

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-D-1292-DB-2014 (O & M)

Reserved on: 13.12.2022

Pronounced on: 16.12.2022

Hakam Singh

.....Appellant

Versus

State of Punjab and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. S.S.Sandhu, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. P.S.Dhaliwal, Advocate
for respondents No. 2 to 4.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the injured-victim, against the verdict drawn on 19.03.2014, upon Sessions Case No. 111 of 22.08.2012, by the learned Additional Sessions Judge, Ludhiana, wherethrough, he made a finding of conviction, upon the convicts, only in respect of charges drawn for offences punishable under Sections 323/435/447 of the IPC, and omitted to either convict or consequently sentence the accused qua a charge drawn for an offence punishable under Section 307 of the IPC.

2. Moreover, through a separate sentencing order drawn on 19.03.2014, the learned Additional Sessions Judge, Ludhiana imposed upon the convicts (supra), both sentence(s) of imprisonment as well as

of fine, for offences punishable under Sections 323/435/447 of the IPC
but in the hereinafter extracted manner :-

Name of the accused	Convicted Sections	under	Sentence
Joginder Singh	435 IPC		To undergo rigorous imprisonment for 1 year and to pay a fine of Rs. 2000/- and in default of payment of fine to further undergo rigorous imprisonment for 6 months.
	323 IPC		To undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for 3 months.
	447 IPC		To undergo rigorous imprisonment for 3 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
Inder Singh	435 IPC		To undergo rigorous imprisonment for 1 year and to pay a fine of Rs. 2000/- and in default of payment of fine to further undergo rigorous imprisonment for 6 months.
	323 IPC		To undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for 3 months.

	447 IPC	To undergo rigorous imprisonment for 3 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
Niranjan Singh	435 IPC	To undergo rigorous imprisonment for 1 year and to pay a fine of Rs. 2000/- and in default of payment of fine to further undergo rigorous imprisonment for 6 months.
	323 IPC	To undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for 3 months.
	447 IPC	To undergo rigorous imprisonment for 3 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

3. Though, the State of Punjab has neither challenged the verdict of conviction (supra) nor has challenged the consequent therewith sentence(s) (supra), as recorded upon the convicts only in respect of offences punishable under Sections 323/435/447 of the IPC, nor has resultantly challenged the omission by the learned trial Judge to convict and consequently sentence the accused qua a charge drawn for an offence punishable under Section 307 read with Section 34 of the IPC.

4. Therefore, though the State of Punjab may not argue that the verdict of acquittal, as made upon the convicts, qua a charge drawn under Section 307 IPC, is infirm, nor can the learned State counsel argue that the consequent therewith order of sentence, be made upon the convicts concerned. However, yet the aggrieved-complainant is required to be addressing arguments on the above facets.

Factual Background

5. The facts relevant for a decision being made, upon the instant appeal are carried in FIR to which Ex.PH/11 is assigned. The FIR (supra) details the factum that on dated 28.5.2012, One MLR was received qua the case of injured Hakam Singh son of Chanan Singh, resident of Tunga Heri, who had received six injuries due to burns, simple in nature, the second MLR was received qua the case of Mohinder Singh son of Bakhtaur Singh as to his having sustained nine injuries due to burns, the third MLR was qua the case of Balraj Singh son of Hakam Singh, who had received three injuries due to burns, the said MLRs were received from Civil Hospital, Pakhowal. In pursuance of the said MLRS ASI Niranjan Singh, In-charge Police Post Lohatwaddi along with other police officials reached at Civil Hospital, Paikhowal. He had moved an application in writing for seeking opinion of the doctor as to fitness of the injured. Thereafter, he recorded the statement of Hakam Singh, who had stated to the effect that he is employed as Warden at Central Jail, Ludhiana. A day prior, i.e., on 27.5.2012, he was on leave and was cultivating his land. His uncle Mohinder Singh and his son Balraj Singh, who were also present, they were working in the fields. At about 6:30 PM, he was cultivating his

fields with tractor make Swaraj-855, whereas his uncle Mohinder Singh and his son Balraj Singh were working in the fields. Then Joginder Singh son of Bakhtaur Singh came from the front side, he was carrying a plastic can, whereas Inder Singh and Niranjana Singh sons of Bakhtaur Singh, who were carrying Bamboo sticks 10 to 15' in length, and, on the ends of Bamboo sticks plastic bags were tied, they came near them. Joginder Singh gave *Lalkara* that they be set ablaze. Joginder Singh poured oil after opening the lid of the plastic can on the bags tied to the bamboo sticks. He took out a match box from the pocket of his shirt, and the bags tied to the bamboo sticks caught fire. Inder Singh started putting fire on the person of his uncle Mohinder Singh. Niranjana Singh put his son ablaze. He after stopping the tractor came over there in order to rescue his uncle and son. Body of Mohinder had caught fire and had been burnt to great extent. The clothes of Balraj Singh and the Parna, which was tied by him on his head had also caught fire. Inder Singh and Niranjana Singh after leaving them moved towards him with the bamboo sticks. They set him ablaze, as a result of which he had sustained injuries on left shoulder, beard from the left portion of his face was also burnt to the some extent. The shirt, which he was wearing had also caught fire. In order to rescue himself, his right hand was badly effected with the fire. They had raised the alarm *Marte Marte*, and on listening of the same, all the three of the accused had fled away by throwing the plastic can and bamboo sticks. They had extinguished fire by putting earth from the fields on their persons. Thereafter, Sukhdev Singh son of Nachattar Singh came at the spot. He after making the arrangement for the vehicle took them to Civil Hospital,

Pahkhowal, over there, they were accorded treatment. The motive behind the infliction of the injuries was that he (the complainant) was a government employee and he had protected his land and has not alienated the same, whereas Inder Singh, Niranjana Singh and Joginder Singh had sold some of their land and they wanted to take possession of his land. Thus, they came in order to kill them and had set them ablaze.

Investigation proceedings

6. The investigation was put into motion and the accused were arrested. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

7. Finding the offences under Section 436 of the IPC to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 08.08.2012, committed the case for trial to the Court of the learned Additional Sessions Judge, Ludhiana.

Trial Court Proceedings

8. On finding a prima facie case, charges under Sections 447, 307, 323 and 435 of the IPC became framed, against the accused, to which they pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined six witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and,

pleaded innocence. However, the accused did not lead any defence evidence.

10. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Ludhiana, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the convicts qua offences punishable under Sections 323/435/447 of the IPC, but, proceeded to, record a finding of acquittal, upon the accused qua an offence punishable under Section 307 of the IPC.

11. The injured-victim Hakam Singh becomes aggrieved from the above drawn verdict of acquittal of the accused, qua an offence punishable under Section 307 of the IPC, and, is led to institute thereagainst the instant appeal before this Court.

Submissions of the learned counsel for the injured-victim.

12. Moreover, though there may not be any dire necessity to examine the correctness of assigning of credence, by the learned trial Judge concerned, to the deposition(s) of the injured eye witnesses in the relevant crime event, who respectively stepped into the witness box, as PW-1, PW-3 and as PW-4. However, when it is most vehemently argued by the learned counsel for the victim injured, that despite PW-2 in her testification echoing, that both injured Mohinder Singh and Balraj Singh, received superficial burn injuries, on the respective regions, of their bodies, yet the said burn injuries being declared to be simple in nature. Moreover, since it is also further vehemently argued whether the said simple burn injuries could concomitantly be construed to be not life endangering injuries, and also, whether the conviction, as

made upon the convicts only for offences punishable under Sections 323/435/447 of the IPC was valid, besides also submits whether the consequent therewith order of sentence was valid. Therefore, it is but deemed necessary to refer to the ocular evidence spoken by the eye witnesses to the occurrence.

MLRs of injured-victim Hakam Singh, Mohinder Singh and Balraj Singh.

13. The MLR of injured victim Hakam Singh, is carried in Exhibit PC, and, the said exhibit has been proven by PW-2. PW-2 in her examination-in-chief has spoken that in Exhibit PC, the hereinafter extracted injuries, hence becoming narrated.

- “1. Superficial burn on the posterior aspect of left arm with vesicle formation scattered in an area of 20 cm x 3 cm vertically covering about 30-40 % of the said area.*
- 2. Superficial burn with vesicle formation scattered in an area of diam 5 cm just posterior to the left axilla. Burn are present in an area of about 40 % of the above area.*
- 3. Superficial burn 3cm x 1 cm on the left cheek 5 cm in front of pinna.*
- 4. Superficial burn vesicle formation in a scattered area on the right thenar eminence.*
- 5. Vesicle due to superficial burn 1.5 cm x 1 cm on the ulnar aspect of right ring finger.*
- 6. Bruise 2 cm x 0.8 cm on the anterior aspect of right arm in its middle.”*

14. Moreover, she also has during the course of her stepping into the witness box has proven the MLR drawn qua injured witness Mohinder Singh, and, to which Exhibit PD is assigned, the therein occurring narrations are also extracted hereinafter.

“1. Lacerated wound on scalp 1.5 cm x 0.2 cm running in antero posterior direction overlying the parietal bone 8 cm above the superior border of right pinna. 1 cm lateral to the midline depth 0.2 cm.

2. Superficial burns in an area of 8 x 2 cm extending from behind the upper part of right ear running vertically downwards towards neck. Advised surgical opinion.

3. Superficial burns in a diffuse area of upper part of chest above the nipple on right side extending to the area overlying upper part of sternum. Area of burns extending to the lateral aspect of chest below the axilla up to 15 cm below the axilla up to the posterior axillary line. Adv. Surgical opinion.

4. Superficial burns with vesicle formation on the medial aspect of right axilla. Scattered in an area of 15 x 4 cm covering about 60% of the said area. Adv. Surgical opinion.

5. Superficial abrasion semi lunar in shape 1 cm long on the dorsum of right hand in the area between middle and ring finger.

6. Superficial abrasion 0.4 cm x 0.2 cm on the dorsum of right hand in the area between index and middle finger.

7. Superficial abrasion 1 cm x 0.2 cm on the proximal phalanx of index finger of right hand dorsal aspect.

8. Superficial abrasion on right leg 5 cm x 1 cm on the anterior aspect in the middle.

9. Superficial abrasion 0.3 cm in dia on the medial aspect of left leg 5 cm above medial malleolus. ”

15. Furthermore, she had also proven the MLR which became drawn by her in respect of injured witness Balraj Singh, and, to which Exhibit PE is assigned, wherein she has further testified that the therein occurring injuries, are, the ones, which become extracted hereinafter.

“1. Superficial burns with the vesicle formation an area of 8 x 2 cm in the upper part of the left side of back horizontally placed, start 10 cm from the middle extending laterally. Area of burn scattered. Covering about 50-60% of said area.

2. Superficial burns with vesicle formation 1.5 cm x 0.3 cm on the back horizontally placed begin 4 cm posterior to posterior axillary line on left side.

3. Superficial burns with vesicle 1 cm dia on the posterior aspect of right leg on its middle.”

16. As above stated she did in her testification make echoings that the said injuries were simple in nature. Therefore, the learned counsel appearing for the aggrieved-injured one Hakam Singh has strived to negate the effect of the above findings. The above asked for negation, is strived, rather for ensuring that the verdict of conviction, as made upon the convicts by the learned Convicting Court qua only offences constituted under Sections 323/435/447 of the IPC, hence being incorrectly or infirmly recorded, whereas, he argues in the light of other speakings made by her, besides in the light of the speakings made by the credible ocular eye witnesses to the occurrence, rather the convicts had made a life endangering assault upon the victims concerned.

Analysis of the deposition of PW-2.

17. PW-2 has in the above extracted manner, made narrations in the respectively drawn MLRs, in respect of the injured victims concerned. Thereins she made candid echoings that superficial burn injuries became received by each of the injured victims, in those regions of the body of the injured concerned, which are not the vital organs of each of the victims injured. Moreover, she in her cross examination, has also pronounced that the vesicle or bladders or blisters are formed within 6 hours of the fire injuries, and, that in Exhibit PC, and, Ex.PC/2, qua injury no. 3, no vesicle formation thereons was

noticed. Moreover, though she has also in her cross examination admitted, that in Exhibit PD and Ex.PD/2, qua injury no. 2 and 3, no vesicle formation was noticed. However, the lack of formation of vesicles in the above stated injuries yet cannot lead to a further inference, that the other injuries occurring in the respective MLRs, were not superficial burn injuries, as in respect of the other injuries, there is a clear recital in each of the MLRs, qua vesicle formations occurring on the relevant burn injuries. In other words, even if, no vesicle formations became echoed by PW-2, in her cross-examination, in respect of some of the injuries, carried in Ex.PC, Ex. PC/2, Ex. PD and Ex.PD/2, yet when the other superficial burn injuries were noticeably carrying vesicle formations. Therefore, when otherwise too, the factum of existences of superficial burn injuries, as pronounced in each of the MLRs concerned, as become drawn in respect of each of the victims injured, were also declared in the apposite MLRs, to be carrying vesicle formations thereons. Therefore, even if qua some of the injuries concerned, there were no vesical formations, yet the defence cannot make any exculpatory capitalization from any such injuries respectively described in MLRs Ex.PC, Ex.PD and in Ex.PE, rather to not carry vesicle formations. The above inference is but naturally garnerable from the other proven burn injuries, which as above stated, do evidently carry vesicle formations.

Probative sanctity of medical evidence viz-a-viz credible ocular account.

18. Be that as it may, even if assuming the said injuries have been declared in the testification rendered in Court by PW-2, to be simple in nature, but the said opinion is only a medical account, in

respect of the relevant occurrence. It cannot and would never substitute the credibility of the injured eye witnesses, who respectively stepped into the witness box as PW-1, PW-3 and PW-4, unless evidence surges forth, and, as becomes comprised in their respective cross examinations, and, such evidence clearly reveals, that the narration of a credible account with respect to the relevant crime event, rather was completely false or prevaricated. Therefore, it becomes imperative to closely and incisively scan the ocular account, as became rendered by the eye witnesses to the occurrence. The injured eye witnesses to the crime event, who stepped into the witness box as PW-1, PW-3 and PW-4, in their respective examinations-in-chief, did made a narration which is completely in tandem with their respectively made previous statements in writing.

19. The trite incriminatory echoing, as appertains to a life endangering assault being made upon the injured victims, by the convicts, becomes comprised in candid speakings, being consistently made by each of them, qua the convicts make an assault upon the victims-injured, after theirs' raising a *lalkara*, that they would torch them alive. Subsequently, all the PWs speak that thereafter the accused proceeded to, sprinkle the kerosene oil, as carried in a plastic can, on plastic bags, as became tied on the edges of the bamboo sticks, whereafter, convict Joginder Singh, is consistently spoken by then, to set it aflame with a matchstick, leading to the plastic bags tied on the bamboo sticks catching fire, whereafter, they took to torch the injured victims concerned.

20. All the injured witnesses speak in unison, that only on their raising a hue and cry, that the convicts fled from the crime site, but after theirs' throwing the bamboo sticks, plastic can, and, matchbox, at the site of occurrence. However, each of them also speak in unison, that the accused had raised a *lalkara* for killing the injured witnesses. The motive for making an assault on the injured eye witnesses, is spelt, in unison by them, to become engendered from a land dispute existing amongst the complainant injured eye witness and the convicts. The injured eye witnesses with unison also narrate that they had doused the fire, as became received on their respective persons, through theirs' applying soil/sand thereons, and, as became collected from the cultivated fields. Therefore, each with the completest harmony, speak that if the torchings' done on the relevant portions of their respective bodies, was not doused by applying thereons, the sand, as became collected from the cultivated fields, thereupon, they would have died in sequel to the said burn injuries. Each of the injured eye witness, who rendered in the above candid manner, rather a vivid ocular account, in respect of the crime event, also became subjected to a grilling cross examination. However therein too, the effect of the above echoings, as made consistently by each of them, in their respective examinations-in-chief, yet remained completely unrepelled by the injured eye witnesses. Therefore, sanctity is to be assigned to their respective depositions. The reason becomes comprised in the factum, that their respective testification(s), are not ridden with any entrenched vice of theirs' openly and direly digressing or improving or embellishing from their respectively made previous statements in writing, nor when their

respectively made testification(s) are gripped with any vice of any dire intra-se contradictions occurring intra-se their respective examination(s)-in-chief, and, cross examinations. Contrarily when they speak with the completest inter-se corroborations. Therefore, obviously completest sanctity is to be assigned to their respectively made testification(s). Resultantly also they are to be construed to render a credible ocular account in respect of the crime event.

Analysis of the ocular account.

21. An analysis of the credible ocular account rendered in respect of the crime event, begets an inference, that the convicts had definitely made a life endangering assault, upon the victims concerned, but the same was averted only on account of the convicts raising a hue and cry, and, which ultimately led the convicts to flee from the crime site. Moreover, it is also spoken with the firmest inter-se corroboration, by each of the injured eye witnesses, that it was only on account of the theirs' hence dousing the fire received by them on theirs respectively torched bodies rather with an incendiarised bamboo stick(s), but the burn injuries did not spread to other regions of their respective bodies, nor, also the said burn injuries assumed any lethal propensity. In consequence, the effect, of the above made credible ocular account with respect to the crime event, by the injured eye witnesses, to the occurrence, is that, it does carry the utmost tenacious evidentiary value. Therefore, when only because the accused fled from the crime site, and, also because the burn injuries became doused rather with sand becoming applied, by the injured eye witnesses, on the respective regions of their torched bodies, that otherwise the life endangering

assault became averted. Thus, but naturally the convicts/accused, did rear a *mens rea*, to make a life endangering assault, upon the injured eye witnesses, and, as but a natural corollary, if yet simple burn injuries existed on the respective regions of their bodies, and, even if they are not on any vital portions of their respective bodies, besides even, if PW-2 declares the burn injuries to be simple, yet it cannot at all benumb the efficacy of the credible eye witness account, as, rendered qua the crime event, by the injured eye witnesses.

Reason for rejecting the Medical Report.

22. The reason is but reiteratedly comprised in the factum that PW-2 is only a medical expert, and, not an eye witness to the occurrence, whereas, the law declared by Hon'ble Apex Court, in respect of comparative probative sanctity to be assigned to inter-se contradictory medical account and eye witness account rendered qua the crime event, is that, the credible eye witness account, is to prevail upon the medical account. Thus the telling effect of the above declaration of law, is that, the echoing made in the testification of PW-2, that the burn injuries were simple in nature, cannot at all eclipse the propensity of the *mens rea* reared by the convicts, to make a life endangering assault, upon the victims injured concerned.

23. The learned trial Judge concerned, appears to detract from the above salient norm governing the predominant evidentiary vigor of credible ocular account, vis-a-vis, medical account, and, has untenably proceeded to make a verdict of conviction, upon the convicts only for a charge qua offences punishable under Sections 323/435/447 of the IPC,

than his proceeding to also record a finding of conviction, even in respect of a charge drawn under Section 307 IPC, besides has untenably omitted to make a consequent therewith order of sentence upon the convicts concerned.

Final order by this Court.

24. In view of the above, this Court finds that, all the above assigned reasons, by the learned trial Judge concerned, to make a verdict of acquittal, upon the accused, qua an offence punishable under Section 307 of the IPC, are not at all meritworthy, rather suffer from a vice of gross mis-appreciation, and non-appreciation of the evidence on record.

25. Therefore, this Court is of the view that the instant appeal merits, it being allowed. Consequently after allowing the instant appeal filed by the injured-victim, this Court maintains the impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convicts, qua offences punishable under Sections 323/435/447 of the IPC, however, quashes the impugned verdict of acquittal, as made on 19.03.2014, upon Sessions Case No.111 of 22.08.2012, qua an offence punishable under Section 307 of the IPC, and, finds/holds the accused-convicts(supra), guilty for an offence punishable under Sections 307/34 IPC.

26. The accused are directed to be produced in custody before this Court on 20.12.2022 for theirs being heard on the quantum of sentence.

27. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.
28. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

16.12.2022
kavneet singh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No