

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

320

CRA-S-3300-SB-2012 (O&M)

Date of Decision: 27.01.2023

BALJIT SINGH @ GOGI

-Appellant

Versus

STATE OF PUNJAB

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Maninder Singh, DAG, Punjab.

KULDEEP TIWARI, J.

1. The present appeal has been directed against the verdict of conviction, and, order of sentence dated 17.08.2012 passed by the learned Additional Sessions Judge, Sangrur, in case FIR No.166 of 12.09.2007, registered under Section 307 of Indian Penal Code (hereinafter referred to as 'IPC'), at Police Station Dirba, District Sangrur, whereby the appellant has been convicted for the offence punishable under Section 307 of IPC, and, has been sentenced to undergo rigorous imprisonment for a period of seven years, and, to pay a fine of Rs.5,000/-, and, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

FACTUAL MATRIX

2. The prosecution agency was set in motion upon receipt of a ruqa/information (Ex.PE), on 12.09.2007, from Primary Health Centre,

Kohrian, by A.S.I., Nirmal Singh (PW-7), regarding admission of Preet Singh (complainant), Gupreet Singh and Satnam Singh. Thereupon, he along with other police officials reached Primary Health Centre, Kohrian, and, sought opinion regarding condition of the injured persons. The doctor vide endorsements, Ex.PG & Ex.PH respectively, declared injured Preet Singh and Gurpreet Singh fit to make statement, and, also informed that injured Satnam Singh was referred to Civil Hospital, Sangrur, on account of his condition being critical. Thereupon, the Investigation Officer recorded the statement of Preet Singh (complainant), Ex.PW1/A, which reads as under:-

“I am a painter by profession. Today, at about 08.15 AM, I and Satnam Singh son of Joga Singh, Caste Majhbi, resident of Ward No.8, Dirba, were going to our work on foot, as Satnam Singh also works with me. When we reached at Committee Road, near Cremation Ground's Turn, Dirba, in the meantime, my brother Gurpreet Singh, who was returning home from North India Pipe Factory, Dirba, after doing night shift duty, met us, and, he started talking to us. While we all three were talking to each other, in the meantime, Gogi Singh son of Amar Singh, Caste Majhbi, resident of Ward No.8, Dirba, came on foot from front side i.e. Committee's side, and, he was holding a bottle of acid in his hand. As soon as he came, he said that “Today, I will teach you a lesson for quarreling with me.” Thereupon, he threw acid from the bottle on all three of us, and, thereafter fled from the spot along with empty bottle of acid. Due to burning sensation of acid fallen on us, we raised hue and cry, whereupon, my father Baldev Singh came at the spot, and, many other persons also gathered there.

Due to falling of some acid on upper part of my right arm, my shirt was burnt, and, my arm also received burns from shoulder slightly downwards elbow. Some drops of acid also fell on right side of my face, and, neck, which left marks thereon. Acid fell on left elbow of my brother Gurpreet Singh and it got burnt. Acid also fell on face and chest of Satnam Singh son of Joga Singh, resident of Ward No.8, Dirba, which resulted in burns thereon. The motive behind this incident is that previously, we had an argument with Gogi Singh, and, because of that grudge, he threw acid on us. My father Baldev Singh arranged conveyance and got us admitted at Hospital, Kohrian. From there, the doctor referred Satnam Singh to Civil Hospital, Sangrur, because much acid had fallen on him. I and my brother Gurpreet Singh are undergoing treatment there itself. I have got recorded my statement and heard it, which is correct. Legal action be taken against Gogi Singh.”

3. On the basis of the above statement, the instant FIR was registered against the appellant-accused. Thereafter, the investigation in the matter was carried out. The statements of witnesses and co-injured were recorded. The Medico Legal Reports (hereinafter referred to as 'MLR') of injured persons were taken into possession. The burnt clothes of the injured/victims were also taken into possession, vide separate recovery memo. On 16.09.2007, the appellant-accused was arrested. During the course of interrogation, on 18.09.2007, the appellant-accused disclosed that on 12.09.2007, he threw acid on Preet Singh, Gurpreet Singh and Satnam Singh, and, that he kept concealed the empty bottle of acid, underneath the heap of sand, lying in verandah of his house. His

disclosure statement was reduced into writing, which was proved on record as Ex.PW7/G, and, in pursuance thereof, he led the police party to the disclosed place and got recovered the empty bottle of acid from there. The recovered bottle was emitting smell of acid, which was taken into possession vide separate recovery memo. After completion of the investigation, Final Report under Section 173 Cr.P.C. was filed before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide committal order dated 22.02.2008.

PROCEEDINGS OF TRIAL COURT

4. Finding a prima-facie case, the appellant-accused was charge-sheeted for commission of offence punishable under Section 307 of IPC, to which he pleaded not guilty and claimed trial. The prosecution, in order to substantiate the allegations against the appellant-accused, examined nine witnesses in total. During the course of trial, the learned Public Prosecutor, vide his separately recorded statements, gave up PWs HC Jarnail Singh, HC Sukhwant Singh, and, ASI Jaswant Singh, being unnecessary, and, also gave up PW Rajinder Singh, being won over by accused. The appellant-accused, in his statement recorded under Section 313 Cr.P.C., though, opted to lead evidence in his defence, however, no witness was examined on his part. He also denied all the allegations, as levelled against him, and, pleaded innocence, as being falsely implicated in the present case.

5. The learned trial Court, after considering the entire oral and

documentary evidence, as led by the prosecution, convicted the appellant-accused for commission of offence under Section 307 of IPC, vide the impugned judgment.

SUBMISSIONS BY BOTH THE COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant-accused has argued that all the facts and circumstances, as proved on record by the prosecution, do not establish any intention or knowledge of the appellant-accused to cause death, therefore, even if the case of the prosecution is considered to be a gospel truth, no offence whatsoever is made out under Section 307 of IPC. He further argued that there is a gross lacuna in the investigation, as the empty bottle, purportedly containing acid, which was allegedly recovered at the instance of the appellant-accused, was not sent for FSL examination, to establish the claim regarding its being actually containing acid, which was used for commission of present crime. So, in the absence of any report from any expert concerned, regarding use of acid in commission of alleged offence, the appellant-accused cannot be held guilty. He further pointed out that there are various discrepancies in the statements of injured/victims and the Investigating Officer, and, that the story of the prosecution, as put forth, has not been proved, beyond reasonable doubt, against the appellant-accused. Therefore, the impugned verdict of conviction is not sustainable in the eyes of law. He has further argued that the learned trial Court ought to have considered the major improvements in the version of the victims/ injured witnesses, however, the learned trial court, erroneously considering the same as minor

contradictions, wrongly held the appellant-accused guilty of the charges framed against him.

7. *Per contra*, the learned State counsel, while drawing attention of this Court towards the statements of complainant Preet Singh (PW4), and, victims/injured eye witnesses Satnam Singh (PW5) and Gurpreet Singh (PW6), stated that all these three material witnesses have proved the case of prosecution beyond any reasonable doubt. He also referred to the statement of Dr. Prabhat Kumar (PW1), SMO, Civil Hospital, Sangrur, who had medico-legally examined Satnam Singh, and, to the statement of Dr. Kirpal Singh (PW2), Medical Officer, CHC, Kohrian, Tehsil Sunam, District Sangrur, who had medico-legally examined Gurpreet Singh and Preet Singh (complainant), and, stated that all the victims/injured had suffered serious injuries, which are sufficient to prove the intention (*mens rea*) of the appellant-accused, to cause their death. Lastly, he has submitted that the learned trial Court has appreciated the entire evidence in its right perspective, therefore, the impugned verdict of conviction, and, order of sentence, do not require any interference.

REASONS

8. With the able assistance of both the learned counsels, this Court has also examined, in detail, the entire oral as well as documentary evidence, as led by the prosecution.

9. Before advertng to the evidence, as led by the prosecution, it is apt to first deal with the legal propositions, and, essential ingredients,

which attract the provisions of Section 307 of IPC, which are discussed hereunder:-

- (i) the intention or knowledge on the part of the accused to cause death;
- (ii) some overt act taken towards it;
- (iii) that overt act is capable of causing death;
- (iv) and that act falls short for completion of the ultimate object.

10. The intent of the accused can be gathered from the nature of the act actually committed, and, from the concerned circumstances attached to it. Therefore, let us examine, whether the prosecution is able to prove all the ingredients, as required to bring home guilt of the appellant-accused, under Section 307 of IPC.

MEDICAL EVIDENCE

11. In order to substantiate its case, the prosecution examined Dr. Prabhat Kumar, SMO, Civil Hospital, Sangrur, as PW1, who had medico-legally examined Satnam Singh on 12.09.2007. He proved on record the carbon copy of his MLR, as Ex.PA. As per the MLR (Ex.PA), following injuries were found on the body of Satnam Singh:-

- “1. Complaint of irritation in the eye and was referred to eye specialist.*
- 2. Fresh acid burn marks on right side of face, right ear, forehead, right side of neck, front of neck and upper part of chest, with reddish erythma on the surrounding area, likely to cause disfigurement.*
- 3. Burn mark on the right arm on the lateral side.*
- 4. Burn mark on the front of right forearm, kept under observation for disfigurement.*

Nature of injures: For injury no.1, was kept under observation for eye specialist report, and, 2, 3 & 4 were kept under observation for disfigurement.

Kind of weapon used: Burn injuries

Probable duration of injuries: Within 24 hours.”

12. Further, Dr. Kirpal Singh, Medical Officer, CHC, Kohrian, was examined as PW2, who had medico-legally examined Gurpreet Singh and Preet Singh (complainant). He proved on record the carbon copies of their MLRs, as Ex.PD & Ex.PF respectively. As per the MLR (Ex.PD), following injuries were found on the body of Gurpreet Singh:-

“1. 9 x 5 cm acid burn injury, moist, red in colour, superficial in nature, situated over upper back part of left forearm. Advised surgical specialist's expert opinion at C.H., Sangur

Kind of weapon used: Acid burn injury

Probable duration of injuries: Within 0 to 6 hours.”

As per the MLR (Ex.PF), following injuries were found on the body of Preet Singh (complainant):-

“1. Multiple small about 8 in number, burn reddish, moist, marks, superficial in nature, situated over right cheek. The lesions are present in area of 7 x 5 cm.

2. Multiple tiny moist, reddish, scars over right side of neck.

3. 37.0 cm x 10 cm, moist reddish burn, superficial in nature, burn injury mark, situated over right arm and upper part of forearm, especially over the lateral aspect of the limb.

Note: Injury No. 1, 2 and 3 are subjected to surgical

specialist's expert opinion at C.H., Sangrur.

Kind of weapon used: Acid burn injury

Probable duration of injuries: Within 0 to 6 hours.”

13. Furthermore, Dr. Ravinder Kaler, Medical Officer, Civil Hospital, Sangrur, was examined as PW3, who stated that injured/victims Gurpreet Singh and Preet Singh, were admitted in the hospital on 12.09.2007, and, were referred to the surgical ward on 13.09.2007, and, that he treated both these patients. He proved on record their bed-head tickets as Ex.PW3/A & Ex.PW3/B respectively. He also proved on record his opinion, Ex.PW3/C, Ex.PW3/D & Ex.PW3/E respectively, qua injured/victims Preet Singh, Gurpreet Singh and Satnam Singh, regarding the injuries suffered by them.

14. All the aforesaid three witnesses were put to cross-examination, but, nothing material could be elicited therefrom to impeach their credibility. Therefore, in the light of such un-impeached medical evidence, corroborated by respective MLRs of the injured/victims, duly proved on record, this Court can safely conclude that all the injured/victims did receive acid burn injuries on their persons.

15. Now, the moot question before this Court, which needs to be answered is the identity of the wrongdoer, at whose hands, the injured/victims suffered the aforesaid acid burn injuries. For this purpose, the prosecution has examined its star witnesses, i.e. all the three injured/victims, who have, without any hesitation, and, unambiguously, narrated the entire incident, wherein, they had suffered the aforesaid injuries at the hands of the present appellant-accused. Perusal of their

testimonies, as available on record, reveals that the same are sufficient to clear the clouds of suspicion, the gist of which is extracted hereafter.

16. Prosecution had examined Preet Singh (complainant) as PW4, who stated that on 12.09.2007, while he, along with Satnam Singh and Gurpreet Singh (complainant's brother), was present on Committee Road, near Cremation Ground, the appellant-accused came there, who was carrying a bottle of acid, and, threatened to teach them a lesson for messing with him and thereupon, he threw acid upon them from the bottle in his hand. Thereafter, the appellant-accused fled from the spot along with the empty bottle of acid, and, upon hearing their hue and cry, his father Baldev Singh came at the spot and admitted all three of them at Civil Hospital, Kohrian. The acid fell on his right arm, and, some drops of the acid also fell on his chest and face. As a result of inflammation of acid, he suffered pain and his skin was badly burnt, and, even his shirt also got burnt due to this acid attack. Not only this, even at the time of recording this statement, he complained of pain in his right arm, which has ultimately resulted in disfigurement of his arm. As regards the injuries suffered by his companions, he stated that Gurpreet Singh suffered burn injuries on his left arm, and, Satnam Singh suffered burn injuries on his face, right eye and chest. He specifically stated therein, a past altercation between him and the appellant-accused, to be the motive behind commission of this deadly incident. During his cross-examination, it surfaced that he remained admitted in Civil Hospital, Sangrur, for 25 days. However, despite being put to lengthy and incisive

cross-examination by the defence counsel, nothing material could be extracted to impeach his credibility, except some minor contradictions with regard to the time and place of occurrence, which are likely to occur in the testimony of a truthful witness.

17. To the same effect is the testimony of co-injured/victims, namely, Satnam Singh and Gurpreet Singh, examined as PW5 and PW6 respectively, by the prosecution. They have corroborated the testimony of Preet Singh (complainant) in its entirety, and, have supported the case of the prosecution. Both these witnesses have also specifically stated in their respective statements, recorded before the Court, that it was the appellant-accused, who threw acid upon them, with an intent to kill them. Both these witnesses have also withstood the cross-examination of the defence and no material contradictions or infirmities could be elicited therein.

18. The prosecution has also examined the Investigating Officer, A.S.I., Nirmal Singh, as PW-7, who proved on record the recovery memo prepared during investigation, and, also the disclosure statement of appellant-accused as well as the recovery effected pursuant thereto.

19. From a conjoint reading of the above testimonies, it stands established that the injured/victims suffered acid burn injuries, pursuant to an acid attack by the appellant-accused on account of some previous enmity, and, there are no reasons to disbelieve the testimonies of the injured witnesses, a higher evidentiary value being attached to the same.

Now, it is to be considered whether the act of the appellant-accused, falls within the ambit of Section 307 of IPC or not.

19. Learned counsel for the appellant-accused has argued that all the evidence, as proved on record, do not establish that the intention or knowledge of the appellant-accused was to cause death, as the injured persons had suffered simple injuries. Therefore, it can be inferred from the nature of the consequences of the act that intention of the appellant-accused was only to cause injuries and not death. Therefore, he is only liable to be punished for causing simple hurt and not for an offence punishable under Section 307 of IPC.

20. This Court is unable to accept the argument, as put forward by learned counsel for the appellant-accused. The injuries actually caused are not the only criteria to gather the intention of a wrongdoer, but, must be inferred from the totality of all the facts and circumstances, in a given case, which must be carefully examined. The result of an act does not always necessarily indicate the intention of the wrongdoer. Here is a case, where the complainant while entering in the witness box has categorically stated that, with an intention to kill, the appellant-accused threw acid upon him and his companions. Further, while deposing before the Court, he has also stated that the injury caused by acid, on his right arm, was still painful and it disfigured his arm. All the injuries have been suffered by the injured persons, caused due to acid burns, which include injury on eye of one of the victims. Though, the injuries were declared as simple in nature, however, sometimes, nature of the injury actually caused, may not

always offer assistance to gather the intention of the wrongdoer, but, the intention of an accused has to be inferred from totality of all the facts and circumstances. Sometimes, an act which is sufficient in ordinary course of nature, to cause death, may not constitute an offence punishable under Section 307 of IPC, if the intention or knowledge is absent. However, if the knowledge and intention is present and even the act results in simple injury or no injury, still the accused can be held guilty of an offence punishable under Section 307 of IPC. This is a case of acid attack, wherein, weapon of offence was not an ordinary one. Acid is a coercive and dangerous substance, which is sufficient to cause permanent disfigurement and eminent threat to the life of the victim. Therefore, this Court can safely infer that the intention of the appellant-accused, as elicited from afore-discussed evidence, goes on to constitute an offence punishable under Section 307 of IPC.

21. Insofar as the argument raised by learned counsel for the appellant-accused regarding non-sending the empty bottle, as recovered pursuant to disclosure statement of appellant-accused, to FSL for its examination is concerned, this Court does not find any major dent in the prosecution's case on account of this lapse, since, all the three doctors, as examined by the prosecution, have categorically held that the victims have suffered burn injuries, due to acid attack. The appellant-accused cannot claim any benefit on account of such minor lapses on the part of the investigation agency. Moreover, it was not the case of the defence, throughout the trial, that the injured/victims have not suffered the injuries

because of acid.

22. The learned counsel for the appellant-accused has also drawn attention of this Court towards the compromise deed, which was placed on record, before this Court as Annexure A-1. The compromise deed is of 28th September, 2013, i.e. after the pronouncement of the impugned judgment of conviction, and, order of sentence, and moreover, no efforts were made by the appellant-accused to prove the veracity of such compromise. Therefore, the compromise cannot be taken into consideration.

23. Finally, the learned counsel for the appellant-accused, when could not succeed in overcoming the hurdles, as discussed above, prayed for a lenient view on the ground the appellant-accused was 18 years of age at the time of the occurrence of the offence, who has already suffered the agony of continuance of trial for more than 17 years. He further submitted that the appellant-accused is not a previous convict, and, is not involved in any other criminal case, after being released on bail by this Court. For this, reliance has been placed on the custody certificate, as placed on record by learned State counsel, to submit that the appellant-accused has already suffered incarceration for 03 years, 01 month and 01 day, out of the total sentence of 07 years, as imposed upon him. He accordingly made a prayer to reduce the sentence of the appellant-accused to the period already undergone by him.

26. This Court finds substance in this submission made by the learned counsel for the appellant- accused. From the record it is revealed

that the appellant-accused was 18 years of age, when he was arrested for the commission of the present crime, and, the custody certificate also shows that he has already undergone imprisonment for 03 years, 10 month and 03 days and is not involved in any other case. It seems that the appellant has mended his ways and is now settled in the mainstream of the society. Therefore, considering the age of accused, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime viz-a-viz re-formative approach of punishment, this Court deems it appropriate to reduce the period of sentence, as imposed upon the appellant-accused, from RI for seven years to RI for five years. However, it is also appropriate to enhance the amount of fine from Rs.5,000/- to Rs.50,000/-, to be equally distributed as compensation, to all the three injured/victims, who have suffered injuries.

CONCLUSION

27. In view of the above, the appeal is **partly allowed**. The impugned judgment of conviction dated 17.08.2012 is upheld. However, the sentence imposed upon the appellant-accused is reduced from RI for seven years to RI for five years, and, he is directed to pay a fine of Rs.50,000/-, to be equally distributed as compensation, to all the three injured/victims, and, in default of payment thereof, to further undergo rigorous imprisonment for two months.

(KULDEEP TIWARI)
JUDGE

27.01.2023
devinder

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