

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2115-SB-2007 (O&M)

Date of decision : August 24, 2022

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Hajura Singh and another

.....Appellants

vs.

State of Punjab

.....Respondent

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

Present: Mr. J.S. Khiva, Advocate for
Mr. Ishaan Thakur, Advocate for the appellants

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, on 20.9.2005, on receipt of intimation from Community Health Centre, Dhanaula, District Barnala, with regard to admission of one Charanjit Kaur, injured there, ASI Sanjiv Singla, from Police Station Dhanaula, went there, to record statement of the complainant. However, on an application having been filed by ASI Sanjiv Singla, the attending doctor declared the injured unfit to make the statement, as such ASI Sanjiv Singla left the hospital.

2. He went there again on the next day, i.e. on 21.9.2005, moving an application, soliciting opinion of the doctor concerned as to whether the injured was fit to make the statement. The doctor gave

the opinion in affirmative. Thereafter, ASI Sanjiv Singla went to record the statement of injured Charanjit Kaur. Inter alia Charanjit Kaur – injured stated that about 3 years earlier, she got married with one Jagtar Singh s/o Harnek Singh resident of village Chauke. Jagtar Singh was working as a conductor with Sidhu Bus Service and the couple had been residing in a rented accommodation in village Longowal, for the last about one and a half years. According to the complainant they were four sisters. Her eldest sister Gurdeep Kaur @ Jit Kaur, was married with Hajura Singh (accused), resident of Dhanaula in the year 1988. However, due to some domestic reasons, Gurdeep Kaur @ Jit Kaur committed suicide. Then in the year 1993, Sarabjit Kaur another sister of the complainant injured, was married with Hajura Singh. Paramjit Kaur a sister of the complainant was married with Teja Singh a brother of Hajura Singh in the year 1988. However, Teja Singh had died but Paramjit Kaur was residing in the house of Teja Singh. In the year 2002, Sarabjit Kaur lost her one arm in a fodder cutting machine accident. Therefore, Hajura Singh intended to leave her. Hajura Singh also used to pressurise Sarabjit Kaur to bring money from her parents and gave her beatings also.

3. On receipt of a message sent by Sarabjit Kaur, complainant injured Charanjit Kaur alongwith her husband Jagtar Singh, mother Harpal Kaur had come to village Dhanaula to meet Paramjit Kaur and Sarabjit Kaur there. Even a Panchayat was convened, in which Karnail Singh, Sarpanch and Chand Singh, Panch, had also participated and the dispute between Hajura Singh

and Sarabjit Kaur was resolved. Hajura Singh was not on speaking terms with the complainant and her husband Jagtar Singh. The complainant alongwith her husband Jagtar Singh and mother Harpal Kaur stayed in the house of Paramjit Kaur. Sarabjit Kaur has gone to the fields to pick up cotton. Paramjit Kaur started cooking meals, while the complainant was sitting by her side. Jagtar Singh started cleaning the vehicle. After some time, she heard noises from outside and when she went out, she saw Hajura Singh grappling with Jagtar Singh and Hajura Singh had made Jagtar Singh fall on the ground. Nirmal Singh son of Sukhdev Singh was giving beatings to Jagtar Singh. On an alarm being raised by the complainant injured, Nirmal Singh started giving beatings to her. Hajura Singh gave fist blows to the complainant hitting her in the stomach, buttocks, abdomen etc. Hajura Singh caused injuries on her forehead with some sharp edged weapon.

4. According to the complainant – injured, motive for the incident was that Hajura Singh used to give beatings to Sarabjit Kaur, a sister of the complainant and the complainant and her husband Jagtar Singh were helping Sarabjit Kaur. Jagtar Singh had approached Panchayat, so as to ask Hajura Singh to refrain from giving beatings to Sarabjit Kaur. After recording the statement of complainant – injured Charanjit Kaur and going through her MLR, the Investigating Officer found that offences under Sections 323, 324 read with Section 34 IPC were made out. However, FIR No. 122 dated 21.9.2005, for offences under Sections 308, 323 read with

Section 34 IPC, with regard to the incident had already been registered at the Police Station on the basis of statement of Hajura Singh and this case was a cross version of that very incident, no separate FIR was registered. However, both the cases were investigated together. During the course of investigation, Hajura Singh and Nirmal Singh were arrested on 16.2.2006 and released on bail.

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

6. On presentation of the challan in the Court of learned JMIC, Barnala, copies of documents relied upon therein, were supplied to the accused free of costs as provided under Section 207 Cr.P.C. Since this case was cross version of the case, registered vide FIR No. 122 dated 21.9.2005, for offences under Sections 308, 323, 34 IPC, which had been committed to the Court of Sessions, therefore, this case was also committed there by learned JMIC, Barnala, vide order dated 27.5.2006.

7. On receipt of the case, by way of commitment, finding a prima facie case, charge for offences under Section 323, 324, 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

8. During the course of its evidence, the prosecution examined the following witnesses :-

PW-1 Dr. Gian Chand, Medical Officer, Civil Hospital,

Barnala, who had medico legally examined injured – Charanjit Kaur,

deposed in that regard stating that he had observed following injuries on the person of injured :-

1. Superficial incised wound on the right forehead 5 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.

He proved the MLR of Charanjit Kaur, as Exhibit PA and Pictorial diagram showing seats of injuries as Exhibit PA/1. He further stated that he had sent intimation to the Police Station regarding admission of the injured Charanjit Kaur in CHC, Dhanaula the same being Exhibit PB. He further stated that on Police request Exhibit PC enquiring about the fitness of the injured Charanjit Kaur to make the statement on 20.9.2025, he vide his endorsement Exhibit PC/1 had declared the injured unfit to make a statement. However, on a similar Police request on 21.9.2005 Exhibit PD, he vide his opinion Exhibit PD/1 had declared the injured Charanjit Kaur fit to make a statement.

PW-2 Charanjit Kaur – injured complainant deposed about her relationship vis-a vis Hajura Singh and further deposed about the mode and manner of the occurrence as per the prosecution version.

PW-3 Jagtar Singh, husband of the complainant provided the eye witness account of the incident, supporting the prosecution story on material aspects.

PW-4 SI Sanjiv Singla, the Investigating Officer of this case, testified with regard to the investigation conducted by him, proving various documents.

With that the prosecution evidence got concluded.

9. 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 were innocent and had been falsely involved in this case. Accused. Hajura Singh took up the plea that he had a dispute with his wife Sarabjit Kaur, who was not residing with him. On account of that Jagtar Singh, Harpal Kaur, Charanjit Kaur and Paramjit Kaur had caused injuries to him and they were booked for committing the offence under Section 308 IPC. In order to save themselves from said case, those persons have falsely involved him in the present case. Accused- Nirmal Singh stated that he had gone to rescue Hajura Singh from Jagtar Singh and as such he has been framed in this case. During their defence evidence, the accused examined Pritam Singh as DW-1 and thereafter closed their evidence.

10. After hearing the arguments, learned trial Court convicted Hajura Singh accused for offences under Sections 324, 323/34 IPC and Nirmal Singh accused for offences under Sections

324/34 and 323/34 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	Hajura Singh	324 IPC 323/34 IPC	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
2	Nirmal Singh	324/34 IPC 323/34 IPC	To undergo R.I. for one and a half years and to pay a fine of Rs.250/-. In default of payment of fine, to undergo further R.I. For 15 days 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.

11. Feeling aggrieved by the said judgment of their conviction and order of sentence, both the accused had approached this Court by way of filing the present appeal, which was taken up on 19.10.2007, when it was admitted for regular hearing and sentence of the appellants was suspended during pendency of the appeal, granting them bail on their furnishing requisite bonds to the satisfaction of CJM, Barnala. Since Hajura Singh was a Police official, on an application having been filed by him, his conviction was stayed during the pendency of the appeal vide order dated 2.7.2009. Now the appeal has come up for final hearing.

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

13. In the present case, the trial Court has convicted accused Hajura Singh for an offence under Section 324 IPC for causing injuries to Charanjit Kaur with some sharp edged weapon. Whereas Nirmal Singh has been convicted for offence under Section 324/34 IPC for the reason that he shared a common intention with Hajura Singh, who had caused such injuries to Charanjit Kaur. Similarly, Hajura Singh and Nirmal Singh have been convicted for offence under Section 323/34 IPC.

14. I find that the trial Court fell in error in convicting and sentencing the accused on several accounts, vide impugned judgment. Keeping in view the facts and circumstances of the case and evidence brought on file, the trial Court has come to the conclusion that the occurrence was the result of a free fight and plea of injuries caused in pursuance of exercise of right of private defence was not available to the accused persons, because in such cases all the persons are responsible for their individual acts. But thereafter, it went on to observe that during the continuance of the occurrence, the accused persons knew about the consequences of the offence actually committed and that such knowledge is gathered from the manner in which the injuries were inflicted by Hajura Singh and Nirmal Singh on the person of Charanjit Kaur and also from their conduct at or before the scene of action. In that way, while causing the injuries, both the accused had shared a common intention. These observations

are diagonally opposite to the earlier observations.

15. From the facts and circumstances of the case, it becomes abundantly clear that the incident had occurred at spur of the moment and not as a result of pre-planning or pre-meditation. There is nothing on record to show that the accused shared a common intention to cause injuries to Charanjit Kaur. Therefore, the conviction of accused, invoking the provisions of Section 34 IPC is not sustainable. On conclusion of the trial, the trial Court had come to the conclusion that only Charanjit Kaur had suffered injuries in the incident and part of the prosecution story with regard to Jagtar Singh having also received injuries was not accepted, since there was no medical evidence to corroborate such allegations.

16. Now coming to the question as to what offences are being disclosed against the accused, as per the prosecution story, Hajura Singh and Nirmal Singh had given beatings to Charanjit Kaur. Hajura Singh had given fist blows in her stomach, buttocks, abdomen etc. These allegations prove offence under Section 323 IPC. As far as offence under Section 324 IPC is concerned, the injury in that regard on forehead of Charanjit Kaur is attributed to Hajura Singh, but the allegations in that respect and evidence adduced are quite vague. The complainant in her statement made to the police, stated that Hajura Singh had caused injury to her with some sharp edged weapon without specifying as to what was that weapon. When her statement was recorded in the Court as PW-2, she had stated that Hajura Singh had given blow on her head with some sharp edged object. She did

not specify as to what was that object; whether he was carrying that object with him or had picked it up from the spot and then hit her with that object. Similarly, Jagtar Singh, appearing as PW-3 was not clear as to what was the sharp edged object with which Hajura Singh allegedly hit Charanjit Kaur. No such object is shown to have been taken into possession by the police during investigation of this case. That object was not shown to the doctor, who had medico legally examined Charanjit Kaur to find out as to whether injury on forehead of the injured, was result of that object. It was not sent to the FSL, Punjab, Chandigarh, to find out, as to whether it was used in the incident or not. Therefore, the story of Hazura Singh having caused injury to Charanjit Kaur on her forehead with a sharp edged weapon, comes out to be doubtful. Rather it seems that in the sudden fight between the parties, she had received certain injuries. Thus conviction of the accused Hajura Singh for offence under Section 324 and that of Nirmal Singh, for offence under section 324 read with Section 34 IPC, cannot be sustained. That leaves us with conviction of both the accused under Section 323 IPC.

17. The parties are closely related with each other. Now they have settled the dispute amongst them in an amicably manner. Written compromise in that regard has been placed on record. The parties have 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. Harpal Kaur is stated to have expired. Hajura

Singh had also appeared and conceded the factum of the matter having been amicably settled between the parties.

18. Under Section 320 Cr.P.C. an offence under Section 323 IPC is compoundable by a person to whom the hurt is caused. 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.

19. 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 peaceful lives and to bring peace and tranquillity in the society, I find that necessary permission to compound the offence should be given to the parties.

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

21. The appeal stands accepted.

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

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No