

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-675-SB of 2004

DATE OF DECISION: JULY 10, 2015

DALWINDER SINGH & ANOTHER ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ASHU KAUSHIK, ADVOCATE FOR THE APPELLANTS.
MRS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Dalwinder Singh and Baljit Singh have challenged the judgement passed by the trial Court wherein accused Dalwinder Singh was convicted under Section 326 IPC and sentenced to undergo 2½ years R.I. and to pay a fine of ₹1000/- and in default to undergo a further period of 9 months R.I. He was also convicted under Section 323 read with Section 149 IPC and sentenced to undergo 6 months R.I. and to pay a fine of ₹300/- and in default to undergo a further period of 2 months R.I. Accused Baljit Singh was convicted under Section 326 read with Section 149 IPC and sentenced to undergo 2½ years R.I. and to pay a fine of 1000/- and in default to undergo a further period of 9 months R.I. He was also convicted under Section 323 IPC and sentenced to undergo 6 months R.I. and to pay a fine of ₹300/- and in default to undergo a further period of 2 months R.I.

2. It is the brief case of the prosecution that on 5.7.2003 at 4.15 p.m. both the accused alongwith four other unknown persons came on three scooters and attacked PW1 Dalip Singh, PW2 Darshan Singh and PW3 Kulbir Singh and caused injuries.

3. PW1 Dalip Singh, PW2 Darshan Singh and PW3 Kulbir Singh had sustained injury in the occurrence. They have deposed that accused Dalwinder Singh got registered a case against PW2 Darshan Singh for the offence under Section 377 IPC in the Police Sation Sadar Ferozepur. In connection therewith, PW1, PW2 and PW3 attended the Court on 5.7.2003 and were returning towards their village Sher Khan on Bajaj Chetak scooter. Accused Dalwinder Singh and Baljit Singh alongwith four other persons came on three scooters at 4.15 p.m. on the said day. Accused Dalwinder Singh attacked PW1 Dalip Singh on his right shoulder with a kappa. Accused Baljit Singh attacked PW1 Dalip Singh on his left arm with an iron pipe. He also attacked PW3 Kulbir Singh on his head with the iron rod. Two other unknown persons also attacked Kulbir Singh and caused injury. Dalwinder Singh also fired gun shot aiming Darshan Singh, but he did not sustain any injury.

4. PW4 Dr.Rajinder Manchanda, Medical Officer, Civil Hospital, Ferozepur, medico-legally examined PW1 Dalip Singh, PW2 Darshan Singh and PW3 Kulbir Singh and issued medical reports. On examination of Dalip Singh, he noted down an incised wound on the right forearm and another incised wound on the anterior side of right thigh. There was also a swelling found on the posterior side of left arm. The first injury found on

the right forearm of Dalip Singh was certified as grievous in nature. The other two injuries were certified by him as simple in nature. PW4 found a swelling on the right parietal region, a reddish contusion on the posterior of right forearm and a swelling on the right shoulder of PW2 Darshan Singh. All the three injuries were certified by him as simple in nature. He also examined PW3 Kulbir Singh and found a lacerated wound on the occipital region of the scalp. There was a reddish contusion on his left shoulder and a lacerated wound on the anterior side of the left chest. All the above three injuries also were certified by him as simple in nature.

5. In the statement under Section 313 Cr.P.C., accused Dalwinder Singh set up a plea of alibi alleging that he remained present on duty between 9.00 a.m. to 5.00 p.m. on the day of occurrence. He also submitted that a case under Section 377 IPC was registered as against Darshan Singh. With an intention to pressurize him to effect compromise, a false case was planted on him.

6. Baljit Singh has stated in his statement under Section 313 Cr.P.C. that he was falsely implicated as he was a witness in the case against Darshan Singh.

7. DW1 Santokh Singh, Junior Engineer attached to Punjab State Electricity Board, Zira was examined on the side of the defence. He spoke to the fact that accused Dalwinder Singh remained in the office on 5.7.2003 between 8.00 a.m. to 5.00 p.m.

8. The trial Court having adverted to the evidence on record came to the conclusion that the prosecution has established the above charges

beyond reasonable doubt and convicted the accused-appellants as stated supra.

9. The case of the prosecution is based on ocular testimony. PW1 Dalip Singh, PW2 Darshan Singh and PW3 Kulbir Singh are the injured witnesses in this case. Various injuries sustained by them were spoken to by PW4 Dr.Rajinder Manchanda. In fact, the injury sustained by PW1 Dalip Singh on his right forearm was found to be a grievous one. The testimony of the injured witnesses cannot be ignored by the Court of Law. Even if there is no corroboration, the very fact that they have sustained injury in the occurrence would establish that they had been present at the scene of occurrence and received injuries as spoken to by them. The medical evidence completely corroborates the evidence of the injured witnesses.

10. Learned counsel appearing for the appellant would submit that there had been a delay of 7 hours in lodging the first information report. *Per contra*, learned Addl.A.G., Punjab would submit that such a delay does not loom large as there was no scope for fabrication of the case by the first informant.

11. It is found that the eye witnesses PW1 to PW3 who sustained multiple injuries in the occurrence had been taking treatment in the hospital. Therefore, there had been some delay in lodging the first information report. Even otherwise, it is found that PW1, the first informant in this case could not give the details of other four accused in the first information report. The above fact would establish that there was no fabrication as regards sequence of events in the first information report. It is a well settled proposition of

law that every delay in lodging the first information report would not create a doubt in the case of the prosecution. Inasmuch as the first information report lodged by the injured witness who was hospitalized did not provide any scope for fabrication, the delay of 7 hours in lodging the first information report pales into insignificance.

12. Of course, there had been some motive between the parties, inasmuch as PW2 Darshan Singh, the son of PW1 Dalip Singh was booked under Section 377 IPC at the instance of the 1st accused Dalwinder Singh. Motive is a double edged weapon. Further, just because there had been a motive, one cannot jump to a conclusion that the present case was foisted on the accused, more especially when PW1 to PW3 have sustained injury in the occurrence. At any rate, the accused could have attacked Darshan Singh, his father Dalip Singh and Kulbir Singh who accompanied them, as Darshan Singh had allegedly committed an unnatural offence which prompted accused Dalwinder Singh to lodge a complaint against Darshan Singh. But, at any rate, fabrication of a false case due to motive, in the above facts and circumstances, is ruled out.

13. Learned counsel appearing for the appellant would vehemently submit that there was no proof of using any pistol in the occurrence, inasmuch as neither the pistol nor empty cartridges were recovered from the scene of occurrence. It is also submitted by him that the first information report does not give any details of four other accused and therefore, the accused cannot be charged with the aid of Section 149 IPC.

14. It is true that there was no recovery of pistol or empty

cartridges from the scene of crime by the investigating official. The fact remains that nobody had sustained any fire arm injury. Therefore, the investigating official would not have thought of recovering the pistol and empty cartridges. But, at any rate, to complete the sequence of events, as spoken to by the injured ocular witnesses, the investigating official should have recovered the pistol and empty cartridges. He should have also taken necessary efforts to arrest the other four unnamed accused as two of them also had attacked PW3 Kulbir Singh and caused injury. There is, of course, a lapse in the investigation committed by the investigating officer. At any rate, non-recovery of pistol or empty cartridges or lack of investigation as regards the involvement of four other accused does not mitigate the charges framed as against the present accused who actually caused injury and committed the offence.

15. Learned counsel appearing for the appellants would submit that the evidence of DW1 who supported the defence of alibi set up by accused Dalwinder Singh was not seriously considered by the trial Court. On scanning the evidence of DW1, I find that his testimony does not rule out the presence and participation of accused Dalwinder Singh in the crime. DW1 has deposed that it was Saturday, but he alongwith the accused Dalwinder Singh were on duty. It is to be noted that Dalwinder Singh was on field duty as per the evidence of DW1. An employee cannot perform his field duty in the office. Further, it is the admission of DW1 that it cannot be made out from the attendance register that a particular employee remained present in the office from morning till evening. The occurrence had taken

place at 4.15 p.m. The presence of Dalwinder Singh at scene of crime was spoken to by the injured witnesses. There is also possibility for accused Dalwinder Singh to be on field duty away from the office that too on a Saturday which was a holiday and would have taken time off to make himself present at the scene of crime to commit the offence. Therefore, the defence of alibi set up by accused Dalwinder Singh through DW1 does not appeal to reason.

16. It is true that only two accused had faced the trial Court as they alone had been named in the first information report by PW1. The fact remains that PW1 to PW3, the injured witnesses have testified that totally 6 persons who came on three scooters assembled at the scene of crime and 4 out of 6 persons including the accused herein attacked PW1 to PW3 and caused injuries. As more than 5 persons were involved in the occurrence, in my considered view, the trial Court has rightly charged and convicted these accused with the aid of Section 149 IPC.

17. In the above facts and circumstances, I find that the trial Court has rightly convicted accused Dalwinder Singh for the offence under Section 326 and 323 read with Section 149 IPC and accused Baljit Singh for the offence under Section 326 read with Section 149 IPC and Section 323 IPC.

18. Learned counsel appearing for the appellants would lastly submit that considering the fact that the appellants has faced the ordeal of trial for the past 12 years, some leniency may be shown in the matter of sentence. I find that there is some substance in the above statement made by the counsel for the appellants.

19. Therefore, accused Dalwinder Singh is sentenced to undergo 1 year R.I. for the offence under Section 326 IPC and is directed to pay a fine of ₹500/- and in default to undergo a further period of 1 month R.I. He is also sentenced to undergo 3 months R.I. for the offence under Section 323 read with Section 149 IPC and to pay a fine of ₹300/- and in default to undergo a further period of 15 days R.I. Accused Baljit Singh is sentenced to undergo 1 year R.I. for the offence under Section 326 read with Section 149 IPC and to pay a fine of ₹500/- and in default to undergo a further period of 1 month R.I. He is also sentenced to undergo 3 months R.I. for the offence under Section 323 IPC and is ordered to pay a fine of ₹300/- and in default to undergo a further period of 15 days R.I. The substantial sentences imposed on the accused shall run concurrently.

20. Confirming the conviction imposed by the trial Court and modifying the sentence as detailed above, the appeal stands dismissed.

21. The accused-appellants are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Ferozepur who shall send them to jail to undergo the remaining part of their sentence. If the accused-appellants fail to surrender, the learned Chief Judicial Magistrate, Ferozepur shall take coercive steps to secure their presence.

July 10, 2015
Gulati

(M. JEYAPPAUL)
JUDGE