

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1967-SB-2002 (O/M)

Reserved on : 26.3.2019

Date of decision : 29.3.2019

Tarsem Singh and others

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. T.N. Gupta, Advocate,
for appellants.

Mr. S.P.S. Tinna, Additional A.G. Punjab.

Mr. Surinder Garg, Advocate,
for complainant.

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KULDIP SINGH, J.

This appeal has been directed against judgment of conviction and order of sentence dated 28.11.2002, passed by learned Additional Sessions Judge, Ferozepur, vide which appellants were convicted under Sections 325, 325/34, 326, 326/34 IPC and were sentenced as under :-

<u>Name of the accused</u>	<u>Offence</u>	<u>Sentence</u>	<u>Fine</u>	<u>In default</u>
Tarsem Singh	325/34 IPC	To undergo rigorous imprisonment for three years	Rs. 1000/-	Four months
	326/34 IPC	To undergo rigorous imprisonment for four years	Rs. 2000/-	Six months
	326 IPC	To undergo rigorous imprisonment for five years	Rs. 5000/-	One year

<u>Name of the accused</u>	<u>Offence</u>	<u>Sentence</u>	<u>Fine</u>	<u>In default</u>
Badal Singh	325 IPC	To undergo rigorous imprisonment for three years	Rs. 5000/-	Six months
	326/34 IPC	To undergo rigorous imprisonment for four years	Rs. 2000/-	Six months
	326 IPC	To undergo rigorous imprisonment for five years	Rs. 5000/-	One year
Gurcharan Singh	325/34 IPC	To undergo rigorous imprisonment for three years	Rs. 1000/-	Four months
	326/34 IPC	To undergo rigorous imprisonment for four years	Rs. 2000/-	Six months
	326 IPC	To undergo rigorous imprisonment for five years	Rs. 5000/-	One year

All sentences were directed to run concurrently.

Facts of case are that Ran Singh owned 15 killas of land in village Gaddan Dob. He had three sons, namely, Harkaran Singh (PW6), Gurcharan Singh (accused) and Satwant Singh. Complainant Iqbal Singh is grandson of said Ran Singh. Ran Singh divided the land in equal shares to his sons. Complainant and his family members used to cultivate 10 killas of land including 5 killas of land, which was given to Harkaran Singh. Gurcharan Singh (accused) and his sons Tarsem Singh and Badal Singh (accused) have been cultivating remaining 5 killas of land. About one year before the occurrence, $3\frac{1}{4}$ killas of land, out of land of Harkaran Singh, was taken on lease by Gurcharan Singh (accused) and he got khasra girdawari of said land entered in his name. Subsequently, with consent of accused, said khasra girdawari was entered in the name of complainant party. About six months before the occurrence, Gurcharan Singh (accused) moved an application before Kuldeep Singh, Tehsildar, for correction of

khasra girdawari. On that account, there was a dispute between the parties.

Tehsildar came to the spot on 26.6.1996. At that time, all accused were present. Complainant Iqbal Singh was present with Harkaran Singh (PW6), Pritam Singh (PW7), Satwant Singh, Amrik Singh, Kashmir Singh and Buta Singh. Statements of both parties were recorded and Tehsildar directed them to leave the spot.

When complainant and his companions were going towards village on the kachha path and reached near the fields of Jasbir Singh, it was about 12.30 PM. Accused Gurcharan Singh, armed with kasia, accused Badal Singh, armed with kulhari (axe) came from backside, whereas Tarsem Singh (accused), armed with sword came from front side and assaulted complainant party. Tarsem Singh gave a blow of sword from the sharp side on the right side of head of complainant. Badal Singh gave a blow of kulhari (axe) from sharp side on left side of neck of complainant, whereas Gurcharan Singh (accused) gave a blow with kasia from sharp side on the backside of left ear of complainant. As a result of which, complainant Iqbal Singh fell down. Accused Badal Singh gave another blow from blunt side of kulhari on right side of head of complainant and accused Gurcharan Singh gave a blow with kasia with sharp side on his left shoulder, whereas accused Badal Singh gave a blow with kulhari from blunt side on left side of head of Harkaran Singh, whereas accused Gurcharan Singh gave a kasia blow from sharp side on left upper arm of Harkaran Singh, as a result of which, he fell down. While Harkaran Singh was lying down, Tarsem Singh gave a sword blow from sharp side on left side of his back. Pritam Singh and Amrik Singh came ahead to save them, on which accused Gurcharan Singh gave a kasia blow on the left ankle of Pritam Singh. All

of them raised alarm, which attracted Satwant Singh and Buta Singh.

Accused ran away from spot towards village with their respective weapons. Complainant and injured were removed to Civil Hospital, Abohar, where they were medically examined by Dr. Pritvi Raj (PW1). Tarsem Singh and Badal Singh (injured) were also brought to Civil Hospital, Abohar. On receipt of report of admission of injured, ASI Harbans Singh visited Civil Hospital, Abohar, and collected MLRs. Since Harkaran Singh was declared unfit to make statement, statement of complainant Iqbal Singh was recorded, which formed the basis of formal FIR.

The statement of Tarsem Singh (accused) was also recorded, who came out with a cross version. While stating about dispute of khasra girdawari and visit of Tehsildar, he stated that after the proceedings, Satwant Singh and Buta Singh left towards village on scooter, whereas his father Gurcharan Singh and his brother Badal followed them on kachha path. He himself was going on camel cart. About 12 Noon, when they reached near the land of Jasbir Singh, Iqbal Singh, armed with gandasa and Harkaran Singh, armed with kasia came there. Harkaran Singh gave a kasia blow from sharp side on the back side of right ear of Badal and Iqbal Singh gave a gandasa blow from sharp side on right side of his head. Satwant Singh fired from his double barrel gun from the side of village. At that time, Buta Singh was also present there with gandasi. Thereafter, accused left spot.

After recording version and cross version, ASI Harbans Singh visited spot. He prepared site plan. The turban of Harkaran Singh was recovered from spot and same was taken into possession. Blood stained

shirt and pajama of Iqbal Singh (complainant) and shirt of Harkaran Singh (injured) were produced before police by MHC Major Singh and these were also taken into possession. On radiological examination, fracture on left shoulder and skull of Iqbal Singh, was found. Similarly, fracture was detected in the skull of Harkaran Singh. Harkaran Singh was referred for CT Scan by Dr. R.K. Verma. In CT scanning, depressed fracture of left parietal bone and contusion injury left para and supraventricular parietal region were detected. Injury No. 1 on the person of Harkaran Singh was declared dangerous to life by Dr. Ramesh Kumar, vide report Ex.P8. Therefore, offence under Section 307 IPC was added. Harkaran Singh was declared fit to make statement on 10.7.1996.

On 18.7.1996, accused Tarsem Singh was arrested and on his disclosure statement, one axe, kasia and sword were recovered in the heap of chaff lying in his house.

During investigation, version of complainant was found to be correct, whereas cross version of accused Tarsem Singh was found to be false. Therefore, accused Tarsem Singh, accused Gurcharan Singh and accused Badal Singh were challaned by police.

After commitment of case, they were chargesheeted under Sections 307, 307/34, 326, 326/34 IPC.

In support of its case, prosecution examined Dr. Prithvi Raj (PW1), Dr. Ramesh Kumar (PW2), Dr. S.K. Juneja (PW3) Balwant Ram (PW4), Complainant Iqbal Singh (PW5), Harkaran Singh (PW6), Pritam Singh (PW7), ASI Harbans Singh (PW7), Mohan Lal (PW8), Dr. Prem Gupta (PW9) and close the prosecution evidence.

When examined under Section 313 Cr.P.C., accused pleaded

same defence story, as put forth by accused Tarsem Singh, which need not to be repeated over and again. They also produced khasra girdawari (Ex.D1 to Ex.D3).

After hearing prosecution, learned defence counsel and going through evidence, learned Additional Sessions Judge, Ferozepur, convicted and sentence accused, as aforesaid.

We have heard learned counsel for appellants, learned State counsel and have also carefully gone through case file.

First of all it is necessary to examine injuries suffered by Harkaran Singh, Iqbal Singh and Pritam Singh to see the nature and extent of injuries.

Harkaran Singh suffered following injuries :-

- '1. A lacerated wound 10 cm x 1 cm bone deep oblique present on left tempoparieto occipital region of head.
2. Reddish contusion 8 x 3 cm horizontal present on anterior lateral side of left arm upper part.
3. Incised wound 4 x 0.5 cm muscle deep vertical present over right scapular region on medial and upper part. Fresh bleeding was present.'

Complainant Iqbal Singh is recorded to have suffered following injuries :-

- '1. Incised wound 12 cm x 2 cm (at centre) bone deep horizontal, present on top of left shoulder. Fresh bleeding was present. Advised x-ray.
2. Incised wound 6 cm x 1 cm (at centre) bone deep oblique present on upper part of neck on left side posteriorly. Fresh bleeding was present.
3. Incised wound 5 cm x 0.5 cm bone deep inverted U shape present on left occipital region of head on lower half. Fresh bleeding was present.

4. Incised wound 8 cm x 0.5 cm oblique bone deep present on right occipital region of head, 6 cm from the pinna of right ear. Profuse bleeding was present. Advised x-ray.

5. Lacerated wound 6 cm x 1 cm bone deep oblique present on right parietal region of head. Fresh bleeding was present. Advised x-ray.'

Pritam Singh (injured) suffered following one injury :-

'1. Incised wound 6 cm x 1 cm (at centre) bone deep horizontal present on lateral side of left leg on lower part. 2 cm above the left lateral malleolus. Fresh bleeding was present. The underlying bone was cut.'

Injury No. 1 on person of Harkaran Singh was declared dangerous to life. On X-ray examination, fracture on left shoulder of outer end of clavical was found and fracture on skull of right occipital bone was found on person of Iqbal Singh. Similarly, on x-ray examination, fracture of left parieto occipital and frontal bone with depression of fractured component of bone was found on person of Harkaran Singh.

On the medico legally examination of accused Badal Singh, following one injury was found :-

'1. Incised wound 4 cm x 0.5 cm bone deep oblique present on right occipital region of head on lower part. Fresh bleeding was present. Advised x-ray.'

On medico legally examination of accused Tarsem Singh, following one injury was found :-

'1. An incised wound 8 x 0.5 cm bone deep oblique present on right occipital parietal region of head. Fresh bleeding was present. Advised x-ray.'

It is to be seen that in cross version, occurrence is not denied though accused have put fourth their case stating that they were infact

inflicted injuries by opposite party. However, nature of injuries on the person of Harkaran Singh show that there was injury on the head which was a depressed fractured. After receipt of such injury, one will not be in a position to cause injury to anybody. Similarly, Iqbal Singh had also suffered incised wound not on head, but also on upper part of neck, which was bone deep. After receipt of such injury, he will also be not able to cause any injury to anybody.

When examined in Court, Iqbal Singh (PW5), Harkaran Singh and Pritam Singh supported their version as stated in complaint, stating that all accused caused injuries to them in the manner mentioned above.

Now, this Court is to see as to whether complainant party is aggressor or accused party is aggressor ?

The nature of injuries on the person of complainant party, discussed above, show that infact they were victim. They were brutally assaulted by opposite party. Therefore, the trial Court rightly held that accused party has assaulted complainant party and even if complainant party has caused one injury each to accused party, that would be in self defence.

The trial Court, for the reasons recorded in judgment, found that Section 307 IPC is not proved. Since there is no appeal filed by State against acquittal of accused party under Section 307 IPC, therefore, this Court will not go into the legality of finding of trial Court qua Section 307 IPC. The fact remains that on account of land dispute, complainant party was assaulted and Harkaran Singh, Iqbal Singh and Pritam Singh were given simple and grievous injuries by accused. The parties are otherwise related to each other.

From the foregoing discussion, we come to conclusion that prosecution case is proved beyond all reasonable doubts. There is no illegality or infirmity in the findings of conviction, recorded by trial Court.

The learned counsel for appellants has argued that parties have compromised, on account of which appellants have withdrawn their appeal against judgment of acquittal, recorded by learned Additional Sessions Judge, Ferozepur, in a criminal complaint filed by them regarding present occurrence. They have also produced photocopy of compromise, which shows that one of injured, Pritam Singh, has expired and other two injured, namely, Iqbal Singh and Harkaran Singh, have entered into compromise, stating that they have no grudge against each other and they have no objection, if impugned judgment of conviction and order of sentence dated 28.11.2002, passed by trial Court, are set aside.

We are of the view that offences are not compoundable. On the basis of compromise with two of injured, a lenient view can be taken in the quantum of sentence.

Considering the nature and gravity of offence, compromise between the parties and considering that appellants are facing agony of protracted trial since 1996, i.e. for 23 years now, while maintaining conviction of appellants under Sections 325, 325 read with Section 34, Sections 326, 326 read with Section 34 IPC, sentence of appellants Tarsem Singh and Gurcharan Singh under Section 325 read with Section 34 is reduced from 3 years rigorous imprisonment to 2½ years rigorous imprisonment, while sentence of fine is maintained. The sentence passed on appellant Badal Singh under Section 325 IPC is reduced from 3 years rigorous imprisonment to 2½ years rigorous imprisonment, while sentence

of fine is maintained. The sentence passed on appellants Tarsem Singh, Badal Singh and Gurcharan Singh under Section 326 IPC is reduced from 5 years rigorous imprisonment to 2½ years rigorous imprisonment, while sentence of fine is maintained. The sentence passed on appellants Tarsem Singh, Badal Singh and Gurcharan Singh under Section 326 read with Section 34 IPC is reduced from 4 years rigorous imprisonment to 2 years rigorous imprisonment, while sentence of fine is maintained.

With the abovesaid modification in sentence, appeal is dismissed. Appellants are on bail. Their bail bond stand cancelled. They be rearrested forthwith to undergo remaining part of sentence.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

29.3.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No