

(2008) 02 P&H CK 0339

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 430-SB of 1997

Harbans Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Feb. 4, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 324

Hon'ble Judges: Sham Sunder, J**Bench:** Single Bench**Advocate:** Hemant Saini, for the Appellant; O.P. Dabla, AAG, Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction, and the order of sentence dated 17.10.1996, rendered by the Court of Addl. Sessions Judge, Ferozepur, vide which it convicted the accused/appellant Harbans Singh, for the offence, punishable u/s 307 IPC, and sentenced him to undergo rigorous imprisonment, for a period of four years, and to pay a fine of Rs. 1000/-, and in default of payment of the same, to undergo rigorous imprisonment for another period of three months.

2. The facts, in brief are that, on 7.3.1995, at about 11.00 pm, Gulzar Singh, his brother Kartar Singh and his son Joginder Singh (injured), were returning to their house, after attending the marriage of Gurnam Singh, and when they reached in the street to depart and to go to their houses, suddenly Harbans Singh, accused, came out of his house, armed with a knife, in his hand, and caused injury with the same to Joginder Singh, in his abdomen, and ran away. The complainant saw the occurrence, in the light of the electric bulb glowing, at that time in the house of Lekh Raj. After the receipt of injury at the hands of the accused, Joginder Singh was brought to his

house, by the complainant. Thereafter, a conveyance was managed, and he was taken to Civil Hospital, Fazilka, where he was medico-legally, examined and treated. Dr. V.K. Mujral, Sr. Medical Officer, Civil Hospital, Fazilka, medico-legally examined Joginder Singh at 5.00 am on 8.3.1995, and sent ruqa Ex.PG to Police Station Sadar, Fazilka. On receipt of the same, Assistant Sub Inspector Baj Singh reached Civil Hospital, Fazilka at 6.00 am on 8.3.1995, and obtained the opinion of the Doctor, as to whether, Joginder Singh (injured) was fit to make a statement. The Doctor vide his report Ex.PF/1, dated 8.3.1995 at 6.00 am opined that the injured was not fit to make statement. Baj Singh, ASI, then proceeded to record the statement of Gulzar Singh, Ex.PA, which was thumb marked by him, and the same was sent to the Police Station, on the basis whereof, the FIR was registered, on 8.3.1995. On the same day, Baj Singh, ASI, proceeded to inspect the spot, and prepared rough site plan, with correct marginal notes. The statements of the witnesses, were recorded, by him, and the accused was searched, but he could not be found. On 16.3.1995, Baj Singh, ASI, recorded the statement of Joginder Singh, injured. On 16.3.1995, the accused was arrested. On interrogation, he disclosed that he had concealed a knife, near the embankment of canal, in the wild growth (sirkandas), and he could get the same recovered, by pointing out. The disclosure statement Ex.PL was reduced into writing. In pursuance of the disclosure statement, the accused got recovered the knife. The same was taken into possession. Rough site plan of the place of recovery was prepared.

3. The motive for the occurrence was that Harbans Singh, accused, used to enter the house of the complainant party, without their consent, to which they resented. The accused nursed a grudge, on account of this reason, and caused injury on the person of Joginder Singh. After the completion of investigation, the accused was challaned.

4. On his appearance, in the Court of the Committing Magistrate, the copies of documents, relied upon by the prosecution, were supplied to the accused. After the case was received by commitment, in the Court of Sessions, charge u/s 307 of the IPC, was framed against the accused, to which he pleaded not guilty, and claimed trial.

5. The prosecution, in support of its case, examined Gulzar Singh, complainant (PW-1), father of the injured and an eye-witness, Joginder Singh, injured, (PW-2), Dr. V.K. Mujral, Sr. Medical Officer, Civil Hospital, Fazilka (PW-3), who found following injury on the person of Joginder Singh:

An incised wound 1.25 cm x 0.5 cm present on the eplgastric region of the abdomen just below the xiphisternum and 1 cm from the mid line of the abdomen and touching the right costral margin. Depth of the wound to be ascertained on the expleration of the wound. Fresh bleeding was present and injury was kept under observation.

He stated that the duration of the injury, was within six hours. The Doctor opined that the underlying sheath, muscles and peritoneum were cut. There was bleeding from the small cut of the size of 1 cm x 0.5 cm present on the surface of liver which was stitched and the bleeding was controlled. He declared the injury, on the person of the injured, as dangerous to life. Gurdip Singh, ASI (PW-4), proved the FIR Ex.PA/1. Mathura Dass, Draftsman (PW-5), prepared the scaled map. Baj Singh, ASI (PW-6), investigated the case. Thereafter, the Addl. Public Prosecutor for the State, closed the prosecution evidence.

6. The statement of the accused u/s 313 Cr.P.C., was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication, due to party faction in the village. He, however, did not lead any evidence in his defence.

7. After hearing the Addl. Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated hereinbefore.

8. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by Harbans Singh, accused/appellant.

9. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The counsel for the appellant, at the very outset, contended that it was merely an ordinary fight, between two youngsters. He further contended that there was no intention, on the part of the accused, to cause such injury, on the person of Joginder Singh, as could prove dangerous to his life. He further contended that the dimension of the injury, being very small, the Investigating Agency, wrongly challaned the accused, for the offence punishable u/s 307 IPC. In other words, he contended that no offence u/s 307 IPC was made out, against the accused. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The knife injury was given by the accused, in the stomach of Joginder Singh. Stomach, being a very vital part of the body, the accused very well knew that such an injury could endanger the life of the injured, and may be sufficient to cause his death, in the ordinary course of nature. There was, therefore, certainly an intention on the part of the accused, to cause such bodily injury, on the person of the injured, as could endanger his life. There was also motive with the accused, to cause such an injury, as he was not happy with the complainant, and his son Joginder Singh, as they had stopped him, from coming to their house, without their consent. Dr. V.K. Mujral, Sr. Medical Officer, Civil Hospital, Fazilka, who medico-legally examined Joginder Singh, in clear-cut terms, stated that, on exploring the injury, underlying sheath, muscles and peritoneum were cut. He further stated that the injury, on the person of the injured, was dangerous to life. There was no reason, on the part of the

Doctor, to give a wrong report. Under these circumstances, from the evidence, produced by the prosecution, it was duly proved that the accused committed the offence, punishable u/s 307 of the IPC. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

11. It was next contended by the Counsel for the appellant, that there was a delay of 8.30 hours, in lodging the FIR, which was utilized by the complainant party, to concoct the story, falsely implicate the accused, and introduce false witnesses. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The condition of the injured, was very serious, as he sustained injury, in his stomach, at the hands of the accused. The first concern of the kith and kin of the injured, was to take him to the hospital, and provide him the best medical aid. After arranging a vehicle, the injured was immediately removed to the Hospital, and got admitted there. Dr. V.K. Mujral, Sr. Medical Officer, Civil Hospital, Fazilka, sent ruqa to the Police Station Sadar, and Baj Singh, ASI reached the hospital at 6.00 am on 8.3.1995. He obtained the opinion of the Doctor, as to whether, the injured was fit to make statement. He, however, opined that the injured was unfit to make statement. It was only, thereafter, that Baj Singh, ASI, recorded the statement of Gulzar Singh, father of the injured, an eye-witness to the occurrence. The statement of Joginder Singh was recorded on 16.3.1995, when he was declared fit to make statement. There was, thus, no delay in lodging the FIR. If, there was any delay, in lodging the FIR, the same stood explained, from the facts and circumstances, referred to above. It is settled principle of law, that the case of the prosecution, cannot be thrown out only on account of delay in lodging the FIR. In the face of delay, in lodging the FIR, the Court is put on guard, to scrutinize the evidence of the prosecution witnesses, carefully and cautiously, and after such scrutiny, if it comes to the conclusion that the same was reliable, delay loses its significance. In the instant case, the evidence of Gulzar Singh and Joginder Singh, injured, has been thoroughly scrutinized. Nothing could be found, during the course of their cross-examination, which could go to discredit their evidence. The trial Court was, thus, right in holding that the delay, if any, in lodging the FIR, stood explained. The trial Court was also right in holding that it was not utilized for concoction of story, false implication of the accused, and introduction of false witnesses. In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

12. It was next contended by the Counsel for the appellant, that, in the first instance, only a case u/s 324 of the IPC, was registered, but later on, the investigating agency converted the same into one u/s 307 IPC. He further contended that this shows that the investigation was not fair. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. When the statement of Gulzar Singh, father of the injured, was recorded, in the first instance, the FIR was registered only u/s 324 of the IPC, as the report of the Doctor had not been received by that time, as to whether, the injury on the person of the injured was dangerous to life or not.

After the report of the Doctor, was received, that the injury on the person of the injured was dangerous to life, the offence was converted to one u/s 307 of the IPC. This does not mean that the investigation was not fair. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

13. No other point, was urged, by the Counsel for the parties.

14. In view of the above discussion, it is held that the judgment of conviction, and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

15. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction, and the order of sentence dated 17.10.1996, are upheld. It may, however, be mentioned here that as per the report received from jail, the appellant has already been released from jail, after the expiry of period of his sentence.