

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

248

CRR-902-2021 (O&M)

DATE OF DECISION: 01.08.2023

MANDEEP SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pranshul Dhull, Advocate,
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Mr. Dilraj Singh Bhinder, Advocate
for respondent No.2.

ARUN MONGA, J.(ORAL)

Challenge herein is to order dated 27.07.2021 passed by learned Additional Sessions Judge, Bathinda, whereby it was held that no charge under Section 307 IPC was made out against respondent no.2 and after framing charge under Section 325 IPC, the file was sent back to Court of learned Additional Chief Judicial Magistrate, Bathinda for trial under Section 228(1) (a) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. Succinct facts first, as pleaded in the instant petition:

"(a) On 22.05.2020, the petitioner suffered gunshot injury by Gurpreet Singh/Respondent No.2/A-1 and his associates namely Manpreet Singh alias Manna/A-2 and Harwinder Singh alias Happy Buttar/A-3. Due to this, the criminal law was brought into motion through registration of FIR No.41 dated 23.05.2020 by the petitioner against the above mentioned three accused. The copy of the FIR and the MLR are annexed herewith as Annexure P-1 and P-2 respectively.

(b) From 23.05.2020, the petitioner visited various medical institutions as the bullet fired by the respondent no.2 remained inside the shoulder region and finally on 17.06.2020, the petitioner was operated and the bullet 2cm x 0.5 cm broken was extracted out. The copies of the relevant medical certificates are annexed herewith as Annexure P-3.

(c) On 05.06.2020, the respondent no. 2 got recovered the weapon used in the commission of the offence along with one empty shell from his house. The copy of the recovery memo is annexed herewith as Annexure P-4.

(d) On 07.09.2020, the police after greasing their hands with the associates of the respondent no.2 namely A-2 and A-3 declared them innocent in the investigation and presented challan/police report against A-1 only. The copy of the police report is annexed herewith as P-5.

(e) On 15.09.2020, the FSL report was received and the Ld. ASI after conducting a "Mini Trial" not only discharged the respondent no.2 for the offence u/s 307 IPC but also discharged him for the offences under Section 25 of Arms Act and framed the charge u/s 325 IPC only vide Impugned Order. The copy of FSL Report is annexed herewith as Annexure P-6. (D) Hence, the present revision petition for the quashing of the Impugned Order, being illegal and contrary to the provisions of the law.

(f) Hence, the present revision petition for quashing of the impugned order, being illegal and contrary to the provisions of law."

3. Learned senior counsel for petitioner contends that although it is specified in the FIR that respondent No.2 had fired a pistol shot which hit the petitioner on his left arm but learned trial Court has erroneously discharged respondent No.2 under Section 307 IPC especially when the MLR also indicates a firearm injury.

4. Per contra, learned counsel for respondent No.2 strenuously opposes the prayer made and submits that impugned order does not suffer from any infirmity since single injury sustained by injured was on non-vital part of the body.

5. I have heard learned counsel for the parties and perused the case file.

6. Learned Court below passed the impugned order, *inter alia*, premised on the following reasoning:

"Merely because a sword or other weapon is issued or number of persons got injured in the incident, is no criteria to hold that offence punishable under Section 307 of the Indian Penal Code. Intention and knowledge has to be established. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity to the blows given etc.

As per prosecution version complainant Mandeep Singh got recorded his statement that he was standing outside the shop; where accused Gurpreet Singh came there and started arguing with him. In the meantime Manpreet Singh @ Manna son of Sarabjit Singh and Happy Butter also came there and three of them started arguing with him. During this hot exchange, Happy Butter took out a pistol which he was carrying and Gurpreet Singh took pistol from Happy Butter. Manpreet Singh and Happy stood aside at a distance of 15 feet from him and Manpreet Singh pelted bricks towards him. Then Gurpreet Singh fired a shot from the gun which hit his left elbow. When he raised alarm, all the accused fled away from the spot with pistol. He was got admitted in Bathinda Neurospine Hospital, for treatment. As per complainant, accused had fired from a country made pistol of 32 bore and fled away with empty cartridge. Complainant had got himself admitted in the govt. Hospital on 22.5.2021 and the Doctor had opined only a lacerated wound of 1 cm x 0,5 cm over left arm on dorsal aspect. 3 cm from elbow joint and opined that he will give opinion regarding kind of weapon after the receipt of opinion from Ballistic expert. Complainant had got himself admitted in a private hospital on 23.5.2020 at Bathinda i.e. Neurospine and Trauma Centre wherein doctor had mentioned that Mandeep Singh had been explained in detail about the injury on his body and need for removal of foreign object. Lateron there had been recovery of bullet 2 ccm x 5 cm broken and the said extraction was made on 17.6.2021 i.e after three weeks after the alleged incident and the said extraction was at Bathinda Neurospine and Trauma Centre, Bathinda. However the same doctor had reported inability to retrieve the foreign body on the said date itself i.e. 17.6.2021 and the said record is also on the case file. But lateron after explaining inability said bullet was alleged retrieved. Complainant has specifically stated that he had been shot at by pistol and there is mention in his complaint made to the police which is mentioned in FIR that Manpreet Singh @ Manna told Gurpreet Singh that if he is not using the pistol, then he should give it to him. Earlier also he had stated that said pistol was taken out from his waist. However, opinion of government doctor is there on the case file that after going through CR scan report as well as report of Bathinda Neurospine Centre which reads as:

“After going through CT Scan report as well as report of Bathinda Neurospine Centre, I am of the opinion that possibility of use of fire arm cannot be ruled out.

When I examined the patient, he was having only single injury as described by me in the MLR and no other injury or complaint of pain was told by the patient. Regarding my opinion about the kind of weapon used is related to that very injury which has been mentioned by me in my MLR.

The bullet recovered on readmission at Bathinda Neurospine Centre doesn't correlate with the kind of weapon used, since in the initial CT scan tiny foreign body were seen and on re admission bullet recovered is related to category of rifled fire arms.

To the similar effect is the report of FSL which reads as follows:

"On the basis of careful scientific examination it has been concluded that:-

- 1. The mechanism responsible to fire through country made pistol marked W/1 contained in parcel 'B' referred above is not in working condition;*

2. *No opinion could be offered with respect to 0.32 inch "KF S&WL" cartridge case marked C/I contained in parcel 'B' as to whether it had been fired or not through country made pistol marked W/1 contained in parcel 'B' referred above as test firing could not be performed due to absence of firing pin.*
3. *The calibre of the lead bullet marked CB/1 contained in parcel 'A' referred above is 0.32 inch.*
4. *One Lead bullet marked CB/1 contained in parcel 'A' referred above had not been fired through country made pistol marked W/1 contained in parcel 'A':*
5. *One lead bullet marked CB/1 contained in parcel 'A' referred above bears land and grooves impression on its surface. Hence it is fired through standard 0.32 inch revolver. Later on the opinion of Doctor had been taken on 21.10.2020 as per which he had opined that the injury no.1 is grievous in nature.*

In view of the aforesaid discussion, particularly the fact that injury does not co-relate with the kind of weapon used in view of report of government doctor as well as FSL, as also the fact that single injury has been caused as per FIR on non vital part of body after an argument, no charge u/s 307 IPC is made out and only charge u/s 325 IPC is liable to be framed.

Charge framed under sections 325 IPC to which accused pleaded not guilty and claimed trial. This offences are triable by the Court of Magistrate. As such, this file be sent back to the court of Additional Chief Judicial Magistrate, Bathinda for 16.8.2021 for trial, as per law. Accused, who is on bail, is directed to appear before that Court on the date fixed, at 10 AM sharp. Ahlmad is directed to send the file to that Court, well in time, complete in all respects."

7. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.
8. In the instant case, findings recorded by learned Court below are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
9. Faced with the situation, learned senior counsel appearing the petitioner on instructions submits that in case subsequent evidence comes forth during the course of the trial the petitioner may be permitted to either raise the objections or seek framing of additional charge in accordance with law.
10. Instant revision petition is hereby dismissed, with the aforesaid liberty.

11. Pending application(s), if any, shall also stand disposed of.

01.08.2023
'D'Vir/R

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No