

SATBIR @ LAKHA
v.
STATE OF HARYANA
(Criminal Appeal No. 1718 of 2009)

OCTOBER 18, 2012

**[SWATANTER KUMAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

Penal Code, 1860 - ss. 307 and 324 r/w 34 - Attempt to murder - Voluntary causing hurt by dangerous weapon or means - Common intention - A-2 was responsible for collection and spending of the donation amount for celebration of the temple festival - Members of the complainant party who were also involved in the said celebration felt that entirety of the donation amount collected should be spent out and it should not go to the personal benefit of any one individual with whom the collection was entrusted - Quarrel ensued between the complainant party and the accused party led by A-2 which allegedly led to an armed assault by the accused party - Knife injuries caused to PW5-complainant and two others PWs 6 and 7 - Courts below acquitted A-3 but convicted A-1 u/s.307 and 324 and A-2 and A-4 u/ss. 307 and 324 r/w s.34 - Conviction of A-2 under challenge before Supreme Court - Held: Apparently appellant/A-2 was enraged by the questioning of his authority about the collection made and the balance amount available with him, and feeling insulted he threw a challenge to the complainant party which ended in the fateful occurrence - No fault in the action of injured witnesses in throwing brickbats which caused some minor injuries on the appellant/A-2 and the other accused - It is quite natural that when the injured witnesses were attacked and A-1 had come there with a knife by which he caused the injuries and the remaining accused other than A-3 aided him to cause such injuries which intention was

A gathered at the moment of the occurrence, the injured witnesses made every attempt to save themselves by throwing brickbats available on the road - On overall consideration of the evidence available on record- ocular as well as documentary, it is clear that the conviction of appellant/A-2
 B under ss.307, 324 r/w 34 was justified.

The appellant/A-2 and A-3 were in charge of the collection of donations for celebration of the religious/ temple festival 'Ravi Dass Jayanti'. After the celebration was over, members of the complainant party questioned
 C about the donation collected by the appellant/A-2 and A-3, the amounts spent for the celebration and demanded for spending the balance amount for the benefit of the temple.

D It is the case of the prosecution that the accused party was enraged by the same and subsequently, one evening, when PW-5(complainant), PWs 6 and 7 along with others were assembled in a tailor shop, the accused party led by the appellant/A-2 questioned the authority of
 E the complainant party in having raised an issue about the balance amount collected by way of donation; that thereafter quarrel ensued between the complainant party and the accused party and in the course thereof, A-1 inflicted knife injuries first on PW-5 and thereafter on PW-
 F 6 and PW-7 after their mobility was restricted by the other accused.

The trial Court acquitted A-3, however, as far as the other three accused, it held that on their part there was a pre-meditated intention in common to injure the members
 G of the complainant party with a weapon, and therefore convicted them - A-1 under Sections 307 and 324 IPC; and the appellant/A-2 and A-4 under Sections 307 and 324 r/w 34 IPC. In appeal, the conviction of A-1, appellant/A-2 and A-4 was confirmed by the High Court. The appellant/
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A-2 challenged his conviction before this Court by filing the instant appeal. A

Dismissing the appeal, the Court

HELD: 1. The trial Court rightly ventured to examine which party was the real aggressor in order to find out whether the fault lay on the appellant party or the complainants. While examining the said issue, the trial Court made an honest attempt and noted certain important features. No contra evidence or material was placed before the Court to take a different view than what was held by the trial Court. [Paras 12, 13 and 14] [685-B-C; 687-E-F] B C

2. Though it was claimed that the knife injury sustained by the appellant/A-2 was at the hands of PW6, it was for the appellant/A-2 to have led necessary evidence in support of the said claim. Except the ipse dixit of the appellant/A-2 throwing the blame on PW-6, there was nothing on record to support the said stand. On the other hand it has come out in evidence that the responsibility of collecting the donations was entrusted to the appellant/A-2 and the said stand of the prosecution was not in dispute. The happening of occurrence in question over the issue relating to collection of donation, the available balance of such collection and the suggestion of one of the members of the complaining party to use the said available balance amount for the benefit of the temple were never disputed. If that be so, when indisputably the appellant/A-2 was responsible for the collection and the spending of the donation amount for the temple celebrations, it was quite natural that the complainant and the accused party who were youngsters and who were stated to be fully involved in the celebrations of the Temple festival felt that entirety of the donation amount collected should be spent out and it should not go to the personal benefit of any one D E F G H

A individual with whom the collection was entrusted. Apparently the appellant/A-2 who was enraged by the questioning of his authority about the collection made and the balance amount available with him, felt insulted who apparently threw a challenge to the complaining
B party which unfortunately ended in the fateful occurrence of causing injuries on PWs-5,6 and 7 who had to ultimately face the wrath of the appellant/A-2 and his supporters. Apart from the simple knife injuries sustained by appellant/A-2 and A-4, the other injuries were
C admittedly by a blunt weapon which could have been caused by the throwing of the brickbats at the instance of injured witnesses which was also admitted. It is quite natural that when the injured witnesses were attacked and A-1 had come there with a knife by which he caused
D the injuries and the other accused other than A-3 aided him to cause such injuries which intention was gathered at the moment of the occurrence, the injured witnesses could have made every attempt to save themselves by throwing brickbats which would have been available on
E the road against the accused in order to save themselves from any further attack. Therefore, no fault can be found with the said action of the injured witnesses which would have caused some minor injuries on the appellant/A-2 and the other accused. [Para 15] [687-G-H; 688-A-H; 689-A]

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3. Taking an overall consideration of the evidence available on record both ocular as well as documentary, the reasoning of the trial Court as well as that of the High Court, it is clear that the conviction and sentence
G imposed on the appellant/A-2 for the offences under Sections 307, 324 read with Section 34 IPC was fully made out and there are no good grounds to interfere with the same. [Para 16] [689-B-C]

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1718 of 2009.

From the Judgment & Order dated 30.04.2009 of the High Court of Punjab and Haryana at Chandigarh in CrI. Appeal No. 488-SB of 1995. A

Rishi Malhotra for the Appellant.

Abhishek Kr. Singh, Anubha Agarwal, Kamal Mohan Gupta for the Respondent. B

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. The second accused is the appellant before us. The challenge is to the common judgment of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal Nos.488-SB/1995 and 580-SB/1995 dated 30.04.2009. By the impugned judgment, learned Single Judge of the High Court confirmed the conviction and sentence imposed on all the accused. The facts relating to the filing of this appeal, briefly stated, are that on 18.02.1992, Ravi Dass Jayanti was being celebrated in the village Saniana from donations collected from public. One Joginder Singh asked the appellant and Dalbir to spend the excess amount for the upkeep of the temple. At about 8 p.m. on that day, one Subhash s/o Nafe Singh (complainant), Jasbir Singh (PW-7), Kashmir Singh (PW-6), Joginder Singh and Surender Singh were present in the shop of one Kitab Singh, a tailor master. At that point of time, accused came to the spot and the appellant stated to have questioned Subhash (complainant) and others as to on what authority they were demanding for the accounts of the donation collections. When exchange of words took place between the complainant party and the accused party, the tailor Kitab Singh asked them not to indulge in such quarrel inside his shop and to get out of the shop. Thereafter all of them went out and came down to the public street and in the course of their continued quarrel, the first accused also by name Subhash s/o Ram Kumar stated to have inflicted a knife blow on the back of the complainant Subhash s/o Nafe Singh (PW-5) while Ram Das (A-4) caught hold of Kashmir Singh and H

- A Dalbir Singh (A-3) caught hold of one Joginder Singh. Accused No.1, Subhash s/o Ram Kumar stated to have inflicted knife injuries to Jasbir Singh and Kashmir Singh. The tailor master Kitab Singh, Surender Singh and Joginder Singh tried to pacify both the groups and in that process Surender Singh also stated to have suffered knife injuries.
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2. According to the complainant party, by way of private defence, they threw brickbats on the accused and that the accused stated to have fled away from the scene of occurrence. It was specifically alleged that two of the accused, namely, the appellant and Ram Das (A-4) also received injuries at the hands of Subhash s/o Ram Kumar (A-1) while he was giving knife blows to Jasbir Singh and Kashmir Singh PWs-6 and 7 respectively. The injured complainants stated to have gone to CHC Uklana in the vehicle belonging to one Baldev Singh where Subhash s/o Nafe Singh was admitted and given treatment while PWs-6 and 7, namely, Kashmir Singh and Jasbir Singh were referred to civil hospital, Hisar as the injuries sustained by them were serious injuries. Surender Singh stated to have gone to CHC Uklana, Saniana on the next day where he was also given treatment.
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3. On receipt of the memo from the hospital, the sub-Inspector L.R. Sharma, PW-9 recorded the statement of Subhash s/o Nafe Singh pursuant to which the case was registered under Sections 324, 323 read with Section 34 IPC. Subsequently, after the receipt of report from the G.H., Hisar of the injuries sustained by Kashmir Singh PW-6, which were noted as serious injuries and were dangerous to life, the offence under Section 307 IPC was also added. PW-9 stated to have recovered a knife from the possession of Subhash s/o Ram Kumar (A-1) based on his disclosure statement. Since the said knife was a spring actuated knife, a separate case under the Arms Act was also registered against him.
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4. Based on the investigation and after its conclusion the final report was lodged and a specific charge under section
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307, IPC was framed against the first accused Subhash s/o Ram Kumar and a charge under Section 307 read with Section 34 IPC was framed against the appellant Dalbir (A-3) and Ram Das (A-4). A charge under Section 323 IPC read with Section 34 IPC was made against all the accused persons. PW-1 was the doctor J.S. Bhatia who was examined to prove the X-ray report Exhibits PD and PE relating to PWs-6 and 7 Kashmir Singh and Jasbir Singh respectively. As per the said Exhibit, it was stated that air was found under the diaphragm of both the injured. PW-2 Dr. Sukhdev proved the MLRs Ex.PF and Exhibit PG of Subhash s/o Nafe Singh and Surender Singh respectively. He found one incised wound on the back of Subhash s/o Nafe Singh and two incised wounds near the chest and two simple injuries of blunt weapon on the person of Surender Singh. He also proved in cross-examination the MLRs Exhibit DA, of Satbir, Exhibit DE of Dalbir and also deposed about the injuries of Ram Das. He found one incised wound on the back of Satbir Singh and one incised wound on the back of Ram Das. Two injuries on the person of Satbir, two injuries on the person of Dalbir and one injury on the person of Ram Das were found to be simple injuries caused with blunt weapons. PW.3 Dr. C.R. Garg proved the MLRs Exhibit PL and Exhibit P.M. according to which five injuries caused with sharp edged weapon, one of which consisted of two incised wounds, were found on the person of Kashmir Singh and two incised wounds were found on the person of Jasbir Singh. Injury No.5 on the person of Kashmir Singh which consisted of two incised wound in the left axillary midline was declared to be dangerous to life.

5. PW-8 Ram Niwas was a Panch witness who confirmed Exhibit PS, the disclosure statement made by Subhash (A-1) about the concealment of knife and the recovery memo Exhibit PS/2 at his instance pursuant to which the knife was taken into possession. The recovery of knife Exhibit PS/2 based on the disclosure statement of Subhash was produced to support the case of the prosecution that A-1 caused the knife injuries on

A PW6 Jasbir. Exhibit PY and PY/1 were the reports of FSL and Serologist marked in the trial Court. In the 313 questioning, while the first accused denied his involvement in the offence, the other accused took up the defence that it was Kashmir Singh who gave knife blows to the appellant and Ram Das (A-4) while complainant-Subhash, Joginder Singh and Surrender threw brickbats at the accused while Jasbir Singh (PW-7) alleged to have caught hold of Ram Das A-4. The trial Court recorded that no evidence was led on the defence side.

C 6. The trial Court, on a detailed analysis of the entire evidence and after making a thorough discussion of the respective contentions made on behalf of the accused including that of the appellant found that no offence was made out as against Dalbir Singh (A-3) inasmuch as he did not effectively participate in the occurrence and the knife blows were inflicted by A-1 Subhash s/o Ram Kumar to the members of the complainant party. The trial Court also found that the allegation that Dalbir Singh (A-3) caught hold of Joginder to whom A-1 alleged to have inflicted the knife injuries was not proved inasmuch as no injury was found on the person of D Joginder Singh. The trial Court, therefore, acquitted Dalbir E Singh (A-3).

F 7. As far as others were concerned, the trial Court reached the conclusion that the accused party were the aggressors, that it was the appellant who was responsible for the aggression and that there was a pre-meditated intention in common to injure the complainant party with the weapon, such common intention was deliberately displayed in the course of committing the crime and, therefore, the accused No.1- Subhash s/o Ram Kumar, A-2, Satbir @ Lakha and Ram Das (A-4) were found G guilty of the offence alleged against them.

H 8. The trial Court, therefore, imposed the sentence of three years' rigorous imprisonment on the appellant and Ram Das (A-4) for the offence under Section 307 read with Section 34 IPC along with fine of Rs. 1000/- and also rigorous

imprisonment of 1 ½ years each for the offence under Section 324 read with Section 34 IPC. The sentences awarded to the accused under different sections were directed to run concurrently and in default of payment of fine each of the accused were to undergo further rigorous imprisonment for a period of three months each. As far as A-1 was concerned, he was imposed with a rigorous imprisonment for a period of four years along with fine of Rs. 1000/- under Section 307 IPC and rigorous imprisonment of two years for the offence under Section 324 IPC, in default of payment of fine he was to undergo default sentence of three months.

9. The appellant along with Ram Das preferred Criminal Appeal No.488-SB/1995 while A-1 Subhash s/o Ram Kumar preferred Criminal Appeal No. 580-SB/1995 and by the common order impugned in this appeal, the learned Single Judge of the High Court of Punjab & Haryana at Chandigarh confirmed the conviction and sentence imposed on the appellant as well as the other convicted accused persons. The appellant has come forward with this appeal against that order of the High Court.

10. We heard Mr. Rishi Malhotra, learned counsel for the appellant and learned counsel for the State. We also perused the judgment of the trial Court as well as the High Court and all other material papers placed before us. In the course of his submissions, counsel for the appellant contended that the injuries sustained by the appellant on his back which were three in number as proved by examination of the concerned doctor, and having regard to the nature of injuries sustained by him the theory of such injuries sustained by him at the hands of A-4 ought not have been accepted. It was contended that there was nothing in evidence to show that the appellant was aware of the possession of knife by A-1, that the role attributed to the appellant was holding of Jasbir Singh (PW-7) and that there was no clinching evidence to show that he shared the common intention with A-1 or other accused in the infliction of injuries

A on the complainant party. The learned counsel lastly contended that the appellant has suffered six months behind the bars and the imposition of three years sentence was on the higher side.

B 11. As against the above submissions, learned counsel for the State after referring to the evidence of PWs-5, 6 and 7 as well as that of the doctor (PW-3) who testified the medical report Exhibit PL of PW-6 Kashmir Singh which disclosed that the incised wound in the left axillary midline was declared to be a dangerous one to the life of PW-6 and the evidence which was elaborately led before the trial Court disclose that but for C the overt act of the appellant in having held PW-6, there would have been no scope for A-1 Subhash s/o Ram Kumar to have inflicted the said serious injury. The learned counsel contended that the conviction and sentence imposed on the appellant was well justified and the same does not call for interference.

D 12. Having heard learned counsel for the respective parties and having perused the judgments of the courts below we are also convinced and find force in the submission of learned counsel for the State. At the very outset, it will have to E be stated that the occurrence has happened on 18.02.1992/ 19.02.1992 was not disputed. It is also not in dispute that the appellant and Dalbir A-3 were in charge of the collection of donations for the celebrations of Ravi Dass Jayanti on 18.02.1992. There was an uncontroverted version of the F prosecution side that after the celebration was over, there was a suggestion to the appellant and other accused party to spend the balance amount for the benefit of the temple. It is the case of the prosecution that enraged by the questioning by the members of the complainant party about the donation collected G by the appellant and A-3, the amounts spent for the celebration and demand for spending the balance amount for the benefit of the temple, on the evening of 19.02.1992 at 8 p.m. when PWs-5, 6 and 7 along with others were assembled in the tailor shop of one Kitab Singh, the accused party led by the appellant H questioned the authority of the complainant party in having

raised an issue about the availability of the balance amount collected by way of donation. The said fact about the quarrel relating to the said issue is also not in dispute. The further fact relating to the injuries sustained in that occurrence both by the complainant party as well as the accused is also not in dispute. Therefore, the trial Court rightly ventured to examine to find out which party was the real aggressor in order to find out whether the fault lie on the appellants party or the complainants.

13. While examining the said issue, the trial Court made an honest attempt and noted certain important features namely:

- a) That PWs 5, 6 and 7 gave a detailed and convincing version of the prosecution story.
- b) Their version amply proved their presence as well as the presence of accused at the place of occurrence on 19.02.1992.
- c) As per the direction of the tailor Kitab Singh when both the groups came out of his shop to the street, A-1 Subhash s/o Ram Kumar wielded a knife and started inflicting injuries first on Subhash s/o Nafe Singh (PW-5) and thereafter on Kashmir Singh (PW-6) and Jasbir Singh (PW-7) whose mobility was restricted at the instance of the appellants and Ram Das (A-4).
- d) Though Dalbir Singh (A-3) stated to have held Joginder Singh no injury was found on the body of Joginder Singh.
- e) In the scuffle appellants and Ram Das (A-4) also received injuries at the hands of Subhash Singh s/o Ram Kumar (A-1).
- f) Admittedly the injured witnesses threw brickbats by way of self-defence against the accused.

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- A g) The medical evidence through Dr. C.R. Garg (PW-3) disclosed five incised wounds on the person of Kashmir Singh (PW-6) and two incised wounds on the person of Jasbir Singh (PW-7).
- B h) The injury No.5 on the person of Kashmir Singh PW-6 consisted of two incised wounds in the left axillary midline which was declared to be dangerous to life by PW-3, the doctor who examined him.
- C i) The X-ray examination of the injury sustained by Jasbir Singh (PW-7) as well as Kashmir Singh (PW-6) disclosed that air was found in the diaphragm of each of the injured as per the version of PW-1, Dr. J.S. Bhatia.
- D j) The causing of knife injuries on the person of PWs-5, 6 and 7 was at the instance of Subhash s/o Ram Kumar (A-1) and the appellant and that the injury in the body of Jasbir Singh was by virtue of the overt act of the appellant in having made him immobile which facilitated Subhash Singh s/o Ram Kumar (A-1) to inflict the injuries on him.
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- F k) Similar overt act was attributed to Ram Das (A-4) which caused severe injuries on Kashmir Singh (PW-6).
- l) The injury sustained by appellant and Ram Das was also at the instance of A-1 Subhash s/o of Ram Kumar only as stated by prosecution witnesses.
- G m) While the injuries sustained by PW-5 Subhash s/o Nafe Singh, PW-6 Kashmir Singh and PW-7 Jasbir Singh were severe, some of the injuries sustained by PWs-6-7 were proved to be serious in nature.
- H n) The injuries sustained by the accused party

including that of the appellant were minor in character. A

- o) The very fact that immediately after the aggression started the appellant and other accused namely, A-3 and A-4 caught hold of PWs-6, 7 and Surender Singh while A-1 Subhash s/o Ram Kumar inflicted the injuries on the witnesses made it clear that the common intention was formulated then and there to indulge in the crime, though there would not have been a pre-meditation or any conspiracy on the part of the accused. B C
- p) Having regard to the serious and dangerous injuries suffered by PW-6 Kashmir Singh, as well as the other injuries sustained by all the three of them namely, PWs-5 6 and 7, offence falling under Sections 307,323 and 324 IPC read with Section 34 IPC was made out. D

14. When we consider the above conclusion of the trial Court, which was also affirmed by the learned Judge of the High Court, we find that there was no contra evidence or material placed before the Court to take a different view than what has been held by the trial Court. Though in the 313 questioning on behalf of the appellant and other accused other than A-1, it was contended that Kashmir Singh (PW-6) only gave knife blows to the appellant and Ramdas (A-4) while Subhash s/o Nafe Singh (PW-5) and Joginder along with Surender threw brickbats and that Jasbir Singh (PW-7) caught hold of Ram Das (A-4), as rightly noted by the trial Court no evidence was led in support of the said stand. E F G

15. Though it was claimed that the knife injury sustained by the appellant was at the hands of Kashmir Singh, it was for the appellant to have led necessary evidence in support of the said claim. Except the ipse dixit of the appellant throwing the blame on PW-6 Kashmir Singh, there was nothing on record H

A to support the said stand. On the other hand it has come out in evidence that the responsibility of collecting the donations was entrusted to the appellant and the said stand of the prosecution was not in dispute. As stated earlier the happening of occurrence on 19.02.1992 at 8 p.m. over the issue relating to

B collection of donation, the available balance of such collection and the suggestion of one of the members of the complaining party to use the said available balance amount for the benefit of the temple were never disputed. If that be so, when indisputably the appellant was responsible for the collection and

C the spending of the donation amount for the temple celebrations, it was quite natural that the complainant and the accused party who were youngsters and who were stated to be fully involved in the celebrations of the Temple festival felt that entirety of the donation amount collected should be spent out and it should

D not go to the personal benefit of any one individual with whom the collection was entrusted. Apparently the appellant who was enraged by the questioning of his authority about the collection made and the balance amount available with him, felt insulted who apparently threw a challenge to the complaining party on

E 19.02.1992 at 8 p.m. which unfortunately ended in the fateful occurrence of causing injuries on PWs-5,6 and 7 who had to ultimately face the wrath of the appellant and his supporters. Apart from the simple knife injuries sustained by appellant and

F A-4 Ram Das, the other injuries were admittedly by a blunt weapon which could have been caused by the throwing of the brickbats at the instance of injured witnesses which was also admitted. It is quite natural that when the injured witnesses were attacked and A-1 had come there with a knife by which he caused the injuries and the other accused other than A-3 aided him to cause such injuries which intention was gathered at the

G moment of the occurrence, the injured witnesses could have made every attempt to save themselves by throwing brickbats which would have been available on the road against the accused in order to save themselves from any further attack. Therefore, no fault can be found with the said action of the

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injured witnesses which would have caused some minor injuries on the appellant and the other accused. A

16. Taking an overall consideration of the evidence available on record both ocular as well as documentary the reasoning of the trial Court as well as that of the High Court we are also convinced that the conviction and sentence imposed on the appellant for the offences under Sections 307, 324 read with Section 34 IPC was fully made out and we do not find any good grounds to interfere with the same. The appeal fails and the same is dismissed. B
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17. The appellant is on bail. The bail bond stands cancelled and he shall be taken into custody forthwith to serve out the remaining part of sentence, if any.

B.B.B.

Appeal dismissed. D