I/D of payment of fine |
|-----------------------------------------|----------------|-----------|-----------|------------------------|
| Didar Singh                             | 148            | 01 year   | Rs.100/-  | RI for 15 days         |
|                                         | 307            | 07 years  | Rs.5000/- | RI for 06 months       |
|                                         | 307<br>r/w 149 | 02 years  | Rs.1000/- | RI for 01 month        |
|                                         | 325<br>r/w 149 | 01 year   | Rs.100/-  | RI for 15 days         |
|                                         | 323 r/w<br>149 | 06 months |           |                        |
|                                         | 323<br>r/w 149 | 06 months |           |                        |
|                                         | 323<br>r/w 149 | 06 months |           |                        |
| Bikramjit Singh son of<br>Darshan Singh | 148            | 01 year   | Rs.100/-  | RI for 15 days         |
|                                         | 307<br>r/w 149 | 02 years  | Rs.1000/- | RI for 01 month        |
|                                         | 307            | 05 years  | Rs.5000/- | RI for 06 months       |
|                                         | 325<br>r/w 149 | 01 year   | Rs.100/-  | RI for 15 days         |
|                                         | 323 r/w<br>149 | 06 months |           |                        |
|                                         | 323            | 06 months |           |                        |
|                                         | 323<br>r/w 149 | 06 months |           |                        |

|                |                |           |           |                 |
|----------------|----------------|-----------|-----------|-----------------|
| Joginder Singh | 148            | 01 year   | Rs.100/-  | RI for 15 days  |
|                | 307<br>r/w 149 | 02 years  | Rs.1000/- | RI for 01 month |
|                | 307<br>r/w 149 | 02 years  | Rs.1000/- | RI for 01 month |
|                | 325<br>r/w 149 | 01 year   | Rs.100/-  | RI for 15 days  |
|                | 323 r/w<br>149 | 06 months |           |                 |
|                | 323<br>r/w 149 | 06 months |           |                 |
|                | 323            | 06 months |           |                 |

Sentences were to run concurrently.

4. Learned counsel for the appellants informed that Rupinder Singh son of Didar Singh had also passed away during the pendency of the appeal and the appeal filed by him had abated vide order dated 20.4.2017.

5. On the merits of the case, learned counsel for the appellants submits that the incident took place in the field of Didar Singh appellant No.1. He also received injuries in the incident and the prosecution has not been able to explain those injuries. The police did not register a cross case against the complainant side on account of political pressure. The appellants are thus, entitled to benefit of doubt. In this regard, reliance is placed upon **‘Lakshmi Singh and others Vs. State of Bihar 1976 AIR (SC) 2263.’** and **‘Bakhtawar Singh Vs. Baldev Singh and others 1996(2) RCR (Criminal) 256.’** It is further submitted that the offence under section 307 IPC, is not attracted because PW-6 Dr. Gurmanjit Rai, has only opined that injury Nos. 1 and 2 on Joginder Singh and injury

No.1 on Jaspal Singh were dangerous to life and not that they were sufficient to cause death in the ordinary course of nature. In this regard, reliance is placed upon **'Pashora Singh and another Vs. The State of Punjab, JT 1992 (6) SC 1.'**

6. Learned State counsel as well as counsel for the complainant support the findings returned by the Addl. Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur. They state that the motive for the crime was that Sukhdev Singh brother of injured Joginder Singh had opposed Didar Singh appellant No.1 in the election for the post of Sarpanch and also there was a dispute between the parties regarding tethering of cattle in a common passage. A total of 14 injuries were caused to Joginder Singh and Jaspal Singh out of which 03 were declared dangerous to life and thus, the offence under section 307 IPC, is attracted. The appellants are not entitled to benefit of doubt as their version regarding injuries suffered by Didar Singh appellant No.1 has been dis-believed by the police as well as the trial Court. The police did not record the cross-version and therefore, Didar Singh filed a private complaint, which was however, dismissed vide a separate judgment dated 17.4.2004. Appeal against the said judgment has been dismissed by a Division Bench of this Court vide judgment dated 16.5.2018, passed in CRM-A-1499-MA-2017 and SLP preferred thereagainst has also been dismissed vide order dated 22.2.2019 passed in SLP (Criminal)-8950-2018. Copies of the judgment of the High Court and order of the Supreme Court have been handed over by learned counsel for the complainant. The version of Didar Singh having been found to be false, the judgment of **Lakshmi Singh's case** (supra)

cannot apply. The appeal is thus, without merit and deserves to be dismissed.

7. Learned counsel representing the petitioner in the revision petition submits that the injured persons suffered injuries which were dangerous to life and remained in hospital for a long period of time. Both were admitted to hospital on 14.5.2000 and Joginder Singh was discharged on 5.6.2000, whereas Jaspal Singh was discharged on 25.5.2000. Thus, they are entitled to compensation of Rs.5 lacs and Rs.2 lacs, respectively.

8. It is true that when the prosecution fails to explain the injuries on the accused persons, it must be held that the prosecution witnesses are not coming forth with the correct facts and benefit of doubt must go to accused persons. However, in the present case, the injuries suffered by Didar Singh were simple in nature except for injury No.3, which was declared grievous. The said injury was inflicted on the first phalanx of left index finger. DW-3 Dr. Paramjit Kaur, who conducted the medical examination of Didar Singh also admitted that the possibility of injuries being self suffered cannot be ruled out. The police did not register a cross case which led Didar Singh to file a private complaint. The said complaint was dismissed vide separate judgment dated 17.4.2004, passed by the same Court and appeal thereagainst has been dismissed by a Division Bench of this Court vide judgment dated 16.5.2018, passed in CRM-A-1499-MA-2017. This judgment has not been interfered with by the Supreme Court as SLP (Criminal)-8950-2018 preferred against the same, has been dismissed. Thus, the version of Didar Singh has not been

found to be true and he cannot contend that he and his co-appellants are entitled to benefit of doubt by following the principle laid down in **Lakshmi Singh's case** (supra). It stands proved that the version put-forth by the appellants, is false and it does not lie in their mouth to suggest that prosecution has not been able to explain the injuries of Didar Singh.

9. The next argument of learned counsel for the appellants, is that section 307 IPC, is not attracted in the facts and circumstances of this case. Is it so ?

10. The prosecution has successfully proved that there were differences between the parties on account of election to the post of Sarpanch. PW-1 Hari Singh, PW-2 Joginder Singh and PW-3 Jaspal Singh have all deposed to this effect. PW-1 Hari Singh and PW-3 Jaspal Singh have not been cross examined regarding the positive assertion made by them in this respect. PW-2 Joginder Singh, although, admits that his brother Sukhdev Singh was elected unanimously but, this does not lead to the inference that there was no dispute between the parties. The cross examination of this witness itself suggests that Didar Singh had contested elections twice/thrice in the past and thus, it is possible that he may have wanted to contest the election in question also, but was prevailed upon not to contest. He may not have been a willing party to this decision and may have nursed a grudge on this account. The motive has thus, been proved by the prosecution beyond reasonable doubt. The cross version set up by Didar Singh appellant No.1 has been found to be false, the natural corollary of which is that the case of the prosecution stands proved. Thus, the accused persons illegally detained Jeeta Masih (servant of the

complainants) and when the complainant party went to get him released, they were attacked with datars and gandas. Joginder Singh suffered total of four injuries out of which two were declared dangerous to life. Injury No.1, which was declared dangerous to life, was an incised wound of 15.5 cm. x 0.5 cm. on middle and left side of forehead starting from 1.5 cm. above medial end of eye-brow and upto the ear pinna. Injury No.2, also declared dangerous to life, was an incised wound of 6 cm. x 0.5 cm. on the left side of the head vertically placed, 10 cm. above upper margin of ear pinna. Jaspal Singh suffered total of 10 injuries out of which injury No.1 was declared dangerous to life and was an incised wound of 12 cm x 15 cm. on the left side of the face obliquely placed, extending from mandible to back of attachment of ear pinna, separating the lower part of ear pinna. These injuries were caused with sharp edged weapons with the intention of causing the same because the appellants would have known that the complainants would come to their fields to get Jeeta Masih, released. The injuries have been caused on vital parts of the body resulting in hospitalization.

11. Section 307 IPC provides for punishment for attempt to commit murder. The requirement of this provision is that the act done should be with an intention or knowledge that, if death was caused, it would amount to murder. The circumstances in which the act is done is also relevant. Every culpable homicide is murder, if the person committing the act knows that it is so imminently dangerous that in all probability, it would cause a bodily injury likely to cause death and there is no excuse for committing such an act. This is with reference to clause

fourthly of section 300 IPC. Now, let us examine the evidence in this case once again. The appellants had forcibly detained Jeeta Masih (servant of the complainants) and they were aware that the complainants would come to get him released. Thus, the appellants were spoiling for a fight. Although, the complainants came unarmed, injuries dangerous to life, were inflicted on vital parts of their body with sharp edged weapons. There is no justifiable excuse for the action of the appellants and they knew that injuries could cause death as they were inflicted with a sharp edged weapon with sufficient force which is evident from the length, depth and seat thereof. The circumstances and the knowledge, imputable to the appellants would thus, bring their act within the definition of section 307 IPC as in case death had been caused, it would have amounted to murder. The term used by the doctor is 'dangerous to life' and the word 'danger' is defined in Oxford dictionary, to mean something that causes peril or exposure to harm. The expression 'dangerous to life' obviously implies that the act was perilous to the lives of the injured persons, which further implies that the injury was likely to cause death. The judgment in **Pashora Singh's case** (supra) is not applicable to the facts of this case. Even otherwise, the said judgment does not lay down any principle of law. The judgment has been given on appreciation of the facts and circumstances of the said case as is evident from para 08 thereof, which is reproduced below:-

“8. In our view, in the facts and circumstances of the case, no offence under Section 307 of the Indian Penal Code is held established against the appellant Pashora Singh. According to the statement of Pal Singh injured himself, Pashora Singh had first

given a Gandasa blow on right knee of Amar Singh. Lahora Singh then gave Gandasa blow on the right hand of Amar Singh from the reverse side. Pal Singh thereafter states that he raised an alarm and tried to intervene, when Lahora Singh gave two Gandasa blows to him. Pashora Singh also gave a Gandasa blow on his head. According to the above statement of Pal Singh, two injuries on his head were inflicted by Lahora Singh and the third one by Pashora Singh. It is an admitted case of the prosecution that the accused persons had a grievance against Amar Singh and his uncle Malkiat Singh for having launched some security proceedings against the accused persons and they had come with an intention of taking revenge from Amar Singh and Malkiat Singh. According to the statement of Pal Singh, Pashora Singh had given a Gandasa blow on the right knee of Amar Singh and Lahora Singh also gave a Gandasa blow on the right hand of Amar Singh from the reverse side. Admittedly, the injuries on Amar Singh are found to be simple in nature and this clearly goes to establish that the accused persons had no intention of causing death of any person nor any injuries found on Pal Singh were stated to be sufficient in the ordinary course of nature to cause death. According to Pal Singh, when he raised an alarm and tried to intervene, Lahora Singh inflicted two Gandasa blows and Pashora Singh gave third blow on his head and thereafter the accused persons ran away. In the circumstances mentioned above, we are clearly of the view that the High Court was not right in holding that the accused had an intention to cause the death of Pal Singh or the knowledge of possible death of Pal Singh. Only injury No. 1 on the head of Pal Singh has been described as dangerous to life and the High Court has itself recorded a finding that the previous litigation between the parties had nothing to do with Pal Singh and it was not established as to which of the two accused had inflicted injury No. 1 on the head of Pal Singh. Thus, in the above facts it cannot be held that Pashora Singh had committed any offence under Section 307 read with Section 34 of the Indian Penal Code. The appellant Pashora Singh in the facts

and circumstances of the case can only be held guilty for an offence under Section 326 read with Section 34 of the Indian Penal Code.”

12. The stage is now set for examining the revision petition filed by the complainant party. They have claimed compensation to the tune of Rs.5 lacs for Joginder Singh and Rs.2 lacs for Jaspal Singh to compensate them for the serious injuries caused and the length of hospitalization. Before I express any opinion on this issue, it would be appropriate to refer to custody certificates dated 9.5.2019, prepared by Karanjit Singh, Superintendent Central Jail, Gurdaspur, which have been handed over in Court by the learned State counsel. According to these certificates, Appellant Didar Singh has undergone actual custody of 01 year, 07 months and 03 days and custody of 02 years, 09 months and 14 days inclusive of remission. Appellant Joginder Singh has undergone actual custody of 21 days and appellant Bikramjit Singh has undergone actual custody of 01 year, 01 month and 01 day and custody of 02 years, 01 month and 29 days inclusive of remission. Joginder Singh has been substantively convicted under section 323 IPC, only. Post conviction, they have all been on bail since the year 2004-2005. A period of approximately 14 years has elapsed since they were granted bail and prior to that they had undergone a trial for a period of approximately 02 years. There is no other case pending or decided against any of the appellants and there is no complaint that they have threatened the complainant side or have acted vindictively against them during the period their sentence

has remained suspended. The parties are co-villagers and keeping in view the aspect of promotion of harmony in the village as well as the fact that there has been no complaint against the appellants during the period of suspension of their sentence, it would be in the interest of justice, if order of sentence of Didar Singh and Bikramjit Singh, is modified and they are sentenced to the period already undergone.

13. So far as Joginder Singh is concerned, keeping in view his custody period of 21 days only, I deem it appropriate to exercise powers under Section 360 Code of Criminal Procedure, 1973 to release him on probation. Accordingly, he is directed to be released on probation on his furnishing Probation bond with adequate surety within 15 days from today, for a period of six months, to the satisfaction of the successor Court of the then Addl. Sessions Judge (Ad hoc), Fast Track Court/Chief Judicial Magistrate, Gurdaspur. His probation period shall commence from the date he furnishes the probation bond, undertaking therein to keep the peace and be of good behavior.

14 The appellants shall also compensate injured-Joginder Singh by paying him a sum of Rs.2 lacs and injured Jaspal Singh by paying him a sum of Rs.1 lac within a period of 08 months from the date of receipt of a certified copy of this judgment. In case of failure to pay, the said amount shall be recoverable from them, in accordance with law.

15. With the aforementioned observations, the conviction of the appellants is maintained and their sentence stands modified. The appeal is accordingly, dismissed and the revision petition stands disposed of.

16. Copy of this judgment be sent to the successor Court of the then Addl. Sessions Judge (Ad hoc), Fast Track Court/Chief Judicial Magistrate, Gurdaspur, for compliance.

17. A photocopy of this judgment be placed in the file of the other connected case.

**(SUDHIR MITTAL)**  
**JUDGE**

**23. 05.2019**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No