

**(2014) 08 P&H CK 0303**

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

**Case No:** CRA-S-1196-SB-2003

Harbhajan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Aug. 6, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 360
- Penal Code, 1860 (IPC) - Section 307, 323, 324, 326, 34

**Hon'ble Judges:** Mahavir Singh Chauhan, J

**Bench:** Single Bench

**Advocate:** H.R. Nohria, Advocate for the Appellant; Shivali, Additional Advocate General, Advocate for the Respondent

**Final Decision:** Partly Allowed

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**Judgement**

Mahavir Singh Chauhan, J.

Bhag Singh, along with his father, Mohinder Singh and two sons Harbhajan Singh and Avtar Singh, was tried for the offence punishable under Sections 307/326/324/323/34 of the Indian Penal Code, 1860 (for short "IPC") by the Court of learned Additional Sessions Judge-Fast Track Court, Ferozepur (for short "the trial Court").

2. Bhag Singh died during the pendency of trial. Vide judgment/order dated 21.04.2003, learned trial Court acquitted Avtar Singh as prosecution could not fix his guilt beyond reasonable doubt but Mohinder Singh was convicted u/s 323, IPC, and was released on probation in terms of Section 360 of the Criminal Procedure Code, 1973 (for short "Cr.P.C.") while Harbhajan Singh, the present appellant, was convicted and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further rigorous imprisonment for nine months, u/s 307, IPC to rigorous imprisonment for four years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further rigorous

imprisonment for nine months, u/s 326 read with Section 34, IPC, and to rigorous imprisonment for six months, u/s 323 read with Section 34, IPC.

3. The substantive sentences were ordered to run concurrently.

4. To challenge the judgment of conviction and order of sentence, appellant-Harbhajan Singh, has brought this appeal which the State is contesting.

5. I have heard learned counsel for the parties besides scanning the record requisitioned from the learned trial Court.

6. Learned counsel for the appellant argues that even if the entire story of the prosecution is taken to be correct and to have been established beyond reasonable doubt, offence punishable u/s 307, IPC, is not made out because, Dr. R.K. Aggarwal (PW-1), who medico-legally examined injured Balbir Singh, vide his report dated 09.05.1998 (Ex. P-5) has opined that injury No. 2 on his person would have proved to be dangerous to life if he had not reached the hospital in time whereas prior thereto, he vide his report Ex. P-4 had opined that nothing abnormal was detected as regards that injury. Such an opinion, according to learned counsel for the appellant, cannot be used to convict the appellant u/s 307, IPC.

7. Another contention raised on behalf of the appellant is that the land of the share of Mohinder Singh was in possession of the accused and it was the complainant who was aggrieved by the act of his father as Mohinder Singh had transferred the land by way of sale in favour of the appellant and his co-accused.

8. Learned State counsel, on the other hand, would argue that in the evidence brought on record by the prosecution, it has been proved beyond reasonable doubt that the land in dispute was in possession of the complainant-Darshan Singh and the present appellant and his co-accused attempted to forcibly enter possession thereof. According to learned State counsel, injuries found on the person of injured Balbir Singh are attributed to the appellant and in view of the opinion of the doctor that injury No. 2 on his person could have proved dangerous to life if timely medical treatment was not given to him and according to him, this is sufficient to reach the conclusion that the injury was caused by the appellant with an intention to kill injured Balbir Singh.

9. Nothing more has been urged on either side.

10. Before analyzing the evidence brought on record by prosecution in support of the accusations, it is necessary to have a survey of the facts and circumstances constituting the prosecution story.

11. As per case of the prosecution, Darshan Singh-complainant (PW-2) is the son of accused Mohinder Singh. The said Mohinder Singh owned land measuring 4 killas 6 kanals, out of which 1 1/4 killas of land was transferred in favour of the complainant and his brothers. Mohinder Singh kept the remainder with himself but later on he

sold 4 kanals of land, out of his remainder land, to Harbhajan Singh, which was being cultivated by complainant-Darshan Singh who had also secured an order of injunction from the Court. On 07.05.1998, at about 05-06 P.M., Darshan Singh, accompanied by his brothers Balbir Singh and Jageer Singh sons of Atma Singh went to the fields. Accused Bhag Singh armed with gandasa, accused Harbhajan Singh armed with kirpan and accused Mohinder Singh and Avtar Singh armed with dangs came there. Bhag Singh, after raising a lalkara of teaching a lesson for cultivating the land and obtaining stay order, inflicted a gandasa blow which hit left arm of Balbir Singh whereupon he fell down on the ground. Bhag Singh-accused caught Balbir Singh from his legs and Mohinder Singh from his hair. Harbhajan Singh accused inflicted a kirpan blow on the front of his neck, on the left cheek and right side of the chest. Avtar Singh gave a dang blow which hit left eye and left side of Balbir Singh. Mohinder Singh-accused gave a dang blow which hit left shoulder and right ankle of the complainant. When complainant tried to rescue his brother Balbir Singh, he was given gandasa blow on his head by Bhag Singh, accused. Complainant raised an alarm which attracted Surjit Kaur wife of the complainant to the spot whereupon assailants fled away from the place of occurrence alongwith their respective weapons. Satpal Singh, who also had reached the spot, took the complainant-Darshan Singh (PW-2) and injured Balbir Singh (PW-3) to the village from where Dial Singh took them to Civil Hospital Kot Ise Khan where they were medico legally examined.

12. On receipt of information, Investigating Officer, ASI Harbans Singh (PW-5) reached the hospital and recorded statement Exhibit P-1 of complainant-Darshan Singh (PW-2). The matter was investigated into. Statements of witnesses were recorded. Accused were arrested. Necessary recoveries were effected. The injured were medico-legally examined by Dr. R.K. Aggarwal (PW-1). On completion of investigation, challan was presented against the accused. Learned trial Court having found a prima facie case, charged the accused under Sections 307/326/324/323/34, IPC. Accused pleaded not guilty to the charge and claimed trial.

13. In order to prove guilt of the accused, prosecution examined Dr. R.K. Aggarwal as PW-1 (who brought on record the factum and extent of injuries on the person of Balbir Singh injured and Darshan Singh, complainant), Darshan Singh as PW-2, injured Balbir Singh as PW-3 and Surjit Kaur as PW-4, (who brought on record ocular account of the occurrence), ASI Harbans Singh as PW-5 and L.C. Ashok Kumar as PW-6.

14. In their statements recorded u/s 313, Cr.P.C., accused denied all the incriminating circumstances brought on the record by the prosecution and pleaded innocence and false implication but did not lead any evidence in defence.

15. Learned trial Court, on appraisal of the evidence brought on record by the prosecution and after hearing learned Public Prosecutor for the State and learned defence counsel, found that the prosecution was able to fix guilt of

appellant-Harbans Singh beyond reasonable doubt and, accordingly, convicted and sentenced him as hereinbefore stated.

16. With regard to the contention raised on behalf of appellant-Harbans Singh regarding absence of motive attributable to him, suffice it to say that it has come on record that it was the complainant who was in possession of the land of the share of his father-Mohinder Singh but be it otherwise, it being a case of direct evidence, absence or inadequacy of motive is inconsequential, and, therefore, the point so raised need not hold this Court for long.

17. Occurrence is not disputed. A perusal of the evidence of Balbir Singh (PW-3) and Surjit Kaur (PW-4) brings out that both of them have given a vivid account of the occurrence and have been able to stand the test of cross-examination successfully. Though it is argued on behalf of the appellant that evidence of complainant-Darshan Singh (PW-2) cannot be taken into consideration as he did not appear for cross-examination on behalf of the defence, having died before he could be cross-examined but if the statement made by this witness in his chief-examination is read in conjunction with other evidence available on record, it comes out that whatever is stated by him in his chief-examination finds support in the depositions of injured-Balbir Singh (PW-3) and Surjit Kaur (PW-4).

18. Be that as it may, it has already been noticed that the occurrence and its manner have remained undisputed. Rather plea put up, on behalf of the appellant before the learned trial Court was that the appellant and his co-accused had inflicted injuries on the person of injured-Balbir Singh (PW-3) and complainant-Darshan Singh (PW-2) in their self-defence. It, however, comes out that cross-version was also recorded but it resulted into acquittal of the members on the complainant side and the appellant and his co-accused, in their best wisdom, have decided not to challenge the finding of acquittal recorded by the learned trial Court in respect of the cross-version. From that it can be safely inferred that the version put up on behalf of the appellant and his co-accused was a cooked up story and they have accepted as correct the finding of acquittal in favour of members of the complainant party.

19. It also needs to be pointed out that on behalf of the appellant no questions have been raised as regards his conviction under Sections 324/323/34, IPC. Whole stress of arguments of learned counsel for the appellant is that offence u/s 307, IPC, is not made out as far as appellant is concerned. Reverting to the evidence available on record, Darshan Singh (PW-2), Balbir Singh (PW-3), Surjit Kaur (PW-4) and ASI Harbans Singh (PW-5) have stopped short of saying that the injuries were caused by the appellant on the person of injured-Balbir Singh and complainant-Darshan Singh with an intention to kill them. Even otherwise, the occurrence is shown to have taken place all of a sudden and this circumstance leads to the conclusion that the assailants did not intend to kill the injured PWs.

20. Another circumstance that militates against the plea that the injuries were caused to the injured PWs with an intention to kill them, is that as per case of the prosecution itself two injured were in the grip of four assailants who were armed with gadasa, kirpan and dandas and nobody was around to rescue them from the assailants. In spite of that the appellant and his co-accused are not shown to have used force to such an extent as could result into injuries to be sufficient to cause death in ordinary course of nature.

21. Even the medical evidence brought on record in the form of deposition of Dr. R.K. Aggarwal (PW-1) is found to be deficient to support the conviction of the appellant u/s 307, IPC. A perusal of his deposition would show that on the person of injured Balbir Singh, he found following injuries:-

1. Incised wound 16 cm x 3 cm on the front of right shoulder, 7 cm from tip of right shoulder, 5 cm from mid line of chest. Fresh bleeding was present.
2. Incised wound 10 cm x 2.5 cm on the front of neck crossing the mid-line, 6 cm above the manubri sternum. The wound was profusely bleeding. X-ray was advised.
3. Incised wound 5 cm x 1.5 cm on the dorsal aspect of left fore arm, 12 cm above the wrist joint. Wound was profusely bleeding. X-ray was advised.
4. Incised wound 3 cm x 1 cm on the right side of face, 2 cm from right angle of mouth. Fresh bleeding was present.
5. Lacerated wound 1 cm x 1 cm on the left side of nose, 3 cm from tip of nose.
6. Lacerated wound 1 cm x 1 on the lateral angle of left eye.
7. Lacerated wound 11 cm x 1/4 cm on the left side of chest, 14 cm below the left nipple.

22. On the person of complainant-Darshan Singh, he found five injuries, as per details given below:-

1. Incised wound 5 cm x 1/2 cm on the left side of scalp, 9 cm from bridge of nose, 14 cm from left pinna. Fresh bleeding was present. X-ray was advised.
2. Lacerated wound 3 cm x 1/2 cm on the right side of back, 9 cm medial to the right shoulder top and 11 cm from mid line of back. X-ray was advised.
3. Abrasion 2 cm x 2 cm on the right side of back, 7 cm from right shoulder tip.
4. Abrasion 7 cm x 2.5 cm on the left growing region, 6 cm from anterior superior iliac spine.
5. Complaint of pain on the left side of neck.

23. Injuries No. 1, 4, 5, 6 and 7 on the person of Balbir Singh were declared simple while injuries No. 2 and 3 were kept under observation. After X-Ray examination,

injury No. 2 was declared as "NAD" (nothing abnormal detected) while injury No. 3 was an oblique cut in the ulna of left forearm passing through periosteum and extending to the cortex corresponding to side of injury. This injury was attributed to Bhag Singh and appellant has been convicted for this injury with the aid of Section 34, IPC. As regards injury No. 2 on the person of Balbir Singh injured, the doctor at the first instance declared that nothing abnormal was detected but on 09.05.1998 he came out with a second opinion that this injury could prove dangerous to life if timely medical assistance was not provided. While appearing as PW-1, he added another dimension to the injury by stating that level of hemoglobin in the body of injured-Balbir Singh was very low. However, injuries on the person of complainant-Darshan Singh were declared to be simple in nature. Injury No. 2 on the person of injured-Balbir Singh, as noticed hereinbefore, was an incised wound 10 cm x 2.5 cm in the front of neck crossing the mid-line, 6 cm above the manubrium sternum. The wound was profusely bleeding. X-ray was advised. The opinion of the doctor, as contained in Exhibit P-5, does not show that this injury could be dangerous to life in the ordinary course of nature. Rather the opinion is that the injury could prove to be dangerous to life if immediate medical assistance was not provided. This can happen in case of any injury and an account of wavering mind of the doctor as regards the nature of injury, I am not inclined to accept that such kind of injury would attract the provisions of Section 307, IPC.

24. Learned State counsel has not been able to show anything to the contrary.

25. In the consequence, conviction of the appellant-Harbhajan Singh, u/s 307, IPC, deserves to be and is, hereby, set aside. However, his conviction under Sections 326/324/323 read with Section 34, IPC, is maintained.

26. The appellant has been awarded four years rigorous imprisonment u/s 326/34 IPC. This punishment is also, as per my view, on the higher side. It also needs to be added that FIR in the matter was recorded on 08.05.1998 and since then the appellant has been facing the agony of investigation, a protracted trial and consequent proceedings. These circumstances also need to be taken into consideration in the matter of award of punishment. I feel that award of rigorous imprisonment for two years, u/s 326/34, IPC, to the appellant shall serve the ends of justice.

27. Consequently, the substantive sentence awarded by the trial Court to the appellant, u/s 326/34 IPC is reduced to two years. However, sentence as regards payment of fine and default clauses and sentence qua other offences is maintained.

28. The appellant through his counsel is directed to surrender before the jail authorities within two weeks from today, failing which the Chief Judicial Magistrate, Ferozepur, shall cause him to be arrested and send him to jail to serve remainder sentence.

29. The appeal is partly allowed in the above-stated terms.