

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

CRA-S-356-SB-2007 (O&M)

Date of pronouncement: 28.09.2022

Om Parkash

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Deepak Vashishth, Advocate for the appellant.

Mr. Vijesh Sharma, Addl. AG Haryana.

Mr. Sandeep Kumar, Advocate for

Mr. Vikaram Singh, Advocate for the complainant.

H.S. MADAAN, J.

1. Appellant/accused Om Parkash son of Sadhu Ram along with his co-accused Rakesh @ Dana, Kuldeep and Dharma, being accused in FIR No.199 dated 08.12.2000, for offences under Sections 323, 324, 307, 506 and 34 IPC, registered with Police Station Kalayat, faced trial by Addl. Sessions Judge, Kaithal and vide judgment dated 15.01.2007, all the accused were convicted for offences under Sections 323, 324, 506 read with Section 34 IPC, whereas, they were acquitted of the charge for an offence under Section 307 IPC and in terms of the order passed on 17.01.2007, the convicts were sentenced to undergo rigorous imprisonment for a period of 06 months each and to pay a fine of Rs.500/- each; in default of payment of fine, to further undergo simple

imprisonment for a period of one month under Section 323 IPC; they were further sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.1000/- each; in default of payment of fine, to further undergo SI for two months under Section 324 IPC; they were sentenced to undergo rigorous imprisonment for a period of 06 months each and to pay a fine of Rs.500/- each; in default of payment of fine, to further undergo SI for one month. All the sentences were ordered to run concurrently.

On an application having been filed by the accused/convicts on 17.01.2007, their sentence was suspended till 17.02.2007 to enable them to file appeal against judgment of conviction and order of sentence, subject to their furnishing necessary bonds, which they furnished.

2. Briefly stated facts of the case, as per prosecution story are that criminal machinery in this case was set into motion by complainant Joginder Singh, who in the statement got recorded by him with ASI Surta Ram from Police Station City Kaithal at Civil Hospital, Kaithal on 07.12.2000, stated that he was working as a driver on truck No.HR-46-7377 belonging to Anoop Singh Rajpoot, R/o Kalayat; on 06.12.2000, at about 6.30 pm, when the complainant along with Jaipal son of Charat Singh and Satnam son of Om Parkash, residents of that very village was present at Kainchi Chowk, Kalayat near kiosk of juice; in the meanwhile Dana @ Rakesh son of Fakiriya, Kuldeep son of Mangat Ram, Dharma son of Munshi Ram and Shekhar son of Sadhu Ram came there and they abused Mohinder Singh, owner of kiosk for the reason that he had opened

the kiosk in spite of the fact that the accused had got it closed and accused started giving slap blows to Mohinder Singh; Jaipal asked from the accused as to why they were beating up Mohinder Singh because kiosk was got opened by them i.e. the complainant party; hearing that Dana took out a knife from his pocket and stabbed Jaipal on left side of abdomen; Kuldeep having a knife stabbed Jaipal on the left side; Dharma also having a knife stabbed Satnam in his abdomen; when Satnam fell down, they Shekhar gave a gandasi blow, which hit Satnam on the left side near the ear; on hearing the noises, Rajinder and Suresh Kumar came to the spot and rescued the complainant and other injured from the clutches of the accused; the accused while leaving the spot threatened the complainant and other persons with him of dire consequences.

After the incident, the injured were shifted to Civil Hospital, Kaithal; information from the said hospital was sent to Police Station City, Kaithal that Joginder Singh, Satnam and Jaipal were admitted there; on receipt of that information, ASI Surta Ram from that police station had gone to the hospital and after seeking the opinion of the attending doctor with regard to fitness of injured Joginder Singh to make statement; he accordingly recorded his statement; the IO collected MLRs of all the three injured; thereafter, on the basis of such statement of complainant and in view of the MLRs, all of the three injured, formal FIR for offences under Sections 323, 324, 506 read with Section 34 IPC was registered at the police station.

After registration of the FIR, the investigation in the case

started, during the course of which, the IO carried out the spot inspection and prepared rough site plan of place of incident; he recorded statements of witnesses; on receipt of medical opinion with regard to nature of injuries on the person of Jaipal, an offence under Section 307 IPC was added in the FIR; all the accused were arrested on 11.12.2000 and weapons of offence were recovered from them.

3. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate at Kaithal. Learned Magistrate supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C., and then finding that offence under Section 307 IPC was exclusively triable by the Court of Sessions, vide his detailed commitment order, committed the case to the Court of Sessions at Kaithal, from where it was entrusted to Addl. Sessions Judge, Kaithal.

Finding a prima facie case, charge for offences under Sections 307, 324 read with Section 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

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

PW-1 Dr. Lajja Ram, Medical Officer, Civil Hospital, Kaithal stated that on 07.12.2000, while posted as such, he had medico-legally examined Jaipal, aged 40 years R/o Kalayat, who had been brought to the hospital by his cousin, Dharampal and on general examination, he observed that the patient was conscious, well oriented having the

following injuries:-

1. Stab incised wound size 4.5 cm x 1 cm in left flank region. Bleeding was present. Advised for surgeon opinion. For depth probing could not done.
2. Incised wound size 3 cm x 1.5 cm depth could not ascertained as probing not done, with fresh bleeding present on the left flank, 4.5 cm proximal to injury No.1. Injury was advised for surgeon opinion.

On the same day, he medico-legally examined Satnam and found the following injuries on his person:-

1. Incised stab wound 2 x 1 cm, depth could not ascertained as probing was not possible, bleeding was present, on lower aspect of the left side chest on anterior aspect of the left side chest on anterior aspect. Injury was advised for surgeon opinion.

On the same day, he also medico-legally examined Joginder and found the following injuries on his person:-

1. Incised wound size 10 cm x 1.5 cm muscle deep with profused bleeding on left side of the face extending from left cheek to left anterior portion of left parietal region. Advised surgeon opinion and X-ray facial skeleton.
2. Incised wound size 3 cm x 1 cm muscle deep on left cheek posterior to injury No.1 above 2 cm. Bleeding was present on cleaning the wound. Injury was advised for surgeon opinion.

PW-2 HC Joginder Singh stated that on 08.12.2000, while he

was posted as MHC at Police Station Kalayat and on that day, he had recorded formal FIR Ex.PF/1 under his signatures and further he had appended endorsement Ex.PF/2 on the ruqa Ex.PF.

PW-3 Constable Ajmer Singh stated that on 09.12.2000, while he was posted at Police Station Kalayat, on that day, he along with ASI Surta Ram had gone to PGI, Rohtak where injured Jaipal and Satnam had handed over their blood stained clothes to ASI Surta Ram, which were taken into police possession, after converting those into a sealed parcel with seal 'RS', vide recovery memo Ex.PG, and seal after use was given to him.

PW-4 Laxman Singh, Draughtsman, stated that on 16.02.2001, while posted as such, on that day, he had gone to the spot and on demarcation of Joginder Singh, prepared scaled site plan Ex.PH with correct marginal notes.

PW-5 Joginder Singh, complainant/injured, PW-7 Jaipal, injured and PW-8 Satnam, injured provided the eye witness account of the incident, deposing in line of the prosecution story.

PW-6 Mohinder stated that on 07.12.2000, he had taken a khoka on rent and used to sell juice there from, located at Kainchi Chowk Kalayat; that accused had got the khoka closed during noon time, since they demanded Rs.100/- as rent; according to this witness, he used to pay rent to Sham Lal Pandit and at about 6 PM, on the same day, Pala @ Jai Gopal, Joginder, Satnam came to his khoka and at their instance, he opened his khoka; in the evening, he had gone to his house after closing

the khoka; that accused did not cause injuries to Jaipal, Satnam and Joginder; he was declared a hostile witness at the instance of learned Public Prosecutor who was given an opportunity to put questions to the witness in the form of cross-examination, which he availed.

PW-9 Ex-Constable Rampal, who had taken three separate parcels along with sample seal to FSL, Madhuban depositing such parcels and sample seal impression chit by submitting his affidavit Ex.PL, testified that so long as the parcels remained in his possession, no tampering therewith had taken place.

PW-10 SI Surta Ram, the Investigating Officer of this case deposed with regard to the investigation conducted by him, proving various documents. He had testified with regard to his having recorded statement of complainant Joginder Singh at Civil Hospital, Kaithal, putting his endorsement below that, sending ruqa to the police station, on the basis of which formal FIR was recorded; he further deposed with regard to visiting the spot, recording statements of witnesses; he stated that he had gone to PGI, Rohtak on 09.12.2000, where two of the injured namely Jaipal and Satnam had been referred and after obtaining medical opinion, had recorded their statements; he further stated that he had taken into possession clothes of both the injured, which were blood stained; he further stated that on an application having been filed by him, the attending doctor had declared the injuries on the person of Jaipal and Satnam to be dangerous to life and thereafter, an offence under Section 307 IPC had been added; he deposed regarding arrest of all the four

accused in this case, further contending that they were interrogated separately.

Accused Dharma during interrogation had suffered a disclosure statement that the knife used by him in the incident on 07.12.2000 had been washed and then kept concealed near the school wall about which only he knew and get the same recovered and thereafter, in pursuance of that statement Ex.PC, Dharma got the knife recovered.

Similarly, Kuldeep Singh had suffered a disclosure statement that the knife used by him in the incident had been cleaned by him and then kept concealed in his fields, about which only he knew; such disclosure statement being Ex.PQ.

Then Om Parkash during his interrogation suffered a disclosure statement that gandasi used by him in the incident had been kept concealed by him in the heap of parali of Rakesh @ Dana, about which only he knew and get the same recovered; such disclosure statement being Ex.PR.

Furthermore, accused Rakesh @ Dana had suffered a disclosure statement that knife used by him in the incident was cleaned by him after causing the injuries and then kept concealed in his fields, about which only he knew and get the same recovered; such disclosure statement being Ex.PS.

This witness further stated that all the accused in pursuance of the disclosure statements suffered by them got recovered the respective weapons which were converted into sealed parcels and then taken into

police possession. He otherwise deposed with respect to the investigation conducted by him.

PW-11 Dr. Ajay Gulati, Sr. Resident posted in Department of Radio-diagnosis, PGIMER, Chandigarh deposed that he had radiologically examined Jaipal on 06.02.2001; he conducted X-ray chest and X-ray abdomen and proved his report Ex.PT in that regard. He further stated that he examined patient Satnam son of Om Parkash on that day and conducted X-ray chest and X-ray abdomen and proved his report Ex.PU in that respect.

PW-12 HC Rohtash Kumar, who was working as MHC of the police station with whom the case property had been deposited vide his affidavit Ex.PT testified with regard to the safe custody.

With that, the prosecution evidence stood closed.

5. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

6. During their defence evidence, accused examined Lehna Singh as DW-1. This witness stated that he knows Sadhu Ram of village Kolekha, who had three sons, namely Chander Shekhar, Jitender and Om Parkash; on 07.12.2000 at about 5/5.15 pm, Jitender and Chander Shekhar were in their village and remained there till 9/9.30 pm; on that day, they had visited their village for purchasing a buffalo; regarding that

they had submitted a written application to SHO, Kalayat, copy of which being Ex.DW1/A, as such, Chander Shekhar was not challaned in this case.

Accused Om Parkash had tendered certain documents in evidence and thereafter, the defence evidence was closed.

7. After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra.

8. Feeling aggrieved by the judgment of their conviction and order of sentence, the accused-convict Om Parkash had filed an appeal before this Court, which was taken up on 19.02.2007, when it was Admitted for regular hearing and the remaining sentence of the appellant was suspended during the pendency of the appeal, subject to his furnishing requisite bonds to the satisfaction of convicting Court.

Now the appeal has come up for final hearing.

9. I have heard learned counsel for the appellants/accused, learned State counsel besides going through the record.

10. In this case, eye witness account of the incident was provided by PW-5 Joginder Singh, PW-7 Jaipal and PW-8 Satnam. All three of them having suffered injuries in the incident. All three of them having got hurt in the occurrence are stamped witnesses and their presence at the spot cannot be doubted. All three of them deposed in a natural and convincing manner. Though, they were subjected to lengthy cross-examination on behalf of the accused but they could not be shattered on any material point. No cogent and convincing reason has

been suggested or proved promoted by which, they might have involved the accused in this case falsely or deposed against them to secure their conviction. Such witnesses having suffered injuries in the incident, it would have been their earnest endeavour to ensure that the persons responsible for their such fate were brought to book and punished suitably, rather than trying to screen the actual culprits and substitute them with the accused without any rhyme or reason. The ocular evidence provided by these witnesses is found to be worthy of reliance, which is supported by medical evidence in the form of statement of PW-1 Dr. Lajja Ram, who had medico-legally examined the injured at Civil Hospital, Kaithal. He narrated about the injuries noticed by him on the person of the injured, proving their MLRs. He had given opinion that injuries found on the person of Jaipal and Satnam could be dangerous to life. He was shown the weapons recovered from the accused and he stated that injuries on the person of injured could possibly be inflicted with those weapons.

11. The investigation in this case has been shown to be carried out in a fair and impartial manner. The IO had no motive to involve the accused in this case wrongly or to challan them falsely. Involvement of appellant/accused in this case clearly comes out to be there. From the statements of eye witnesses referred to above, who have categorically stated that the appellant/accused Om Parkash armed with gandasi had given blows to complainant Joginder Singh on left side near ear and second such blow was given by him to Joginder hitting him on head. The appellant-accused Om Parkash is specifically named in the FIR also and

during the course of investigation, he had been arrested and as deposed by PW-10 SI Surta Ram, Om Parkash had suffered a disclosure statement before him that he had kept concealed the gandasi used by him in the incident in the heap of parali of Rakesh @ Dana, about which only he knew and thereafter, in pursuance of disclosure statement Ex.PR, had got the same recovered from his possession, which was seized by converting into a sealed parcel and then taken into police possession.

12. From the record, it comes out that the gandasi had been recovered from the accused on 11.12.2000, whereas incident had taken place on 07.12.2000. PW-1 Dr. Lajja Ram, who had conducted medico-legal examination of the injured was shown gandasi Ex.P6 got recovered by accused Om Parkash and the witness had stated that injuries on the person of Joginder Singh, may be caused with that gandasi. Therefore, the trial Court was justified in convicting the appellant/accused for offences under Sections 323, 324, 506 IPC.

13. Surprisingly, the trial Court had acquitted the accused for offence under Section 307 IPC. The reasoning given for doing so is not very convincing. Two of the injured namely Jaipal and Satnam having suffered stab wounds with knives which are dangerous weapons with Joginder Singh having suffered injuries on face caused with gandasi, the intention of the accused to commit their murder was clearly there. The doctor examining them have also given opinion that injuries on the person of Jaipal and Satnam could be dangerous to life. He had further stated that after seeing the X-ray report pertaining to injured Satnam

prepared at PGI, Rohtak, which show free air under domes of diaphragm, the possibility of the injury to the internal organs could be dangerous to life. The trial Court has conveniently without noticing this thing and by given unconvincing reasons arrived at the conclusion that offence under Section 307 IPC was not made out. Why it was so done only the trial Court can explain.

To make out a case under Section 307 IPC, the Court is to consider all facts and circumstances and merely for the reason that the eye witnesses have not specifically stated that the injuries were caused by the accused with an intention to commit murder does not mean that such intention was not there. Accused armed with dangerous weapons like knives and gandasies, causing injuries in the abdomen and on vital parts, clearly show their intention to commit murder of the victims. Though much can be written about such conduct of the Trial Judge, however, I refrain from doing so. It is sufficient to mention that the Trial Judge conveniently let off the accused for a grave offence of Section 307 IPC, giving superfluous reasoning. However, the State has not chosen to challenge the judgment on this point.

14. The sentence awarded to the accused is not on high side. No reduction therein is called for. The appeal is found to be without merit and is dismissed accordingly.

15. However, one glaring mistake has come to notice of the Court inasmuch as in terms of the impugned judgment, the appellant/accused was sentenced to rigorous imprisonment for a period of

one year for offence U/s 324 IPC, for six months each for offences U/s 323 and 506 IPC. All the sentences were to run concurrently but in terms of the custody certificate placed on record, appellant Om Parkash had undergone total sentence of 02 years, 10 months and 09 days including remissions. The accused was convicted on 17.01.2007 to undergo RI for one year and to pay a fine of Rs.2000/- and fine has been paid. The accused had undergone 02 years, 10 months and 09 days as an under trial in case FIR No.199 dated 08.12.2000; that it being so, it is very strange that trial Court ignored this fact while sentencing the accused. Nevertheless the appeal being without merit stands dismissed.

28.09.2022

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(H.S. MADAAN)
JUDGE

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