

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-786-SB-2005 (O&M)
Decided on : 18.10.2019

Chhinda Singh and others
... Appellant(s)
Versus
State of Punjab
... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Umaid Singh Mann, Advocate as *Amicus Curiae*
for the appellant(s).
Ms. Jaspreet Kaur, AAG, Punjab.

MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment dated 11th March, 2005 and order of quantum of sentence dated 12th March, 2005, passed by Addl. Sessions Judge, Moga, whereby, the accused-appellant(s) were convicted and sentenced as under : -

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) in default of payment of fine(s)</i>
<i>Chhinda Singh</i>	<i>307 IPC</i>	<i>Rigorous Imprisonment (RI) for 08 years</i>	<i>₹ 5000/-</i>	<i>RI for one year</i>
<i>1. Harpreet Singh, 2. Nathu Singh, 3. Seera Singh, 4. Jang Singh, 5. Darshan Singh</i>	<i>307/149 IPC</i>	<i>Rigorous Imprisonment (RI) for 06 years each</i>	<i>₹ 4000/- each</i>	<i>RI for nine months each</i>

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) of default payment of fine(s)</i>
1. Chhinda Singh, 2. Harpreet Singh, 3. Nathu Singh, 4. Seera Singh, 5. Jang Singh, 6. Darshan Singh	148 IPC	Rigorous Imprisonment (RI) for 01 year and 06 months each	₹ 1000/- each	RI for one month each
1. Harpreet Singh, 2. Seera Singh, 3. Jang Singh, 4. Darshan Singh	323 IPC	Rigorous Imprisonment (RI) for six months each	₹ 500/- each	RI for one month each
1. Chhinda Singh, 2. Nathu Singh,	323/149 IPC	Rigorous Imprisonment (RI) for four months each	₹ 300/- each	RI for 15 days each

All the sentences were ordered to run concurrently.

2. Prosecution case in brief is that on 12th July, 2002 at about 10:00 P.M. when the complainant PW-2/Resham Singh was present in his house along with his family, a fault occurred in the electricity supply to their house, as a result of which, they started making efforts to restore it by way of a kundi connection. While they were doing so, appellant No.1/Chhinda Singh armed with a wooden baton (balla) and the other accused-appellants armed with dangs came to the spot and questioned the complainant about the installation of illegal electricity connection. This led to a verbal altercation between them. Thereafter, appellant No.1-Chhinda Singh inflicted a baton blow on the head of PW-2/Resham Singh. Accused-appellant No.2/Harpreet Singh inflicted a dang blow which too hit him on his head. Accused-appellant No.3/Nathu Singh inflicted a dang blow on the right eyebrow of the complainant and accused-appellant No.4/ Seera Singh hit the complainant on his left eyebrow with the dang. As a result of which, the

complainant fell down on the ground. While the complainant was lying fallen on the ground, accused-appellant No.6/Darshan Singh inflicted a dang blow hitting him on his left temporal region. On a hue and cry raised by the complainant, Jagjit Singh and Malkeet Kaur rushed to the spot and witnessed the occurrence. The accused-appellants did not stop at that, but continued to inflict injuries on PW-3/Major Singh, son of the complainant and his nephew Boota Singh. Complainant-Resham Singh (PW-2) and his son Major Singh along with Boota Singh were taken to Civil Hospital, Baghapurana. Since the complainant had received serious injuries, he was got admitted in Civil Hospital, Moga by Jagjit Singh. It was stated that the motive behind the occurrence was that the complainant was trying to draw illegal electricity by way of a kundi connection and the accused-appellants were restraining him from doing so. After inflicting the injuries on the complainant, the accused-appellants fled from the place of occurrence. Injury No.1 on the person of PW-2/Resham Singh, was a lacerated wound on the right side of the scalp and kept under observation. After receipt of the radiological report Ex.P-5, the same was opined to be dangerous to life.

3. On completion of investigation, challan was presented. The prosecution in support of their case examined as many as seven witnesses including the two stamped witnesses i.e. PW-2/Resham Singh and PW-3/Major Singh, besides examining the Doctors, who had medically treated the injured witnesses. The prosecution gave up PWs Boota Singh, Jagjit Singh and Malkeet Kaur and two others as unnecessary. When examined under Section under 313 Cr.P.C. the accused-appellants pleaded false implication. It was stated by them that in fact, it was the complainant party comprising of Major Singh, Resham Singh and others who had attacked the

appellants-Harpreet Singh and when Jang Singh tried to save him from the attack of the complainant party, both were inflicted injuries by the complainants. Accused-appellants/Harpreet Singh and Jang Singh took the specific plea of self defense, whereas, the other accused-appellants pleaded that they were not present at the place of occurrence.

4. On a perusal of the evidence and other material on record, the trial Court convicted the accused-appellants and sentenced them as already detailed hereinabove.

5. Ld. *Amicus Curiae* has primarily challenged the impugned judgment on the ground that the three material witnesses i.e. eye-witnesses Jagjit Singh, Malkeet Kaur and injured Boota Singh were not examined by the prosecution. He has further argued that the ingredients to attract the mischief of Section 307 IPC are clearly amiss in the instant case as neither there was an intention nor knowledge on the part of the accused-appellants to murder the complainant PW-2/Resham Singh. It has also been urged that the injuries on the person of the accused-appellants/Jang Singh have gone unexplained from which an inference can clearly be drawn that in fact it was not a pre-mediated attack, but was a case of sudden fight which emanated due to a verbal altercation which had taken place between the parties due to the illegal electricity connection being drawn by the complainant party.

Ld. *Amicus Curiae* while drawing the attention of this Court to statement of PW-4/Dr. Sukhmander Singh, Medical Officer, Civil Hospital, Moga, has vehemently submitted that in fact not only all the injuries were blunt and as per the Doctor, injuries on the complainant could have been a result of falling on a hard surface.

Ld. *Amicus Curiae* has further urged that assuming for the sake

of arguments that the prosecution version is correct then at best, it would be a case falling under Section 325 IPC in view of the nature of injuries as well as the absence of *mens-rea*, which is one of the primary ingredients of Section 307 IPC.

6. On the contrary, Ld. State counsel controverted the submissions made by the Ld. *Amicus Curiae* by urging that the ocular testimony was fully corroborated by the medical evidence. Both the injured witnesses were removed to the hospital without any delay. Hence, the question of a embroidered version to falsely implicate the accused-appellants did not arise. It was also submitted that not only *mens-rea* existed in the present case, but even the knowledge on the part of the accused-appellants was clearly discernible from the seat of injuries. Hence, she prayed for dismissal of the instant appeal.

7. I have heard learned counsel for the parties and gone through the evidence as well as other material available on record.

8. On reappraisal of the evidence on record, the stand of the defense is seemingly self-contradictory. On one hand, it has been urged that it was the complainant party which had launched an unprovoked attack on the accused-appellants/Jang Singh and Harpreet Singh and it was in their right of private defense that the injuries had been inflicted on the complainant party and in the same breath it has been contended that at best it was a case of sudden fight where both the parties suffered injuries. The arguments advanced by the Ld. *Amicus Curiae* comes across as unbelievable. No explanation worth the name has been put-forth by the defense as to why the complainant party would without any provocation, rhyme or reason attack the accused party and cause them injuries. Hence, in

this background, the plea of the accused party of right of private defense does not appeal to reason.

The version of the prosecution comes across as more convincing. The occurrence took place at the house of the complainant party. Even assuming that the complainant party was indeed indulging in theft of electricity by using a kundi connection, it would not give the accused party a licence to indulge in assault. At best, even if the accused party had some grievance or grouse in that regard, they could have approached the authorities concerned in this regard rather than take the law into their own hands.

9 Coming to the next submission of the Ld. *Amicus Curiae* that the essential ingredients i.e. *mens-rea* to attract the mischief of Section 307 IPC is absent, deserves to be rejected. It would be relevant to reproduce the injuries suffered by the injured witnesses, which are reproduced as under:-

Complainant – Rehsam Singh (PW-2):

1. *Lacerated wound 8 cms x 1 cm on the right side of scalp. 9 cms from right pinna and 4 cms right of midline. Bone deep, direction oblique, margins irregular. Fresh bleeding was present. X-ray was advised.*
2. *Lacerated wound 0.7 cm x 0.3 cm on the lateral side of right eye brow. Fresh bleeding was present.*
3. *Lacerated wound 0.5 x 0.2 cm on 1 cm medial to the injury no. 2. Fresh bleeding was present.*
4. *Lacerated wound 1.5 cm x 0.5 cm on lateral aspect*

of left eye brow. Fresh bleeding was present.

5. *Lacerated wound 1.5 cm x 0.3 cm on left side of the forehead, 6 cms above injury no. 4. Fresh bleeding was present.*

Major Singh (PW-3):

1. *A lacerated wound of 3 cms x 2 cms on right parietal region. Bone deep wound. Fresh bleeding was present.*
2. *A lacerated wound of 2.5 cm x .5 cm on bridge of nose. Bleeding fresh from nose. Swelling in surrounding area.*
3. *A lacerated wound of 3 cms x .5 cm on back of right forearm. 6 cms from above wrist joint. Fresh bleeding was present.*
4. *A reddish contusion of 8 cms x 3 cms on left lateral aspect of chest.*

Boota Singh:

1. *A lacerated wound of 10 cms x 1 cm on parietal region on right side of scalp. Bone deep wound. Fresh bleeding was present and complaint of vertigo and nausea.*
2. *A lacerated wound of 4 cms x 1 cm on scalp just above the anterior hair line and 3 cms from the midline to left. Fresh bleeding was present.*

On the person of Resham Singh injury No.1 was bone deep. On its X-ray examination vide Ex.P-5, it was

found to be a depressed comminuted fracture on right side of skull.

A perusal of the supplementary injury report Ex.P-6 reveals that all the injuries suffered by the complainant-Resham Singh (PW-2) were on and around his head which admittedly is a vital part of the body. The manner in which the injuries were caused and that too only on and around the head goes a long-way to establish that the intention of the accused party was to cause death of the complainant. A great deal of stress was laid by the Ld. *Amicus Curiae* that the injuries on the person of complainant could have been self-suffered or by falling on a hard surface, as also deposed by PW-4/Dr. Sukhmander Singh in his cross-examination. However, looking to the nature and seat of injuries, it bewilders me as to how the Doctor could have given such an opinion. It is unbelievable that the nature and kind of injuries suffered by the complainant could have been the result of a friendly hand.

Further, the injuries on the person of complainant – Resham Singh (PW-2) as well as Boota Singh were found in and around the neck and head area. The contention of accused-appellants/Jang Singh and Harpreet Singh that it was in their right of private defense that they inflicted injuries on the witnesses, is bereft of any merit. It is inconceivable as to how could these two can inflict serious injuries on the complainant party, who as per the accused-appellants themselves, were more in number and in turn suffered only minor injuries. Thus, in view of this the seat of injuries clinchingly goes to prove that there were in fact more than two persons involved in the attack on the complainant party. In this background, the contentions of the accused-appellants namely Chhinda Singh, Nathu Singh, Seera Singh and Darshan Singh that they were not present at the place of occurrence cannot

be accepted.

12. As a sequel to the above discussion, no interference is warranted in the impugned judgment of the Ld. Trial Court, which deserves to be upheld, as the same is a well reasoned one. Consequently, the instant appeal stands dismissed. Accused-appellants who are on bail, their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

(MANJARI NEHRU KAUL)
JUDGE

October 18, 2019

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*