

CRA-S-59-SB-2007(O&M)

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

CRA-S-59-SB-2007 (O&M)

Reserved on : February 28, 2020

Date of Decision: October 01, 2020

Nachhattar Singh

...Appellant

Versus

State of Punjab

...Respondent

2.

CRA-D-621-DB-2007 (O&M)

State of Punjab

...Appellant

Versus

Binder Singh @ Balwinder Singh and others

...Respondents

AND

3.

Criminal Revision No.1457 of 2007(O&M)

Lakhmer Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Raj Kumar Gupta, Advocate and
Mr. Gurminder Singh Phull, Advocate for
accused - Nachhattar Singh.

Mr.H.S.Grewal, Additional AG, Punjab.

Mr.Kulvir Narwal, Advocate for the
complainant – petitioner in CRR-1457-2007.

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HARINDER SINGH SIDHU, J.

1. Since common questions of law and facts are involved in the aforesaid cases these are taken up together and disposed of by a common judgment.
2. CRA-S-59-SB-2007 has been filed against the judgment and order dated 19.12.2006 passed by the Additional Sessions Judge, Moga in Sessions Case No.RT-37 of 2006, whereby appellant Nachhattar Singh, who was charged with and tried for offence punishable under Sections 307/324/323/34 of the Indian Penal Code (in short 'the IPC'), has been convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- and in default to further undergo RI for a period of one month. Binder Singh @ Balwinder Singh, Dalip Singh and Gulwant Singh, who were also tried with Nachhattar Singh were acquitted.
3. CRA-D-621-DB-2007 by the State of Punjab and CRR-1457 of 2007 by the complainant have been filed to challenge the acquittal of Binder Singh @ Balwinder Singh, Dalip Singh and Gulwant Singh, as also the acquittal of Nachhattar Singh for the offence under Section 307 IPC.
4. The case of the prosecution in a nutshell is that on 01.06.2002 M.L.R regarding the injuries suffered by Lakhmer Singh and Nachhattar Singh was received in the police station. Thereupon, S.I Balbir Singh along with the other police officials went to Civil Hospital, Baghapurana to record the statement of injured. The doctor declared them unfit to make statement. On 03.06.2002 SI Balbir Singh again went to the hospital when injured Lakhmer Singh made the statement to the effect that on 31.05.2003 at about 7.30 PM he was going from the

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bus stand of village Gholia Khurd to his house. On the way near Patwar Khana Nachattar Singh armed with Gandasa, Binder Singh armed with dang and Dalip Singh armed with dang were standing there. On seeing him Nachattar Singh started abusing him. He asked Nachattar Singh why he was abusing him. Dalip Singh told him that he used to twist his moustaches on seeing him. Accused Nachattar Singh gave a gandasa blow on his head. Binder Singh gave a dang blow on his left elbow. Dalip Singh gave a dang blow on his left arm. On his raising hue and cry Gulwant Singh who was standing nearby raised lalkara that Lakhmer Singh be killed and he would manage everything. Meanwhile Balwinder Singh s/o Hazura Singh and Bager Singh son of Atma Singh came there and saw the accused inflicting injuries on him. After inflicting injuries all the accused persons fled away. The motive behind the occurrence was that Dalip Singh was a mediator in the marriage of the complainant. He wanted that the wife of the complainant should work at his house. The complainant used to stop his wife from going there. Due to this reason the accused in connivance with each other caused injuries to him. Bagher Singh took him to Civil Hospital, Baghapurana after arranging the vehicle.

5. On the basis of the statement FIR was registered under Sections 323/324/34 IPC. Injuries Nos.1,2,3 & 4 were kept under observation. On 04.06.2002 the offence under Section 307 IPC was added.

6. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. Balwinder Singh, Dalip Singh and Gulwant Singh denied their presence at the spot and pleaded false implication. Accused Nachhattar Singh stated that on 31.05.2002 at

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about 6 p.m, he was going on a motorcycle along with Hakam Singh to leave him at his house in village Barewala. When they reached at some distance from his house, Lakhmer Singh armed with Kirpan, Baghar Singh having bottle of liquor, Amar Singh, Daulat Singh and Balwinder Singh were standing there. Lakhmer Singh abused him. When he stopped his motorcycle Lakhmer Singh also raised Lalkara to teach him lesson. Balwinder Singh caught him. Lakhmer Singh gave kirpan blows to him. The others gave him fist blows. He fell down and they dragged him. Then he was taken to Civil Hospital, Baghapurana where he was medically examined. Police recorded his statement. But being leaders of ruling party and under political pressure of the other party they were not challaned. Police falsely implicated the accused in this case at the instance of complainant party and on basis of concocted story. He had filed a complaint against the complainant party. In defence, the accused examined four witnesses.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW-1 Vajinder Singh Jaswal, Jaswal Diagnostic Centre, Moga deposed that he was M.D Radio Diagnosis. He had conducted as many as about 5000 C.T Scans. On 01.06.2002, he conducted C.T Scan examination of Lakhmer Singh who was referred to him by Dr. A.S Gill Medical Officer, Civil Hospital, Bahgapurana. Plain scan of head was done with slice thickness and table incrementation of 10 MM and 5 MM. There was a well defined hyper dense Epioura Haemotoma involving the right temporo-parietal region with attenuation balues between 67 and 73 HU. Air was also seen in it. It measures about 5.2 cm x 0.6 cm. Craniocaudal extent is about 4 cms. Mass effect was seen in the form of

slight white matter buckling, however no medline shift was observed. No other area of altered attenuation was seen. Fracture of the right parietal bone was seen. He observed the following:

“Epidural Haematoma Right side with pneumocephalus. Fracture right parietal bone.”

Ex.PA is the C.T. Scan report which bears his signatures. Ex.PA is based on C.T Scan film Ex.PA/1.

9. PW2-Gursewak Singh Draftsman deposed that on 24.01.2003, he prepared scaled site plan Ex.PB on the pointing out of Balwinder Singh son of Hazura Singh.

10. PW3-Doctor Arvinder Gill, Medical Officer, Distt T.B. Control Officer, Moga deposed that on 31.05.2002 when he was posted as Medical Officer C.H.C Baghapurana, he examined patient Lakhmir Singh. He found the following injuries on his person:

- “1. An incised wound of 7 cm x 1 cm on scalp on right side just above anterior hair line and 5 cm from mid-line. Bone deep and fresh bleeding was present.*
- 2. An incised wound 8 cm x 1 cm on scalp on right parietal region. Bone deep wound. Fresh bleeding was present.*
- 3. There were 12 reddish contusions of varying size from 4 cm x 4 cm to 14 cm x 4 cm on whole of the back.*
- 4. A reddish contusion of 14 cm x 6 cm on back of left forearm in middle. Movements of fore arm was painful.*
- 5. A reddish contusion of 8 cm x 6 cm on front of right upper arm in middle.*
- 6. An abrasion of 6 cm x 4 cm on back of left elbow joint. Fresh oozing was present.”*

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Injuries Nos.1,2,3 & 4 were kept under observation while injuries no.5 & 6 were declared simple. Probable duration of injuries was fresh. Weapon used for injuries No.1 and 2 was sharp and blunt for the rest.

11. After receipt of report of CT Scan and X-ray examination he sent supplementary report to the police vide which he declared injury no.2 as dangerous to life and injury no.1 as simple. He proved his report Ex.PB. Injuries No.3 & 4 were also declared as simple. He proved the police request Ex.PE and Ex.PE/1 his endorsement vide which he declared Lakhmer Singh unfit to make the statement on 02.06.2002.

12. PW4-SI Chiranji Lal, P.S Baghapura deposed that he partly invdestigated this case on 11.08.2002. Accused Mandip Singh, Balwinder Singh and Dalip Singh were formally arrested by him.

13. PW5-Lakhmer Singh deposed that on 31.05.2002 at about 7.30 p.m, he was coming back to his house from bus stand of his village. When he reached at the corner of his street and passed from near the Patwarkhana, Nachattar Singh armed with Gandasa, Binder Singh armed with dang, Dalip Singh armed with dang and Gulwant Singh empty handed were standing there. Nachattar Singh accused started abusing him. When he asked him why he was doing so, then Dalip Singh accused asked as to why he was twisting his moustaches on seeing him. Then Nachattar Singh accused gave him gandasa blow which hit on his head. Balwinder Singh @ Binder Singh gave dang blow which hit him on his right upper arm. Dalip Singh gave a dang blow which hit on his back. Nachattar Singh gave another gandasa blow on his head with the intention to cause death. Then he fell

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down. When he was lying down, Balwinder Singh gave another dang blow which hit on his left elbow. Dalip Singh gave another dang blow which hit on his left arm. Gulwant Singh who was standing beside them raised lalkara that he be done to death and that he would settle everything. He raised raula. Then all the accused fled away alongwith their respective weapons. Then Balwinder Singh and Bager Singh came there.

14. The motive for the crime was that Dalip Singh was the mediator in his marriage. He (PW 5) was not allowing his wife to visit Dalip Singh's house. He (PW 5) had divorced his wife under these circumstances. Dalip Singh had threatened him that he would teach him a lesson for divorcing his wife. He was taken to Civil Hospital, Baghapurana by Balwinder Singh and Bagher Singh in a Jeep. His statement Ex. PF was recorded by the police.

15. In cross examination he stated that Bagher Singh was his real brother. PW Balwinder Singh belongs to Village Rori Kapura which was at a distance of 50 kms from his village. He had reached the Hospital at about 8/8.15 PM. On that date no police official had come to the hospital. He had not sent any family member or any person who accompanied him to the hospital to inform the police. At about 3/3.30 PM on 3.6.2002 his statement was recorded in the hospital. He was unconscious on 1.6.2002. Therefore, he did not know anything about his being tested under CT scan at Moga.

16. PW6-Balwinder Singh son of Hazura Singh r/o Gholia Kalan deposed that on 31.05.2002 at about 7.15 p.m he had gone to the house of Bagher Singh in village Gholia Khurd for getting his Jeep. Bagher Singh told him that the Jeep was standing at the Taxi stand. Both of them proceeded to Taxi stand to take the Jeep.

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When they came out of the house they saw all the accused. Nachhattar Singh was armed with gandasa, Binder Singh and Dalip Singh were having dangs. Gulwant Singh was empty handed. Nachhattar Singh was delivering filthy abuses to Lakhmer Singh. Lakhmer Singh had asked Nachhattar Singh as to why he was abusing him to which Dalip Singh replied that they felt insulted because Lakhmer Singh was raising his moustaches at the sight of the accused. Then Nachhattar Singh gave a gandasa blow on the head of Lakhmer Singh. Binder Singh gave a dang blow on the right upper arm of Lakhmer Singh. Dalip Singh hit with dang on the back of Lakhmer Singh. After this, Nachhattar Singh had given another gandasa blow at the head of Lakhmer Singh. Lakhmer Singh fell down. Binder Singh gave a dang blow which hit on left elbow. Then Dalip Singh give a blow with dang which hit on the left arm. Gulwant Singh raised lalkara that Lakhmer Singh be done to death and that he will manage everything. Lakhmer Singh raised alarm. The accused went to their houses with their respective arms. Baghar Singh was left at the spot to attend upon Lakhmer Singh and he went to get the Jeep. Then Lakhmer Singh was taken to Civil Hospital, Baghapurana in the said vehicle. His statement was recorded by the police on 03.06.2002 at village Gholia Khurd where the occurrence had taken place.

17. PW7-Sub Inspector Balvir Singh, Police Lines Taran Taran deposed that on 03.6.2002, he was posted at Police Station Baghapurana. On 02.06.2002 he received MLRs of Lakhmer Singh and Nachhattar Singh in the police station. On receipt of the MLRs, he went to Civil Hospital Baghapurana. He gave application Ex.PE to the doctor for the fitness of injured Lakhmer Singh and Nachhattar Singh on which doctor made his endorsement Ex.PE/1 declaring

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injured Lakhmer Singh unfit to make statement. The doctor also declared Nachhattar Singh as unfit to make statement. On 3.6.2002 he went to Civil Hospital, Baghapurana and moved application Ex.PG to the doctor regarding the fitness of injured Lakhmer Singh on which doctor made his endorsement Ex.PG/1 and declared Lakhmer Singh fit to make statement. Then he recorded the statement Ex.PF of Lakhmer Singh on the basis of which formal FIR Ex.PF/2 was recorded. He went to the place of occurrence and prepared the rough site plan Ex.PH at the instance of Balwinder Singh. He recorded the statements of the witnesses Balwinder Singh, Bagher Singh and others. He arrested Nachhattar Singh accused on 28.06.2002 who was produced by PW Bhupinder Singh. Gandasa was also recovered from him which was taken into possession vide memo Ex.PK. On 03.07.2002, he arrested the accused Gulwant Singh. On his transfer, further investigation of the case was conducted by SI Chiranji Lal. He identified the gandasa recovered from accused Nachhattar Singh Ex.MO1. After completion of the investigation, challan against the accused was prepared and presented by Harinder Singh SI/SHO P.S Baghapurana.

18. DW1- Satwinder Singh son of Harminder Singh r/o Gholia Khurd, deposed that house of the accused Nachhattar Singh was adjacent to his house in the same lane. About 3-1/4 years back, at about 6.30 p.m, accused Nachhattar Singh was driving his motorcycle and his friend Hakam Singh of Barrewala was sitting on the pillion. Nachhattar Singh was going to leave Hakam Singh at his village. At a distance of 10 karams from the house of Nachhattar Singh accused, Lakhmer Singh armed with kirpan, Begher Singh having a wine bottle in his hand alongwith Balwinder Singh, Amar Singh and Daulat Singh were standing on the

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road. They were in drunken condition. They stopped Nachhattar Singh by encircling him. Lakhmer Singh gave a Lalkara saying that he will teach lesson to Nachhattar Singh for interfering in the household affair of others. Balwinder Singh caught hold of Nachhattar Singh. Lakhmer Singh gave two kirpan blows hitting on the right thumb and left hand finger of Nachhattar Singh. Daulat Singh, Amar Singh and Bagher Singh gave beating to Nachhattar Singh with fist blows etc and dragged him. On alarm being raised and the accused ran away. Nachhattar Singh was taken to the hospital.

19. DW2- Baldev Singh r/o V Rauke Kalan Tehsil Nihal Singh Wala, District Moga deposed that for the last 5 years, he was running a workshop under the name and style of 'Dashmesh Agri- Works' at Gholia Khurd. He remained present at his workshop all times. No occurrence or fight took place between Nachhattar Singh and Lakhmer Singh etc in the lane in front of his workshop. House of accused Nachhattar Singh was situated on the back side of his workshop. About three years back at about 6.00 p.m, he was attracted to the spot on hearing alarm created at the side of occurrence regarding this occurrence near the house of Nachhattar Singh. As long as the noise and the alarm being created by both the warring sides continued, he remained in his workshop doing his job. When the alarm has ceased he went to the place of occurrence.

20. DW3-HC Gurpreet Singh, Clerk PC Branch, SSP Office, Moga brought the record. He stated that as per entry No.1344 PC-4/02 dated 22.7.2002, complaint was received. It was forwarded to SHO, P.S Baghapurana on 30.9.2002. As per our record with the police of P.S Baghapurana it pertained to FIR No.123 dated 03.6.2002 under Sections 324/323/34 IPC. When a case is registered then

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enquiry report is annexed with the police file and the complaint which is found to be false is filed.

21. DW4- Jarnail Singh, SP (Retd.) Moga deposed that the enquiry in this case was entrusted to him on the application dated 16.8.2002 moved by Balwinder Singh son of Gulwant Singh. After enquiry and recording the statements of the witnesses from both the sides and also considering the other aspects of the controversy, he had submitted his enquiry report Ex.D2. As per his findings only Nachhattar Singh and Lakhmer Singh i.e., one person from each side participated in the occurrence. The remaining accused persons were falsely implicated.

22. The Learned Trial Court accepted the contention of the Counsel for the accused that there was an unexplained delay of three days in registering the FIR. PW3 Dr. Arvinder Gill had deposed that except Vertigo and Nausea the injured was not in a serious condition. He had deposed that on 01.06.2002 the condition of the injured was stable. As per the admission record Ex.DA of the injured at the time of admission he was fully conscious. On 02.06.2002 again his condition was stable. On 03.06.2002 he was recorded as 'feeling better'. PW5 Lakhmer Singh - injured has deposed that in the hospital he was attended to by Balwinder Singh and Bagher Singh. The Ld. Trial Court accepted the contention of the Counsel for the accused that once both the eye witnesses remained at the side of the injured in the hospital and Sub Inspector Balbir Singh had visited the Hospital on 01.06.2002 and 02.06.2002, there was no reason for them to have not disclosed about the occurrence to SI Balbir Singh.

23. Admittedly, the MLR was received from the Hospital on 01.06.2002.

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PW7 SI Balbir Singh deposed that he had gone to the Hospital on 01.06.2002 for recording the statement of the injured, but the doctor had declared him unfit to make a statement. The Ld. Trial court held that the authenticity and genuineness regarding the visit of SI Balbir Singh to the Hospital on 01.06.2002 was shattered in his cross-examination, wherein, he stated that he did not go to the Hospital on 01.06.2002 and only went there on 02.06.2002. Further, there was no written certificate of the doctor on record regarding the unfitness of the injured on 01.06.2002. The Trial Court found it mysterious that as to why despite receiving the MLR on 01.06.2002, the Police did not visit the Hospital on 01.06.2002. As per the bed-head ticket Ex.DA of the injured he remained stable throughout his admission in the Hospital. In view thereof, the Trial Court concluded that the things had been manipulated and the certificate Ex.PE/1 dated 02.06.2002 of PW3 Dr.Arinder Gill declaring the injured unfit on 01.06.2002 seems to have been managed to cover up the delay.

24. The Ld. Trial Court further concluded that presence of PW6 Balwinder Singh at the place of occurrence was doubtful. PW5 Lakhmer Singh – injured in his cross-examination admitted that PW6 Balwinder Singh was resident of village Rorri Kapura which was at a distance of about 50 kilometers from the place of occurrence. There was nothing on record that Balwinder Singh was in any manner related to the injured. There was no evidence that he had any other relations in the village. The reason given by Balwinder Singh that he had gone to village Gholia Khurd to take the jeep of Bagher Singh was not found credible by the Court. He had not stated so in his statement Ex.D1 recorded by the Police. The Trial Court concluded that this improvement was made by PW6 after due

deliberation and consultation only to justify his presence at the place of occurrence. Moreover in his examination-in-chief as well as while making his statement Ex.D1 to the Police he had wrongly disclosed his place of residence. He had claimed that he was a resident of Village Gholia Khurd, but in cross-examination he admitted that he was from village Rorri Kapura which was about 50 kilometers from the place of occurrence. Moreover, as per the MLR, the injured was taken to the Hospital by Bagher Singh. The presence of Balwinder Singh was not recorded in the hospital that he had also accompanied the injured to the hospital. Bagher Singh did not step into the witness box.

25. As regards the role of accused Gulwant Singh, the Trial Court noted that PW5 injured Lakhmer Singh and PW6 Balwinder Singh had both stated that Gulwant Singh only raised *lalkara* after the injured had already been inflicted injuries. No injury was caused to him after *lalkara* was raised by Gulwant Singh. The Trial court concluded that Gulwant Singh could not be attributed common intention in causing any injury as no injury was caused after his *lalkara*. Thus, the possibility of his false implication could not be ruled out. It was also proved on record that Lakhmer Singh was inimical towards Gulwant Singh.

26. DW4 Jarnail Singh, the then Superintendent of Police, Moga had come to the conclusion that none of the accused other than Nachhattar Singh participated in the occurrence. No weapon of offence was recovered from accused Binder Singh and Dalip Singh. There was delay of three days in lodging the FIR.

27. As regards accused Nachhattar Singh, the Trial court believed the testimony of injured Lakhmer Singh that he had received two head injuries at the hands of accused Nachhattar Singh. This testimony was further corroborated by

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recovery of *gandasa* from Nachhatar Singh. PW7 SI Balbir Singh stated that at the time of arrest of accused Nachhattar Singh, he had produced the *gandasa*. These injuries were also corroborated by MLR, as per which the injured had received two injuries on the head with sharp side of a weapon. DW4 Jarnail Singh, the then Superintendent of Police, Moga deposed that in the enquiry conducted by him, he had come to the conclusion that accused Nachhattar Singh had caused injuries to Lakhmer Singh. But regarding the applicability of Section 307 IPC on the basis of CT Scan report Ex.PA rendered by PW1 Dr.Vajinder Jaswal, the Trial Court concluded that the report appeared to be manipulated and procured. It was not explained by the prosecution as to who had taken the injured to the clinic of Dr.Vajinder Jaswal on 01.06.2002 when he was already admitted in Civil Hospital, Baghapurana. PW5 – the injured in his cross-examination stated that he did not know about the conduct of his CT Scan on 01.06.2002 as he was unconscious. PW1 Dr.Vajinder Jaswal stated that he did not know as to who had brought the injured to his hospital for CT Scan. He further stated that he did not receive any referral slip for conducting the CT Scan of the injured. He also did not remember whether any MLR of the injured was sent to his clinic. He also did not remember whether the patient was conscious or not at the time of conducting CT Scan test. He did not bring any record regarding the test conducted in his clinic. He also did not bring any slip or bill regarding the charges paid for the said test. Although, there was an endorsement of Dr.Arinder Gill (PW3) in the bed-head ticket Ex.DA that CT Scan report regarding detection of Epidural Haematoma Right side and fracture of Right Parietal bone was received by Dr.Arinder Gill on 01.06.2002, but this was opined to be manipulated and ante-dated. Ld. Trial Court held that if

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the report had been received on 01.06.2002 there was no reason for Dr.Arvinnder Gill not to disclose the same to the Investigating Officer when he had gone to the Hospital on 02.06.2002 and 03.06.2002 to know about the condition of the injured to make a statement. In such circumstances, there was no reason for the Investigating Officer to not directly register the FIR under Section 307 IPC on 03.06.2002. The Trial Court concluded that non-disclosure of CT Scan report to the Investigating Officer on 02.06.2002 and 03.06.2002 proved that the report was not available till then and was manipulated at a later stage. Moreover, while getting recorded his statement on 03.06.2002, PW5 Lakhmer Singh had not disclosed that any CT Scan test had been conducted on him on 01.06.2002.

28. The Trial Court concluded that the unexplained delay of three days in lodging the FIR coupled with the aforesaid infirmities did not rule out the chance of CT Scan report Ex.PA being manipulated to make out a case under Section 307 IPC. Thus, the supplementary report Ex.PD sent by PW3 Dr.Arvinnder Gill declaring injury No.2 on the basis of CT Scan report could not be given any credence. The Trial Court held that the prosecution failed to prove that injury No.2 was dangerous to life.

29. The Trial Court concluded that the prosecution had failed to prove the guilt of accused Binder Singh, Dalip Singh and Gulwant Singh. They were acquitted of the charges by giving them benefit of doubt. As regards accused Nachhatar Singh Trial Court held that it had been proved on record that accused Nachhattar Singh caused two injuries from the sharp side of the *gandasa*. The two injuries sustained by the injured at the hands of accused Nachhattar Singh had been duly proved by the testimony of PW5 Lakhmer Singh. The said testimony had been

duly corroborated by the medico-legal report. Accordingly, he was convicted and sentenced under Section 324 IPC. The CT Scan report based on which the offence under Section 307 IPC had been added having been found to be doubtful and manipulated he was acquitted of the offence u/s 307 IPC.

30. It is well settled the scope of interference with a judgment of acquittal is limited. If the view taken by the Trial Court is a possible view, it is not open to the higher Court to reverse the judgment just because another view is possible.

31. Accordingly, the CRA-59-SB-2007 is dismissed. In view thereof, CRA-D-621-DB-2007 and CRR-1457-2007 are also dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 01, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No