

2023:PHHC:149807

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

CRA-D-987-2022 (O&M)
Pronounced on: 22.12.2023

Jaswinder Singh @ Joginder Singh.... Appellant

Versus

State of Punjab.... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Varinder Singh Rana, Advocate, for the appellant.
Mr. Amit Rana, Senior DAG, Punjab.

GURBIR SINGH, J.

1. This appeal has been filed against the judgment and order of sentence dated 29.07.2022 passed by learned Additional Sessions Judge, Sri Muktar Sahib, whereby the appellant-Jaswinder Singh alias Joginder Singh has been convicted under Sections 376/511, 307, 450, 326, 324, 323 of Indian Penal Code and sentenced as under:-

Under Section	Sentence
376/511 IPC	To undergo rigorous imprisonment for 5 years and to pay fine of Rs.10,000/- and in default of making payment of fine, he shall further undergo rigorous imprisonment for 6 months.
307 IPC	To undergo rigorous imprisonment for life and to pay fine of Rs.1,00,000/- and in default of making payment of fine, he shall further undergo rigorous imprisonment for one year.
450 IPC	To undergo rigorous imprisonment for 6 years and to pay fine of Rs.10,000/- and in default of making payment of fine, he shall further undergo rigorous imprisonment for 9 months.

326 IPC	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.20,000/- and in default of making payment of fine, he shall further undergo rigorous imprisonment for 1 year.
324 IPC	To undergo rigorous imprisonment for 3 years and to pay fine of Rs.2,000/- and in default of making payment of fine, he shall further undergo rigorous imprisonment for 2 months.
323 IPC	To undergo rigorous imprisonment for 1 year.

All the sentences were ordered to run concurrently.

2. Briefly stated, an FIR No.031, dated 27.05.2019 (Ex.PW8/B) under Sections 307, 450, 376, 511, 326, 324, 323 of IPC was registered on the statement (Ex.PB) of complainant Malkeet Singh, PW2, that on 27.05.2019, his daughter (hereinafter called, “the victim”) was alone in the house and when he returned at 11:30 AM to his house for lunch, he heard the voice of victim, who was raising alarm. So, he ran towards the room and saw the accused-appellant, who while holding a kappa in his hand, was giving blows with kappa to the victim with intention to kill her. In order to ward off the attack, the victim raised her both the hands and the right thumb of her hand was chopped off, but the appellant kept on giving blows with kappa at his daughter. When the complainant tried to rescue her, the appellant came forward towards him and then the complainant came out in the street and raised alarm. Thereafter, the appellant fled away from the spot after throwing the kappa in the house of the complainant. She was taken to Civil Hospital, Sri Muktsar Sahib. She was given first aid and then referred to PGI, Chandigarh due to severe injuries. After registration of the FIR, investigation was conducted. Weapon of offence i.e. kappa was taken into police possession vide recovery memo Ex.PW8/E; rough sketch of kappa was

prepared Ex.PW8/F; blood stained earth was taken into possession vide recovery memo Ex.PW8/G; blood of the accused was lifted with cotton and taken into possession vide memo Ex.PW8/H. After completion of investigation and necessary formalities, challan against the appellant was presented before the learned Illaqa Magistrate, who committed this case to the Court of Session for trial of the accused.

3. Prima facie, a charge under Sections 376 IPC read with Section 511, 450, 326, 324, 323 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

4. In support of the case, the victim was examined as PW1; the complainant Malkeet Singh as PW2; Dr. Manbir Singh as PW3, who conducted the Medico Legal Examination of injured-victim; ASI Chhinder Singh as PW4; C-Sandeep Singh as PW5; Dalip Singh Sachdeva, Draftsman, as PW6, who prepared scale site plan; HC Dalbir Singh as PW7; Retired Inspector Nirmal Singh as PW8; Dr. Raghuraman S. as PW9, who proved x-ray report and skiagrams of the victim; Dr. Vipin Rana as PW10, who proved the surgery performed on the victim; Dr. Ramesh as PW11, who proved treatment record of PGI pertaining to the victim; Pooja as PW12, who proved the skiagrams; ASI Gurmail Singh as PW13; Dr. Arpandeep Singh Brar, Medical Officer, as PW14, who proved the disability certificate issued to the victim. Thereafter, the prosecution evidence was closed.

5. Statement of appellant under Section 313 of Cr.P.C. was recorded. The appellant denied the incriminating evidence appearing against him. He pleaded that he neither entered the house of the complainant nor caused any injury on the person of the victim. He and victim were having

love affair and wanted to marry each other. The parents of the victim did not agree to their marriage. The victim had given documents regarding the proof of her age to the appellant for the purpose of court marriage. When parents of the victim came to know about their plan, then they themselves caused injuries to the victim and falsely implicated him in this case. The victim deposed against him just under the pressure of her parents and in order to save them from criminal liability.

6. The appellant himself stepped into the witness-box as his own witness and deposed as DW1. Two documents marked as D1 and D2 were tendered in defence evidence. After closure of the defence evidence, the learned trial Court convicted the appellant and sentenced him, as mentioned above.

7. Learned counsel for the appellant has argued that no independent witness has been examined by the prosecution. No person was examined who saw the appellant with the weapon entering the house of victim or coming out from her house. The statement of the victim recorded under Section 164 Cr.P.C. is different from her deposition in the Court. There is delay in lodging the FIR. As per the version of the prosecution, time of occurrence is 11:30 AM. Ruqa (Ex.PW8/A) was sent at 7:00 PM, whereas police reached the spot at 1:00 PM. The time utilized by the prosecution was actually used to falsely implicate the appellant. It is further argued that the appellant took definite stand in his statement under Section 313 Cr.P.C. That the injuries were caused by parents of victim when they came to know about their plan of court marriage. He, with the permission of the Court under Section 315 Cr.P.C., stepped into the witness-box as DW1. He had deposed

that the victim belongs to his village. They were having love affair. Her father and uncle Mukand Singh were not ready for their marriage. On 28.04.2019, the family of the victim got arranged her engagement with another person. Even after the engagement, they kept on meeting with each other and decided to get married through court. The victim handed over her documents Mark D-1 and Mark D-2. On 27.05.2019 when they were to go for court marriage, the parents of the victim came to know about their plan and they gave beatings to the victim. At that time, he was standing in front of gate of the house of the victim. The parents of the victim tried to chase him, but he ran away from the spot. He went to the Police Station Bariwala to inform the matter. The police made him sit in the police station and thereafter, in the evening, SHO accompanied by the father of the victim came and instead arresting parents of victim, falsely framed him in the present case.

8. Learned State counsel has opposed the arguments made by learned counsel for the appellant. It is submitted that defence version is an afterthought. The appellant himself in his cross-examination stated that whatever he had stated on that day was not put to the victim when she was examined in the present case. The appellant did not move application before any Magistrate at the time of remand or thereafter regarding his false implication.

9. We have heard the submissions of learned counsel for the appellant and the learned State counsel and have gone through the case file.

10. Dr. Manbir Singh, PW3, has proved copy of Medico Legal Report of the victim dated 27.05.2019 as Ex.PW3/A; pictorial diagram as

Ex.PW3/B and computer generated copy of MLR as Ex.PW3/C. The following injuries were found on the person of victim:-

- “1. Incised wound of 8 x 1 cm over dorsal aspect of right hand about 2 cm away from wrist joint, bone deep with fresh bleeding present. Advised X-ray of right-hand Antero-Posterior and lateral view with ortho opinion.*
- 2. Incised wound of 10 x 2 cm over dorsal aspect of right forearm about 4 cm above right wrist joint, bone deep, edges everted with fresh bleeding. Advised X-ray of right forearm Antero-Posterior and lateral view with ortho opinion.*
- 3. Amputated right thumb at level of middle phalanx, edged everted, fresh bleeding present, Advised X-ray with ortho opinion.*
- 4. Incised wound of 14 x 2 cm over left shoulder joint lateral aspect bone deep with fresh bleeding and edges everted advised X-ray of shoulder Antero-Posterior and lateral view with ortho opinion.*
- 5. Incised wound of 6 x 2 cm over left side of face, 7 cm below left lower eyelid, muscle deep, edges everted, advised X-ray face left lateral and Antero-Posterior view with surgery opinion.*
- 6. Incised wound of 6 x 1 cm over left side of face 4 cm below left lower eyelid, skin deep, edges everted. Advised X-ray face Antero-Posterior and lateral view with surgery opinion.*
- 7. Incised wound of 4 x 1 cm over right frontal region of head, 1 cm lateral to right eyebrow, muscle deep, edges everted.*

Advised X-ray skull Antero-Posterior and lateral view with surgery opinion.

8. Incised wound of 10 x 3 over dorsal aspect of left hand, bony deep, edges everted with fresh bleeding. Advised X-ray left hand Antero-Posterior and lateral view with ortho opinion.

9. Incised wound of 5 x 2 cm over left forearm, dorsal aspect, about 3 cm above left wrist joint with edges everted, bony deep with fresh bleeding present. Advised X-ray left forearm Antero-Posterior and lateral view with ortho opinion.

10. Diffuse swelling over the occipital region on skull, Advised X-ray skull Antero-Posterior and lateral view with surgery opinion.

11. Incised wound of 6 x 4 cm over right shoulder joint, muscle deep, edges everted fresh bleeding present. Advised X-ray right shoulder joint Antero-Posterior and lateral view with ortho opinion.

12. Incised wound of 8 x 3 cm over right shoulder region, going to back, muscle deep, edges everted with fresh bleeding. Advised X-ray of shoulder Antero-Posterior and lateral view with ortho opinion.

13. Incised wound of 12 x 3 cm over inter-scapular region over the upper back about 5 cm below neck region, bone deep, edges everted with fresh bleeding. Advised X-ray spine with ortho and surgery opinion.

14. Incised wound of 14 x 3 cm over left side of upper back region, 20 cm below neck region, bone deep, edges everted with fresh bleeding. Advised X-ray spine with ortho and surgery opinion.”

On the basis of reports, injury Nos.1, 2, 3, 7, 8 and 9 were declared grievous in nature and the doctor gave opinion that collective injuries could be dangerous to life. As per his opinion, all injuries were caused with sharp edged weapon. Even in the cross-examination, he stated that the injuries mentioned in the MLR Ex.PW3/A might be caused with any type of sharp edged weapon. Thus, number of injuries, nature of injuries and kind of injuries found on the person of the victim and keeping in view that she was promptly taken to the hospital as there was definite opinion of the Medical Officer that duration of the injuries was within 6 hours at the time of her examination, so, it can be concluded that said injuries are the result of criminal act and were caused by someone.

11. From the evidence on record, it is duly proved that the appellant tried to commit rape upon her and when she resisted, he caused injuries with kappa at her. Her statement is corroborated by her father Malkeet Singh, PW2, who had duly proved that he saw the appellant causing injuries at his daughter, the victim. There was no reason for the victim to falsely depose against the appellant if she had love affair with him. The victim stated in her cross-examination that her house was two houses away from the house of the appellant. The appellant had not denied his presence, rather his version is that he was outside the house of the victim when her father saw him, who chased him, but he ran away. Had defence version been probable, then the victim

would have raised alarm in the village and would have called the persons from the neighbourhood, but his conduct that he ran away from the spot, is also a circumstance which goes against him. The statement of the victim recorded under Section 164 Cr.P.C. (Ex.PA) was not put to her in the cross-examination to confront her regarding her different version. Said statement could be used as a previous statement made by her, to contradict her statement made in the Court. The victim, PW1, was not put any question that she was having love affair with the appellant and defence version is not put to her and this fact is also admitted by the appellant in his cross-examination. The other part of defence version that the parents of the victim had caused injuries to her is also not probable. Malkeet Singh, PW2, who is father of the victim, is not put any question that he had caused injuries on the person of the victim. So, it can be concluded that the defence version is not probable at all and is an afterthought. It was the appellant, who caused injuries on the person of the victim. The appellant attempted to commit rape upon victim and when she resisted, he gave successive blows at her and caused injuries.

12. Mere producing of the scheduled caste certificate and copy of the aadhar card of the victim is not a proof that same were handed over by the victim to the appellant for the purpose of court marriage. Since the appellant is none else but a neighbourer, so, the possibility of laying hands such documents cannot be ruled out.

13. Another argument of learned counsel for the appellant is that there is no definite opinion that the injuries were dangerous to life, so, the ingredients of Section 307 IPC are not attracted at all.

14. The doctor gave definite opinion that collective injuries on the victim could be dangerous to life. It is well settled that the intention of the accused can be gathered from the nature of the weapon, nature of injuries, number of injuries, size of injuries and also from the surrounding circumstances. In addition, the severity of blows inflicted can be considered to know the intention of the accused. The weapon used in the instant case is kappa. 14 injuries have been caused by the appellant at different parts of the body of the victim. Right thumb of the victim was also amputated.

15. In case ***State of Madhya Pradesh Versus Kanha @ Omprakash, 2019 AIR (Supreme Court) 713***, it is held by the Hon'ble Supreme Court that the intention of the accused can be ascertained from actual injury, if any, as well as from the surrounding circumstances. The extract of said judgment reads as under:-

*“11. Several judgements of this Court have interpreted Section 307 of the Penal Code. In **State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28**, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted:*

“9....To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. 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 deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be

attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

*This position in law was followed by subsequent benches of this Court. In **State of M P v. Saleem, 2005(3) RCR (Criminal) 749: (2005) 5 SCC 554**, this Court held thus:*

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

*In **Jage Ram v. State of Haryana, 2015(1) RCR (Criminal) 802: (2015) 11 SCC 366**, this Court held that to establish the commission of an offence under Section 307, it is not essential*

that a fatal injury capable of causing death should have been inflicted:

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. 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 the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

The above judgements of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.”

16. The oral testimony of the victim-PW1 and Malkeet Singh-PW2 is fully corroborated by the medical evidence. It is proved that the appellant

has caused injuries with the intention to kill the victim and if by that act, the victim had died, then appellant would have been guilty of the murder. This Court is of the view that the prosecution has successfully proved the charge as framed against the appellant beyond shadow of any doubt and he has been convicted in accordance with law. So, the conviction of the appellant is hereby upheld.

17. Another argument of learned counsel for the appellant is that the sentence awarded to the appellant is on higher side. The appellant has been awarded imprisonment for life and has also been ordered to pay fine under Section 307 IPC. The appellant deserves leniency and is entitled for lesser punishment. It is further submitted that old age parents of the appellant are dependent upon him. After considering the submissions, we are of the view that the appellant has caused 14 injuries on the person of victim with a kappa, a dangerous weapon. Injuries were also on the head and right thumb of the victim was also amputated. There were 8 fractures on her body and she became permanently disabled. As per the disability certificate issued by the competent authority, disability of the victim is 70%. Appellant is a co-villager of the victim. Measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and unprotected state of victim. The courts are required to keep in mind not the rights of the criminal but also the rights of the victim of the crime and society at large while considering the imposition of appropriate punishment. A common man can only have faith in judicial system if proper sentence is awarded to the criminal. It is all the most necessary that the punishment

awarded should be directly proportionate to the nature and magnitude of offence.

18. In case ***Shailesh Jasvantbhai vs. State of Gujarat, (2006) 2 SCC 359***, the Hon'ble Apex Court opined that:

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: ‘State of criminal law continues to be—as it should be— a decisive reflection of social consciousness of society.’ Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

19. This Court is of the view that it is the duty of the each court to

award proper sentence and if undue sympathy is shown to the offender and inadequate sentence is imposed, then it would do more harm to the criminal justice system.

20. Thus, keeping in view the nature of the crime, victim a helpless unmarried girl, offender a co-villagers residing in the neighbourhood, we are of the view that the sentence awarded upon the appellant is commensurate with his act.

21. In the light of above discussion, we do not find any illegality in the judgment and order of sentence passed by the learned trial Court and there is no ground to interfere in the same. Appeal is without any merit and the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

(GURBIR SINGH)
JUDGE

December 22, 2023

sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No