**(2008) 03 P&H CK 0194**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 837-SB of 1997

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| Kulwant Singh | | APPELLANT |
| | Vs | |
| State of Punjab | | RESPONDENT |

**Date of Decision:** March 11, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Penal Code, 1860 (IPC) - Section 302, 307, 324

**Citation:** (2009) 4 RCR(Criminal) 489

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** Premjit Singh Hundal, for the Appellant; Amit Chaudhary, Assistant Advocate General, Punjab, for the Respondent

**Judgement**

Kanwaljit Singh Ahluwalia, J.

Kulwant Singh son of Ajit Singh, who was aged 22 years at the time of occurrence, on 21st June, 1996 at 7.15 p.m. caused injuries with kirpan to Mukhtiar Singh and Jasbir Singh. Injuries of both the injured were declared dangerous to life. Case FIR No. 73 dated 23.06.1996 was registered at Police Station Majitha u/s 307 and 324 IPC. FIR was lodged at the instance of Baldev Singh PW-1. It was stated in the FIR that complainant Baldev Singh along with two injured Mukhtiar Singh PW- 2 and Jasbir Singh PW-3 was traveling on the roof of a bus on 21st June, 1996 when present appellant Kulwant Singh attempted to pick pocket of Mukhtiar Singh. It is stated that Mukhtiar Singh caught hold of the wrist of the appellant and at that moment, grappling ensued between the parties. Thereafter, Kulwant Singh has taken out the kirpan and caused injury to both Mukhtiar Singh PW-2 and Jasbir Singh PW-3 respectively. FIR was investigated. Report u/s 173 Cr.P.C. was submitted. Thereafter, the appellant was charged for offence u/s 307 IPC on two counts and u/s 324 on two counts for causing injuries.

2. Mr. Premjit Singh Hundal appearing for the appellant has made three submissions before me. He has stated that in the present case, occurrence has taken place on 21st June, 1996, whereas statement of Baldev Singh was recorded on 23rd June, 1996 at 8.15 p.m. It has been stated that even though for two days, Baldev Singh was available, he made no effort to make the complaint. His second argument is that the PW-6 Dr. Vijay Kumar Sethi has stated that operation of both Mukhtiar Singh and Jasbir Singh was performed. No operation notes have been proved. Thirdly, it has been stated that the Appellant was not known to the complainant and injured, therefore, no test identification parade has been carried.

3. I am afraid, from the perusal of the evidence, all these three arguments cannot be sustained. Delay in each case will not entitle the accused to acquittal. This Court cannot become oblivious of the fact that the appellant is the sole accused put to the trial. Furthermore, PW-2 Mukhtiar Singh and PW-3 Jasbir Singh are injured. They have suffered severe injuries in the abdomen. They will be the last persons to falsely implicate or substitute the accused. His second submission that the operation notes have not been exhibited or proved cannot be accepted as PW-6 Dr. Vijay Kumar Sethi, Medical Officer, Primary Health Centre, Gharyala, District Amritsar has specifically stated that the operation was performed, he as medical officer will be last person to say wrongly. Simply, because operation notes were not exhibited, it cannot be said that no operation was performed. In view of the arguments raised, it will be necessary to reproduce injuries suffered by both Mukhtiar Singh PW-2 and Jasbir Singh PW-3. Following injuries were suffered by Mukhtiar Singh:

1. Adhesive tape 11 x 9 cm applied on right side of middle of front of chest. Advised for x-ray and operation notes.

2. Adhesive tape 20 x 11 cms applied middle of front of abdomen. X-ray and operation notes was advised.

3. Surgical bandage 15 x 7 cms applied on left side of abdomen. Advised x-ray and operation notes.

4. A scratch 5 cm x length on other side of upper 1/3rd of left arm.

Whereas, Jasbir Singh suffered following injuries:

1. Adhesive plaster applied 17 x 13 cm in size over front abdomen. Advised x- ray and operation notes.

2. Adhesive plaster 24 x 16 cm in size applied over left side of chest. Chest tube was put. Advised x-ray and operation notes.

4. Therefore, the opinion that injuries were dangerous to life can also be decided by the Court from the very fact that the injuries were given in the abdomen. The court cannot

loose sight of the fact that doctor has stated that the chest-tube was put in the chest of Jasbir Singh and the size of injury was 24 x 16 cm. Such injury in chest is sufficient to fall within the ambit of Section 307 IPC.

5. Third argument regarding the identity is also misconceived. In cross- examination of the witnesses, no foundation was laid. Rather, it has been stated by the appellant that he had a quarrel with Baldev Singh a few days ago. He had also examined defence witness DW-1 Harbans Singh to this effect. This question of identity can also not be sustained because a suggestion was also put to Mukhtiar Singh that a criminal complaint was filed against him u/s 302 IPC but nothing substantial has been brought on record to fortify this argument. Once it was suggested, parties knew each other and there was enmity, argument of identity will pale into insignificance.

6. Once I have held that the conviction of the appellant has been rightly recorded by the learned trial Court, next question which this Court has to decide is whether the sentence awarded by the learned trial Court is adequate or requires some modification. It has been stated by Mr. Premjit Singh Hundal that in the present case occurrence has taken place on 21st June, 1996. Appellant has already suffered a protracted trial of more than 11 years. At the same time, this Court cannot loose sight of the fact that the appellant had mustered courage to pick the pocket and when restrained, has caused kirpan blows to two persons, who suffered serious and severe injuries. To balance the mitigating circumstances of protracted trial with the aggravated conduct of the accused, ends of justice will be met in case the sentence awarded to him u/s 307 IPC on both counts is reduced from five years to three years and fine of Rs. 1000/- is enhanced to Rs. 10000/-.

With these observations, present appeal is disposed off.