

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

SR. No.355

CRA-S-876-SB-2004 (O&M)

Reserved on

Date of Decision:21.12.2022

Azad Singh

...Appellant

Versus

State of Haryana

...Respondents

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

Present: Mr.Sandeep Kumar, Advocate for
Mr. Vikram Singh, Advocate,
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

Mr.Raj Kumar Gupta, Advocate
for the complainant.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 26.03.2004 and order of sentence of even date passed by the learned Additional Sessions Judge, Panipat, whereby the appellant was convicted and sentenced in the following manner:-

Accused/appellant-Azad Singh

Offence	Sentence
307 IPC	To undergo rigorous imprisonment for seven years with fine of Rs.25,000/- and in default of payment of fine, to further undergo simple imprisonment for two years

- 326 IPC To undergo rigorous imprisonment for three years with fine of Rs.15,000/- and in default of payment of fine, to further undergo simple imprisonment for one year.
- 324/452 IPC To undergo rigorous imprisonment for one year each with fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

All the sentences were ordered to run concurrently.

The story of the prosecution, as it emerges from the report under Section 173 Cr.P.C., is that on the intervening night of 28/29.06.1998, the police had received two ruqas with regard to injured, namely, Ajmer and Tejbir from General Hospital, Panipat and it was conveyed that due to serious condition of the patients, both of them had been referred to PGI. However, on the next day, i.e., on 29.06.1998, again an information was received with regard to admission of the injured in Prem Hospital, Panipat. ASI Ramjit Singh along with other police officials reached the hospital and after getting the opinion from the doctor, he recorded the statement of PW-1 Ajmer (complainant), who was declared fit to make statement. The complainant Ajmer stated that he was an agriculturist. At about 08.00 P.M. on 27.06.1998, he was standing with Yashpal son of Rajinder in the street in front of his house. In the meantime, accused Azad Singh came there with a he-buffalo and accused Azad Singh objected to his presence in the street. On this, there was exchange of hot words between the complainant and accused/appellant Azad Singh. The complainant told accused/appellant Azad Singh that there was sufficient space for his he-buffalo to pass through the street. Accused/appellant Azad Singh left for his house and the complainant also returned home. However,

while leaving, accused Azad Singh threatened to kill him. At about 08.00 PM on 28.06.1998, the complainant took his meals and was planning to go to his Gher (courtyard). In the meantime, somebody knocked at the door and the complainant opened the same. He found that accused Azad Singh was carrying a sword and his brothers, namely, Sultan and Ramphal were with him. On opening the door, accused Azad Singh gave a blow with sword and the complainant raised his left hand and the sword hit on his left hand. The complainant ran inside his house and his brother Tejbir (PW-2) enquired him about the matter. The complainant told him that accused/appellant Azad Singh and his brothers had entered their house and Azad Singh had given a sword blow to him. On this, PW-2 Tejbir and PW-9 Binder asked accused Azad Singh not to do so. However, accused Azad Singh gave two blows to PW-2 Tejbir Also. PW-9 Binder also tried to intervene, but accused Azad Singh caused injuries on his hands with the sword. The other family members also reached there and tried to separate them. However, the brothers of accused Azad Singh fired in the air from their country made pistols and left with their weapons. After the occurrence, PW-2 Tejbir became unconscious and their family members shifted the complainant, Tejbir and Binder to General Hospital, Panipat. Since Tejbir had suffered serious injuries, he was referred to PGIMS, Rohtak. Thereafter, keeping in view his serious condition, Tejbir was brought to Prem Hospital, Panipat and got admitted there. The accused had entered their house without any reason and had caused injuries to them. On the basis of the statement Ex.P1 made by the complainant Ajmer, FIR Ex.P5/1 was registered against all the three accused, i.e Azad Singh and his

two brothers, namely, Ramphal and Sultan.

After registration of the formal FIR, the investigation was conducted by the police and MLRs of all the injured were prepared. With regard to injury No.1 on the person of PW-2 Tejbir, the doctor opined that it could be dangerous to life, whereas injury No.1 on the person of PW-1 Ajmer was declared to be grievous. A sword was recovered from accused Azad Singh, as per his disclosure statement.

After completion of the investigation, a final report under Section 173 Cr.P.C. was presented against the above-said three accused in the court of learned Area Magistrate. Since the offence was exclusively triable by the court of Sessions, the case was ordered to be committed to the court of Sessions.

The learned trial Court found sufficient grounds for framing charges under Sections 452/324/326/307/34 IPC and the accused were ordered to be charge-sheeted, accordingly, to which, they pleaded not guilty and claimed trial.

In support of the case of the prosecution, ten prosecution witnesses were examined. The prosecution examined the injured Ajmer as PW-1, who had lodged the FIR in the instant case. In his deposition, he had supported the case of the prosecution and had narrated the role of each of the accused. He assigned specific injuries to the present appellant. The testimony of PW-1 Ajmer was further corroborated by the testimony of PW-2 Tejbir, injured. He stated that he had gone to the door to enquire about the matter, but in the meantime, accused/appellant Azad Singh entered into his house and gave sword blow on his head. He also gave another blow

with a sword on his chest. When his family members came out of the house on hearing his cries, Sultan and Ramphal fired shots in the air. The appellant also attacked his brother Binder with a sword, which hit him on both his hands. After causing injuries, all the three assailants ran away from the spot. The prosecution further examined Dr. Sanjay Dhaiya, Prem Hospital, Panipat, as PW-3, who deposed that the police moved an application Ex.P2 on 29.06.1998 and he reported that Tejbir was unfit for his statement, whereas the patient Ajmer was well conscious and was able to give his statement. Further, Dr. Shalaj Gupta, Prem Hospital, Panipat was examined as PW-4, who was working as Consultant Radiologist in the hospital and had conducted NCCT Scan of the brain of Tejbir and gave his report Ex.P4. As per his opinion, there was a compound fracture on right frontal bone extending to frontal sinus to roof of right orbit with query, right frontal encephalocele and query dural tear with multiple aerocele. ASI Rajinder Singh was examined as PW-5 to prove the registration of the formal FIR, Ex.P5/1. Dr. S.K. Khurana, Medical Officer, General Hospital, Panipat, was examined as PW-6, who deposed that on 28.06.1998, he medico legally examined Tejbir and found the following injuries on his person:

1. There was 10 cm incised wound on right side of forehead underlying bone was cut, bleeding was present. X-ray was advised.
2. 5 cm abrasion on left side of chest, bleeding was present.

The patient was referred to PGI, Chandigarh and both the injuries were caused with sharp edged weapon and he proved the copy of MLR as Ex.P6.

On an application, Ex.P7, moved by the police, he gave his opinion, Ex.P7/1 and injury No.1 on the person of Tejbir was declared to be dangerous to life by him. He also examined Ajmer, injured, and found the following injuries on his person:-

1. 8 cm x 3 cm incised wound with underlying structure cut on planter side of left wrist bleeding was present. X-ray was advised.
2. 3 cm x 1/2 cm abrasion on dorsum of left hand bleeding was present.

PW-6 Dr. S.K. Khurana further examined Binder, injured and found the following injuries on his person:-

1. 1,5 cm x .75 cm incised wound on middle phalanx of left index finger, bleeding was present and x-ray was advised.
2. Multiple abrasions on the palmer side of right hand.

He had also sent ruqas regarding the admission of Tejbir, Ajmer and Binder and on 03.08.1998, the police had moved an application to obtain his opinion as to whether the injuries on the person of injured Tejbir and others were result of the weapon, i.e. sword shown to him. He opined that possibility of the injuries on the person of the injured persons by sword shown to him could not be ruled out. Even he gave his certificate that injury No.1 on the person of injured Tejbir was dangerous to life. SI Hari Singh was examined as PW-7, who deposed that he had prepared the report under Section 173 Cr.P.C.. Dr. Prem Kumar was examined as PW-8, who had conducted the x-ray examination of Ajmer and found fracture of lower end

of left forearm. Binder, injured, was examined as PW-9, who also supported the version of PW-1 Ajmer and PW-2 Tejbir completely. The prosecution further examined SI Ramjit Singh as PW-10, who was the investigating officer in the instant case. He had prepared the rough site plan Ex.PW10/B and also obtained the opinion of the doctor with regard to the fitness of the injured. He also moved various applications to seek opinion with regard to injuries suffered by the complainant side. He also arrested the present appellant and in pursuance of his disclosure statement Ex.PW10/D, the police reached his house and the appellant got recovered a sword, which was lying in the fodder. The said witness conducted the investigation further and after completion of the investigation by him, the challan was presented against the accused/appellant.

After closure of the evidence by the prosecution, the statements of all the three accused were recorded under Section 313 Cr.P.C. The appellant pleaded his innocence and stated that Bhal Singh had seven killas of land in village Rana Majra. The land belongs to Bhal Singh and there was a civil litigation between Bhal Singh and Duli Chand. Bhal Singh was having enmity with Duli Chand etc. and on that account he was nursing a grudge against Duli Chand and his family members on account of the aforesaid litigation. None of the accused was present at the place of occurrence and no such occurrence had taken place at the house of the complainant party. He further stated that the complainant side was attacked by some unidentified persons and they had been falsely implicated after much deliberations.

In defence, the appellant examined Om Parkash as DW-1, who

stated that at about 08.00 PM, there was a noise and some people were seen coming from the side of the house of Ramesh and on hearing the noise, he came in the street and found that Tejbir, Ajmer etc had suffered injuries on their person and were going towards their home. The injured were saying that some unidentified persons had caused injuries to them and thereafter they went to their house and from there they were shifted to hospital. He further stated that he did not hear any noise of fight in their house nor any shots were fired at their house.

After both the sides concluded their evidence, vide the impugned judgment and order, the learned trial Court acquitted Sultan Singh and Ramphal, whereas the present appellant was held guilty under Sections 324/326/452/307 IPC and was sentenced as mentioned above.

Learned counsel for the appellant has submitted that the appellant had been falsely implicated in the present case due to civil litigation between the parties. In fact, the injuries were caused to PW-1 Ajmer (complainant), PW-2 Tejbir and PW-9 Binder by some unidentified persons and later on the appellant was falsely implicated by coining a false version. He further submitted that the version put-forth by prosecution was highly improbable, as it was impossible to cause injuries to three injured in the presence of so many family members. Apart from that, it was stated that Ramphal and Sultan were carrying country made pistols and they fired from their respective pistols. However, the said version has been found false by the learned trial Court and both of them have been ordered to be acquitted. Still further, there was delay of 13 ½ hours in lodging of the FIR. Binder had suffered minor injuries and he had witnessed the occurrence.

Consequently, Binder could have reported the matter immediately after the occurrence. Furthermore, the entire prosecution case is based on the testimonies of interested and inimical witnesses. Even it has been alleged that the injuries were caused on the person of three injured by sword by the appellant. However, no blood was lifted from the spot by the police and all this makes the prosecution case to be highly doubtful.

On the other hand, learned counsel for the State assisted by the learned counsel for the complainant submitted that the case of the prosecution had been duly proved by the testimonies of PW-1 Ajmer, PW-2 Tejbir and PW-9 Binder, who were all injured witnesses. Furthermore, the prosecution had examined PW-6 Dr. S.K. Khurana, who proved on record the injuries suffered by three injured and such serious injuries could never be self suffered. Apart from that, the allegations levelled by the complainant side were found to be correct during the course of investigation and the appellant has been rightly convicted by the learned trial Court.

I have heard the learned counsel for the parties and with their able assistance I have gone through the case file carefully.

Learned counsel for the appellant submitted that the appellant had been falsely implicated due to civil litigation between the parties. The injured were attacked by some unidentified persons, which was witnessed by DW-1 Om Parkash. After suffering the injuries, the injured went to their home and from there they were shifted to the hospital. In fact, I find no force in the submissions made by the learned counsel for the appellant. The version of the prosecution was duly investigated by the police and was found to be correct. Still further, the appellant has alleged that a civil

litigation was pending between the parties, however, no such evidence has been led by the appellant in support of the said argument. Moreover, all the injured, namely, Ajmer, Tejbir and Binder had suffered serious injuries and could not have been self suffered. Still further, the injured had no reason to falsely implicate the present appellant and to save the real culprits, when they had suffered the injuries, which were even dangerous to life. Apart from that, the defence taken by the appellant was vague that some unidentified persons had caused injuries to the injured and no independent witness was produced by the appellant in this regard.

Learned counsel for the appellant further argued that version of the prosecution was improbable as so many persons were present at the house of the injured when the appellant along with his brothers had gone to their house and it was not possible to cause so many injuries by the appellant and his accomplices. In fact, the said argument is without any substance. The appellant along with co-accused went to the house of the injured and were duly armed with their respective weapons. Accused/appellant Azad Singh was carrying a sword, whereas his co-accused Ramphal and Sultan were carrying country made pistols. Once the accused party was duly armed with lethal weapons, they could have very well planned to attack on the complainant side, which they actually did. Three persons, namely, Ajmer, Tejbir and Binder were seriously injured in the attack by the present appellant. Initially, Ajmer was attacked and when Tejbir and Binder came to save him from the assailants, even they were attacked by the appellant and his accomplices.

Still further, learned counsel for the appellant submitted that

Ramphal and Sultan were stated to be carrying fire arms, however, no country made pistol was recovered from them and even the version to that effect has been found to be false by the learned trial Court and both of them had been acquitted. However, it is observed that merely because Ramphal and Sultan, two co-accused, have been acquitted, would not lead to the conclusion that even the appellant was not present at the place of occurrence. In fact, the case of the present appellant is on a different footing. In the case of the present appellant, not only three persons were seriously injured by using a sword, but the recovery of sword had also taken place from the present appellant. However, in the case of Ramphal and Sultan, fire shots were attributed to them; but, there was no corresponding injury on the person of all the three injured nor the recovery of fire arm had taken place from them. Consequently, the appellant cannot be permitted to take advantage of the acquittal of Ramphal and Sultan.

Learned counsel for the appellant further vehemently argued that there was delay of 13½ hours in reporting the matter and Binder had only suffered superficial injury and he could have reported the matter immediately after the occurrence. Apart from that, the prosecution case is based on the testimonies of interested witnesses. Learned counsel also referred to the fact that no blood was lifted from the spot. However, this Court finds no substance in the said arguments raised by the learned counsel for the appellant on the ground that the appellant and his accomplices had opened a murderous assault on the family of the complainant. Tejbir, PW-2, was seriously injured and was referred to PGI. The two other injured namely, Ajmer and Binder were the real brothers of Tejbir and their first

priority was to provide best possible treatment to Tejbir, who had suffered serious injuries. Consequently, the delay of 13½ hours in lodging the FIR is insignificant and is liable to be ignored by this Court. Apart from that, the entire case is based on the testimonies of injured PW-1 Ajmer, PW-2 Tejbir and PW-9 Binder, all injured, and they can never be termed as interested witnesses. Furthermore, if there is any shortcoming in investigation viz no lifting of the blood from the place of occurrence, the accused/appellant cannot take advantage of the said fact. The injured had suffered serious injuries on their person and can never be penalised for the fault on the part of the investigating officer.

In the instant case, the prosecution examined PW-1 Ajmer and PW-2 Tejbir, both injured witnesses, and both of them have given the graphic details of the entire occurrence. Their testimonies have been duly corroborated by the PW-9 Binder, another injured witness. All the three injured were medico-legally examined by PW-6 Dr. S.K. Khurana, who proved the MLRs of all the three injured on record. Even he gave his opinion Ex.PW7/1 and declared injury No.1 on the person of Tejbir as dangerous to life, whereas injury No.1 on the person of Ajmer, PW-1, was declared to be grievous. He also opined that possibility of the injuries on the person of the injured persons by sword shown to him could not be ruled out. Apart from that the prosecution had also examined PW-8-Dr. Prem Kumar, who clearly stated Ajmer had suffered fracture of lower end of left forearm and he placed on record the summary Ex.PW8/B in this regard. Even the said witnesses were subjected to lengthy cross-examination and all of them had withstood the test of cross-examination. Thus, the learned trial

Court has rightly convicted the present appellant under Sections 324/326/452/307 IPC and the impugned judgment of conviction is ordered to be upheld.

However, from the perusal of the case file, it is apparent that the appellant is facing the agony of trial/appeal since the last more than 24 years. It is also stated that the appellant is the sole bread earner of his family. As per the custody certificate, the appellant has undergone 01 year, 04 months and 27 days of his sentence (including remission) as on 15.11.2022. The sentence imposed upon the appellant was ordered to be suspended by this Court on 11.01.2005 and since then, he has not misused the concession of bail granted to him. The above-said facts are not disputed by the learned counsel for the State.

Keeping in view the facts and circumstances of the case as noted above, coupled with the facts that the appellant is facing the agony of trial/appeal for the last more than 24 years; custody period; as well as his antecedents, sentence awarded to the appellant is reduced to the period already undergone by him. The amount of total fine imposed upon the appellant is enhanced to Rs.2,50,000/-, which shall be deposited with CJM concerned within a period of 03 months from today, failing which the appellant shall undergo further rigorous imprisonment for a period of 06 months. Out of the said amount of Rs.2,50,000/-, Rs.1,00,000/- shall be paid to injured Ajmer (PW-1); Rs.1,00,000/- shall be paid to legal heirs of Tejbir (PW-2) as he is stated to have died as recorded by the learned Additional Sessions Judge in the judgment and order dated 26.03.2004 and remaining amount of Rs.50,000/- shall be paid to injured Binder (PW-9). It

is relevant to mention here that the concerned CJM shall issue notice to the legal heir(s) of PW-2 Tejbir (since deceased) and on their appearance, an amount of Rs.1,00,000/- shall be paid to his legal heirs.

In view of the above, the impugned judgment of conviction dated 26.03.2004 passed by the learned Additional Sessions Judge, Panipat is upheld and order of sentence is modified to the extent indicated above.

With the above modifications, the present appeal 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 for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

21.12.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO