

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2099-SB-2007 (O&M)

Date of decision : August 24, 2022

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Jagtar Singh and others

.....Appellants

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. L.S. Sidhu, Advocate
for the appellants No. 1 and 2

Appellant no.3 – Harpal Kaur – dead, appeal qua her abated.

Mr. A.S. Barnala, Advocate
for appellant No. 4

Mr. Anmol Singh Sandhu, Assistant Advocate General,
Punjab.

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H. S. Madaan, J.

1. Briefly stated facts of the case, as per the prosecution story are that, the criminal machinery in this case was set into motion by complainant Hajura Singh, who in the statement got recorded by him with the police on 21.9.2005, at Community Health Centre, Dhanaula, District Barnala, stated that he was working as a Constable with the Punjab Police. He had three more brothers, the eldest being Pritam Singh, followed by complainant Hajura Singh, thereafter Teja

Singh and Jagraj Singh being youngest of all the siblings; the complainant and his brother Teja Singh were married with two real sisters, i.e. Sarabjit Kaur and Paramjit Kaur, daughters of Bahadur Singh of village Longowal; Teja Singh, brother of the complainant had since died; his widow Paramjit Kaur was however staying in the matrimonial house; Charanjit Kaur, a sister of wife of the complainant had got married with one Jagtar Singh son of Harnek Singh of village Chauke and at that time was residing in a rented accommodation at Rampura; Charanjit Kaur and Jagtar Singh had got married of their own, resultantly, the complainant was not on speaking terms with them and he did not relish that the couple should come to their house, as such relations between the complainant on one side and Charanjeet Kaur and Jagtar Singh, on the other side, were strained; the complainant used to refrain his wife Sarabjit Kaur, as well as sister-in-law Paramjit Kaur from having any interaction with Charanjit Kaur and Jagtar Singh.

2. About two years earlier, the complainant had gone to his in-laws house at Longowal, to bring back his wife, Sarabjit Kaur, then his co-brother -in-law Jagtar Singh, mother-in-law Harpal Kaur and father-in-law Bahadur Singh had given him beatings and for that reason he had stopped having any interaction with his in-laws family; Sarabjit Kaur wife of the complainant had also filed a maintenance case against him about two years previously, which was pending in the Court at Sangrur; in April 2005 a Panchayat was convened and Sarabjit Kaur was rehabilitated in the matrimonial home. However,

the case filed by Sarabjit Kaur against the complainant was still pending.

3. On 19.5.2005, a Panchayat was convened to ask Sarabjit Kaur to withdraw the maintenance case filed by her against the complainant. The matter was settled. However, in that Panchayat, Harpal Kaur, mother-in-law, Jagtar Singh co-brother-in-law, Charanjit Kaur, sister-in-law had also come and they had stayed at the house of Teja Singh. On 20.9.2005, when the complainant was returning home from his fields then at about 10.00 a.m., while the complainant was passing by the house of Teja Singh, then Charanjit Kaur taunted the complainant that he was a worthless man being a Constable and that he could not compete with them. The complainant objected to said wording by Charanjit Kaur and asked her to refrain from using that type of language.

4. Then Jagtar Singh armed with *Ghotna*, his sister-in-law Paramjit Kaur and mother-in-law Harpal Kaur armed with wooden *Bahies* came out of the house. Jagtar Singh caught hold of the complainant from his neck and exhorted his co-accused not to spare him and to put an end to the dispute forever. Hearing that Paramjit Kaur and Charanjit Kaur grappled with the complainant. Jagtar Singh gave a *Ghotna* blow to the complainant hitting him on the backside of his head. After suffering the said blow, the complainant fell down. Paramjit Kaur and Charanjit Kaur gave stick blows to the complainant hitting him on his head. While the complainant was lying on the ground, Harpal Kaur gave two blows with *Bahi* to the

complainant in his abdomen. As the complainant was trying to get up from the ground, Paramjit Kaur gave a stick blow on his mouth, on the right side. Then Jagtar Singh gave two blows with *Ghotna* to the complainant hitting him on his right knee and right thigh. Charanjit Kaur gave two blows on his legs, as a result of which his right leg got broken. He suffered a fracture in his right leg. Another blow was given hitting the complainant on his left leg. The complainant raised an alarm, which attracted Nimma Singh son of Sukhdev Singh, Jagraj Singh and Karnail Singh, who came and rescued the complainant from the clutches of the accused. They removed him to the hospital.

5. From the Hospital, an intimation had been sent to the Police Station, Dhanaula, on receipt of which, ASI Sanjiv Singla, proceeded to CHC, Dhanaula and moved a written application dated 20.9.2005, seeking opinion of the attending doctor with regard to fitness of injured Hajura Singh to make a statement. However, the doctor had declared him unfit to make a statement. Thereafter ASI Sanjiv Singla left CHC, Dhanaula. He alongwith other police officials arrived there on the next day i.e. 21.9.2005 and moved a similar application on which the attending doctor declared the injured fit to make the statement and thereafter, he had recorded statement of injured complainant Hajura Singh. Then below the statement of complainant, the Investigating Officer appended his endorsement and sent Ruqa to the Police Station, on the basis of which formal FIR was recorded.

6. The complainant was medically treated and medico

legally examined. He was subjected to X-Ray examination also, which showed that injury No. 10 on his person was grievous in nature. The accused were arrested in this case. The Investigating Officer recorded the statements of the witnesses, and carried out spot inspection, preparing rough site plan of the place of occurrence.

7. After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

8. On presentation of the challan in the Court, copies of documents relied upon therein, were supplied to the accused free of costs as provided under Section 207 Cr.P.C. and then finding that the offence under Section 308 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Barnala, vide order dated 27.5.2006, committed the case to the Court of Sessions and it was assigned to the Court of Additional Sessions Judge, Barnala.

9. On receipt of case by way of entrustment, finding that prima facie offences under Sections 308, 325, 323, 34 IPC were disclosed against the accused, all of them were charge sheeted accordingly, to which they pleaded not guilty and claimed trial.

10. During the course of its evidence, the prosecution examined, in as many as, eight witnesses, as mentioned below :-

PW-1 Dr. Gian Chand, Medical Officer, Civil Hospital, Barnala, who had medico legally examined injured – Hajura Singh, deposed in that regard stating that he had observed following injuries on the person of the injured :-

1. Lacerated wound on the centre of the scalp occipital region Wound was V-shaped, 7 cm x 4 cm, wound was bone deep. Severe fresh bleeding was present Associated diffuse swelling was present. X-ray was advised.
2. A lacerated wound on the right parietal region Wound was obliquely place 9 cm x 1 cm present 9 cm above the pinna of the ear. Wound was bone deep Severe fresh bleeding was present X-ray was advised.
3. Diffused swelling with contusion on the left temporal region, present 6 cm. above the pinna of ear Tender on pressure and X-ray was advised.
4. Diffused swelling with contusion on the left wrist joint tender on pressure. Movements were restricted
5. Liner contusion on the right face, 8 cm. x 2 cm present two cm., from the lateral angle of the eye. Reddish pinkish in colour.
6. Multiple contusions on the right scapular and infra scapular region reddish-pink in colour
7. Contusion with diffused swelling on the lateral side of left eye reddish pink in

colour.

8. Contusion with diffused swelling on the right lumber region reddish pink in colour.

9. Contusion with diffused swelling on the right knee joint and thigh reddish pink in colour.

10 Diffused swelling with contusion on the right ankle joint and leg Reddish pink in colour Tender on pressure.

11. Diffused swelling with contusion on the left ankle joint tender on pressure.

He proved carbon copy of the MLR prepared by him as Exhibit PA and Pictorial diagram showing seats of injuries as Exhibit PA/1. He deposed that he had sent *Ruqa* Exhibit PB to the Police Station regarding admission of the injured Hajura Singh in CHC, Dhanaula and on Police request Exhibit PC dated 20.9.2005 he vide his endorsement Exhibit PC/1 had declared the injured unfit to make a statement. Whereas on a similar request he vide his endorsement Exhibit PD/1 had declared the injured Hajura Singh fit to make a statement. This witness further stated that on 27.9.2005, he had declared injuries No. 1, 2 and 3 to be simple in nature and injury No. 10 to be grievous in nature, vide report Exhibit PF.

PW-2 Darshan Pal Jindal, Draughtsman, stated that he had gone to the spot and prepared the scaled site plan of the place of

occurrence, at the instance of Karnail Singh and Jagtar Singh. He proved the said site plan as Exhibit PG.

PW-3 Hajura Singh complainant injured, as well as PW-4 Nirmal Singh, eyewitness provided the ocular version of occurrence in question and also deposed about the mode and manner in which the occurrence was carried out by all the accused and the injuries caused to Hajura Singh.

PW-5 MHC Nirmal Singh and PW-6 HC Karamjit Singh, both formal witnesses tendered in evidence their respective affidavits as Exhibits PK and PL.

PW-7 Dr. Rajinder Kumar, Medical Officer, Dhanaula, also stated that he had conducted X-Ray examination of the skull of Hajura Singh. He proved X-Ray films as Exhibit PW 7/1 to PW-7/3, X-ray examination report as Exhibit PW-7/4 and an entry qua the conducting of X-ray examination in the register as Exhibit PW-7/5.

PW-8 SI Sanjiv Singla, the Investigating Officer in this case testified with regard to the investigation conducted by him, proving various documents.

The prosecution relied upon various documents. With that the prosecution evidence was closed.

11. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused in the prosecution evidence, were put to such accused, but they denied the same contending that they are innocent and had been falsely involved in this case. Rather, Hajura Singh had

caused injuries to them.

12. The plea taken by all the accused is to the effect that Gurdeep Kaur @ Jit Kaur was married to Hajura Singh, who had committed suicide. Thereafter Sarabjit Kaur was married with Hajura Singh. Paramjit Kaur another sister of Gurdeep Kaur, was married with a brother of accused Hajura Singh, who had also died. Sarabjit Kaur got her arm chopped off in a fodder cutting machine. Hajura Singh was pressurising her to bring more dowry articles and to contract second marriage. Litigation between the spouses had taken place, however, the matter was compromised and Sarabjit Kaur was rehabilitated in the matrimonial home. Thereafter, Hajura Singh started maltreating and harassing Sarabjit Kaur. On getting a message, her relatives and the remaining accused went to Dhanaula to meet Sarabjit Kaur and with the intervention of Panchayat, the matter was resolved. Such accused stayed in the house of Paramjit Kaur and at about 10.00 am when Jagtar Singh was cleaning the vehicle in the court yard of house of Paramjit Kaur, Hajura Singh caught hold of him making him to lie on the ground, Nimma Singh beat up Jagtar Singh and when Charanjit Kaur raised alarm Hajura Singh started beating up Jagtar Singh giving him fist and leg blows in the stomach, as well as on the back, besides causing injury with a sharp ended weapon on the head and that while she was rescuing herself from Hajura Singh, Hajura Singh also received some injuries.

13. During their defence evidence, the accused also examined DW1 Dr. Gian Chand, who stated that he had medico

legally examined Charanjit Kaur w/o Jagtar Singh and found following injuries on her person :-

1. Superficial incise wound on the right forehead 4 cm X 1 cm transversely placed present 4 cm above the eye brow, severe fresh bleeding was present.
2. Complaint of pain in the abdomen and difficulty in passing the urine due to blow by legs.
3. Complaint of pain in the lower back.

Sarabjit Kaur wife of Hajura Singh appearing as DW-2 supported the defence version.

14. After hearing the arguments, learned trial Court convicted the accused for offences under Sections 308, 325, 323 read with Section 34 IPC vide judgment dated 25.9.2007 and in terms of order passed on the same day, sentenced them as follows :-

<i>Sr. No.</i>	<i>Name of the convict</i>	<i>U/s</i>	<i>Sentence imposed</i>
1	Jagtar Singh	308 IPC	To undergo R.I. for four years and to pay a fine of Rs.1,000/-. In default of payment of fine, to undergo further R.I. for two months.
		325/34 IPC	To undergo R.I. for one and a half years and to pay a fine of Rs.500/-. In default of payment of fine, to undergo further R.I. for one month.
		323/34 IPC	To undergo R.I. For six months and to pay a fine of Rs.250/-. In default of payment of fine, to undergo further R.I. For 15 days

<i>Sr. No.</i>	<i>Name of the convict</i>	<i>U/s</i>	<i>Sentence imposed</i>
2	Paramjit Kaur	308/34 IPC 325 IPC 323/34 IPC	To undergo R.I. for three years and to pay a fine of Rs. 500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. for two years and to pay a fine of Rs.500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. For six months and to pay a fine of Rs.250/-. In default of payment of fine, to undergo further R.I. For 15 days
3	Charanjit Kaur	308/34 IPC 325/34 IPC 323/34 IPC	To undergo R.I. for three years and to pay a fine of Rs. 500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. for one and a half years and to pay a fine of Rs.500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. For six months and to pay a fine of Rs.250/-. In default of payment of fine, to undergo further R.I. For 15 days
4	Harpal Kaur	308/34 IPC 325/34 IPC 323/34 IPC	To undergo R.I. for three years and to pay a fine of Rs. 500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. for one and a half years and to pay a fine of Rs.500/-. In default of payment of fine, to undergo further R.I. for one month. To undergo R.I. For six months and to pay a fine of Rs.250/-. In default of payment of fine, to undergo further R.I. For 15 days

All sentences were ordered to run concurrently.

15. Feeling aggrieved by the said judgment of their conviction and order of sentence, the accused-convict had approached this Court by way of filing the present appeal, which was

taken up on 18.10.2007, when it was admitted for regular hearing and interim bail granted to the appellants-accused by the trial Court was extended. Vide order dated 18.2.2008, all the appellants were granted bail during pendency of the appeal subject to their furnishing requisite bail bonds to the satisfaction of CJM Barnala. During the pendency of the appeal, Harpal Kaur – appellant is said to have expired, as such proceedings qua Harpal Kaur have got abated.

16. I have heard learned counsel for the appellants and learned State counsel, besides going through the record.

17. At the very outset, it may be mentioned that the trial Court in para No. 19 of the judgment has concluded that the occurrence happened as a result of free fight, therefore, the defence plea of injuries caused on the person of Hajura Singh in pursuance of exercise of right of private defence is also not available to the accused persons. It was further observed that in the light of free fight all the persons are responsible for their individual acts. Thereafter, the Court took a diagonally opposite stand observing that from the evidence coming on record, it is established that Jagtar Singh with *Ghotna* had caused injuries on the head of Hajura Singh which attracted Section 308 IPC. Paramjit Kaur with stick had caused injury on the leg of Hajura Singh, resulting into fracture of his right ankle joint, whereas Charanjit Kaur and Harpal Kaur together with other accused while armed with stick and *Bahi* had caused simple injuries on Hajura Singh. Then a very strange observation has been made that on spur of the moment during the course of occurrence, the

accused had shared the common intention. This observation is totally misconceived and absurd. The observations made by the trial Court in para No. 19 are mutually contradictory. Rather, as it comes out from the file, it was a case of sudden fight and every assailant is responsible for any of the injury inflicted by him individually and not vicariously liable for the injuries caused by his co-accused. From the facts and circumstances of the case, it cannot be inferred that the accused shared a common intention to cause injuries to Hajura Singh. Therefore, conviction of the accused for offences invoking Section 34 IPC i.e. on Jagtar Singh for Section 325/34 and 323/34 IPC, Paramjit Kaur for Section 308/34, 325/34, 323/34 IPC, Charanjit Kaur for 308/34, 325/34, 323/34 IPC and Harpal Kaur for 308/34, 325/34, 323/34 IPC, cannot be sustained. That leaves us with the conviction of Jagtar Singh for offence under Section 308 IPC, Paramjit Kaur for offence under Section 325 IPC, Charanjit Kaur and Harpal Kaur for offence under Section 323 IPC.

18. Another thing to be seen is whether offence under Section 308 IPC is made out against Jagtar Singh. Section 308 IPC deals with offence of attempt to commit culpable homicide. For ready reference, this provision is reproduced as under :-

308. Attempt to commit culpable homicide.—

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Then we have to see what is culpable homicide. Section 299 IPC deals with the offence of culpable homicide, providing as under :-

299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

19. In the present case, Jagtar Singh, accused is alleged to have given a Ghotna blow on the back side of the head of the complainant, resultantly, he fell down. Now we have to see the medical evidence brought on record by the prosecution. The injury alleged was found to be simple in nature. X-Ray report Exhibit PW 7/4 goes to show that injuries No. 1, 2 and 3 on the skull did not reveal any fracture and the fracture detected was with respect to injury No. 10 that is on the right leg, ankle joint. PW-1 Dr. Gian Chand, who had medico legally examined the injured at CHC

Dhanaula, had stated that injuries No. 1, 2, 3 and 10 were kept under observation, whereas rest of the injuries were simple in nature. He further stated that on 27.9.2005 at the request of ASI Sanjiv Singla, he declared injuries no. 1,2 and 3 to be simple in nature , whereas injury No. 10 was grievous in nature, vide his report Exhibit PF. He has not uttered even a single word that injuries no. 1, 2 and 3 individually or collectively could be dangerous to life. It being so, PW-3 Hajura Singh – injured while getting his statement recorded nowhere stated that Jagtar Singh had given injuries to him on the back of skull with an intention to kill him. Rather from the evidence on the record, such intention to cause death, knowledge that he was likely to commit culpable homicide/murder of Hajura Singh by inflicting such injuries, does not come out to be there. Similarly, no knowledge can be attributed to Jagtar Singh that by hitting Hajura Singh on the back of head with a *Ghotna*, he was likely to cause his death or such bodily injury, which might result into his death. It has to be taken note of that if Jagtar Singh wanted to cause death of Hazura Singh, he would have given blows with much more force, resulting into fracture of the bones, which was not there. The very fact that the injuries on the head were found to be simple in nature, indicate that the blows were not given with much force and intensity, thereby pointing out that intention of the assailants was not to cause death of the victim.

20. The trial Court has not given any reason as to how it has come to the conclusion that Jagtar Singh has committed an offence

under Section 308 IPC. In view of the detailed discussion above, no offence under Section 308 IPC is disclosed against Jagtar Singh. Rather the offence which can be attributed to him is under Section 323 IPC.

21. The parties are closely related with each other. Now they have settled the dispute amongst themselves in an amicable manner. Written compromise in that regard has been placed on record. One of the appellant, namely, Harpal Kaur has since expired and appeal qua her has got abated. The remaining appellants and Hajura Singh – complainant injured, had admitted the compromise. As a matter of fact Jagtar Singh and Charanjit Kaur had appeared in the Court in person, whereas Paramjit Kaur has furnished her affidavit duly sworn in with regard to compromise. Hajura Singh had also appeared and conceded the factum of the matter having been amicably settled between the parties.

22. Under Section 320 Cr.P.C. an offence under Section 323 IPC is compoundable by a person to whom the hurt is caused, whereas offence under Section 325 Cr.P.C. can be compounded by the person to whom hurt is caused but permission of the Court is required for that purpose. Section 320 (5) provides that when the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard. As per sub Section 6, a High Court or Court of Session acting in the exercise

of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

23. Since the appeal is pending before this Court, considering that the parties are closely related with each other and have since resolved their difference by entering into a compromise, in order to enable them to live in harmony and to promote peace and tranquillity in the society, I find that necessary permission to compound the offence should be given to the parties.

24. Accordingly, granting necessary permission for composition, the appellants are acquitted of the charge framed against them.

25. The appeal stands accepted.

August 24, 2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No