



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

CRM-A-83-2020 (O&M)

Date of Decision: November 13, 2024

Gursewak Singh

... Appellant

Versus

State of Punjab and Others

...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. R.S. Chauhan, Advocate
for the appellant

Mr. H.S. Deol, Sr. DAG, Punjab.

Mrs. Arti Kaur, Advocate for
respondent Nos.2 & 3.

DEEPAK GUPTA, J.

Applicant– complainant is aggrieved of judgment dated 14.12.2018 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the two accused (*respondent Nos.2 & 3 herein*) have been acquitted of the charge under Section 307 IPC, though convicted under Section 323, 325 & 506 read with Section 34 IPC. Appellant is further aggrieved by separate order of even date, whereby respondent Nos.2 & 3 were given the benefit of probation under Sections 3 & 4 of Probation of Offenders Act, 1958 (hereinafter referred as ‘The Probation Act’).

2. As per prosecution case, on 04.10.2017 at about 09:15 A.M. as the complainant - Gursewak Singh (*appellant herein*) was cultivating his land, accused Asha armed with an iron rod and accused Manpreet Singh armed with an iron pipe trespassed into his land and exhorted to teach him a lesson for cultivating their land with the help of tractor. It was alleged that Asha Rani gave iron rod blow on his head, which he warded off by raising his left arm. The blow fell on his left wrist, resulting in its fracture. As he tried to flee, accused Manpreet Singh inflicted iron pipe blow on his left ankle, fracturing the same. Asha gave another iron rod blow on his left shoulder and back. The alarm raised by complainant attracted Mandeep Singh son of Gurmeet Singh and Balihar Singh son of Santokh Singh, working in the nearby fields and as they reached the spot, complainant entered the house of Mandeep Singh and saved himself; whereas the assailants fled away along with their weapons. The injured – complainant was shifted to hospital by his niece - Amandeep Kaur and nephew - Davinderjit Singh. Intimation was sent to the police, which arrived at the hospital and recorded the statement of complainant – Gursewak Singh, resulting in registration of FIR, initially under Sections 323, 325, 506 read with Section 34 IPC. Subsequently, supplementary statement was made by the complainant on 15.10.2017, at which Section 307 IPC was added. After concluding trial, conviction of accused – respondent Nos.2 & 3 was recorded under Sections 323, 325, 506 read with Section 34 IPC but they were acquitted of the charge under Section 307 IPC. The two respondents – accused were given the benefit of probation. It is informed that said respondents-accused have accepted the

impugned judgment and order and have not filed any appeal.

3. It is contended by learned counsel for the appellant that there was sufficient evidence on record to prove that injuries were inflicted by the accused with such an intention that if they by their acts caused his death, they would have been guilty of murder and so, acquittal of the respondents under Section 307 IPC is not justified. It is further the contention of learned counsel that respondents have been wrongly given the benefit of probation, having regard to the nature of injuries caused on the person of the complainant – appellant.

4. Learned counsel for respondents no.2 and 3 however seeks dismissal of the application seeking leave to appeal.

5. We have considered submissions of both the sides and have appraised the record.

6. While recording acquittal of respondents under Section 307 IPC, it has been taken into consideration by learned trial Court that as per medico-legal report (Ex.PW4/B), proved by PW-4 Dr. Naranjan Ram, following three injuries were found on the person of injured – Gursewak Singh.

1. Complaint of pain over left lower and middle third of forearm due to hit by the rod with severe tenderness.
2. Multiple reddish abrasions and diffuse swelling of lower third of left lower leg, bluish discoloration of skin on lateral surface of left lower third of lower leg.
3. Reddish abrasion on the back of lower third of the left chest wall.

All the three injuries were subjected to radiological

examination and as per the X-ray report (Ex.PW-5/A), injury Nos.1 & 2 were found to be grievous; whereas injury No.3 was found to be simple in nature.

7. Learned trial Court also found PWs Mandeep Singh son of Gurmeet Singh, and Balihar Singh son of Santokh Singh to be unreliable as their presence at the spot was found to be doubtful. Learned trial Court further noticed that medical evidence did not support the prosecution case to the effect that none of the injuries found on the person of appellant – injured would be dangerous to life. It was specifically noticed that offence under Section 307 IPC was added after 10 days of the incident simply on the basis of supplementary statement of the complainant.

8. It is no doubt true that causing of actual injury, which is dangerous to life, is not necessary to attract Section 307 IPC, as it is the intention of accused, which is relevant, as to whether he inflicted the injury with such an intention that had it resulted into death, accused would have been guilty of murder. In order to discern such an intention, some of the factors to be taken into consideration are the kind of weapon used, body part on which injury is inflicted, repetition of injuries etc.

9. In the present case, injuries are alleged to have been caused by iron rod and iron pipe, i.e. blunt weapons. No sharp edged weapon was used. None of the injuries were caused on any vital part of the body of injured-appellant – Gursewak Singh. Only one injury is attributed to Manpreet Singh and two to Asha, which as noticed earlier, are not on any vital part of the body of the injured.

10. In the aforesaid facts and circumstances, learned trial Court

did not commit any error in recording acquittal of the accused under Section 307 IPC. Said finding is hereby sustained.

11. Coming to second submission made by learned counsel for the appellant, it is fairly conceded by him that Section 4 of the Probation Act does not bar grant of probation for an offence, which is not punishable with death or imprisonment for life. The conviction of the respondents has been recorded under Sections 323, 325, 506 read with Section 34 IPC and maximum punishment provided under Section 325 IPC is 07 years imprisonment.

12. Section 4 of the Probation Act reads as under:-

“4. Power of Court to release certain offenders on probation of good conduct

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

xxxxxxxxxxxxxxxxxxxx.”

13. Thus, apart from the fact that concerned person should not have been found to be guilty of committing an offence punishable with death or imprisonment for life, the other conditions to release such a

person on probation are circumstances of the case including the nature of offence and character of the offender.

14. In the present case, as noticed earlier injuries found on the person of appellant-injured are on non-vital part of the body, having been caused by blunt weapons. The two respondents are first offenders. No such circumstance has been pointed out by learned counsel for the appellant, so as to deprive the respondents from granting the benefit of probation. As such, this Court does not find any illegality in the impugned order passed by the trial Court granting the benefit of probation to the respondents.

15. No other argument has been raised.

16. Consequently, finding no merit in the present application for grant of leave to appeal, same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

(LISA GILL)
JUDGE

November 13, 2024
sarita/sanjay khan

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