

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-757-SB of 2004.
Date of Decision: May 06, 2015.**

KASHMIR SINGH AND ANOTHER APPELLANTS.

VERSUS

THE STATE OF PUNJAB RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Damanjit Sandhu, Advocate for the appellants.

 Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

SNEH PRASHAR, J.

1. This is an appeal preferred by appellants Kashmir Singh and Gurdev Singh @ Deba, assailing the judgment of conviction and order of sentence dated 22.03.2004 recorded by learned Additional Sessions Judge (Fast Track Court), Gurdaspur, in case bearing First Information Report No.72 dated 10.08.2000 under Sections 307, 326, 427, 447, 148 and 149 of the Indian Penal Code (for short "I.P.C.") registered at Police Station Civil Line Batala (City Batala).

2. Precisely, the story presented by the prosecution was that on 10.08.2000 Daljit Singh son of Nau Nihal Singh reported to Sub Inspector

Manmohan Singh of Police Station Civil Line Batala that he and his brother Paramjit Singh had purchased two plots in Guru Nanak Colony, Batala from Dharamveer Seth. They were in possession of the plots and the land of Kashmir Singh son of Kartar Singh, resident of Guru Nanak Colony Batala adjoined backside of the plots. On 09.08.2000 at about 6 p.m., he was telephonically informed by some person that Kashmir Singh and his brothers alongwith some other persons were getting foundation dug in his plot. He, taking Davinderpal Singh and Gurmit Singh with him, went to his plot and found Kashmir Singh, Deba, Gurdial Singh @ Nindi, Gurmukh Singh @ Mukhi, Bhupinder Singh @ Bhinda and Kirtan Singh raising construction on his plot. When he raised objection, they got enraged and on an alarm given by Kashmir Singh and Bhupinder Singh to teach them (complainant party) a lesson, Kashmir Singh and his co-accomplices attacked on them with '**Datar**' and '**Dang**' etc. and caused injuries to them. The shouts attracted Harjinder Singh son of Darshan Singh and Kartar Singh son of Swaran Singh to the spot. Seeing them, the assailants fled away with their respective weapons. While leaving they took away the 12 bore DBBL licenced gun and cordless set of Davinderpal Singh.

The motive stated by the complainant was that Kashmir Singh etc. wanted to encroach upon his plot and on resistance by him, they connived and caused injuries to him and his companions and inflicted an injury on the head of Davinderpal Singh with an intention to kill him.

3. Based on the statement of the complainant, a formal First Information Report was recorded and investigation commenced. The 12 bore licenced gun was recovered from the possession of Gurdev Singh @ Deba. All the accused were arrested, challaned and sent to the court for trial.

Appellants Kashmir Singh and Gurdev Singh as well as the other accused were charge-sheeted for commission of offence under Sections 148, 307, 326, 323, 324, 427, 447 and 379 read with Section 149 I.P.C.

4. To substantiate its charges, the prosecution examined PW1 Gurmit Singh, PW2 Davinderpal Singh, PW3 Balwinder Singh, Inspector-Investigating Officer, PW4 Sub Inspector Manmohan Singh, SHO and PW5 Dr. Jagdev Singh.

After closure of evidence of the prosecution, statement of the appellants under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded. The evidence incriminating against them on record was put to them to which they replied in negative and pleaded false implication. They examined DW1 Tarsem Lal Goel, Senior Assistant of the Office of Raj Bhawan, Chandigarh in their defence.

5. Considering the submissions made by learned Public Prosecutor and the counsel representing the accused and the evidence available on record, learned trial Court held appellant Kashmir Singh guilty for commission of offence under Section 324 I.P.C. and appellant Gurdev Singh @ Deba guilty for commission of offence under Sections

324 and 379 I.P.C. and convicted them thereunder. The sentence awarded to them is as follows:-

“Kashmir Singh was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for commission of offence under Section 324 I.P.C. In default of payment of fine to further undergo RI for 15 days.

Gurdev Singh @ Deba was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for commission of offence under Section 324 I.P.C. In default of payment of fine to further undergo RI for 15 days.

Gurdev Singh @ Deba was also sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for commission of offence under Section 324 I.P.C. In default of payment of fine to further undergo RI for 15 days.

All the substantive sentences shall run concurrently.”

Co-accused of the appellants, namely, Bhupinder Singh, Kirtan Singh and Gurmukh Singh were acquitted of all charges levelled against them. It was held that commission of offence under Sections 307, 326, 148/149, 447 and 427 I.P.C. could not be proved against the appellants and accordingly they were acquitted under the said sections.

The judgment of trial court to the aforesaid effect was not challenged by the prosecution.

6. Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 22.03.2004 passed by learned trial court, the appellants preferred the instant appeal.

7. The submissions made by Mr. Damanjit Sandhu, learned counsel representing the appellants and Mr. Ashish Sanghi, Deputy Advocate General for the State of Punjab have been heard.

8. At the very outset, learned counsel for the appellants argued that the motive behind the occurrence, as stated by the complainant in the First Information Report, was that the appellants wanted to encroach upon his plot, which was adjoining to their land, by raising construction and when he resisted their action, they in connivance with each other caused injuries to him (complainant) and his companions. However, the prosecution led no evidence to prove that the complainant and his brothers were owners of any plot adjoining to the land of the appellants. It was also not proved that the appellants had started raising construction on their land during the course of which they intended to encroach upon the plot of the complainant. There being no substantive evidence to prove the motive, the ocular testimony of Gurmit Singh PW1 and injured Davinderpal Singh PW2 does not deserve to be relied upon.

Learned counsel further contended that the only evidence on which the prosecution could rely upon was the statement of PW1 Gurmit Singh and PW2 Davinderpal Singh. No independent public witness was examined to corroborate their version. There were also material discrepancies in their statements which rendered them suspicious and unreliable.

9. Another argument raised by learned counsel for the appellants was that there was unexplained delay in lodging of the First

Information Report which was fatal to the prosecution case especially because complainant Daljit Singh was not examined.

10. PW1 Gurmit Singh and PW2 Davinderpal Singh were both injured/eyewitnesses of the occurrence. The First Information Report may have been lodged by Daljit Singh because it could be recorded on the statement of one injured/eyewitness, but the other persons who suffered injuries during the occurrence were also to be considered as complainants in their individual capacity. Their statements during investigation had been recorded and narrating the occurrence they had stated the names of the assailants at whose hands they had suffered injuries. As such, non examination of Daljit Singh had no adverse bearing on the deposition of PW1 Gurmit Singh and PW2 Davinderpal Singh, who both were injured during the occurrence and at the time of trial they appeared and made deposition corroborating the allegations of the prosecution. Non-examination of Daljit Singh was beyond the control of the prosecution as he had expired. For that reason also his absence was immaterial.

11. A scrutiny of the statements of PW1 and PW2 indicates that they consistently deposed that appellant Kashmir Singh inflicted a '**Datar**' blow on the left shoulder of Davinderpal Singh and Gurdev Singh @ Deba gave a '**Datar**' blow on the left hand of Davinderpal Singh. It was also stated by them that Kashmir Singh inflicted '**Datar**' blow on the arm of Gurmit Singh. Since all the injuries stated by PW1 and PW2 were proved to have been caused with a sharp edged weapon but were simple in nature as established by medical evidence, the appellants were convicted

for commission of offence under Section 324 I.P.C. PW5 Dr. Jagdev Singh, Medical Officer, Civil Hospital, Batala, who medico legally examined Gurmit Singh PW1, Davinderpal Singh PW2 and Daljit Singh son of Nau Nihal on their arrival in the hospital on the day of occurrence itself, proved their medico legal reports prepared by him i.e. Ex.PW5/E, Ex.PW5/B and Ex.PW5/C respectively.

12. On his appearance in the witness box PW1, Gurmit Singh gave a detailed narration of the occurrence. He stated that he was informed by Daljit Singh that his plot situated at Guru Nanak Colony was being encroached upon by some persons. Accompanied by Daljit Singh and Davinderpal Singh, he reached the spot and found that Kashmir Singh etc. were filling foundation in his plot. Giving particulars of the injuries suffered by him and Davinder Pal Singh at the hands of the appellants he testified that they were rescued by Harender Singh and Kartar Singh and that while leaving the spot Deba had taken away the 12 bore gun and the mobile phone of Davinderpal Singh. PW2 Davinderpal Singh corroborated the version of PW1 Gurmit Singh on all material particulars. No inconsistency on any major aspect of the case could be pointed out by learned counsel for the appellants in the deposition of PW1 and PW2. As already mentioned above, statements stood corroborated by medical evidence.

No other public witness may have been examined by the prosecution but for that there was no reason to disbelieve the injured/eyewitnesses. It is commonly seen that people from general public

hesitate in becoming witness in the incidents of violence especially when two rival parties of the same village/vicinity are involved. The unequivocal testimony of PW1 and PW2 was sufficient for basing conviction of the appellants.

13. As far as delay in lodging of the First Information Report is concerned, admittedly after the occurrence the injured were taken to Civil Hospital, Batala on the same day. PW4 Sub Inspector Manmohan Singh stated that on receipt of information he went to Civil Hospital, Batala and gave application to the doctor to know about the fitness of the injured. Doctor opined that they were unfit for making statement. On the next day i.e. 10.08.2000 after the doctor opined that the injured were fit for making statement, the statement of injured Daljit Singh Ex.PA was recorded and on the basis of the same formal First Information Report Ex.PA/3 was registered. In that manner, the delay of one day was sufficiently explained by the prosecution.

14. The 12 bore DBBL gun of PW2 Davinderpal Singh was recovered from the possession of Gurdev Singh @ Deba as was proved by PW3 Inspector Balwinder Singh. Since it was a licenced gun, recovery of the same could not be manipulated.

15. Although PW5 Dr. Jagdev Singh stated that injury No.6 on the person of Daljit Singh caused with a sharp edged weapon was grievous in nature but as the X-ray report on which his opinion was based was not proved by the prosecution, it was rightly held by learned trial court that commission of offence under Section 326 I.P.C. is not proved

and the appellants were convicted only under Section 324 I.P.C.

16. The sentence awarded to the appellants, as indicated above, is adequate and calls for no intervention.

Accordingly, the judgment of conviction and order on sentence dated 22.03.2004, are maintained. The appellants are on bail, their bail bonds, shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Gurdaspur shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

May 06, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.