

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

**396**

**CRA-S-2353-SB-2004 (O&M)  
Date of Decision: 07.06.2023**

Sarabjit Singh and others

...Appellants

Versus

State of Punjab

... Respondent

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

Present : Mr. Balram Singh, Advocate  
as Amicus Curiae for the appellants.

Mr. Vishal Sharma, Advocate  
for the appellants.

Mr. Amish Sharma, AAG, Punjab

**N.S.SHEKHAWAT, J.**

1. The present appeal is directed against impugned judgment of conviction and order of sentence dated 23.11.2004 passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur, whereby, appellant Sarabjit Singh has been convicted under Sections 307 and 324 IPC and was sentenced to undergo rigorous imprisonment for a period five years and to pay a fine of Rs. 2000/- under Section 307 IPC and rigorous imprisonment for a period of six months and to pay a fine of Rs. 500/- under Section 324 IPC alongwith default stipulations, whereas, appellant Dharam Singh was convicted under Sections 307/34 IPC and 324/34 IPC and was sentenced to undergo rigorous imprisonment for a period of five years and to a fine of Rs. 2000/- under Section 307/34 IPC and to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 500/- under Section 324/34 IPC alongwith default stipulations.

2. As per the case of the prosecution, at about 06.00 p.m. on

15.02.2003, Kulwant Singh complainant was present near tea shop

and he saw that Sarabjit Singh son of Jagir Singh resident of village Bhagowal and Sarabjit Singh son of Major Singh resident of village Sultanpur Lodhi, who were coming from their houses to bus stand. On seeing them, Sarabjit Singh @ Sabha son of Dharam Singh hurled abuses on them and Sarabjit Singh son of Jagir Singh asked him not do so. On this Sarabjit Singh @ Sabha gave a *Kirpan* blow to Sarabjit Singh son of Jagir Singh, which hit him on his forehead. After that, Sarabjit Singh @ Sabha also gave *Kirpan* blow to Sarabjit Singh son of Major Singh, who had intervened to save the injured, namely, Sarabjit Singh son of Jagir Singh and the blow hit on his forehead. Sarabjit Singh @ Sabha, accused, ran away from the place of the occurrence alongwith his weapon. Two injured were shifted to the hospital, where, they were medico-legally examined. Two injuries were found on the person of Sarabjit Singh son of Jagir Singh and one was found on the person of Sarabjit Singh son of Major Singh, brother-in-law. Both the MLR were prepared on 15.02.2003 after getting medical aid, Sarabjit Singh son of Major Singh, injured had gone to his house whereas another injured Sarabjit Singh son of Jagir Singh was referred to Dayanand Medical College and Hospital, Ludhiana for his treatment. The *rukka* was received in the police station and ASI Ram Kumar visited DMCH Ludhiana on 17.02.2023 and sought the opinion of the doctor with regard to the fitness of injured Sarabjit Singh son of Jagir Singh and he was declared unfit to make the statement. As a consequence, the statement of Kulwant Singh was recorded and the FIR in the present case was registered.

After necessary investigation, the challan was presented under Sections 307, 324 and 34 IPC and since the offence was exclusively triable by the Court of Sessions, the case was accordingly committed to the Court of learned Sessions Judge, Hospiarpur. After leading evidence produced in the shape of challan, the learned trial Court found a *prima-facie* case under Sections 307, 324 and 34 IPC against the accused and they were ordered to be charge sheeted as per that. Both the accused claimed innocence and the trial was held as per law.

3. In order to bring home the guilt of the appellants/accused, the prosecution examined 10 witnesses.

4. The prosecution examined PW1 Kulwant Singh complainant who supported the case of the prosecution as mentioned in the FIR. His testimony was duly corroborated by PW2 Sarabjit Singh son of Jagir Singh, injured and PW3 Sarabjit Singh son of Major Singh (injured). The prosecution examined PW6 Dr. Rajesh Mehta Medical Officer, who medico-legally examined Sarabjit Singh son of Jagir Singh and found the following injuries:-

1. *Dressed wound over forehead. On opening the dressing the wound was packed up with gauze. On further exploration there was incised wound 10 x 1 cm x bone deep over right side of forehead obliquely placed 6 cm anterior to right ear extending to left frontal region. X-ray and surgical observation were advised.*

2. *Abrasion 1 cm x ½ cm over left malar region with swelling of left eye. X-ray and surgical opinion was advised.*

Nature of injury No. 1 was kept under x-ray and surgical observation. Nature of injury No. 2 was declared simple. In view of X-ray report of DMC Ludhiana vide report No. 10559 dated 16.02.2003, there was evidence of linear fracture of frontal bone and C.T. Scan one at Raj Scan Centre Hoshiarpur showing comminuted fracture of frontal bone more towards right side, Inner table of frontal bone was displaced posteriorly which was slightly compressing the frontal bone, air from frontal sinus was seen anteriorly, in frontal lobe with pneumocephalus with cerebral oedema; injury No. 1 was declared dangerous to life. The weapon used for injury No. 1 was sharp, while for injury No. 2 weapon used was blunt. He proved on record the copy of the original MLR as Ex.PB and pictorial diagram showing the seats of the injuries as Ex.PB/1. The duration of both the injuries was within six hours. The CT Scan report derived from the original CT Scan report given by Raj Scanning Centre was exhibited as Ex.PG and his report for declaring injury No. 1 as dangerous to life was exhibited as Ex.PH. The statement of PW6 Dr. Rajesh Mehta was duly corroborated by the statement of PW4 Dr. Munish Kumar Goyal, Assistant Professor, Department of Neuro Surgery, DMCH, Ludhiana. He proved on record the treatment file as Ex. PC and patient remained in the hospital till 26.02.2003. The prosecution also examined PW10 Dr. Amit Sharma, Medical Officer, Civil Hospital, Hoshiarpur, who

examined Sarabjit Singh son of Major Singh, injured and found the following injuries on his person:-

1. *2.5 cm x half cm x .5 cm transversely placed incised wound near forehead just below hairline and 5 cm above nasion and immediately left lateral to the midline. Fresh bleeding was present.*

The injury was declared to be inflicted by a sharp edged weapon and was simple in nature. The patient was treated and discharged as out patient case. The duration of the injury was within six hours.

5. I have heard the learned counsel for the parties and have gone through the trial Court record carefully with their able assistance.

6. Learned counsel for the appellant vehemently contended that Sarabjit Singh son of Jagir Singh PW2 remained admitted in DMCH Ludhaiana from 16.02.2003 to 26.02.2003, when he was discharged from the hospital after recovery. Dr. Munish Kumar Goyal, PW4 from the DMCH Ludhiana stated in clear terms that he had not declared any injury as dangerous to life at any stage. Otherwise, the patient remained conscious and the injuries were operated upon. Learned counsel further contended that after receiving first aid, in Civil Hospital Hoshiarpur Sarabjit Singh son of Jagir Singh was referred to DMCH Ludhiana. PW6 Dr. Rajesh Mehta of Civil Hospital Hoshiarpur wrongly declared injury No. 1 dangerous to life. Thus, no offence under Section 307 IPC is made out against the

present appellant. Still further, there was delay of 02 days in reporting the matter to the police and the prosecution could not explain the said delay. Further, it is apparent from the defence evidence that Sarabjit Singh appellant was also caused injuries by the complainant side and the same could not be explained by the prosecution and the complainant has concealed the genesis of the occurrence.

7. Learned State counsel has vehemently opposed the submissions made by the learned counsel for the appellants and contended that the learned trial Court has recorded valid reasons for convicting the appellants under Sections 307, 324 and 34 IPC and impugned judgment is legally sustainable. Having considered the rival submissions made by the learned counsel for the parties in the light of the evidence led by both the sides, it is apparent that in the present case, FIR was got registered by PW1 Kulwant Singh with regard to the injuries caused to Sarabjit Singh son of Jagir Singh and Sarabjit Singh son of Major Singh. The offence under Section 307 IPC was added in the present case as injury No. 1 suffered by Sarabjit Singh son of Jagir Singh, injured, was declared to be dangerous to life. Before proceeding further, it would be appropriate reproduce the provisions of Section 307 IPC, which is as follows:-

*“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 murder, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment*

*for life, or to such punishment as to hereinbefore mentioned.”*

8. This Court has held in the matter of **CRA S-1843-SB-2005 titled as Paramjit Kumar @ Pamma VS. State of Punjab and connected appeal** as follows:-

*16. A reading of Section 307 IPC, the following ingredients would be essential to make out an offence under Section 307 IPC - (i) That the accused did an act; (ii) that the act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury in the ordinary course of nature was sufficient to cause death, or that the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death; and (iii) that the accused had no excuse for incurring the risk of causing such death or injury.*

*17. To prove the serious offence under Section 307 IPC, it has to be shown that the act committed by the accused falls short of death of the injured. Equally, the question, what injuries are dangerous to life, is apposite. Modi on Medical Jurisprudence and Toxicology, 24th Edition, page 559 has described the injury dangerous to life as follows:- “Danger to life should be imminent before the injuries are extensive and implicate important structures or organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a large artery or rupture of some internal organs, such as the spleen, should be considered dangerous to life. But the injuries which prove fatal remotely by inter-current diseases, such as tetanus, erysipelas etc. should not be considered as dangerous.”*

9. It has been vehemently contended by the learned counsel for the appellants that in the present case, no offence under Section 307 IPC is made out against the present appellants. To buttress the said arguments, learned counsel has specifically referred to the testimonies of PW4 Dr. Munish Kumar Goyal, Assistant Professor, Department of Neuro Surgery, DMCH, Ludhiana and PW6 Dr. Rajesh Mehta, Medical Officer, Civil Hospital Hoshiarpur. After due consideration, I find force in the submissions made by the learned counsel for the appellants that no offence under Section 307 IPC is made out against the appellants in view of the following findings:-

(i) As per the testimony of PW1 Kulwant Singh, PW2 Sarabjit Singh son of Jagir Singh, injured, and PW3 Sarabjit Singh son of Major Singh, injured, that Dharam Singh, appellant No. 2 raised a *lalkara* that Sarabjit Singh son of Jagir Singh should be finished on that day. Sarabjit Singh appellant No. 1 inflicted a *Kirpan* blow on the forehead of Sarabjit Singh son of Jagir Singh. He gave another *Kirpan* blow on the forehead of Sarabjit Singh son of Major Singh, another injured. Thereafter, the appellant No. 1 tried to run away and while running away, lifted a stone and pelted towards him causing injuries on his face on the left side near eye. However, he did not repeat the blows after causing one injury each to Sarabjit Singh son of Jagir Singh and Sarabjit Singh son of Major Singh.

(ii) In number of judgments, this Court as well as Hon'ble Supreme Court have held that the intention of the accused can be judged from various circumstances like motive, words used by the accused at the time of offence, weapon used, at which part of the body the injury was

caused etc. In the present case, both the appellants were tried for commission of the offence under Section 307 IPC and it was alleged that the accused had the intention to cause such bodily injuries, which were capable to cause death and such acts had fallen short of death. However, in the present case, one of the accused Dharam Singh, who had exhorted his son Sarbjit Singh to cause injuries, did not cause any injuries at all to both the injured. Thus, the *mens rea* or the requisite intention, so as to cause such bodily injuries, which could attract Section 307 IPC were missing in the instant case.

(iii) Apart from that, it has been alleged that the motive for the present occurrence was that one day before the incident, there was an altercation between Sarabjit Singh, accused and Sarabjit Singh son of Jagir Singh, which was later on patched up. Thus, the motive in the present case was not so strong as would have incited the assailants to cause such bodily injuries as would be sufficient to cause death in ordinary course of nature.

(iv) In the present case, the offence under Section 307 IPC was added for causing injury No. 1 on the person of Sarabjit Singh son of Jagir Singh, PW2. He remained admitted in DMCH, Ludhiana from 16.02.2003 to 26.02.2003 when he was finally discharged after treatment. The prosecution examined PW4 Dr. Mukesh Kumar Goyal, Assistant Professor, Department of Neuro Surgery, DMCH, Ludhiana, who stated that he had given the treatment to Sarabjit Singh injured PW2. He admitted that at the time of admissions, the patient was conscious and was brought by his brother Sucha Singh. He further admitted that the said patient was never operated in their hospital. Even, no CT scan was done in their hospital. As per the report of the X-ray and CT Scan of Hoshiarpur, there was comminuted fracture of frontol

bone with pneumocephalus and cerebral oedema. He further admitted that he had never declared at any stage that any injury was dangerous to life and no operation was conducted by him. Still further, the prosecution examined PW6 Dr. Rajesh Mehta of Civil Hospital, Hoshiarpur, who declared the injury No. 1 to be dangerous to life. However, PW6 Dr. Rajesh Mehta, also admitted that vitals of the patient were normal at the time when he was brought to him. The BP was 110/80 and he was conscious. He also admitted that at the time of admissions, the vitals of the patient were normal and there was no danger to his life. He further admitted that he received the report from Raj Scanning Centre on 15.02.2003 and did not declare the injury No. 1 as dangerous to life on 15.02.2003 after receiving the report from Raj Scanning Centre. Even, he had given his opinion Ex.PG on the basis of the reports submitted by Raj Scanning Centre, but the report of Raj Scanning Centre was not exhibited on record. Thus, it is apparent that the prosecution not only failed to exhibit the CT scan report, which was the basis of the opinion with regard to injury No. 1, but even Dr. Rajesh Mehta had wrongly declared the injury No. 1 to be dangerous to life. In the present case, the patient, i.e. PW2 Sarabjit Singh son of Jagir Singh remained admitted for more than 10 days in DMCH Ludhiana and they had all the medical records with them. However, at no stage, he declared the injury No. 1 to be dangerous to life. Even no surgery was done in the hospital and no CT scan was done in their hospital. Thus, the material, on the basis of which, the opinion with regard to injury attracting Section 307 IPC was given, was not on record.

10. Learned counsel for the appellants further argued that in the present case, appellant No. 2 Dharam Singh has been involved in the present case only because of the fact that unfortunately he happened to be the father of Sarabjit Singh, principal accused. Even no role has been attributed to him and he is simply shown to be present at the place of occurrence. Even, the motive in the present case was only qua appellant No. 1, as there was a fight between appellant No. 1 Sarabjit Singh son of Jagir Singh one day prior to the present occurrence. The said submissions have been opposed by the learned State counsel. In fact, I find force in the said submissions raised on behalf of appellant No. 2. In the present case, it has been alleged that Dharam Singh was only present at the place of the occurrence. As per the testimonies of PW1 Kulwant Singh, complainant PW2 Sarabjit Singh son of Jagir Singh and PW3 Sarabjit Singh son of Major Singh, he had only exhorted his son, i.e. appellant No. 1 to cause injuries to Sarabjit Singh son of Jagir Singh and that he should not be spared. None of the witness had levelled any other allegations against him. Still further, as per the admitted case of the prosecution, no recovery was effected from him. Moreover, the parties were admittedly inimical towards each other and had caused injuries to each other. Thus, the story of the prosecution with regard to the involvement of Dharam Singh in the present case appears to be doubtful and he is ordered to be acquitted of the charges by extending benefit of doubt to him.

11. In view of the above, the prosecution has failed to prove the offence under Section 307 IPC and been able to prove the offence under Sections 326 and 324 IPC against Sarabjit Singh, appellant No. 1 and the impugned judgement of conviction dated 23.11.2004 passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur, is ordered to be modified to that extent.

12. After holding the appellant No. 1 guilty under Sections 326 and 324 IPC, this Court shall proceed to determine the quantum of sentence, which should be inflicted on appellant No. 1. This Court is conscious of the fact that the present appellant was aged about 19 years at the time of framing of charges against him, i.e., on 02.08.2003. The occurrence in the present case pertains to 15.02.2003 and a period of more than 20 years has elapsed since then. Thus, the appellant No. 1 is facing the agony of trial/appeal for the last more than 20 years. Even, the custody certificate has been filed by the learned counsel for State of Punjab and as per that the appellant is a first offender and no other criminal case was ever registered against him. Even, the sentences imposed on present appellant No. 1 was ordered to be suspended by this Court on 07.01.2005 and he has not misused the concession of bail since then. The appellant No. 1 is sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs. 50,000/- under Section 326 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months; the appellant No.1 is further sentenced to undergo rigorous imprisonment for a period of six months and to pay

a fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days under Section 324 IPC. All the substantive sentences shall run concurrently. The period of detention during the investigation, trial and appeal is ordered to be set off against the sentences awarded to the appellant No. 1 in the present case.

- 13.            The appeal stands disposed off accordingly.
- 14.            All pending applications, if any, are disposed off, accordingly.
- 15.            Records of the Court below be sent back.

19.04.2023  
amit rana

(N.S.SHEKHAWAT)  
JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No