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JAGE RAM & ORS.

v.

STATE OF HARYANA

(Criminal Appeal No. 92 of 2015)

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JANUARY 28, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

Penal Code, 1860 – s.307 – Prosecution case that PW-5 and his two sons ‘S’ and ‘PW-6 were cutting pullas (reeds) in their fields when the accused party went there and asked them not to cut the pullas – In the wordy altercation, second accused gave pharsi blows on the head of ‘S’ – Conviction of second accused u/s.307 IPC by Courts below – Challenged, on ground that evidence of the witnesses suffers from material discrepancy and is self-contradictory; and additionally, the defence plea of private defence was not considered by the courts below in proper perspective – Held: PWs 5 & 6 have clearly spoken about the overt act of the accused – PWs 5 and 6 being injured witnesses, their evidence is entitled to great weight – Evidence of PWs 5 and 6 amply corroborated by medical evidence – Evidence that had not surgical assistance been given to ‘S’, he would have definitely died – Having regard to the weapon used for causing the head injuries to ‘S’, nature of injuries, situs of the injury and the severity of the blows, conviction of 2nd accused u/s.307 IPC was justified.

Sentence / Sentencing – Second accused gave pharsi blows on the head of the victim – Convicted u/s.307 IPC and sentenced to RI of five years –Appropriate punishment – Held: Question of awarding sentence is a matter of discretion – What sentence would meet the ends of justice would depend upon the facts and circumstances of each case and the courts

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must keep in mind the gravity of the offence, motive for the crime, nature of the offence and all other attendant circumstances – In the case in hand, the incident occurred more than 20 years back in the heat of passion in course of a wordy altercation – Accused surrendered in 2012 and is in custody since then, for more than three years – Period of sentence imposed upon second accused reduced to three years apart from directing him to pay Rs.7.50 lakhs as compensation to the victim – Code of Criminal Procedure, 1973 – s.357(3).

State of M.P. vs. Kashiram & Ors, AIR 2009 SC 1642 = (2009) 4 SCC 26; State of M.P. vs. Bablu Natt (2009) 2 SCC 272; Alister Anthony Pareira vs. State of Maharashtra (2012) 2 SCC 648 and Soman vs. State of Kerala (2013) 11 SCC 382 – relied on.

Hari Singh vs. Sukhbir Singh & Ors. (1988) 4 SCC 551 – referred to.

Case Law Reference

AIR 2009 SC 1642	relied on	Para 13
(1988) 4 SCC 551	referred to	Para 15
(2009) 2 SCC 272	relied on	Para 16
(2012) 2 SCC 648	relied on	Para 16
(2013) 11 SCC 382	relied on	Para 16

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 92 of 2015

From the Judgment and Order dated 19.08.2011 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 181 SB of 2000

A Vibha Datta Makhija, Gagan Gupta for the Appellants.

Ajay Bansal, AAG, Akshat Goel, Kamal Mohan Gupta, Gaurav Yadav, for the Respondents.

B The Judgment of the Court was delivered by

C **R. BANUMATHI, J.** 1. This appeal is preferred against the judgment dated 19.8.2011 passed by the High Court of Punjab and Haryana in Criminal Appeal No.181 SB of 2000, whereby the High Court partly allowed the appeal filed by the appellants thereby confirming the conviction of the appellants with certain modifications.

D 2. Briefly stated, case of the prosecution is that on the fateful day i.e. 18.11.1994, at about 8.00 A.M. in the morning the complainant Jagdish (PW-5) along with his two sons namely Sukhbir and Mange Ram (PW-6) were busy in cutting pullas (reeds) from the *dola* of their field. At that time, Jage Ram (A-1) and his sons Rajbir Singh @ Raju (A-2), Rakesh (A-3) and Madan (A-4) armed with *jaily*, *pharsi* and *lathis* respectively, entered the land where the complainant was working with his sons and asked them not to cut the *pullas* as it was jointly held by both the parties. Wordy altercations ensued between the parties and Jage Ram insisted that he would take away the entire *pullas*. In the fight, the accused persons started inflicting injuries to the complainant, and his sons Rajbir @ Raju (A-2) gave a *pharsi* blow on the head of Sukhbir, Jage Ram (A-1) caused injury to Jagdish (PW-5) with two *jaily* blows. Additionally, Madan and Rakesh attacked the complainant with *lathi* blows on shoulder and left elbow respectively and caused several other injuries to the complainant party. Jagdish and his injured sons raised alarm, hearing which Rajesh and Usha came to rescue them and on seeing them, the accused persons fled away.

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3. The injured witnesses were taken to the Primary Health Centre, Taoru where Dr. Pardeep Kumar, Medical Officer, medically examined the injured persons. Injured Sukhbir was vomiting in the hospital and later on he was referred to General Hospital, Gurgaon as his condition deteriorated. A CT scan disclosed that large extra-dural haematoma was found in the frontal region with mass effect and Sukhbir needed urgent surgery and he was operated upon and the large extra-dural haematoma was removed. Dr. Pardeep Kumar (PW-2) also examined the other injured persons, PW 5-Jagdish and PW 6- Mange Ram.

4. Statement of Jagdish was recorded, based on which F.I.R. was registered at Police Station Taoru, Gurgaon under Sections 323, 324, 325 and 307 read with Section 34 IPC. PW 8-Ramesh Kumar (ASI) had taken up the investigation. He examined the witnesses and after completion of investigation, challan was filed under Sections 307, 325, 324 read with Section 34 IPC. In the trial court, prosecution examined nine witnesses including Jagdish-PW5, Mange Ram-PW6 and Dr. Prem Kumar-PW2 and Dr. Hilol Kanti Pal-PW9, Neuro Surgeon, PW8-investigating officer and other witnesses. The accused were examined under Section 313 Cr.P.C. about the incriminating evidence and circumstances. First accused Jage Ram pleaded that on the date of occurrence-complainant party Jagdish and his sons Mange Ram and Sukhbir forcibly trespassed into the land belonging to the accused and attempted to forcibly cut the *pullas*. Jagdish further claims that he along with Rakesh caused injuries to the complainant party in exercise of right of private defence of property. He has denied that Rajesh and Usha had seen the incident. Raju (A-2) and Madan (A-3) stated that they were not present on the spot and they have been falsely implicated. Rakesh (A-4) adopted the stand of his father Jage Ram.

A 5. Upon consideration of oral and documentary evidence,
the learned Additional Sessions Judge vide judgment dated
17.2.2000 convicted all the accused persons under Sections
307 and 325 IPC and sentenced them to undergo rigorous
imprisonment for five years and one year respectively and a
B fine of Rs. 500/- each with default clause. Aggrieved by the
said judgment, the accused—appellants filed criminal appeal
before the High Court of Punjab and Haryana. The High Court
vide impugned judgment dated 19.8.2011 modified the
C judgment of the trial court thereby convicted Jage Ram (A-1)
under Section 325 IPC and sentenced him to undergo rigorous
imprisonment for one year, convicted second accused Rajbir
@ Raju under Section 307 IPC and imposed sentence of
imprisonment for five years as well the fine of Rs.500/- was
D confirmed by the High Court. Sentence under Section 325
IPC (two counts) was modified as the sentence under Section
323 IPC and he was sentenced to undergo six months rigorous
imprisonment. Both the sentences were ordered to run
concurrently. High Court modified the sentence of Madan (A-
E 3) Rakesh (A-4) under Section 323 IPC and sentenced them
to undergo rigorous imprisonment for six months (two counts)
respectively. In this appeal, the appellants assail the
correctness of the impugned judgment.

F 6. Ms. Vibha Datta Makhija, learned Senior Counsel
appearing for the appellants contended that the evidence of
the witnesses suffers from material discrepancy and is self-
contradictory. It was submitted that injured witness Sukhbir
was not examined in the court and neither CT Scan nor x-ray
G nor operational notes of Sukhbir were produced before the
court and in the absence of such material evidence, courts
below erred in convicting the second accused under Section
307 IPC. Additionally, the learned counsel contended that the
defence plea of private defence was not considered by the
H courts below in proper perspective.

7. Per contra, learned counsel appearing for the respondent-State contended that the evidence of all the witnesses satisfactorily establishes the overt act of the accused persons and Jagdish (PW-5) and Mange Ram (PW-6) being the injured witnesses, the veracity of these witnesses cannot be doubted. It was submitted that the medical evidence sufficiently corroborated the oral evidence and the prosecution has established the intention of the 2nd accused in causing attempt to commit murder of Sukhbir and in appreciation of the evidence, courts below recorded concurrent findings convicting the second accused under Section 307 IPC and the same warrants no interference.

8. We have carefully considered the rival contentions and gone through the impugned judgment and perused the materials on record.

9. As it emerges from the evidence, complainant Jagdish (PW-5) and his two sons Sukhbir and Mange Ram were cutting *pullas*. The accused party went there and asked them not to cut the *pullas*. In the wordy altercation, second accused Rajbir @ Raju gave *pharsi* blows on the head of Sukhbir. PWs 5 & 6 have clearly spoken about the overt act of the accused that A-1 Jage Ram attacked and caused injury to PW-5 Jagdish with *jaily* blows and that second accused Rajbir @ Raju attacked on the head of Sukhbir with *pharsi*. They have also stated that Madan and Rakesh caused injuries to PW5-Jagdish with *lathi* on shoulder and left elbow respectively. PW 2- Dr. Pardeep Kumar in his evidence stated that he has examined PWs 5 and 6 and noted the injuries on the body of PWs 5 and 6 and issued wound certificates. Evidence of PWs 5 and 6 is amply corroborated by medical evidence. PWs 5 and 6 being injured witnesses, their evidence is entitled to great weight. Cogent and convincing grounds are required to discard the evidence of injured witnesses. In the light of the

A fact that PWs 5 and 6 were injured witnesses, courts below tested their evidence for its credibility and recorded concurrent findings that PWs 5 and 6 are trustworthy witnesses. We find no reason to take a different view.

B 10. Appellants have raised the contention that the prosecution failed to adduce evidence that A-2 Rajbir attempted to commit murder of Sukhbir. It was submitted that injured person Sukhbir was neither examined nor medical evidence like CT Scan, x-ray and operational notes and
C Sukhbir were produced to corroborate the oral evidence and while so courts below erred in convicting second accused Rajbir @ Raju under Section 307 IPC.

11. Dr. Pardeep Kumar-PW-2, who examined Sukhbir
D found during his medico-legal examination a lacerated wound in the middle of the top of the skull. Injured-Sukhbir was found vomiting in the hospital and he was examined by a Neuro Surgeon Dr. Hilol Kanti Pal (PW-9) of Safdarjung Hospital, Delhi on 19.11.1994, i.e. the day after the incident. PW-9 has
E stated that Sukhbir was unconscious since 2.00 P.M. on 18.11.1994 and was deeply comatose with irregularity of pupils and a laceration was diagnosed on the right front parietal region. Further, PW-9 has stated that during the CT scan, it
F was revealed that a large extra-dural haematoma was present in the frontal region with mass effect and to avoid further deterioration of his condition, he was operated upon by frontal trephine craniotomy an haematoma measuring about 125 ml was evacuated. PW-9 stated that had not the operation been
G conducted on Sukhbir and had not the extra-dural haematoma removed by operation urgently, the head injury caused to Sukhbir would have caused his death. As noted by the High Court, it is thus brought on evidence that had not surgical assistance been given to Sukhbir, he would have definitely
H died.

12. For the purpose of conviction under Section 307 IPC, 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 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.

13. In the case of *State of M.P. vs. Kashiram & Ors.*¹, the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under:-

“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.

¹ AIR 2009 SC 1642 = (2009) 4 SCC 26

A 14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28, *Girija Shanker v. State of U.P.*(2004) 3 SCC 793 and *R. Prakash v. State of Karnataka* (2004) 9 SCC 27.

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16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury."

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See *State of M.P. v. Saleem* (2005) 5 SCC 554 pp. 559-60, paras 11-14 and 16.

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13. "6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in

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Sevaka Perumal v. State of T.N.(1991) 3 SCC 471."

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14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injury and the severity of the blows, courts below recorded concurrent findings convicting the 2nd appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir @ Raju under Section 307 IPC is unassailable.

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15. Learned counsel for the appellants contended that the second appellant is in custody for more than three years

and since the occurrence was in the year 1994, prayed for reduction of the sentence imposed on the second appellant to the period already undergone. Placing reliance upon the judgment of this Court in *Hari Singh vs. Sukhbir Singh & Ors*², learned counsel for the appellants additionally submitted that in terms of Section 357 (3) Cr.P.C. that the compensation may be awarded to the victim and the sentence be modified to the period already undergone.

16. For the conviction under Section 307 IPC, courts below imposed upon the 2nd appellant rigorous imprisonment of five years, while imposing punishment, courts have an obligation to award appropriate punishment. Question of awarding sentence is a matter of discretion and the same has to be exercised by the courts taking into consideration all the relevant circumstances. What sentence would meet the ends of justice would depend upon the facts and circumstances of each case and the courts must keep in mind the gravity of the offence, motive for the crime, nature of the offence and all other attendant circumstances. Vide *State of M.P. vs. Bablu Natt*³; *Alister Anthony Pareira vs. State of Maharashtra*⁴ and *Soman vs. State of Kerala*⁵.

17. In the light of the above, considering the case in hand, the occurrence was of the year 1994 when the complainant party was cutting *pullas*, the accused asked them not to cut the *pullas* which resulted in the wordy altercation. In the heat of passion, the accused have caused injuries to the complainant party. The second accused Rajbir @ Raju is in custody. He surrendered on 5.1.2012 and is stated to be in

² (1988) 4 SCC 551

³ (2009) 2 SCC 272

⁴ (2012) 2 SCC 648

⁵ (2013) 11 SCC 382

A custody since then, for more than three years. Having regard to the facts and circumstances of the case, in our considered view, the period of sentence of five years may be reduced to three years apart from directing the second appellant Rajbir @ Raju to pay substantial compensation to injured-Sukhbir.

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18. As noticed above, injured-Sukhbir sustained grievous head injuries and was deeply comatose and was in a state of shock and trauma. Learned counsel for the injured-witness submitted that for quite some time injured-Sukhbir was unconscious and thereafter suffering from mental trauma. Having regard to the nature of injuries sustained by Sukhbir and the period of treatment and other circumstances, we are of the view that, it would be appropriate to direct second appellant-accused Rajbir @ Raju to pay Rs.7,50,000/- as compensation to the injured-Sukhbir. When the matter came up for hearing on 14.10.2014, learned counsel for the appellants informed the Court that he had offered Rs.5,00,000/- by way of demand draft towards compensation to the injured-Sukhbir in the presence of the Sarpanch of the village which he has refused to receive the same. The said amount of Rs.5,00,000/- is now kept in fixed deposit in the Registry of this Court.

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19. For inflicting blows on PW-5 Jagidsh with *jaily* A-1 Jage Ram was convicted under Section 325 IPC and sentenced to undergo rigorous imprisonment for one year. A-3 and A-4 have also given *lathis* blows to PW-5 and were convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for three months by the High Court. Having regard to the fact that the occurrence was of the year 1994, considering the other facts and circumstances of the case, the sentence of imprisonment imposed on Jage Ram (A-1), Madan (A-3) and Rakesh (A-4) is reduced to the period already undergone by them.

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20. The conviction of A-1 under Section 325 IPC, A-3 A
and A-4 under Section 323 IPC is confirmed and the sentence
is reduced to the period already undergone by each of them.
The conviction of second accused Rajbir @ Raju under Section
307 IPC is confirmed and the sentence of imprisonment of B
five years is reduced to the period already undergone and
additionally the second accused shall pay a compensation of
Rs.7,50,000/- to the injured witness-Sukhbir. Compensation
amount of Rs.5,00,000/- deposited in this Court by the 2nd
appellant shall be paid to the injured witness-Sukhbir. The C
second accused Rajbir @ Raju shall deposit the balance
compensation amount of Rs.2,50,000/- before the trial court
within three months from the date of this judgment and on
such deposit, the same shall also be paid to the injured witness-
Sukhbir. On failure to deposit the balance compensation, the D
second appellant Rajbir @ Raju shall undergo default sentence
of one year.

21. The appeal is allowed to the above said extent.
Second appellant Rajbir @ Raju is ordered to be released E
forthwith if not required in any other case. Bail bonds of
accused A1, A3 and A4 shall stand discharged.

Bibhuti Bhushan Bose

Appeal disposed of.