

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

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CRA-S-2191-SB-2011**Date of Decision : 31.05.2023**

Gurdev Singh and others

...Appellants

Vs.

State of Punjab

...Respondent

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

Present:- Mr. Rhythem Bajaj, Advocate for
Mr. S.P.S. Sidhu, Advocate
for the appellants.

Appellant No. 1 Gurdev Singh died.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Arshdeep Singh Siva, Advocate
for the complainant.

N.S.SHEKHAWAT, J

1. The present appeal is directed against the judgment of conviction and order of sentence dated 18.08.2011 passed by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib whereby, the present appellants stand convicted under Sections 308/34 and 323/34 IPC and sentenced, as mentioned below:-

Major Singh U/s 308/34 IPC He is sentenced to undergo RI for three years alongwith fine of Rs. 2000/-. In default of payment of fine, to undergo RI for two months.

U/s 323/34 IPC He is sentenced to undergo RI for one year alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.

Jagsir Singh	U/s 308/34 IPC	He is sentenced to undergo RI for three years alongwith fine of Rs. 2000/-. In default of payment of fine, to undergo RI for two months.
	U/s 323/34 IPC	He is sentenced to undergo RI for one year alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.
Sukha Singh	U/s 308 IPC	He is sentenced to undergo RI for five years alongwith fine of Rs.3000/-. In default of payment of fine, to undergo RI for four months.
	U/s 323/34 IPC	He is sentenced to undergo RI for one year alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.

2. However, Gurdev Singh, one of the appellant/accused, died during the pendency of appeal before this Court, as such, appeal abated qua him due to his death.

3. As per the case of the prosecution, the FIR was registered on the basis of the statement made by Paramjit Singh resident of village Ranjit Garh, a labourer. As per the complainant, the house of Sukha Singh is situated in front of the house of the complainant and his brother. At about 08.00 p.m., on 21.03.2007, the complainant heard the commotion from the street. On this, he alongwith his elder brother Bhajan Singh came outside and found that the accused were quarreling with their younger brother Babbi. The complainant and his brother Bhajan Singh took Babbi to his house. After this, when they came in the street, the accused were still there and were carrying

dangs (sticks) in their hands and waylaid them. Gurdev Singh accused, gave a blow with *dang* on the head of the complainant. Major Singh, accused gave another blow with the *dang* on the left and right arm of the complainant. Bhajan Singh tried to intervene, however, Sukha Singh gave *dang* blow on his head. Accused Jagsir Singh gave fist blow on his nose. The complainant and his brother raised an alarm to save them and their younger brother Babbi reached at the spot. He also raised the alarm to save them and on this the accused fled away from the place of occurrence with the *dangs* (sticks) in their hands. The complainant and his elder brother were shifted to civil hospital in an injured condition by their family members. The motive for causing injuries was that Babbi, younger brother of the complainant, was coming to his house after plying the tractor, but the *Kuraha* (agricultural implement) which was attached with the tractor had touched the bullock cart of Sukha Singh and two wooden planks of the cart were broken. The accused had been assured that they would be compensated by the complainant in this regard, but the accused with premeditation, had threatened them and had assaulted them. With these broad averments, the FIR was got registered by Paramjit Singh.

4. After the necessary investigation, the *challan* was presented against the accused under Sections 308, 323 and 34 IPC. After taking into consideration the incriminating evidence collected during the course of evidence, the learned trial Court ordered framing

of the charges under Sections 308, 325, 323 and 34 IPC against the accused and they pleaded their false implication and claimed trial.

5. In order to prove the case, the prosecution had examined nine prosecution witnesses.

6. Paramjit Singh, complainant/injured was examined as PW1, whereas another injured Bhajan Singh was examined as PW2. Both the injured had supported the case of the prosecution, as mentioned in the FIR. Dr. Vandana, Emergency Medical Officer, Civil Hospital, Muktsar, was examined as PW3. She medico-legally examined Bhajan Singh and found the following injuries:-

- 1. Defused swelling measuring 2 cm X 2 cm on the frontal region of scalp. 2 cm posterior to anterior hairline just right to the midline.*
- 2. Bleeding from nose present.*

7. Both the injuries were kept under observation and the weapon used for both the injuries was blunt. He proved on record MLR Ex.PW3/A and pictorial diagram showing seat of injuries as Ex.PW3/B. On the basis of surgical opinion given by Dr. Jai Dev Singh, he prepared his supplementary report qua injured Bhajan Singh and declared injury No. 1 being dangerous to life and as per the opinion of the surgeon, injury No. 2 was the result of Injury No. 1. On the same day, he had medico-legally examined Paramjit Singh PW1 and found the following injuries:-

- 1. A lacerated wound measuring 4 Cm x 1 CM on the frontal region of scalp just right to the midline at the anterior hair line.*

2. *Diffused swelling measuring 4 CM X 3 CM alongwith abrasion 3 CM X 2 CM on the dorsal aspect of right forearm. 5 CM proximal to wrist joint.*
3. *Reddish abrasion .5 CM X .5 CM on the back of left elbow.*

8. She proved on record the copy of the MLR as Ex.PW3/E and pictorial diagram as PW3/F. The injuries suffered by Paramjit Singh were declared to be simple in nature. In her cross-examination, she stated that it is quite possible that the injuries on the person of both the injured may be suffered in a road side accident between a tractor and a bullock cart. The prosecution examined PW4 Dr. Prem Nath Girdhar, who prepared the X-ray report of Bhajan Singh and as per him, the X ray report of the skull showed fracture of fronto parietal bone, whereas the X ray report of nasal bone was normal and his report in this regard was Ex.PW4/A whereas the X ray film was exhibited as Ex.PW4/B. On the same day, X ray of Paramjit Singh was also conducted and his report in respect was Ex.PW4/C and X ray films were Ex.PW4/D. The prosecution further examined PW5 Dr. Jaidev Singh, Deputy Medical Commissioner, Civil Hospital, Muktsar, who was a surgical specialist and was called by Dr. Bandana Bansal, EMO. He found the following facts:-

“There was history of sustained medico-legally injuries on 21.03.2007 at about 9 p.m. History of vomiting, history of patient not responding to verbal command. History of bleeding from the left ear and history of patient passing urine on bed. He examined the patient.

The patient was in state of unconsciousness. There was no verbal response, but response to painful stimuli present. Pulse 90 per minute. Blood pressure 150 X 90. Right eye pupil was mid dilated and sluggish to light reaction. Left pupil dilated and not reacting to light. Patient lying in flexion attitude. Peripharaal reflex is present. Abdomen was soft and chest was clear. Glasgo, scale was 6 out of 15. My clinical impression was head injury (injury to brain) and he started treatment on the line of head injury and advised C.T. Skull.

On the report of C.T. Skull, which was showing fracture of temporal and parietal bone with shifting of brain to one side with edema of brain. The report was shown at 02 p.m. on the same day and he advised to take the treatment from Neurological centre. So, he referred the patient on 22.03.2007 at 02.p.m. To Neurological centre at Bhatinda, Ludhiana or Chandigarh. He sent his surgical opinion report dated 22.03.2007 stating the condition of the patient and clearly mentioned that patient Bhajan Singh son of Lal Singh had sign and symptoms of head injury (injury to brain). Ex.PW4/A is his report, which is in his hand and bears his signatures. Ex.PW4/A is attested photocopy of the Bed Head Ticket. The original, he has brought today in the Court. In Bed Head Ticket, Ex.PW4/B was his examination. Ex.PW4/C was his treatment”.

9. The prosecution further examined PW6 Dr. Dinesh Gupta, Neuro Surgeon and proved on record his affidavit Ex.PW6/8. The prosecution further examined Dr. Anu Gupta, who conducted the CT scan head, X ray chest and ultrasound of abdomen. PW8 ASI Balkar Singh was the initial IO who got the MLR prepared and also

obtained the medical opinion. He made recovery of sticks from the accused and supported the case of the prosecution. Constable Harpreet Singh was examined as PW9 and on receipt of the information, DDR No. 7 dated 22.03.2007 Ex. PW9/A was registered in Police Station, Sadar Muktsar in this regard.

10. After the closure of the prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. Accused Sukha Singh stated that the complainant and his brother had taken alcohol and the tractor was being driven at a very high speed by the complainant and it had hit the bullock cart, resulting into the injuries suffered by the complainant and they did not cause any injury to the complainant. Rather they received injuries by falling from the tractor. Similar defence has been raised by Major Singh and Jagsir Singh. The accused did not lead any evidence in their defence.

11. Learned counsel for the appellants vehemently argued that in the instant case there was delay of five days in registration of the FIR. The occurrence had taken place at about 8 p.m. on 21.03.2007 but the FIR in the instant case was registered on 26.03.2007 and the prosecution miserably failed to explain the said delay. Apart from that, the story of the prosecution was apparently false and improbable. From the testimonies of the prosecution witnesses and the medical evidence, it was evident that the injured had suffered injuries on their own and due to enmity, they were falsely involved in the present case. Apart from that, the ocular

evidence of the prosecution did not find any support from the medical evidence. PW5 Dr. Jaidev Singh, Deputy Medical Commissioner, Civil Hospital, Muktsar, had stated that he had examined the patient on 22.03.2007 but in his deposition the name of the injured was not clear. Still further, the entire prosecution case was based on the testimonies of the injured witnesses as well as interested witnesses of the prosecution and there was no independent corroboration of the prosecution story, thus, the case of the prosecution was liable to be disbelieved and the appellants were liable to be acquitted by this Court.

12. Countering the said arguments, the learned counsel for the State assisted by the learned counsel for the complainant vehemently opposed the said submissions made by the learned counsel for the appellants. Learned counsel contended that after the injured suffered the injuries, the matter was immediately reported to the police vide DDR No. 7 dated 22.03.2007 in this respect. Later on, the initial report was converted into FIR on 26.03.2007 after collection of the medical evidence. Thus, it can not be stated that the story of the prosecution was concocted. Learned State counsel further submitted that the case of the prosecution has been duly supported by PW1 Paramjit Singh and PW2 Bhajan Singh, who both are injured witnesses. Their testimonies have been duly supported from the statements of various doctors, viz, PW3 Dr. Vandna, PW4 Dr. Prem Nath Girdhar, PW5 Dr. Jaidev Singh, PW6 Dr. Dinesh Gupta and

PW7 Dr. Anu Gupta. All the said doctors, who had treated the injured from time to time had supported the case of the prosecution. Still further, in the instant case, PW1 Paramjit Singh and PW2 Bhajan Singh were duly corroborated and they had no reason to falsely depose against the present appellant. Once the statements of the injured witnesses, doctors and investigators are found to be credible, the said submissions can be believed even in the absence of independent evidence.

13. I have considered the rival submissions made by the learned counsel for the parties. In fact, the occurrence had taken place at about 8.00 p.m. on 21.03.2007. Immediately, thereafter, both the injured, i.e., PW1 Paramjit Singh and PW2 Bhajan Singh were shifted to the hospital. Even from the medical evidence, it is apparent that the first priority of the family of the injured was to provide best possible treatment to the injured. Still further, the prosecution examined Constable Harpreet Singh PW9, who proved on record the copy of DDR No. 7 dated 22.03.2007 Ex.PW9/A, vide which, ASI Balkar Singh had gone from Police Station to Civil Hospital Muktsar for recording the statement of the injured. Still further, vide Ex.PW9/B, i.e., copy of DDR No. 10 dated 23.03.2007, ASI Balkar Singh returned to Police Station Muktsar after recording the statement of the complainant/injured Paramjit Singh. Thereafter, the medical record was obtained and the case was registered by the police on 26.03.2007, Thus, it can never be said that the prosecution could not

explain the delay in registration of the FIR and the arguments raised by the learned counsel for the appellants are liable to be rejected.

14. Still further, in the present case, the complainant/injured Paramjit Singh was examined as PW1 and he supported the case of the prosecution. Even PW2 Bhajan Singh, injured, also deposed on similar lines and again supported the case of the prosecution. Both the injured witnesses had given the vivid account of the entire occurrence and the manner, in which, serious injuries were caused on their person. The prosecution further examined PW3 Dr. Vandna, who proved on record the MLR, pictorial diagrams showing the seat of the injuries, on record before the learned trial Court. She had initially attended both the injured and also exhibited the bed head ticket of Bhajan Singh and Parmjit Singh. Dr. Prem Nath Girdhar was examined as PW4 who conducted X ray of skull of Bhajan Singh, which showed fracture of frontal parietal bone and his report in this regard was Ex.PW4/A and X-ray films were exhibited as Ex.PW4/B. Apart from that PW5 Dr. Jaidev Singh, the Deputy Medical Commissioner, Civil Hospital, was examined as PW5, who had rendered the surgical opinion report dated 22.03.2007 who clearly mentioned that Bhajan Singh, patient had sign and symptoms of head injury, injury to brain and his report in this regard was Ex.PW4/A. Even, the attested copy of the bed head ticket was exhibited as PW3/A and his examination in the bed head ticket was Ex.PW4/B and Ex.PW4/C was the treatment prescribed by him. As

per him, there was history of sustaining medico-legally injuries and the patient Bhajan Singh was not responding to verbal commands. There was bleeding from the left ear and history of the patient passing urine in the bed. The patient was in the state of unconsciousness. There was no verbal response, but response to painful stimuli was present. The right eye pupil was mid dilated and sluggishness to light reaction. The patient was lying in flexion attitude. His medical impression was head injury (injury to brain) and he started the treatment on the line of head injury and advised the CT scan as per the report and the CT scan clearly showed the fracture of the temporal and parietal bone with shifting of brain to one side with edema of brain. PW6 Dr. Dinesh Gupta, Neuro Surgeon, was examined by the prosecution and he tendered his affidavit Ex.PW6/A in this regard. PW7 Dr. Anu Gupta, had conducted the CT scan and X ray examination in their clinic and proved on record Ex.P-10 and Ex.P-12. Thus, from the above referred discussion, it is apparent that the ocular account was duly corroborated by the medical evidence.

15. All the accused had caused injuries to both the injured, i.e. PW1 Paramjit Singh and PW2 Bhajan Singh. Even the injury No. 1 suffered by Bhajan Singh was declared dangerous to life by PW3 Dr. Vandna, Medical Officer, Civil Hospital, Muktsar. Further, there was a motive on the part of the appellants to cause injuries to the injured and despite lengthy cross-examination, the testimonies of PW1 Paramjit Singh and PW2 Bhajan Singh could not be shattered

in any manner. Thus, the story of the prosecution was correctly believed by the learned trial Court and the findings recorded in this regard are liable to be upheld by this Court.

16. Apart from that, this Court has also examined the evidence led by the prosecution before the learned trial Court. The statements of both the injured and doctors, who had treated at different stages have been duly corroborated by the testimony of ASI Balkar Singh, who was examined as PW8. He had arrested the accused and in pursuance of their disclosure statements, the recoveries of *dangs* (sticks) were effected from them. Even, his statement has been corroborated by PW9 Constable Harpreet Singh.

17. Section 308 of IPC reads as under:-

“308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration (a), on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section”.

18. From the facts of the case, it is apparent that it was a case of sudden fight between the parties. The trial Court has rightly disbelieved the story of the defence that the injuries could be suffered by Bhajan Singh and Paramjit Singh by fall from a tractor. Detailed findings have been recorded by the learned trial Court in this regard. The said findings did not suffer from any perversity. Still further, even this Court is of the considered view on the strength of prosecution evidence that appellants can be attributed the knowledge that their act of causing injuries endangering the life of PW2 Bhajan Singh would fall within the meaning of Section 308 IPC. In fact, from the perusal of the facts of the present case, it is evident that the accused could be attributed with the knowledge that the injuries were likely to cause death and have been rightly convicted by the learned trial Court under Section 308/323 IPC read with Section 34 IPC.

19. Still further, this Court has perused the findings recorded by the learned trial Court in the light of the evidence led by the prosecution and settled principles of law. This Court is of the considered opinion that the findings recorded by the trial Court do not suffer from nay material irregularity, illegality or perversity, warranting interference by this Court. Thus, the impugned judgment of conviction dated 18.08.2011 passed by the Additional Sessions Judge, Sri Muktsar Sahib is ordered to be upheld.

20. Now advertng to the order of sentence, it is apparent that the duty of the Court to exercise judicial discretion, while

imposing sentence of offence. According to Black's Law Dictionary "Judicial Discretion" means the exercise of judgement by a Judge or Court based on what is fair under the circumstances and guided by the rules and principles of law; a Court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. In a way, it is an obligation to the Society, which has reposed faith in the Court of law to curtail the evil. It must evince a rationalized judicial discretion and not a individual perception or a moral propensity.

21. In the present case, the occurrence had taken place on 21.03.2007, i.e. almost 16 years ago. The custody certificate have been filed by the learned State counsel, which clearly show that all the appellants are first offenders and in the last sixteen years, they had not misused the concession of bail. Apart from that, accused/convicts belong to the same family, as per the learned counsel for the parties and the appellants are the sole bread earners of the family. Consequently, taking into consideration the plea of the appellants as well as the gravity of the offence in mind, the sentences imposed on the appellants are ordered to be reduced and the appellants are ordered to undergo sentences as under:-

Major Singh	U/s 308/34 IPC	He is sentenced to undergo RI for one and half year alongwith fine of Rs. 2000/-. In default of payment of fine, to undergo RI for two months.
	U/s 323/34 IPC	He is sentenced to undergo RI for six months alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.
Jagsir Singh	U/s 308/34 IPC	He is sentenced to undergo RI for one and half year alongwith fine of Rs. 2000/-. In default of payment of fine, to undergo RI for two months.
	U/s 323/34 IPC	He is sentenced to undergo RI for six months alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.
Sukha Singh	U/s 308 IPC	He is sentenced to undergo RI for two years alongwith fine of Rs.3000/-. In default of payment of fine, to undergo RI for four months.
	U/s 323/34 IPC	He is sentenced to undergo RI for six months alongwith fine of Rs. 500/-. In default of payment of fine, to undergo RI for one month.

22. It is further ordered that all the sentences shall run concurrently and the period of sentences already spent by them shall be deducted from the substantive sentence awarded to them by this Court.

23. In view of the above modification, the appeal is partly allowed and the sentences awarded to the present appellants are reduced to the period as indicated above.

24. All pending applications, if any, are disposed off, accordingly.
25. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.
26. Records of the Court below be sent back.

31.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No