

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

**394**

**CRA-S-1879-SB-2004 (O&M)  
Decided on : 24.04.2023**

Joginder Singh and others

. . . Appellant(s)

Versus

State of Haryana and others

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Rakesh Nehra, Sr. Advocate with  
Mr. Y.S. Turka, Advocate and  
Mr. Ankit Yadav, Advocate, for the appellant(s).

Mr. Pawan Kumar Jhanda, AAG, Haryana.

Ms. Jaspreet Kaur Sandhu, Advocate for  
Ms. Awaljot Kaur, Advocate  
for respondents No.2 & 3 – complainant(s).

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**SANJAY VASHISTH, J.**

1. Appellants, namely Joginder Singh (appellant No. 1), Iqbal Singh @ Rana (appellant No. 2) and Harjinder Kaur (appellant No. 3) have filed the present appeal, impugning the judgment dated 16.09.2004, passed by the Court of learned Additional Sessions, Judge, Ambala in sessions case No. 41/19.09.2003. Proceedings have arisen from FIR No. 93 dated 31.05.2003 under Sections 324, 506 and 34 the Indian Penal Code, registered at Police Station Brara, District Ambala.

2. Subsequently, charges under Sections 307 read with Section 34 IPC and 506 IPC were framed by learned Trial Court and accordingly, appellants were convicted and sentenced as under:-

(1) **Accused Joginder Singh (appellant No. 1, herein) :-**

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| Section(s)     | Rigorous Imprisonment (RI) | Fine in Rs. | In default     |
|----------------|----------------------------|-------------|----------------|
| 307 r/w 34 IPC | 05 years                   | 1000/-      | 03 months R.I. |
| 506 IPC        | 01 year                    | -           | -              |

(II) Accused Iqbal Singh (appellant No. 2, herein) :-

| Section(s)     | Rigorous Imprisonment (RI) | Fine in Rs. | In default     |
|----------------|----------------------------|-------------|----------------|
| 307 r/w 34 IPC | 03 years                   | 500/-       | 02 months R.I. |
| 506 IPC        | 1 year                     | -           | -              |

(III) Accused Harjinder Kaur (appellant No.3, herein) :-

| Section(s)     | Rigorous Imprisonment (RI) | Fine in Rs. | In default     |
|----------------|----------------------------|-------------|----------------|
| 307 r/w 34 IPC | 03 years                   | 500/-       | 02 months R.I. |
| 506 IPC        | 1 year                     | -           | -              |

All the sentences were ordered to run concurrently.

3. As per the case built up by the prosecution, statement of complainant - Labh Singh, was recorded at the first instance, as ***Asal Tahreer*** (Ex.P4) and on that basis formal FIR (Ex.P20) was registered. Said version as detailed in para 2 of the judgment, is reproduced here below:-

*“The complainant Labh Singh was resident of village Subri. The accused Joginder Singh was his neighbour. The complainant was working as bus driver in the bus belonging to Swami Viveka Nand Girls School, Yamuna Nagar. On 31.5.03 when the complainant reached his house in village Subri at around 4.00 P.M. he found the drain in front of his house blocked as the street in front of the house of Joginder Singh – accused was being metalled. Due to this blockade of the drain, the water was not flowing in the drain from the side of the*

*complainant. At around 5.30 PM on that day the complainant started cleaning the drain by removing the earth lying in the drain, the accused after conversing with one another came there and tried to stop the complainant from cleaning the drain. The complainant told the accused that the street towards their side had become pucca and the remaining portion belonged to him and since the water had been blocked and he was removing the earth from his land, so the accused should not object to it. On the refusal of the complainant, the accused gave a lalkara that they would not allow the complainant to construct a drain. Accused Harjinder Kaur and Iqbal Singh ran inside their house. The accused Harjinder Kaur brought a Kirpan from inside and handed over the same to her father-in-law accused Joginder Singh, whereas, accused Iqbal Singh brought out a ballam. Harjinder Kaur shouted that the complainant should not escape on which the accused Joginder Singh gave a blow of Kirpan in the stomach of the complainant. The complainant tried to rescue himself but he could not, due to which kirpan hit the stomach of the complainant. Baldev Singh (PW2), brother of the complainant, after hearing the noise of the fight came there on which the accused threatened the complainant that he was saved that day but he would be killed later on. The accused ran inside their house, whereas, Baldev Singh brought the complainant-injured to Civil Hospital, Mullana, where he was examined by Dr. Shiv Kumar (PW7), who found the following injuries on his person:*

*“Incised wound 4 cms. X 3 cms., depth of the wound could not be measured, freshly bleeding, advised X-Ray abdomen, referred to surgical specialist Ambala City for an opinion.”*

*Dr. Shiv Kumar gave his report Ex.P8. Informatoin Ex.P9 was sent by Dr. Shiv Kumar to the Police Station, which the Investigating Officer ASI-Gurmej Singh reached the hospital Mullana and recorded the statement Ex.P4 of the complainant – injured and after receiving the opinion Ex.P13 & Ex.P15 sent the information Ex.PW4/1 to the police station through C-*

*Pritpal Singh on the basis of which MHC-Baldev Singh (PW5) recorded formal First Information Report, copy of which is Ex.P20.”*

4. After completion of the investigation, final report under Section 173 Cr. P. C. was prepared and submitted to the Court of Ld. Area Magistrate. The case being exclusively triable by Sessions Court, was committed to the Court of Sessions vide order dated 05.09.2003. Thereafter, Ld. Trial Court charge-sheeted the appellants under Sections 307, 34 IPC and 506 of IPC vide order dated 26.09.2003 and 28.11.2003.

5. To prove the case of the prosecution, total 11 witnesses appeared in the witness box. The summarized details of the witnesses are given here-in below:-

- ◆ **Gurmail Singh s/o Labh Singh** appeared as **PW-1**, who proved that he was associated by ASI Gurmej Singh while conducting the investigation and he handed over one shirt and vest (Baniyan), both stained with blood and having sword cut. Said clothes were worn by his father Labh Singh-injured.
- ◆ **Baldev Singh**, appeared as **PW-2**, who authenticated the manner of incident and the fact that he took injured-Labh Singh to hospital (CHC, Mullana).
- ◆ **Labh Singh (injured)**, appeared as **PW-3**, who being injured stated in clear terms that Joginder gave the blow of Kirpan on his stomach.
- ◆ **Constable-Manohar Lal**, appeared as **PW-4**, who proved preparation of scaled site plan (Ex. P5), which was prepared at the instance of injured - Labh Singh.

- ◆ **MHC Baldev Singh, who appeared as PW-5, is the formal witness.**
- ◆ **Constable Pratap Singh appeared as PW-6, is a formal witness.**
- ◆ **Dr. Shiv Kumar Anand, MO CHC, Mullana, appeared as PW-7, who stated that at the first instance, he did medico-legal examination of injured-Labh Singh, who was brought by his brother Baldev Singh (PW-2) and that after conducting the medico legal report (MLR), he sent one ruqa (Ex.P9) to SHO, P.S. Mullana, for his information. On police application dt. 31.05.2003 (Ex. P10), he gave his opinion (Ex.P11) declaring injured - Labh Singh, fit to make statement.**

He further proved that on moving an application (Ex. P12), by police for seeking his opinion about the injury on the person of Labh Singh, same was kept pending waiting the x-ray and surgeon opinion.

On moving another application dt. 12.07.2003 (Ex. P14), this witness confirmed the opinion of surgeon that *'possibility of injury No. 1 on the persons of Labh Singh, being dangerous to life, cannot be ruled out'*. However, he accepted the suggestion that he never examined the patient and the possibility of the injury being not dangerous, cannot be ruled out.
- ◆ **Jai Narain appeared as PW-8, who proved the photographs (Ex. P16 and 17) and its negative (P-18 and 19).**

- ◆ **SI Rameshwar Prasad (SHO P.S. Barara) appeared as PW-9**, who proved the preparation of final investigation report under Section 173 Cr. P.C. after completion of investigation.
- ◆ **ASI Gurmej Singh appeared as PW-10**, who proved the investigation being Investigating Officer.
- ◆ **Dr. Sudhir Kapoor, MO, Civil Hospital, Ambala City, appeared as PW-11**, and proved his opinion Ex. P-22/1 to the effect that *'possibility of injuries being dangerous to life cannot be ruled out'*. However, this witness also admitted that this possibility can go both ways and the opinion given by him is not definite.

There is no denial by the said witness that no surgical intervention was required to the injured and therefore, he prescribed only I.V. fluid, antibiotic and pain killer to the injured.

Prosecution witnesses Jaswinder Singh and HC Om Prakash were not examined being unnecessary.

6. While recording the statement of accused, under Section 313 Cr. P. C. Appellant No. 1-Joginder Singh took a specific stand in his defence, which is recorded here-in below:-

*“Q.17. Anything else to say?”*

*Ans. I am innocent. On 31.5.02 Labh Singh was breaking the drain of us and when I came in the evening from the Gurudwara at about 5.30 P.M.. I objected Labh Singh for breaking drain. Then Labh Singh ran towards me to open attack upon me with Kasi in his hand. In that process Labh Singh fell on wood root (mund) of trees lying over there and he suffered*

*injury. My signatures were taken on blank papers by the police which were converted into documents later on. I never made any disclosure statement nor got recovered anything. I never inflicted any injury upon the person of Labh Singh.”*

However, appellant No. 2-Iqbal Singh took a specific stand that he has falsely been implicated and relevant part is reproduced here-in below:-

*“Q.17. Anything else to say?”*

*Ans. I am innocent. I have been falsely implicated in this case being the son of Joginder Singh co-accused.”*

Stand taken by appellant No. 3 - Harjinder Kaur, is as under:-

*“Q.17. Anything else to say?”*

*Ans. I am innocent. I have been falsely implicated in this case. I am a Pardanashin lady. I performed Parda before my father-in-law and other elder male persons of the village. I was having five months old breast fed-child at that time.”*

7. After considering the evidence and stand taken by the appellants (accused), learned trial Court convicted and sentenced the appellants, as detailed in the initial part of the appeal.

Thus, challenging the impugned judgment, present appeal is pending consideration today before this Court.

8. While opening the arguments on behalf of the appellants, Mr. Rakesh Nehra, Senior Advocate, assisted by Mr. Y. S. Turka, Advocate, pointed out that during the pendency of the present appeal before this Court, parties from both the sides i.e. injured and the appellant(s) have reconciled their issues and being co-villagers have entered into the compromise for providing a better future and atmosphere to the next generations.

Therefore, Ld. Senior counsel for the appellants points out that Panchayati Compromise/mutual compromise dated 12.01.2023 signed by all

the concerned/affected persons has already been taken on record. Rather, by way of an application, moved by the appellants, all the victims have been arrayed as respondents, and accordingly, an amended memo of parties has also been taken on record by the Court vide its order dated 20.01.2023, passed in the miscellaneous application(s). Ld. Senior Advocate also points out that after noticing the submission regarding compromise, this Court, vide an order dated 14.02.2023 had directed the trial Court/Illaq Magistrate to record the statements of all the affected parties and after verifying the factum of compromise, to submit its report before this Court as to whether said compromise is genuine or not.

9. In compliance to the said direction, one report has been forwarded to this Court by the Court of Additional District & Sessions Judge, Ambala, vide memo/letter No. 121 dated 09.03.2023 after recording of the statement(s) of all the parties connected with the issue in appeal.

Said report is taken on record, subject to all just exceptions. Registry is directed to tag the same at appropriate place. However, for the sake of convenience, same is reproduced herein-below also:-

*“ I have the honor (honour?) to submit that on 28.02.2023, accused persons namely Joginder Singh son of Luxman Singh; Iqbal Singh @ Rana son of Joginder Singh, and Harjinder Kaur wife of Hardeep Singh, resident of Village Subhri, Tehsil Barara (Ambala); **and** Gurmail Singh son of late Labh Singh & Kuldeep kaur wife of late Labh Singh, residents of Village Subhri, Tehsil Barara (Ambala) i.e. legal representatives of complainant Labh Singh (since deceased), **i.e. the parties in Sessions Case No.41 of 2003 titled as ‘State versus Joginder Singh & Others’, bearing FIR No.93 Dated 31.5.2003, registered under Sections 307/506/34 IPC at Police Station Barara (Ambala), decided vide judgment dated 16.9.2004 by the Court of Shri Sanjiv Kumar, the then learned Additional Sessions Judge, Ambala,***

*had put appearance in this Court being the Successor Court, and produced certified copy of order dated February 14, 2023, passed by Hon'ble High Court.*

***Vide Order dated February, 14, 2023** passed by Hon'ble High Court in CRM-6757-2023 in/and CRA-S-1879-SB of 2004, this Court has been directed to record the respective statements of the parties with regard to the compromise and submit a detailed report in that regard along with copies of the statements, on or before 16.3.2023.*

*Joint statement of Gurmail Singh and Kuldeep Kaur i.e. legal representatives of complainant Labh Singh (since deceased), was recorded to the effect that "There are three accused in the present case. The matter has been compromised with all accused persons. The compromise is voluntary, without any coercion or undue influence. The accused persons have filed Quashing Petition/Application before the Hon'ble High Court of Punjab and Haryana, Chandigarh".*

*Accused persons namely Joginder Singh, Iqbal Singh @ Rana and Harjinder Kaur also suffered joint statement to the effect that "The matter has been compromised with legal heirs of complainant Labh Singh (since deceased). The compromise is voluntary, without any coercion or undue influence. We have filed Quashing Petition/Application before the Hon'ble High Court of Punjab and Haryana, Chandigarh. We are not involved in any other criminal case, neither we have ever been declared as Proclaimed Person in any case".*

*From the statements which the parties got recorded, it is clear that three persons were arrayed as accused in said case. It is further comes out that all the accused persons and legal representatives of the complainant are parties to the compromise; and none of the accused has ever been declared a proclaimed offender, and no such proceedings have been initiated or pending decision.*

*This Court is of the opinion that the compromise is genuine, voluntary, and without any coercion or undue*

*influence.”*

10. Ld. Senior counsel for the appellants submits that in view of facts and circumstances of the case that the alleged incident took place on 31.05.2003, and after being convicted by the trial Court, appeal is pending before this Court since the year 2004, now, during the pendency of present appeal filed by the appellants against the impugned judgment, good sense has prevailed over parties and family members of both the sides i.e. accused and the victims and they have reconciled their disputes/issues by entering into a compromise being co-villagers and residing in neighborhood area.

Thus, for providing better and peaceful future to the coming generations, he prays for quashing of the proceedings in view of the compromise. Ld. Senior counsel also submits that there are several instances when this Court as well as the Apex Court have held that power under Section 482 Cr.P.C., has a wider scope of interference, by enabling the members of both the sides to live their future lives peacefully.

11. Further, learned counsel appearing for respondents No.2 & 3 (representing the victims) is in agreement with the appellants to quash the proceedings in view of the compromise, having no objection over it.

12. Said contention is seriously opposed by Ld. State counsel by stating that offence under Section 307 of IPC, for which appellants have been convicted is a serious offence and for such offences proceedings should not be quashed on the basis of compromise.

13. Faced with the situation, Ld. Senior counsel, points out that in the present appeal main issue is “***whether the offence under Section 307 of IPC is made out or not, for the single injury attributed to appellant No.1 – Joginder Singh ?***”, and once same is treated as a **preliminary issue** and

decided in negative, it would be convenient to accept the request made by appellants and private respondents jointly. While submitting so, Ld. Senior counsel, submits that he would refer the evidence of injured complainant – Labh Singh (PW-3), and the statement of Dr. Shiv Kumar Anand (PW-7), and also statement of Dr. Sudhir Kapoor (PW-11) to demonstrate that neither the intention of the appellants was to commit murder of the injured Labh Singh, nor the medical evidence available on record, is sufficient to cover the parameters required under the law for punishing the appellants under Section 307 of IPC. He submits that the medical evidence is insufficient to hold that the injury suffered by Labh Singh, was in fact, so dangerous to his life that he could have died in the absence of timely medical aid.

14. Said contention of treating the issue as preliminary that whether the offence under Section 307 of IPC is made out or not, in the present appeal, is not opposed by the Ld. State counsel. Hence, this Court now proceeds to hear Ld. Senior counsel for the appellants and the State counsel on the issue, whether the offence punishable under Section 307 of IPC, is made out or not ?

**WHETHER OFFENCE U/S 307 IPC IS PROVED ?**

15. First of all, statement deposed in examination-in-chief by injured Labh Singh (PW-3) is reproduced herein-below:-

*“ On 31.5.2003 I had returned to my vill. after finishing my job work at about 4.00 p.m. I had left the school bus at Yamuna Nagar in the school. At about 5.30 p.m. I was lifting earth from the small drain in between the two pukka streets which have fallen in that drain on account of paving down of these streets leading to the house of the accused. Accused Joginder present today in court, stopped me from lifting earth from that drain saying that it was his land, and I replied that he had constructed his street in his own land and so, this drain and its land*

*belonged to us. In the meantime, daughter-in-law of accused Joginder brought a sword and Iqbal Singh present today in court, came there armed with a spear (Ballam), and that sword was handed over to accused Joginder by his daughter-in-law saying that I will not be allowed to go alive from the spot. Then accused Joginder gave a blow of Kirpan on my stomach. I fell down and became unconscious. The same day, I regained consciousness at around 8.00 p.m. in C.H.C. Mullana. There my statement was recorded by the police, which is Ex.PR which bears my signatures. I was referred to Civil Hospital Ambala from CHC Mullana. I remained admitted there for around nine days, where my medico legal examination and x-rays were got done.”*

From the said statement, Ld. Senior counsel submits that except of one injury i.e. in question, which is attributed to appellant No.1 – Joginder Singh, no other injury is attributed to any other accused.

16. This Court has noticed and gone through the statement of injured – Labh Singh (PW-3) and finds that the incident had taken place suddenly on the issue of flowing of drain water in the street. Initially, none of the accused were armed with any weapon. As per allegations, it was the appellant No.3 – Harjinder Kaur, who brought the kirpan (sword) from inside and handed-over it to appellant No.1 – Joginder Singh, and thereafter, appellant No.1 – Joginder Singh, caused a blow of kirpan on the stomach of injured Labh Singh. **After falling down and becoming unconscious, there was no repetition of blows by appellant No.1 – Joginder Singh.** Thus, in normal circumstances, the person who has deep rooted intention to cause murder would repeat his blow or would cause injuries to the other members of the victims’ side also.

17. Ld. Senior counsel also submits that in support of medical

evidence, another aspect, is that in fact, there is no evidence in regard to the form of opinion for declaring the injury dangerous to life sufficient for punishing the appellants for committing of offence under Section 307 of IPC. To examine the statement, as addressed by Ld. Senior counsel, this Court has deeply gone through the statement of Dr. Shiv Kumar Anand, M.O., CHC Mullana (PW-7). His complete statement in examination-in-chief along with cross-examination is reproduced hereunder:-

*“ On 31.5.03 when I was posted in CHC Mullana, I did the medicolegal examination on Labh Singh son of Bachan Singh r/o vill. Subri, brought by Baldev Singh, brother of the patient, alleged to have suffered injuries in violence. General condition was conscious. Pulse 80 per minute, B.P.130/80 mm of hg, Pupils equal and reacting to light both sides normally. The following injury was found:*

*“Incised wound 4 cms. X 3 cms., depth of the wound could not be measured, freshly bleeding, advised X-Ray abdomen, referred to surgical specialist Ambala City for an opinion.”*

*The kind of weapon used was sharp and subject to the surgeon opinion. The time of the injury was within six hours. I have brought the original MLR register, carbon copy of MLR of Labh Singh is Ex.P8, which was prepared by me in the same process while preparing the original one and as per the original, it is the correct and true copy and also bears my signatures. After conducting the MLR on the person of Labh Singh, I sent rukka Ex.P9 to SHO, P.S. Mullana for information and necessary action.*

*On 31.5.2003 police moved an application Ex.P10 before me seeking my opinion as to whether injured Labh Singh was fit to make a statement or not. Vide my opinion Ex.P11, I declared Labh Singh fit to make the statement. Police moved another application Ex.P12 before me seeking my opinion regarding the injury No.1 on the person of Labh Singh, which was kept pending for opinion after an x-ray and surgeon's opinion, as to*

*whether the injury No.1 was dangerous to life or not. Vide my remarks Ex.P13, I kept my opinion pending regarding the injury No.1.*

*On 12.7.2003 police moved an application Ex.P14 before me and after obtaining surgical opinion, regarding nature of injury No.1 on the person of Labh Singh, whether the same was dangerous to life or not. Vide my opinion Ex.P15 I confirmed the opinion of surgeon that possibility of injury No.1 on the person of Labh Singh, being dangerous to life, cannot be ruled out.*

*xxxxxxxxxxxxx by both the ld. counsel for the accused.*

*Since I have not probed the depth of injury, so I was not in a position to give any opinion with regard to nature of injury. I had referred for surgical opinion. No opinion of the surgeon with regard to treatment or probing of injury by the surgeon was made available to me to see my opinion with regard to nature of injury. When application Ex.P12 was moved before me, patient was not available with me for examination. Similarly when application Ex.P14 was moved on 12.7.03, patient was not examined by me. My report Ex.P15 was given because the surgeon had opined on 5.6.2003 that possibility of injury being dangerous to life, can not be ruled out. **This opinion is not a definite opinion and the possibility of its being non-dangerous, also cannot be ruled out.** I had not treated the patient and simply gave the first-aid. I had not mentioned whether edges of wound were regular or irregular. Possibility of this injury having been sustained by injured by a fall on a sharp pointed wooden root of a tree, cannot be ruled out.”*

18. On 31.05.2002 itself, ASI Gurmej Singh, presented one application for seeking opinion for injury No.1, suffered by Labh Singh (PW-3). On the same application following endorsement was given by Dr. Shiv Kumar Anand:-

*“Injury No.1*

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*Subject to surgeon opinion and advice x-ray abdomen.*

*So report will be given after getting surgeon opinion.*

*Sd/- 31/5/03”*

Thus, in fact, on 31.05.2003, there was no such opinion available with the prosecution agency.

19. Subsequently, on 04.06.2003, another application was presented by ASI Gurmej Singh, to the Doctor, surgical specialist, Govt. Hospital, Ambala City, over which, on 05.06.2003, opinion (Ex.PW22/1) was given by Dr. Sudhir Kapoor (PW-11). For convenience, his opinion dated 05.06.2003 is also reproduced hereunder:-

*“Pt. Labh Singh s/o Bhajan Singh, is admitted in MSW since 31.05.2003 with multiple injuries. Possibility of injury being dangerous to life cannot be ruled out.*

*5/6/2003*

*Sd/- Dr. Sudhir Kapoor,  
M.O., G.H. A/City.”*

20. Thereafter, on 12.07.2003, ASI Gurmej Singh, presented another application (Ex.P14) to Medical Officer, C.H. Mullana, by stating therein that surgical specialist has given his opinion that possibility of injury being dangerous to life cannot be ruled out. Therefore, you may also give opinion regarding the nature of injury. On the said written application/request, Dr. Shiv Kumar Anand, RMO, CHC Mullana, gave his opinion, on the bottom of same application, which is reproduced as under :-

*“Patient Labh Singh vide MLR No. SKA/98/03, was referred to C.H. Mullana City for surgical opinion. Surgical opinion is the possibility of injury being dangerous to life cannot be ruled out.*

*Sd/- RO, CHC Mullana.”*

21. In furtherance of the opinion given by the surgical specialist, Dr.

Sudhir Kapoor, appeared as PW-11, and his statement before the Trial Court is also required to be taken note of. Therefore, same is being reproduced hereunder:-

*“ On 31.5.03 I was as above. On that day, Labh Singh son of Bachan Singh, resident of village Subri was referred to Civil Hospital, Ambala City from C.H.C. Mullana. The patient was admitted since the surgeon's opinion and X'ray of the injury was sought by the doctor who conducted the M.L.R. on my examination, I found that the general condition of the patient was fair. A stitched wound was present on the abdominal wall corresponding to the number one of the M.L.R. I advised ultra sound of the abdomen. The ultra sound report showed minimal intraperitoneal fluid. The patient was treated and discharged on 7.6.2003. On 4.6.03 the police moved an applicatoin Ex.P22 to seek my opinion regarding the nature of the injury. I gave my opinion Ex.P22/1 to the effect that possibility of injury being dangerous to life cannot be ruled out.*

*xxxxx by S/Shri Anil Kaushik, Adv. and Shri D.K. Bansal, Adv. counsel for the accused.*

*The patient was referred to Civil Hospital, Ambala City for X. Ray examination. AS per record Labh Singh was never subjected to X.ray for his injury. There is noting on the bed head ticket with regard to any X.ray examination of injury. Since the wound was stitched so the depth of the injury could not be ascertained. The wound was not probed by me. The patient was given I.V. fluid and antibiotic and pain killer. The condition of the patient remained stable and improving. The ultra sound*

*was not conducted by the doctors of the Civil Hospital, Ambala City. It was got conducted by the patient from a private centre. The condition of the patient was stable and did not require any intervention from surgical point of view. **The word possible can go on both way. The opinion given by me is not definite. Even after getting the ultra sound report, there was no need for any surgical intervention.***”

22. After giving a thorough reading, time and again to the statements, and on being asked from the Ld. State counsel also, there appears to be no base with the Court to hold that finding of Ld. Trial Court of holding that the injury suffered by Labh Singh is dangerous to life and same is sufficient for punishing the appellants for committing an offence under Section 307 of IPC i.e. attempt to cause murder. Undisputedly, there is only one incised wound of measuring 4 cms. X 3 cms. On the very first day, Doctor, who conducted the Medico Legal Examination at CHC, Mullana, had advised for x-ray abdomen, and had referred the patient to surgical specialist. Even depth of the wound could not be measured. Nowhere in the deposition of Dr. Shiv Kumar Anand (PW-7), it is made clear that what kind of treatment was started or prescribed by him. Even there is nothing mentioned of applying stitches over the wound by him, at CHC Mullana.

23. Ld. State counsel could not refer any documentary evidence to show that x-ray abdomen was conducted. At the first instance, the opinion given by Dr. Shiv Kumar Anand (PW-7) is “*Possibility of injury No.1 on the person of Labh Singh, being dangerous to life cannot be ruled out.*”. During cross-examination, he has clearly admitted the fact of neither probing the depth of injury, nor was he in a position to give any opinion regarding the

nature of injury. It is also admitted that for forming of his own opinion, no treatment or probing of injury by surgeon was made available to him to see the nature of injury. Even patient was not available before the Doctor at the time of forming of opinion on 12.07.2002. Moreover, this aspect in clear words has been admitted by Dr. Shiv Kumar Anand (PW-7) that this opinion is not definite opinion and the possibility of itself being non-dangerous also cannot be ruled out. Doctor also admitted the suggestions that possibility of sustaining of this injury by falling on a sharp pointed wooden root of a tree, cannot be ruled out.

24. Now, it would not be fair if in the same breath, the statement of Dr. Sudhir Kapoor, M.O.C.H. Ambala City (PW-11) is not examined.

25. As per the said Doctor on 31.05.2003 itself, when he examined the injured, his wound was already stitched. He had advised the ultrasound of the abdomen, and on being asked for giving an opinion, said Doctor opined that possibility of injury being dangerous to life cannot be ruled out. He also admitted the non-examining the depth of injury, as it was stitched, and the wound was not probed by Dr. Sudhir Kapoor (PW-11). This surgeon Doctor only gave I.V. fluid, antibiotic and pain killer to the injured. However, he clearly stated that the condition of the patient remained stable and kept improving. Ultrasound was not conducted by the Doctors of Civil Hospital, Ambala city, but it was got conducted by the patient from a private centre.

This Court is surprised to note that for proving of the said ultrasound report, neither any Doctor as Radiologist, nor any staff of private centre has appeared in the witness-box, and in the said situation, how said ultrasound report could be made basis for forming of opinion by Dr. Sudhir Kapoor (PW-11) regarding the nature of injury. Moreover, in the last part of

his cross-examination, he clearly admitted that the word ‘possible’ can go both ways and his opinion is not a definite one. It was also accepted that even after the receipt of the ultrasound report, there was no need for any surgical intervention.

Thus, by examining the exhibited documents regarding the opinion given by both the Doctors, and reading their depositions before the Trial court, two facts are clear, firstly that none of these Doctors have prescribed any specific treatment, and secondly, none of these Doctors have stated that, who actually stitched the injury. There is nothing available on record to hold that any of the internal organ of the body in the stomach had suffered injury or any kind of damage. Even Doctors themselves are of the opinion that the injury in question can also be “*non-dangerous to life*”.

26. This Court has been guided by the Hon’ble Apex Court in the judgment rendered in case of *Jai Narain Mishra & others Vs. State of Bihar, 1972 (CAR) 19 (SC)*, wherein, penetration caused in the chest by thrusting a Bhalla, was taken with the purview of offence punishable under Section 307 of IPC, and wound was not probed, however, considering the nature of injury and the circumstances, offence was converted being punishable under Section 326 of IPC, from Section 307 of IPC. Para No.11 of the said judgment says as under:-

“11. Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 1½" x ½" x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his

*head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though **endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid.** The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment.”*

27. Thus, in totality of circumstances, as discussed here-in-above, and with the support of the judgment of the Hon’ble Apex Court in **Jai Narain Mishra’s case (supra)**, I find that prosecution has completely failed in proving the case, one under Section 307 of IPC. Even, initially accused being empty handed, and after bringing of the Kirpan (sword) from the house, suddenly, causing a single blow, though, the appellants were total three in number, and the victims were also total three in number. **Except one injury in question, no one from both the sides has allegedly suffered even a scratch.** Therefore, intention in the mind of appellant No.1 – Joginder Singh or his associates cannot be assumed of causing murder of the injured –

Labh Singh. Even there is no repetition of blow, though, with kirpan (sword) it could have been repeated.

28. Even, medical evidence adduced by the prosecution, itself is creating big doubt about the nature of the injury. None of the Doctors is definite in his opinion, whether injury could be definitely dangerous to life. Rather, medical evidence as stated before the Court is that there opinion is not definite and it could be non-dangerous to life also. Therefore, this Court is firm in holding that by no stretch of imagination, offence under Section 307 of IPC is made out, rather the injury could be construed as of a grievous nature. Therefore, injury being incised and of the size of *4 cms. X 3 cms.*, appellants could be punished under Section 326 of IPC.

**Thus, preliminary issued is decided accordingly.**

29. Now without adverting to the role of any of the appellants, and the factual deposition available on record by all the witnesses, Ld. Senior counsel for the appellants, and learned counsel for respondents No.2 & 3 (victims) are of the one view that the present appeal be decided in view of the compromise, which has been found to be executed as genuine one with free volition.

This Court realizes that once preliminary issue has been decided by threshing out complete oral as well as medical evidence, and reaching to the conclusion of not making out an offence punishable under Section 307 of IPC, this is the stage from where the Court can proceed to decide the appeal, in view of factum of compromise between the parties.

30. Learned counsel for the appellants has confined his submission for compounding the sentence for the reason that a compromise dated 12.01.2023 (Annexure A-1), has been arrived at between the appellants and complainant/victim/injured party. Learned counsel further submits that

occurrence had taken place on 31.05.2003, i.e. about 20 years ago, over a small dispute of blocking of street due to drain water, between the neighbours. Now, with the intervention of close relatives, friends and respectable persons of the area, affected parties have amicably resolved all the disputes and compromised the matter. They are now living peacefully and there is no ill-will/grudge against convicts/appellants.

31. Learned Senior counsel for the appellants further argues that law is well settled in regard to compounding of offences/quashing of FIR even after conviction, during proceedings of the appeal against conviction pending in High Court/Sessions Court and even in cases involving non-compoundable offences. In this regard, he has placed reliance on the judgment(s) of:

- I) Hon'ble the Supreme Court rendered in the cases of Narinder Singh and others v. State of Punjab and another, (2014) 6 SCC 466; and Ramgopal and another v. The State of Madhya Pradesh, 2021 SCC Online SC 834;
- ii) a Full Bench judgment of this Court in the case of Kulwinder Singh v. State of Punjab and another, 2007 (3) RCR (Criminal) 1052;
- iii) a Division Bench judgment of this Court in the case of Sube Singh and another v. State of Haryana and another, 2013 (4) RCR (Criminal) 102; and
- iv) a recent judgment passed by this Court in the case of Lakhbir Singh v. State of Punjab and another (CRA-S2065-SB-2007, decided on 14.02.2023 : Law Finder Doc ID #2138925).

32. Learned counsel appearing for respondents No.2 & 3

(complainant(s)/victim(s)/injured party) has joined hands with the appellants and submits that he has instructions to state at the Bar that if FIR No. 93, dated 31.05.2003, registered at Police Station Barara, and all the subsequent proceedings emanating therefrom are quashed in terms of compromise-deed dated 12.01.2023 (Annexure A-1) and the appellants are acquitted/discharged by this Court, they will have no objection.

33. Learned State counsel after going through the statements and the report received from learned Court below, very fairly admits that the matter has been compromised. However, learned State counsel objects the prayer of the appellants for compounding of offence/quashing of FIR and consequential proceedings as also acquittal/discharge of the appellants on the basis of compromise dated 12.01.2023 (Annexure A-1), entered into between the appellants and affected parties, by submitting that prosecution has been able to prove its case, which is why accused persons have been convicted by the Trial Court by passing a reasoned order in the present case. Thus, no concession can be extended to the convict persons by quashing of FIR or compounding of offences on the basis of compromise.

34. I have heard learned counsel for the parties and with their able assistance gone through the record.

35. Issue involved in the present appeal is that once matter has been considered after appreciation of evidence by the learned Trial Court and appeal against the same is pending before Appellate Court, whether proceedings can be quashed/compounded/finished on the basis of compromise amongst all the parties to *lis*.

36. The matter is no longer *res integra*. Hon'ble the Supreme Court in **Narinder Singh's case (supra)** has considered in detail the issue in hand as also inherent power of High Court under Section 482 Cr.P.C. to quash

criminal proceedings involving non-compoundable offences in view of compromise/settlement arrived at between the parties. In the said case, FIR was registered under Sections 307, 324, 323 and 34 IPC. A petition under Section 482 Cr.P.C. was filed before this Court seeking quashing of FIR on the basis of compromise entered into between the petitioners who were the accused in the FIR and the complainant. This Court refused to exercise its extraordinary discretion invoking the provisions of Section 482 Cr.P.C. on the ground that four injuries were suffered by the complainant and as per the opinion of the doctor, Injury No.3 was serious in nature.

37. After detailed discussion, in paragraph No. 29 of the judgment in **Narinder Singh's case (supra)**, Hon'ble the Supreme Court laid down certain principles/guidelines for the High Court so as to give adequate treatment to the settlement between the parties, while exercising power under Section 482 Cr.P.C., while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Para 29 and 29.1 of the said judgment, being relevant, are reproduced as under:-

*“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*

*29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.”*

38. In relation to the cases involving the offence punishable under Section 307 IPC, in para No. 29.6 of the judgment, Hon'ble the Apex Court

has held as under:-

*29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. **However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.** (emphasis added)*

39. In the case in hand, initially FIR was lodged under Sections 324, 506, 34 of IPC, and later on, injury punishable under Section 324 of IPC was converted to the offence punishable under Section 307 of IPC, and accordingly, appellants were convicted and sentenced for the offences punishable under Sections 307/34 and 506 of IPC. However, as already noticed above, after analyzing the evidence, this Court came to the conclusion that ingredients constituting an offence under Section 307 IPC are completely missing in the present case. Therefore, for the injury in question, all the appellants were held guilty for committing an offence punished under Section 326 of IPC. Thus, charge of offence has been converted from 307 IPC to 326 IPC.

40. In Narinder Singh's case (supra), their Lordships' of Hon'ble

the Supreme Court also discussed the scope of Section 320 Cr.P.C. vis-a-vis powers of High Court in exercise of Section 482 Cr.P.C. and came to the conclusion that Section 320 Cr.P.C. deals with only “compoundable offences” within the statutory frame work and the extraordinary power is enjoyed upon a High Court under Section 482 Cr.P.C. In other words, powers under Section 482 Cr.P.C. are of larger scope than Section 320 Cr.P.C.

41. In the case of **Ramgopal and another (supra)**, Hon’ble the Supreme Court has dealt with a situation where appeal under Sections 294, 323 and 326 read with 34 of IPC and Section 3 of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989, was pending and the concerned parties entered into compromise during pendency of such appeal. In para 13 of the judgment, Hon’ble the Supreme Court has made the following observations:

*“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C., 1973 may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in **Narinder Singh & Ors. v. State of Punjab & Ors., (2014) 6 SCC 466** and **Laxmi Narayan (Supra)**.”*

42. From a bare perusal of the above, it is evident that broadly it was concluded by their Lordships' that touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice and that a restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice.

43. Thus, it can be safely concluded that where offences are non-heinous or where the offences are pre-dominantly of a private nature, they can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction.

44. It has further been held in **Ramgopal's case (supra)** that the matters which can be categorized as personal in nature or in the matter in which the nature of injuries do not exhibit mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest, the Court can quash the FIR in view of the settlement arrived at amongst the parties. The observation of the Hon'ble Supreme Court is extracted as under:-

*"19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."*

45. The Full Bench of this Court in the matter of **Kulwinder Singh**

(supra) has made the following observations:-

“(28) To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice”.

(29) In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and others, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:

“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”

(30) The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

(31) No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

(32) The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(33) The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.

(34) The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debita Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined

*para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”*

46. After considering the aforementioned position of law as enumerated from the interpretation made by Hon’ble the Supreme Court, Full Bench of this Court and in totality of circumstances that compromise dated 12.01.2023 (Annexure A-1) between the parties has already been entered, nothing can be achieved by hearing the appeal on merits.

47. The report alongwith statements of the affected parties received from learned Court below would reveal that members of complainant/victim/injured party have genuinely effected compromise dated 12.01.2023 (Annexure A-1) with the appellants and they have no objection, if the appellants are acquitted/discharged.

48. At this juncture, it would be pertinent to notice that during the course of arguments, learned Senior counsel for the appellants has also pointed out that Criminal Miscellaneous Application No. CRM-6757-2023 in CRA-S-1879-SB-2004 has been filed under Section 482 Cr.P.C., with a prayer for quashing FIR No.93, dated 31.05.2003, under Sections 324/506/34 of IPC, registered at Police Station Barara, Distt. Ambala, and all the consequential proceedings arising therefrom, in view of the compromise arrived at between the parties. It is further submitted by the learned Senior

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counsel that even as per judgment of Hon'ble the Supreme Court rendered in the case of **Ramgopal and another (supra)**, powers of this Court under Section 482 Cr.P.C. are at a higher pedestal being extra ordinary in nature.

49. Said contention of learned counsel for the appellants is strengthened with the observations made by their Lordships' of Hon'ble the Supreme Court in para No. 19 of the judgment in **Ramgopal's case (supra)** that, as already noticed and reproduced in Para No. 33 of this judgment.

50. In view of above discussion, **Criminal Miscellaneous Application No. CRM-6757-2023 in CRA-S-1879-SB-2004 is allowed.** Consequently, FIR No. 93, dated 31.05.2003, under Sections 324, 506, 34 of IPC, registered at Police Station Barara, District Ambala, alongwith all consequential proceedings including judgment of conviction and order of sentence dated 16.09.2004, passed by learned Addl. Sessions Judge, Ambala, are quashed, on the basis of compromise dated 12.01.2023 (Annexure A-1), entered into between the appellants and members of complainant/victim/injured party(s).

51. **Criminal Appeal No. CRA-S-1879-SB-2004 stands disposed of.**

**(SANJAY VASHISTH)**  
**JUDGE**

**April 24, 2023**

*J.Ram*

*Whether speaking/reasoned: Yes/No*

*Whether Reportable: Yes/No*