

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

330

1)

CRA-S-2160-SB-2003
Decided on : 20.12.2022

Sohan Singh and others

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

2)

CRR-959-2004

Paramjit Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. A.P.S. Mann, Advocate
for the appellant(s) (in CRA-S-2160-SB-2003)
for respondents No.2 to 14 (in CRR-959-2004).

None for the petitioner(s) (in CRR-959-2004).

Mr. J.S. Arora, DAG, Punjab.

SANJAY VASHISTH, J.

This judgment shall dispose of CRA-S-2160-SB-2003 and CRR-959-2004, as they both are interconnected and arising out of the same judgment of conviction and order of sentence dated 30.10.2003. However, the facts are being extracted from CRA-S-2160-SB-2003.

2. Criminal Appeal i.e. CRA-S-2160-SB-2003, was filed by total 13 appellants, against the judgment of conviction and order of sentence dated 30.10.2003, passed by the Ld. Additional Sessions Judge (Ad-hoc), Ludhiana, whereby, appellants were acquitted for the offence under Section 307 of IPC, but were held guilty under Sections 325, 325/149 & 148 of IPC.

Trial was conducted and decided vide Sessions Case No. 43 of 23.04.1998, arising from FIR No. 134, dated 02.11.1997, registered under Sections 307, 323, 324, 325, 427, 452, 148, 149 of IPC and Section 25 of the Arms Act, lodged at Police Station Sahnewal, District Ludhiana.

Accused/appellants were held guilty for commission of offences punishable under Sections 325, 148 and 325/149 and of IPC, and each one of them were ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Pavittar Singh	325 IPC	02 years RI	Rs.1000/-	1 month RI
	148 IPC	01 year RI	Rs. 500/-	15 days RI
Sohan Singh, Gurwinder Singh, Bahar Singh, Jasbir Singh, Harpal Singh, Ravinder Singh, Jagjit Singh, Joginder Singh, Jaswant Singh, Sewa Singh, Kulbir Singh, Gurdip Singh	148 IPC	01 year RI	Rs.500/- (each)	15 days RI
	325/149 IPC	02 years RI	Rs. 1000/- (each)	1 month RI

All the substantive sentences were ordered to run concurrently. However, the period of detention already undergone by the accused-appellants, if any, was ordered to be set off against the substantive sentence.

3. On 15.12.2022, when the appeal was taken up for hearing, following order was passed:-

“On 15.11.2022, following order was passed:-

“While referring to the order dated 19.05.2017, learned counsel for the appellants submits that the State may verify the life status of Sohan Singh (appellant No.1), Jasbir Singh (appellant No.4), Harpal Singh (appellant No.5), and Pavittar Singh (appellant No.9), as they were stated to have died or missing during the pendency of appeal.

Learned counsel for the appellants also informs that as per his instructions, though not definite, other appellants i.e. Ravinder Singh (appellant No.6), Jagjit Singh (appellant No.7), and Joginder Singh (appellant No.8), have also expired by now.

Learned State counsel is unable to confirm the said

fact.

In view of the situation, that total 13 convicts had filed present appeal, and life status of majority of them is under doubt, it would be appropriate to seek report from the State of Punjab, whether all the aforementioned 07 appellants are alive or not?

Learned State counsel seeks some time to clarify the issue about life status of all the appellants.

List on 23.11.2022.

Photocopy of this order be placed on the file of other connected case.”

Today, learned State counsel, on instructions from SI Shiv Kirpal Bedi, states that as per verification got done by him, appellant No.1 – Sohan Singh, appellant No.4 – Jasbir Singh, appellant No.6 – Ravinder Singh, appellant No.7 – Jagjit Singh, appellant No.8 – Joginder Singh, and appellant No.9 – Pavittar Singh, have expired during the pendency of present appeal before this court.

In support of his statement, learned State counsel submits that the respective death certificates of the aforesaid appellants, issued by the concerned authorities of State of Punjab. Said death certificates are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

*In view of said circumstances that appellant No.1 – Sohan Singh, appellant No.4 – Jasbir Singh, appellant No.6 – Ravinder Singh, appellant No.7 – Jagjit Singh, appellant No.8 – Joginder Singh, and appellant No.9 – Pavittar Singh, who have expired, the present appeal qua all of them stands abated. However, same would be subject to the terms & conditions, passed by this Court in **IOIN-CRA-S-4686-SB-2018** in **CRA-S4686-SB-2018**, titled as, **“Shivji Ram @ Dimple Vs. State of Punjab”**, decided on **24.11.2022** (Law Finder Doc Id # 2076392).*

Mr. APS Mann, learned counsel for the appellants, thus, states that main accused i.e. appellant No.9 - Pavittar Singh, was convicted under Section 325 of IPC, has already expired, and rest of the appellants were substantially convicted and sentenced for offences under Section 325 read with Section 149 of IPC. Thus, fate of decision of the appeal qua appellant No.2 – Gurwinder Singh, appellant No.3 – Bahar Singh, appellant No.5 – Harpal Singh, appellant No.10 – Jaswant Singh, appellant No.11 – Sewa

Singh, appellant No.12 – Kulbir Singh @ Kulwinder Singh, and appellant No.13 – Gurdip Singh, is left in the present appeal.

Learned State counsel is directed to produce fresh custody certificates in respect of aforesaid remaining seven appellants, on the next date of hearing.

Adjourned to 20.12.2022.

Photocopy of this order be placed on the file of other connected case.”

4. Now, it is not in dispute that out of 13 appellants, aforementioned six of them have already expired, during the pendency of present appeal. Thus, *qua* six aforementioned appellants, as mentioned hereinabove, present appeal has already been ordered having abated.

5. While opening the arguments for the remaining appellants, Mr. A.P.S. Mann, counsel for the appellants, pointed out that there are total 03 witnesses cited by the prosecution. Injured witness – Pargat Singh, who appeared as PW-1, did not support the case of prosecution, and was declared hostile. Another injured witness – Krishan Bahadur was not examined by the prosecution. Only one witness i.e. injured Tara Singh (PW-5) has been examined by the prosecution, who supported the case of prosecution. Counsel also points out that said witness identified the accused – Pavittar Singh (already dead), Sohan Singh (already dead), Ravinder Singh (already dead), and Jagjit Singh (already dead). Other accused were not identified by him in the witness-box. Thus, counsel for the appellants argues that case of the prosecution is not proved beyond the shadow of a doubt, as the remaining appellants were, in fact, not identified by the sole injured eye-witness, who appeared in the witness-box.

6. This argument of the counsel is considered by me by going through the evidence of injured witness – Tara Singh (PW-5). In

examination-in-chief, he has specifically stated that *“On 02.11.1997 at 07:30 PM, I along with son Paramjit Singh, Pargat Singh and Krishan Bahadur were present in the Dhaba. In the meantime, a truck bearing registration No. PB-10F-8526 came there and stopped at a short distance from Dhaba. From the truck Sohan Singh armed with rifle, Pavittar Singh armed with gandasi, Ravinder Singh armed with gandasi, Bihar Singh armed with gandasi, Sewa Singh armed with gandasi, Gurvinder Singh armed with soti, Jasbir Singh armed with soti, Jaswant Singh armed with rifle, Joginder Singh armed with soti, Jagjit Singh armed with soti. In the court room, I identify Pavittar Singh, Sohan Singh, Ravinder Singh, Joginder Singh, Bihar Singh and others, I do not identify, as I was down headed at the time of occurrence.”*

While appearing in the cross-examination, surprisingly a question is asked and this time, he did not name Bahar Singh. It rather raises a presumption that name of Bahar Singh was not to be named by him in the cross-examination, and therefore, deliberately this answer was got from his mouth in the first line of the cross-examination. This also shows that partially witness was under the influence of accused.

7. As far as injuries upon the injured Bahadur s/o Chaman are concerned, same have been proved by PW-2/Dr. G.S. Randhawa, vide copy of MLR as Ex.PF. Injury of Pargat Singh, Tara Singh, have also been proved by the same Doctor. Injuries suffered by Pargat Singh, was declared as grievous injury by eye-specialist, and injury suffered by Tara Singh, was also declared as grievous.

8. PW-4/Paramjit Singh (complainant) deposed that he was present in the dhaba on 02.11.1997, and was also present at the spot when the accused arrived together armed with weapons. He also identified the accused present in the Court, and testified that Pavittar Singh came to him and

threatened to teach him a lesson for obtaining the stay order, and Sohan Singh fired a shot with a Double Barrel Gun upon his father to kill him. But fire struck over the eye of injured Pargat Singh. Second fire struck the head of Krishan Bahadur. From the deposition of said witness, which stands corroborated with the medical evidence also, it is proved that all the accused arrived on spot armed with respective weapons, **having a common object**, and were thus rightly found involved in the incident.

Deposition of injured-complainant Paramjit Singh finds corroboration with the statement of PW-5 / Tara Singh.

9. Countering the arguments of the counsel for the appellants, learned State counsel, submits that it is not the quantity of the evidence but the quality of evidence which is material, and deposition of even a single witness if appeals to the conscious of the Court, is sufficient to find out the reality in the dispute.

Learned State counsel further submits that there is no explanation by any of the appellants, to prove that either they were not present at the spot, as alleged by the witnesses or that they had no intention to cause grievous hurt to the complainant party. He reads out the statement of Tara Singh (PW-5), and complainant – Paramjit Singh (PW-4), and submits that the ocular version is in corroboration with the medical evidence. Thus, there is no illegality or infirmity in the judgment of conviction passed by the Ld. Trial Court, and appeal filed by the appellants deserves to be dismissed.

10. I have considered the submissions addressed by all the respective counsel for the parties and perused the relevant material on record with their able assistance.

11. While considering the material available on record, vis-à-vis, charge under Section 307 of IPC, Ld. Trial Court gave a finding that no

offence under Section 307 of IPC is made out. Finding recorded in para No.15 of the judgment (impugned herein) says as under:-

“15. It has been further argued by the learned defence counsel that no offence u/s 307 IPC is made out because the prosecution has failed to establish that the shots were fired with intention to kill.

Here I will agree with the contention of the learned defence counsel because Pargat Singh who had received injuries on his person has nowhere stated that the shot was fired at him with intention to kill. The other person, namely, Krishan Bahadur who had allegedly received the gun shot injury has not been examined. Statement of Tara Singh would also reveal that he has nowhere stated that the shot was aimed at him by Sohan Singh or Jaswant Singh or that they had any intention to kill him. He has categorically stated that he cannot tell as to what intention they had fired the shots. The statement of Paramjit Singh that the fire was fired with intention to kill, in the absence of its mention in the statement Ex.PB and corroboration from Tara Singh is not sufficient to hold that the accused had fired shots and had caused injuries on the person of Tara Singh with intention to kill him. Thus, no offence u/s 307 IPC is made out.”

Qua other part of the attribution to the accused persons, learned counsel for the appellants could not point out any illegality in the findings given by Ld. Trial Court. It has been specifically found from the deposition of injured witness - Tara Singh that accused-appellant Pavittar Singh had given gandasi blow on his left arm, and then accused-appellant Sewa Singh gave a gandasi blow with its reverse side on his right eye. Injuries by other accused were also given when he had fallen down. In fact, ocular testimony has been tested with the medical evidence, which is available on record as testimony of Dr. G.S. Randhawa.

12. Therefore, this Court finds no illegality in the findings given

with respect to other attributions, holding present appellants guilty for the offenses under Sections 325, 149 and Section 148 of IPC. Finding recorded by Ld. Trial Court noticed in para No.17 says as under:-

“17. Nevertheless it is evident from the testimony of injured Tara Singh that Pavittar Singh gave gandasi blow on his left arm and then Sewa Singh gave a gandasi blow with its reverse on his right eye and when he fell on the ground the other accused gave injuries on his person while he was lying on the ground. This version put forth by Tara Singh is fully corroborated by Paramjit Singh. Their ocular testimony stands corroborated by the medical evidence in the shape of the testimony of Dr. G.S. Randhawa as well as the documentary evidence in the shape of medico- legal report Ex. PM and the pictorial diagram showing the seats of the injuries as Ex.PH/1. It stands established from the testimony of Dr. G. S. Randhawa that injury No. 2 on the person of Tara Singh was subjected to X-ray and on receipt of x-ray report he vide his opinion Ex.PL had declared the injury to be grievous. Injury No. 2 on the person of Tara Singh on left fore-arm, the same had been attributed to accused Pavittar Singh. Therefore, he is held guilty for the offence punishable us 325 IPC while the other accused are held guilty under section 325 read with section 149 IPC. As all the accused had attacked at the Dhaba for forming unlawful assembly they all are held guilty for the offence us 148 of the Indian Penal Code. Let the accused be heard on the quantum of sentence.”

13. This finding seems to be absolutely correct, and more for the reason that there is explanation *qua* the coming of all the accused together armed with deadly weapons. Coming together itself shows that all the accused had a *common object* to teach a lesson to the members of the complainant party for obtaining the stay order. Thus, this court finds no illegality in the judgment of of the Ld. Trial Court convicting the accused/appellants under Sections 325/149 and 148 of IPC. Accordingly, the present appeal is dismissed by maintaining the findings given by Ld. Trial

Court.

ORDER OF SENTENCE :-

14. In compliance to the order dated 15.12.2022, learned State counsel has produced custody certificates, dated 20.12.2022, of Gurwinder Singh (appellant No. 2), Bahar Singh (appellant No. 3) and Harpal Singh (appellant No. 5), which are taken on record. As per custody certificates, the said appellants had undergone 21 days custody as under trial upto 27.11.1997.

15. Learned counsel for the appellants submits that there cannot be custody certificates in respect of Jaswant Singh (appellant No. 10), Sewa Singh (appellant No. 11) and Kulbir Singh @ Kulwinder Singh (appellant No. 12) and Gurdip Singh (appellant No. 13) because during investigation, they were found innocent and were never arrested. Subsequently, they were released on bail.

16. Learned counsel for the appellants further argues that the incident took place way-back in the year 1997, and in the present appeal, the issue is in regard to the offenses under Sections 325/149 and 148 of IPC only, as the main accused i.e. Pavittar Singh (appellant No.9) to whom attribution of causing of grievous injury was made for framing the offence under Section 325 of IPC has already expired. He further submits that since the year 1997, when the incident in question took place, none of the remaining appellants has been found involved in any kind of criminal activities. Said submissions of the learned counsel is affirmed in view of the custody certificates dated 20.12.2022, in respect of some of the appellants i.e. Gurwinder Singh (appellant No.2), Bahar Singh (appellant No.3), and Harpal Singh (appellant No.5).

Qua appellant No.10 – Jaswant Singh, appellant No.11 – Sewa

Singh, appellant No.12 – Kulbir Singh @ Kulwinder Singh and appellant No.13 – Gurdip Singh, learned counsel submits that they were summoned under Section 319 Cr.P.C., and thus, there cannot be any custody certificate qua them. Moreover, learned State counsel is not in a position to counter the submissions of the appellants' counsel that none of them is ever found in any criminal activity, except of the incident in question, which happened in the year 1997.

17. Therefore, after considering all the aspects and the fact that incident took place in the year 1997 i.e. about 25 years back, and nothing has been pointed out by the State, if anyone of them was found in any criminal activity during this period, no purpose would be served after such a belated stage to send the convicts inside jail for undergoing their remaining part of sentence. Therefore, all the appellants are ordered to be sentenced for the period as already undergone by them.

However, appellants No.2, 3, 5, 10, 11, 12 & 13 (i.e. Gurwinder Singh, Bahar Singh, Harpal Singh, Jaswant Singh, Sewa Singh, Kulbir Singh and Gurdip Singh), are ordered to deposit Rs.10,000/- (each) as compensation. Upon deposit of compensation amount, the same shall be disbursed amongst injured Tara Singh and Krishan Bhadur only by learned Area Magistrate after issuing notices to the injured persons, for withdrawing of compensation amount. Third injured, namely, Pargat Singh is stated to be turned hostile, therefore, he does not deserve any compensation. However, it is made clear that in the event of default in deposit of aforementioned amount of compensation, order of sentence dated 30.10.2003, passed by learned Trial Court, shall enure.

Accordingly, appeal is disposed of with aforesaid modifications.

18. So far as, criminal revision i.e. CRR-959-2004 is concerned,

there is no representation on behalf of the petitioner. Still, this Court has examined the revision petition, and nothing is found as perverse finding to interfere with the acquittal of the appellants for the offence under Section 307 of IPC. Moreover, there is no State appeal against the finding of acquittal under Section 307 of IPC, and in revisional jurisdiction, finding of acquittal cannot be interfered by this Court.

Criminal revision stands disposed of accordingly.

**(SANJAY VASHISTH)
JUDGE**

December 20, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No