

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.332

- I. **CRA-S-7-SB-2004 (O&M)**
Reserved on:18.11.2022
Pronounced on:30.11.2022
- Tarsem Lal** **...Appellant**
- Versus**
- State of Punjab** **...Respondents**
- II. **CRA-S-44-SB-2004 (O&M)**
- Raj Kumar @ Raju** **...Appellant**
- Versus**
- State of Punjab** **...Respondents**

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. P.S. Ahluwalia, Advocate,
for the appellant in CRA-S-7-SB-2004.

Mr. Gaurav Jain, Amicus Curiae
for the appellant in CRA-S-44-SB-2004.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S. SHEKHAWAT, J.

This judgment shall dispose of above-said two criminal appeals as the same arise out of a common judgment of conviction and order of sentence dated 22.10.2003 passed by the learned Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur as similar question of law and facts are involved therein.

Both the appellants convicted and sentenced by the learned trial

Court in the following manner:-

Accused/appellant-Tarsem Lal	
Offence	Sentence
307 IPC	To undergo rigorous imprisonment for ten years with fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year
324 IPC	To undergo rigorous imprisonment for two years with fine of Rs.200/- and in default of payment of fine, to further undergo rigorous imprisonment for three months
Accused/appellant -Raj Kumar	
307/34	To undergo rigorous imprisonment for ten years with fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year
324	To undergo rigorous imprisonment for two years along with a fine of Rs.200/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

The factual matrix as it involves from the final report under Section 173 Cr.P.C. is that Shamsher Singh son of Madan Lal, complainant, was present in a shop at 07.00 PM on 16.01.2001 and his father Madan Lal and uncle Janak Raj had also joined him at a shop. Tarsem Lal and Raj Kumar, both accused/appellants, called him out of the shop and on their calling, he went out. They started talking to each other at some distance from their shop near Hanuman Temple. Tarsem Lal, accused, hurled abuses at him and told him that they would teach him a lesson for picking up a fight with them. Accused Raj Kumar @ Raju exhorted Tarsem Lal to kill him and in the meantime, Tarsem Lal took out a knife from his paint and gave blow with the knife on the left side of the chest of Shamsher Singh. Raju also took out his knife and gave a knife blow on the left side of the chest of Shamsher Singh, in order to kill him. Tarsem Lal thereafter gave four blows

with knife which hit Shamsher Singh on his left thigh, left buttock, right buttock and left leg. Raju also caused injuries with four blows of knife near his stomach and the injured Shamsher Singh raised the alarm to save him. The accused, on hearing the alarm, ran away from the place of occurrence and took away their weapons also. Madan Lal, father of the injured, as well as Janak Raj, uncle of the injured, had witnessed the entire occurrence and the accused had attacked Shamsher Singh with an intention to kill him. The father and the uncle of the injured shifted him to the Civil Hospital, Patahankot. However, keeping in view the serious condition of the injured, the doctors referred him to Dayanand Medical College, Ludhiana for further better management. There was already a quarrel between the parties in the past and due to this enmity, the injuries were caused by the accused to the injured.

Shamsher Singh, injured, was initially medico legally examined at Civil Hospital, Pathankot, however, his condition was serious, consequently, he was referred to Dayanand Medical College, Ludhiana. The statement of the complainant/injured was recorded by the police as Ex PA and on the basis of the same, the FIR in the instant was registered against the accused under Sections 307/324/34 IPC. The initial investigation was conducted and the blood stained earth was taken into possession by the police and sealed in a parcel. The accused were also arrested on finding sufficient evidence against them. The accused suffered disclosures statements before the police and in pursuance to their statements, the knives hidden by the accused were recovered from them and were taken into possession by the police. The police also recorded the

statements of various witnesses, who were acquainted with the facts of the instant case.

After presentation of the challan, the learned trial Court ordered framing of charges against the accused under Sections 307/324/34 IPC, to which, they pleaded not guilty and claimed trial.

To support the charge, the prosecution examined 12 witnesses. The prosecution examined Shamsher Singh, injured, as PW-1. He narrated the above referred facts in his testimony and explained the role of both of the accused. He clearly stated the manner, in which the injuries were caused to him by the accused. He was called by both the accused from his shop and they were talking to each other. In the meantime, accused/appellant Tarsem Lal exhorted Raj Kumar @ Raju to teach him a lesson regarding a previous dispute between the parties. Accused-appellant Tarsem Lal caught hold of the injured from his neck and took out a knife from his pocket and gave its blow on his left flank. Then Raj Kumar @ Raju took out a knife from his pocket and gave its blow on the left flank of Shamsher Singh. Tarsem Lal also gave knife blows on the thighs and buttocks of Shamsher Singh. On hearing his noise, the father and uncle of the injured came at the spot and rescued him from the clutches of the assailants and also shifted to the hospital. He was referred to DMC, Ludhiana for better medical treatment. The prosecution examined PW-2 Madan Lal, father of the injured Shamsher Singh. The prosecution further examined PW-3 Janak Raj, uncle of the injured Shamsher Singh, who was also an eye-witness of the occurrence and supported the version of the PW-1 in all material particulars. The

prosecution further examined PW-4 Constable Roshan Lal, who was a witness to the recovery of blood stained earth and prepared the samples by the prosecution. Still further, PW-5 Chanan Singh, Constable, had delivered the special report. PW-6 ASI Surinder Pal conducted the initial investigation in the instant matter. He interrogated both the accused in the instant case and on their disclosure statements, the recoveries of knives were effected from the accused/appellants. Still further, the prosecution examined PW-7 Dr. Bhupinder Singh, Medical Officer, Civil Hospital, Pathankot, who medico legally examined Shamsher Singh, injured, on 16.01.2001 and he noticed the following injuries:-

- (i) Punctured stab wound 5 x 2.5 cm over left chest in mid axillary line below apex of left axilla. Obliquely placed. Depth could not be ascertained. The bone was going deep into incostal area.
- (ii) Stab wound 3 x 1 cm over left lower part of chest anterior to mid axillary line 15 cm interior to injury No.1. Depth could not be ascertained.
- (iii) Stab wound 3 x 1 cm over left gluteal region in outer and upper quadrant. Bleeding profusely. Depth could not be ascertained.
- (iv) Stab wound 3 x 1 cm over left thigh on the antero lateral aspect on the middle 1/3rd portion.
- (v) Incised wound 1 x .25 cm x. 25 cm over anterior surface of left lower leg 15 cm distal to knee joint.

- (vi) Stab wound 3 x 1 cm over right gluteal region. Depth could not be ascertained.
- (vii) Stab wound four in number each measuring 2.5 x 1 cm over posteriol-lateral surface of right thigh. Depth could not be ascertained.

All injuries kept under observation for x-ray surgical opinion. Weapon used was sharp edged and the duration was within three hours. Patient was brought in a serious condition with both BP and pulse unrecordable and was referred to DMC Ludhiana on the same day.

The said witness was searchingly cross-examined and he had withstood the test of cross-examination. During his cross-examination, the learned trial Court had put him a question as to what were the various factors, which he took into consideration while declaring the injuries as dangerous to life and as per his reply, he had received an x-ray report from DMC, Ludhiana, there was evidence of left plural effusion on the chest x-ray, which means that injury must have penetrated through the plura. He also admitted that leading to the plural effusion means that the injury must have penetrated through the thoracic cavity from the x-ray. From the x-ray report, he could not say whether the injury had extended to lungs or not. The prosecution further examined PW-8 J.S. Dhanjal, who prepared the site plan at the place of occurrence. Still further, PW-9 Pal Chand, ASI, clearly proved the investigation before the learned trial Court and nothing material could be elicited from his cross-examination. Still further HC Prem Pal was

examined as PW-10, who was witness to the recovery memos. Apart from that, the prosecution examined PW-11 Dr. Bikram Jeet Singh Sandhu, who had examined the patient when he was admitted in the emergency on 17.01.2001. There was history of attack by two persons and the same injuries were noticed by him in his deposition before the court. Similarly, PW-12 Dr. Kavita Goel, who conducted x-ray examination on Shamsheer Singh, was also examined as a witness.

Thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded and they simply pleaded false implication and no reason for false implication was mentioned by them. The defence examined three witnesses namely DW-1 Hira Lal, DW-2 Ajay Singh and DW-3 Vikram Gupta son of Subhash Chander. DW-1 Hira Lal was an auto driver and he stated that after the occurrence, many persons had gathered there and the injured was shifted in his auto-rickshaw to the hospital. Similarly, DW-2 Ajay Singh also not supported the case of the defence. Vikram Gupta was also examined as DW-3.

After hearing the counsel for both the parties and going through the record of the case, the learned trial Court concluded that the prosecution has successfully proved its case, bringing home the guilt against the accused/appellants. Accordingly, accused/appellants were convicted and sentenced as noted above.

Learned counsel for the appellants have vehemently argued that there is delay in registration of the FIR. The occurrence had taken place at about 07.00 PM on 16.01.2001 and the injured had reached the hospital immediately after the occurrence. Even PW-9 ASI Pal Chand reached Civil

Hospital and moved an application for recording the statement of the injured, but he was informed that the injured had been shifted to DMC, Ludhiana. Another application was moved for recording the statement of the injured, however, he stated that he would make the statement only in the presence of his father. Learned counsel have further submitted that the FIR has been recorded only on the basis of the statement of the injured on 19.01.2001, which is wrong on the face of it and there is a possibility of false implication of the appellants in a criminal case. Still further, learned counsel for the appellants further submitted that there are material contradictions in the testimonies of PW-2 Madan Lal and PW-3 Janak Raj and both the eye witnesses had not witnessed the occurrence and their presence at the place of occurrence was highly doubtful and improbable. Still further, it has been submitted that PW-11 Dr. Bhupinder Singh, who medico-legally examined the injured initially, was admittedly related to injured Shamsheer Singh and he was the first doctor to examine the injured. Consequently, a wrong MLR had been prepared by the said doctor in collusion with the injured and the allegations are palpably false. Learned counsel further submitted that the appellants have been facing the prosecution since January 2001 and a lenient view may be taken in the matter and in case this Court upholds the conviction, the sentence imposed on the appellants may be suitably reduced.

On the other hand, learned counsel for the State opposed the arguments raised by the learned counsel for the appellants and submitted that the testimony of PW-1 Shamsheer Singh remained unshaken, despite a

lengthy cross-examination on him. The accused/appellants are liable to be convicted by this Court in view of convincing evidence of PW-1 Shamsher Singh which has been duly supported by the medical evidence in the shape of testimonies of PW-7 Dr. Bhupinder Singh, PW-11 Dr. Bikramjit Singh and PW-12 Dr. Kavita Goel. Still further, the weapons of offence have been recovered from both of them and the accused had set up a false defence in the instant case. Even the evidence led by the prosecution was cogent and convincing and the appellants are liable to be convicted by this Court.

This Court heard learned counsel for the parties and perused the case file minutely.

To prove the charge, the prosecution has examined PW-1 Shamsher Singh, who has assigned specific roles to both the accused/appellants. In fact, both the accused/appellants had called the injured out of his shop and accused/appellant Tarsem Lal told him that they would teach him a lesson regarding a previous quarrel with them. Accused/appellant Raj Kumar @ Raju exhorted Tarsem Lal to kill him and Tarsem Lal, appellant caught hold of him from his neck. Tarsem Lal took out a knife from his pocket and gave its blow on the left flank of the injured. Raj Kumar @ Raju took out a knife from his pocket and he also gave a blow on the left leg of the injured. Accused Tarsem Lal also gave knife blows on his thighs and buttocks. Five knife blows were given by Tarsem Lal and 3/4 blows were given by Raju. On hearing his noise to save him, his father and uncle reached at the spot and saved him from the clutches of the assailants. The injured was immediately shifted to the hospital, where he was examined

at 7.45 p.m. on 16.01.2001 by PW-7 Dr. Bhupinder Singh, Medical Officer and he found seven injuries on his person. Even the said doctor was duly cross-examined and nothing material could be extracted from the same. The injured was referred to Dayanand Medical College and Hospital. He was examined by PW-11 Dr. Bikramjit Singh in emergency of DMC, Hospital, Ludhiana on 17.01.2001 and the injuries were again noticed by him, which were duly explained by him to the Court. Even PW-12 Dr. Kavita Goel, from DMC Hospital Ludhiana, was examined and she also noticed the left plural effusion. Apart from that, a specific question was put to PW-7 Dr. Bhupinder Singh with regard to the various factors, which he took into consideration for declaring the injuries as dangerous to life. PW-7 Dr. Bhupinder Singh clearly stated that from the x-ray report received from DMC Hospital, Ludhiana, there was evidence of left pleural effusion on the chest X-Ray, which means that injured must have penetrated through the plural, leading to plural effusion, which further means that the injury must have penetrated through the thoracic cavity. Thus, the ocular account of the injured has been duly supported by the medical evidence.

Learned counsel for the appellants have referred to minor contradictions appearing in the testimonies of PW-2 Madan Lal and PW-3 Janak Raj. First of all, the testimony of the injured witness i.e. PW-1 Shamsher Singh has been found to be worthy of credence and no further corroboration is required. However, as a matter of abundant caution, this Court has perused the testimonies of PW-2 Madan Lal and PW-3 Janak Raj, who had also reached the place of occurrence. The testimonies of PW-2 Madan Lal and PW-3 Janak Raj, also supported the testimony of the injured

witness. In fact, these witnesses were examined by the learned trial Court after a long gap of several months and such minor variations are bound to appear in the testimony of truthful witnesses and are liable to be ignored by this Court. Still further, learned counsel for the appellants also submitted that there was a delay in registration of the FIR as the occurrence had taken place on 16.01.2001, whereas, the FIR was registered on 19.01.2001. First of all, the injured witness Shamsher Singh had no reason to falsely involve the appellants. The appellants have raised no defence as to why they were named by PW-1 Shamsher Singh as the assailants in the instant case. Still further, this Court agrees with the findings recorded by the learned trial Court that in the present case, the police has been negligent in late recording of the statement. A perusal of the testimony of PW-2 Madan Lal and PW-3 Janak Raj would show that both these persons were busy in the treatment of their son at DMC Hospital, Ludhiana and were commuting from Pathankot to Ludhiana for the treatment of their son as well as their domestic affairs. Being a layman, they could never be expected to be aware of the technicalities of law and also the fact that the matter was to be reported to the police at the earliest. On the other hand, PW-9, ASI Pal Chand clearly admitted that he made no efforts to contact anyone between 16.01.2001 and 19.01.2001. On 16.01.2001, he went to the doctor and moved an application to get the statement recorded. However, it was found that the patient had already been referred to DMC Hospital, Ludhiana. On 17.01.2001, he visited DMC Hospital, Ludhiana and moved another application for recording of the statement. However, the injured Shamsher Singh, who was aged about 17/18 years, refused to make the statement on that day as he

wanted to make the statement in the presence of his father. Thereafter, on 19.01.2001, PW-9 ASI Pal Chand along with other police officials again visited DMC Hospital, Ludhiana for recording the statement of the complainant/injured Shamsher Singh and he made the statement to the police. Thus, it is apparent that the local police has been negligent in the present case and a victim of a crime can never be penalized for the fault on the part of the police.

Still further with the assistance of the learned counsel for the parties, this Court has carefully gone through the trial Court record. After both the accused were arrested, the weapons of offence were also recovered from them and the matter has been investigated by the police thoroughly and there was sufficient incriminating evidence against both the appellants during the course of investigation. This Court also agrees with the finding recorded by the trial Court that the testimonies of three defence witnesses did not help the case of the appellants in any manner. Only general and vague statements have been made by the three witnesses, which have been dealt by the learned trial court and the findings recorded by the learned trial Court in convicting the appellants under Sections 307/324/34 IPC are liable to be affirmed in this regard. Learned counsel for the appellants also submitted that the appellants are facing the agony of the trial/appeal for the last 21 years and never indulged in any other criminal activity during this period. Even they were granted the benefit of suspension of sentence, but they never misused the concession granted by this Court. Learned counsel have also referred to the law laid down by the Hon'ble Supreme Court of India in the matter of **“Surinder Singh Vs. State (Union Territory of**

Chandigarh), 2022 (1) (Crime), 133”, in which the Hon’ble Supreme Court has held as follows:-

“32. The equality of ratio between two sets of variables is now well known as the doctrine of proportionality. The bedrock of sentencing policy in our criminal justice system is also based on the axiom of proportionality. This principle of commensurate sentencing treats offenders as agents capable of evaluating their own illegal conduct and the social censure associated with it, which is communicated to them by imposing a proportionate sentence. The exercise for assessing ‘proportionality’ is thus dependent upon the gravity of the offence which is determined according to - (a) mischief caused or risk involved in the offense; (b) the overall conduct of the offender and; (c) motives ascribed to the felon. Further, the equality of treatment so as to eliminate discriminatory practices in the award of sentencing, is integral to the canons of proportionality. Needless to say, the guarantee of even-handedness before the law(s), as enshrined in Article 14 of our Constitution, encompasses the administration of criminal justice system as well.

33. Having said that, we cannot be incognizant of the fact that there are practical difficulties in achieving absolute consistency in regards to sentencing. It must be candidly acknowledged that there is an element of discretion present while adjudicating the issue of sentence, however, the same cannot be exercised in an unprincipled manner. This Court has explicitly ruled out the practice of awarding disproportionate sentences, especially those that showcase undue leniency, for it would undermine the public confidence in efficacy of law.

34. The sentencing policy, therefore, keeps pace with changing time. Undoubtedly, the primary emphasis while deciding the quantum of sentence should lie on the gravity or penal value of the offense. However, other guiding elements of

rehabilitative justice model, including, appreciation of grounds for mitigation of sentence also deserve to be duly considered within the permissible limits of judicial discretion. The awarding of just and proportionate sentence remains the solemn duty of the Courts and they should not be swayed by non-relevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as 'relevant' or 'non-relevant' will depend on the facts and circumstances of each case, and no straight jacket formula can be laid down for the same.

35. *Adverting to the facts of the case, in hand, we are of the considered view that at this stage, the sentence awarded to the appellant is no longer in degree to the crime which he has committed. Remitting the Appellant to the rigors of imprisonment at this juncture of his life would not serve the ends of justice due to following mitigating factors:*

a. *No motive or element of planning has been proved by the Prosecution in the present case which indicates the possibility that the offense could have been committed on impulse by the Appellant. Hence, the culpability of the offender in such situations is less than that which is ascribed in premeditated offenses as the commission of planned illegal acts denotes an attack on societal values with greater commitment and continuity in comparison to spontaneous illegal acts.*

b. *Even though the factum of injury may not have a direct bearing on a conviction under Section 307 IPC, the same may be considered by a Court at the time of sentencing. No doubt, the offence committed by the Appellant squarely falls within the four corners of Section 307 IPC, but fortunately neither the complainant nor any other person was hurt by the untoward act of the Appellant.*

c. *Appellant has already undergone a sentence of 3*

months and 19 days. Additionally, despite the occurrence taking place in 1999, there is no indication that Appellant has been involved in any untoward activity before or after the incident. This highlights the Appellant's good character and indicates that the incident can be interpreted as an isolated lapse of judgment. Further, the Appellant's clean post-incident behaviour suggests that he is rational individual who is capable of responding to the social censure associated with the offence. Hence, the passage of a long time period coupled with a clean record, both before and after the incident is definitely a factor that calls for mitigation of sentence.

d. Barring this particular incident wherein he was under the influence of alcohol, the Appellant had an unblemished service record with sixteen good citations in his favour. This indicates that he was a valuable member of society than the present criminal incident might lead one to assume. This is not to say that courts should draw up a social balance sheet when sentencing, but only to take these positive social contributions as a factor for mitigation of sentence.

e. Lastly, it is to be noted that the Appellant was suspended in the year 1999 and has also been subsequently dismissed from service in the year 2007. Hence, this should also be considered as a reasonable factor for mitigation because the dismissal and the consequent loss of social security benefits such as pension, also construes as a form of social sanction.”

In the instant case also, the appellants were sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,000/- under Section 307 of IPC and were sentenced to undergo

rigorous imprisonment for a period of 2 year and to pay a fine of Rs.200/- under Section 324 of IPC and all substantive sentences were ordered to run concurrently. It is not in dispute that the FIR in the instant case was registered on 19.01.2001 and a period of more than 21 years has elapsed since then. The sentence imposed upon the appellants was ordered to be suspended in October 2004/February 2005 and since then, they have not misused the concession of bail granted to them. Even the learned State counsel has produced the custody certificates and as per the custody certificate, Tarsem Lal, appellant/accused has undergone 01 year, 07 months and 25 days of actual custody and has undergone 03 years, 9 months and 9 days of total sentence, which includes remissions as well. Similarly, accused-appllant Raj Kumar @ Raju has undergone 01 year, 05 months and 21 days of actual custody and has undergone 03 years, 08 moths and 10 days of total sentence, which includes the remissions.

Thus, keeping in view the facts and circumstances of the case noted above, coupled with the facts that the appellants are facing the agony of trial/appeal since last more than 21 years and are the sole bread winners of their respective families, sentence awarded to the appellants is reduced to the period already undergone by them. However, the amount of total fine imposed upon the appellants is enhanced to Rs.1 lac each, which shall be paid as compensation to the injured Shamsheer Singh s/o Madan Lal resident of Nathu Nagar, Pathankot within a period of 03 months from today, failing which the appellants shall undergo 01 year of imprisonment.

In view of the above, the impugned judgment of conviction dated 22.10.2003 passed by the learned Additional Sessions Judge (Adhoc)

Fast Track Court, Gurdaspur is upheld and order of sentence is modified to the extent indicated above.

With the above modifications, both the present appeals stand partly allowed in the above terms. Pending application(s), if any, shall also stand disposed of.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back forthwith.

30.11.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO