

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

(i) Crl. Appeal No.D-957-DBA of 2003

Sumitra

...Appellant

VERSUS

Sant Maan Singh and another

...Respondent

(ii) Crl. Appeal No.S-286-SB of 2003

Gurbax

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: December 11, 2019

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
 HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: None for the appellant (in CRA No.D-957-DBA of 2003).

Mr.Hemant Bassi, Mr.Harmanjeet Singh and
Mr.Jugraj S.Virk, Advocates
for the appellant (in CRA No.S-286-SB of 2003).

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the appeal bearing CRA No.S-286-SB-2003, is to

the judgment of conviction dated 27.01.2003 and order of sentence dated

which appellant Gurbax was held guilty and convicted in case FIR No.0272 dated 08.04.1998 of Police Station City Hisar, for the commission of offences and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default</i>
307 IPC	Rigorous imprisonment for five years and to pay fine of ₹1000/-	RI for one year
450 IPC	RI for three years	

Both the sentences were ordered to run concurrently.

Vide aforesaid judgment, accused Sant Maan Singh was acquitted of the charges levelled against him in complaint under Sections 307, 324, 326 and 452 IPC . Feeling aggrieved of the same, Sumitra has filed CRA No.D-975-DBA-2003, challenging the judgment of acquittal and also for enhancement of the sentence imposed upon accused Gurbax.

The background facts in nutshell are as herein given:-

That, initially FIR No.272 dated 08.04.1998 was registered at the instance of Raghubir Singh. As per version of the said FIR, Raghubir Singh, was aged about 32 years and was doing embroidery work. He was married and having two children. On 07.04.1998, after taking meals, the complainant along with his family members, had retired in the courtyard of his house. At about 12.30 a.m. in the night, Gurbax s/o Sant Maan Singh, resident of Shiv Nagar, whose *dera* is adjoining to his house, after scaling the wall, had entered complainant's house and gave him knife blow in the stomach, while he was lying there. The complainant got up. Gurbax, after giving the knife blow at once, ran away. The complainant raised alarm '**maar diya maar diya**' and his wife also woke up. She saw Gurbax running

from there. The reason for enmity is that about five years back, complainant

Raghubir Singh had purchased a plot of this house for a sum of ₹20,000/- from father of Gurbax and money was paid in cash, however, the complainant could not get the sale deed registered. The money was also not returned. Then, accused filed the case in the Court for getting the house vacated and that case is pending. Now, Gurbax was putting pressure upon the complainant to get the house vacated but he refused to vacate the house and for this reason, Gurbax had caused knife injury to the complainant. After receipt of injury, Ram Kumar s/o Raja Ram had taken Raghubir Singh to General Hospital, Hisar for his treatment.

After recording of the statement of Raghubir Singh, FIR was got registered and further investigation was handled by ASI Krishan Lal. He had gone to the spot on 11.04.1998 and took a piece of *machchardaani* having blood-stains, in his possession. After sealing the same, recovery memo was separately prepared. Site plan of the place of occurrence was also prepared.

On 12.04.1998, one Ruli Ram, Lumberdar of village Gangwa had produced accused Gurbax. During the course of interrogation, accused Gurbax had made disclosure, about having kept concealed the knife near the kotha of DRD. His disclosure statement was recorded, on the basis thereof, Gurbax got recovered the knife from the disclosed spot. Sketch, thereof was prepared and it was converted into parcel and taken into possession, vide separate memo. Rough site plan of the place of recovery was also prepared. The copy of the civil suit was also obtained. Even, the scaled site plan was got prepared. The treatment record of Raghubir Singh was also collected.

On completion of investigation, challan against Gurbax was

On presentation of the challan, compliance of Section 207 Cr.P.C. was made and thereafter, the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Sections 307 and 450 IPC against accused Gurbax, who pleaded not guilty and claimed trial.

Thereupon, the prosecution proceeded to record the evidence and examine the witnesses.

At this juncture, it is pertinent to mention that when the case was at the stage of recording of the evidence, another complaint case, filed at the instance of Sumitra wife of Raghubir Singh, was also received. The concerned officer directed that statements of common witnesses shall be recorded in the State case and photostat be placed on record of the other case. The witnesses who are different in both the cases, shall be recorded separately in their respective cases, in which they have been listed.

For the convenience, the gist of the the complaint filed by Sumitra, wife of Raghubir Singh against Gurbax as well as his father Sant Maan Singh, is as herein given:-

The complainant resides in Shiv Nagar, Hisar along with her husband and children.

On 08.04.1998, the complainant and her children as well as her husband Raghubir Singh were sleeping in the courtyard of the house during night time. Then at about 12 midnight, Gurbax and Sant Maan Singh, who have their *dera* adjoining to the house of the complainant, after breaking the wall of the house of the complainant, had come to their house. Sant Maan

Singh caught hold of both the legs of her husband, while he was asleep and

Gurbax gave a knife blow in the stomach of her husband. The husband of the complainant received serious injury and the complainant as well as her husband had raised alarm '*maar diya maar diya*', upon which, the complainant stood up, whereupon, both the accused had ran away from the spot. The complainant took care of her husband, who was bleeding. Hearing alarm, Kalu, Puran and Bansi neighbours, had come there. The husband of the complainant became unconscious due to the injury. After making arrangement of the conveyance, he was taken to General Hospital, Hisar, where he was medically examined. He was admitted in the hospital. The police came there and the complainant had apprised the police of the occurrence. The police had obtained signatures/thumb impressions on one or two papers from the husband of the complainant and did not disclose to them as to what had been written on the same.

The husband of the complainant was sent to Medical College and Hospital, Rohtak, when his condition was quite serious. He remained admitted there till 15.04.1998. The husband of the complainant was again got admitted in the Medical College and Hospital, Rohtak, from 17.04.1998 to 30.04.1998 and his life was saved after a major operation. Still husband of the complainant is unfit to walk.

The motive for nursing grievance is that about five years back, the complainant party had purchased the plot of a residential house for a sum of ₹22,500/- from accused Sant Maan Singh and Gurbax and the payment had been made. The sale deed could not be registered. Later on, Sant Maan Singh refused to get the sale deed registered. They did not return the money and filed civil case for vacating the house. They were

pressurizing them to vacate the house for the last many days and also

threatened them but her husband refused to vacate the house and nursing grudge, with intention to cause death, the accused had caused the injuries with knife on the stomach of husband of the complainant.

On 18.05.1998, the complainant had gone to police station City Hisar and there, she came to know that only Gurbax had been challaned under Sections 324 and 452 IPC as the police had connived with them. The name of Sant Maan Singh had not been mentioned in the case and the case was also not registered under Section 307 IPC. No opinion was obtained from the doctor, who treated Raghubir Singh at Rohtak. A prayer had been made in the complaint for a direction to be issued to SHO, Police Station, City Hisar, to register a case under Section 307 IPC and also that Sant Maan Singh be summoned and arrested and legal action be taken.

On filing of the complaint, evidence was recorded before commitment and thereafter, accused Sant Maan Singh was also summoned as an accused in the complaint. Thereafter, the case was committed to the Court of Session. Even charge was framed under Sections 307 read with Section 34 and 450 IPC against accused Sant Maan Singh, to which, he pleaded not guilty and claimed trial.

Thereafter, the cases proceeded in the manner as stated aforesaid.

In an endeavour to establish its case, the prosecution examined as many as 12 witness, besides adducing documentary evidence.

PW-1 Raghubir Singh, who set the ball rolling in the case, proved his statement Ex.PA. **PW-2 Sumitra** is the complainant of the complaint earlier filed, which was then received by the then learned Addl.

occurrence by accused Sant Maan Singh and Gurbax, in which injury was inflicted on the person of her husband. Her statement is also in consonance with the testimony of PW-1 Raghubir Singh.

PW-3 Head Constable Om Parkash has tendered into evidence, his affidavit Ex.PB, which is formal evidence. **PW-4 Constable Raju** has deposed about preparation of scaled site plan Ex.PC, at the instance Sumitra wife of Raghubir.

PW-5 SI Jagat Singh has deposed about himself to be posted at Police Station City Hisar. On the night of 7/8.4.1998, he had received ruqa Ex.PD along with MLR of Raghubir Singh and thereupon, he had gone to hospital, whereupon, he recorded the statement of injured Raghubir Singh, after obtaining opinion qua fitness of the injured from the concerned doctor, on the basis whereof, **FIR Ex.PA/2** was got registered.

PW-6 Balwan Singh, has brought the summoned record concerning bed head ticket of Raghubir Singh and copy of the same is Ex.PF.

PW-7 Head Constable Hans Raj has deposed about having produced parcel containing knife before the doctor along with application on behalf of Kuldeep Singh Inspector, for his opinion. After the opinion, the doctor again sealed the knife and handed over to him and he deposited the same with MHC.

PW-8 Dr.Surinder Sukhija has deposed about having radio-logically examined Raghubir on 12.04.1998 and found fracture on left 6th rib on X-ray chest PA and AP and his report is Ex.PG and X-ray films are Ex.P1 and P2.

PW-9 DSP Kuldeep Singh has deposed about having received

ruqa **Ex.PA** along with endorsement **Ex.PA/1** on 08.04.1998, on the basis whereof, he recorded FIR **Ex.PA/2**. Furthermore, he also deposed about application **Ex.PH** on 25.06.1998 having sent through Head Constable Hans Raj to the doctor for obtaining opinion; if the injury on the person of Raghubir could be caused by the knife. On 11.05.1998, he moved application **Ex.PH/1** regarding nature of injury and the doctor had kept the opinion reserved. Again on 17.06.1998, he moved the same application vide endorsement **Ex.PH/2** and the doctor gave opinion that injury on the person of Raghubir Singh was dangerous to life. He further deposed about having re-arrested Gurbax. On completion of investigation, challan was presented.

PW-10 Dr.M.K.Bhadu deposed about having medico-legally examined Raghubir Singh on 08.04.1998 and he deposed about details of the injuries, found on the person of Raghubir Singh, which are herein given as under:-

1. *A freshly bleeding wound 3 cm x .75 cm, spindle shape grapping with coming out of GIT contents out of this deep into abdomenl cavity. The margins were sharp. It was tender, there was guardening of muscles in the epigastric region of abdomen.*

He also deposed that the injuries were caused by sharp weapon within the probable duration of 24 hours. The nature of injuries was kept under observation. **Ex.PJ** is the correct carbon copy of the MLR and **Ex.PK** is the diagram showing location of the injuries. He also deposed about dispatch of ruqa **Ex.PD**, thereby apprising the police of admission of Raghubir Singh in the General Hospital, Hisar. He also deposed about SI Jagat Ram to have filed an application **Ex.PE** on the same day to seek

opinion regarding fitness of the patient to make statement. He opined the injured to be fit to make statement. He further deposed that on 11.05.1998, in pursuance of the application filed by the police, he had opined that injury No.1 was kept under observation and therefore, it was not possible to give opinion. His opinion is Ex.PM. He further deposed about another application Ex.PH/2 having filed on 17.06.1998 to seek his opinion and after seeing X-ray report as well as the bed head ticket, as there was fracture of 6th rib as per bed head ticket, the patient was operated for exploratory leprotomy with spleenotomy with repair of diaphragm. He declared injuries as dangerous to life and his opinion is Ex.PN. On 25.06.1998, in pursuance of the application Ex.PH, filed before him along with parcel of knife, the seal whereof, was broken and on seeing the knife, he had opined that injury No.1 is possible by weapon brought by the police and his opinion is Ex.PO.

PW-11 ASI Krishan Lal is the Investigating Officer of the present case. He has deposed that on 08.04.1998, he was posted in Police Post Mill Gate under P.S. City Hisar and on that day, he was entrusted with the investigation of the present case. He also deposed that on 11.04.1998, he visited the spot and had taken the piece of *machchardani* with the blood-stains and converted the same into parcel and taken into possession vide memo Ex.PP. He further deposed about preparation of rough site plan of the spot of occurrence. He also deposed that on 12.04.1998, accused Gurbax was produced by Ruli Ram, Lumberdar of village Gangwa. During the course of interrogation, Gurbax had made disclosure statement Ex.PR, about having kept concealed the knife near the *kotha* of DRD. Thereafter, he led the police party to *kotha* of DRD and got recovered the knife. He prepared

the sketch of knife, which is Ex.PS. He also deposed about the same to

have been converted into parcel and taken into possession vide memo Ex.PT. Rough site plan of the place of recovery Ex.PU was also prepared. On 14.04.1998, he recorded statement of Sumitra.

PW-12 Kamal Anand, Ahlmad, had brought the case file of the case titled as '*Sant Maan Singh vs. Raghubir Singh*' and deposed about the same to be pending in the Court of learned Civil Judge (Jr. Divn.) Hisar, which was fixed for plaintiff's evidence and copy of the plaint is Ex.PV.

Thereafter, the evidence of the prosecution was closed.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to both the accused in their statements under Section 313 Cr.P.C. However, both the accused denied those allegations and pleaded their innocence and false implication.

In defence, learned defence counsel tendered into evidence, copy of the sale deed mark-A, copy of the ejectment application Ex.DG, reply of ejectment Ex.DH, copy of the plaint of civil case Ex.DJ, written statement/reply to the application of stay Ex.DK, another application for ejectment Ex.PL, reply Ex.DM, written statement of amended case Ex.DN, receipt of the items Mark B, copy of order Mark C and copy of order of delivery of possession Mark E and closed the defence evidence.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide judgment dated 27.01.2003, accused Sant Maan Singh was **acquitted** of the charges levelled against him whereas accused Gurbax was held **guilty and convicted** for the offences under Sections **307 and 450 IPC** and sentenced

as already detailed in the earlier portion of the judgment.

Feeling aggrieved of the aforesaid judgment of conviction and order of sentence, accused-appellant Gurbax filed CRA No.S-286-SB-2003. Even, feeling aggrieved by the aforesaid judgment, complainant Sumitra has filed CRA No.D-957-DBA-2003 challenging the acquittal of Sant Maan Singh and for enhancement of sentence imposed upon accused Gurbax.

Notices of appeals were given to the concerned quarter, who made appearance. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant Gurbax and learned State counsel and have perused the record.

To establish the occurrence, the prosecution has examined injured Raghubir Singh as **PW-1**. The said witness has categorically deposed that on 07.04.1998, he along with his wife and children was sleeping in his house and at about 12-12.30 midnight, accused Sant Maan Singh and Gurbax, present in the Court, had come to his house. Sant Maan Singh caught hold of his legs and Gurbax gave a knife blow in his stomach. He raised alarm, upon which his wife had woken up and she also started raising noise. Thereafter, both the accused had run away. He further deposed about himself to have been taken to Civil Hospital, Hisar, by Ram Kumar and he was medically examined. He also deposed about recording of his statement, which is Ex.PA. He further deposed that on 12.04.1998, he came to know that the police had arrested only one person. He also deposed that he had been referred to General Hospital, Rohtak, where he remained there for about twenty days and was operated upon. Thereafter, they had also got filed the complaint in the Court.

Another material witness examined by the prosecution is **PW-2**

of the prosecution, had witnessed the occurrence. She has also deposed about the incriminating role of Sant Maan Singh and Gurbax, while causing injury to her husband Raghubir Singh on 07.04.1998 at about 12-12.30 midnight. She further deposed that she woke up and both the accused ran away with the knife. She also deposed that the neighbours were attracted to their house and then her husband was shifted to Civil Hospital, Hisar. She also deposed that police had come to the hospital and recorded her statement. Prior to that, police had recorded the statement of Raghubir and then Raghubir was referred to Medical College and Hospital and they shifted him to Rohtak, where he remained admitted upto 30.04.1998. She also deposed that on 12.04.1998, they came to know that police had arrested only one person and thereafter, they filed a complaint in the Court.

From the testimonies of the aforesaid witnesses and also in view of the recitals of the statement Ex.PA, on the basis whereof, the ball went rolling, it is evident that at first instance, it was only Gurbax, who was named as assailant and specific role was assigned to him by Raghubir Singh himself that he scaled the wall of his house and had inflicted knife blow in his stomach. It was only in the complaint filed in the Court by Sumitra that role of Sant Maan Singh has been put forth. Therein, it is stated that Sant Maan Singh had caught hold the legs of Raghubir Singh and then Gurbax had given the injury. However, the role so put forth qua Sant Maan Singh is a marked improvement coming forth. There was absolute silence qua role of Sant Maan Singh in Ex.PA. It is claim of Sumitra wife of Raghubir Singh that it was only on 18.05.1998 that they came to know about the police, to have only named one accused Gurbax and that name of Sant Maan

Singh is missing in the proceedings, so conducted by the police. However,

it is pertinent to mention that the statement Ex.PA had been got recorded by Raghubir Singh and there is also mention made, at the tail-end of the statement about the statement to have been read over to Raghubir Singh and he had heard the same and admitted the same to be correct. Only thereafter, he had affixed his thumb impressions. Though, it is now claimed that thumb impressions/signatures were obtained on blank papers but there is nothing, as such, coming forth, to so substantiate this claim. Rather, the recital so existing, as stated aforesaid, duly establish about the statement to have been got recorded by Raghubir Singh and it was read over and after admitting the same to be correct, he had affixed his thumb impressions. The complaint, in question, had been filed on 19.05.1998 i.e. after about 40 days of the taking place of the occurrence.

The fact of litigation pending between Sant Maan Singh and the complainant party, is duly established from the evidence brought on record. Precisely, on this account, role so coming forth of Sant Maan Singh, is established to be introduction later on made, at the instance of Sumitra, with an exaggerated effort to rope him along with Gurbax, while assigning role of having caught hold of the legs of Raghubir Singh.

Now, it is submitted by learned counsel for the appellant Gurbax that if the testimony of injured as well as another eye witness, as such, is taken to be an improvement, made vis-a-vis the role of Sant Maan Singh, then the entire version of the prosecution, qua the role of Gurbax also becomes doubtful. However, the aforesaid submission is not tenable. Soon after taking place of the occurrence, Raghubir Singh was taken to Civil Hospital, Hisar and there, he had got recorded his statement to the police, thereby stating about incriminating role of Gurbax in causing the

occurrence. The prompt action, so taken, rules out weaving of the false story, vis-a-vis the role of Gurbax and therefore, solely on account of role of Sant Maan Singh having been introduced in the complaint, filed at a later stage, does not render the prosecution version qua the role of Gurbax to be doubtful.

The ocular version, so coming forth qua the role of Gurbax also stands corroborated from the medical evidence, brought on record. PW-10 Dr.M.K.Bhadu has deposed about having medico-legally examined Raghubir Singh on 08.04.1998 and he has deposed about detail of injuries found on his person, which has already been reproduced in the earlier portion of the judgment. He has also proved the carbon copy of the MLR, which is Ex.PJ. Further, he has deposed about the opinion, so sought from him regarding nature of the injury and he has categorically deposed about there to be fracture of 6th rib, as per bed head ticket. The patient was operated for exploratory leprotomy with spleenotomy with repair of diaphragm and thus injury was declared **dangerous to life** and the opinion is **Ex.PN**. Even, PW-6 Balwan Singh, Record Keeper of PGI, Rohtak, had brought bed head ticket of Raghubir Singh and proved the carbon copy of the same, which is Ex.PF, which also shows about Raghubir Singh to have remained admitted in PGI, Rohtak. Now, it is submitted by learned counsel for the appellant Gurbax, that at first instance, the case was only registered under Sections 324 and 450 IPC and since, it is only injury as detailed by the concerned doctor, therefore, no intention to kill, as such, is made out and therefore, no offence under Section 307 IPC is made out. However, the aforesaid submission is not tenable. The question, as to whether, there was

of fact and would depend on the facts of a given case, which has to be attributed on evidence.

To justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused but such intention may also be deduced from various other circumstances, surfing in the evidence and many a times, in some cases, there can be ascertainment of the intention even without making reference to the actual wounds. It is not necessary that injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of a person assaulted. Even, the intention or knowledge, may be implied and can be gathered from the bunch of circumstances, coming forth in the evidence adduced by the prosecution. In the light of the same, adverting to the present case, it is pertinent to mention that accused Gurbax while armed with knife had scaled the wall of the house of injured Raghubir Singh and caused him injury with the knife and that too on the stomach. The seat of injury is also very essential to be taken note of and statement of **PW-10** Dr.M.K.Bhadu, is also required to be taken note of. The patient remained admitted in hospital, at first instance from 08.04.1998 to 15.04.1998 and thereafter, again from 15.04.1998 to 30.04.1998, in PGI, Rohtak. Even, the concerned doctor has stated about there to be fracture of 6th rib. As per bed head ticket, patient was operated for exploratory leprotomy with spleenotomy with repair of diagram and on the basis thereof, the concerned doctor had categorically opined about the injury to be **dangerous to life**.

which led to long duration of admission of the injured in the hospital, the requisite intention to kill/ knowledge, on the part of Gurbax Singh, do amply stand established.

Learned counsel for the appellant Gurbax has also raised plea of false implication of the accused in the present case, on account of pending litigation between the complainant side and Sant Maan Singh. No doubt, as submitted by learned counsel for the appellant, from the voluminous evidence brought on record, it stand established that there was civil litigation pending between the parties concerned, prior to the occurrence in question but however, solely on account of pending litigation, the plea of false implication, *ipso facto* does not stand established. Even though, learned counsel for the appellant has also emphasized upon there to be motive for causing the occurrence but however, the question of motive in the present case, does not carry much weight, as there is direct evidence coming forth. Injured Raghubir Singh, at whose instance, the proceedings were initiated at first instance, while in the witness box, has given a vivid description of the manner of causing of the occurrence by the accused and his testimony, as such, cannot be doubted, as he had himself sustained injury in the occurrence in question. Even, PW-2 Sumitra, is the most natural witness, to have seen the occurrence, as she is wife of the injured and her presence, as such, cannot be doubted, as the occurrence had taken place at midnight in their abode. The said witness has deposed, in consonance with the version, so given by Raghubir Singh. In the light of the same, when vivid account has been given by both the eye witnesses, the fact of pending litigation, in *ipso facto*, does not establish the false

implication, as now raised at the behest of appellant Gurbax.

As such, the impugned judgment merits no interference.

At this juncture, it is pertinent to mention that learned counsel for appellant Gurbax has prayed for reduction in the sentence imposed upon the appellant.

The incident relates back to the year 1998. At the relevant time, appellant Gurbax was 22 years of age. The appellant has faced protracted trial. In view of the same and considering the chances of reformation of appellant Gurbax, the sentence imposed upon him under Section 307 IPC is reduced to three years from five years. The other sentence and sentence of fine and in default, are upheld. The substantive sentences shall run concurrently.

As such, both the appeals sans merit and they are consequently dismissed, with the modification in the sentence imposed upon Gurbax, as detailed aforesaid

Accused-appellant namely Gurbax, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 11, 2019
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No