

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-950-SB of 2004
Date of Decision : 01.12.2015**

Brij Lal and others

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.N.L.Sammi, Advocate
Learned counsel for the appellant.

Mr.Ajaib Singh, Addl.AG, Punjab.

- 1. Whether Reporters of Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 08.04.2004, vide which all the appellants have been held guilty and convicted for the offences punishable under Sections 326, 325 read with Section 34 of Indian Penal Code (hereafter called the 'IPC') and the order on quantum of sentence of the even dated vide which all the appellants have been sentenced as under:-

Name of the Convict	Under Section	R.I	Fine	In default
Brij Lal	326 IPC	3 years	Rs.1000/-	Six months
	325/34 IPC	2 years	Rs.500/-	Three months

Name of the Convict	Under Section	R.I	Fine	In default
Gulab Ram	326/34 IPC	3 years	Rs.1000/-	Six months
	325 IPC	2 years	Rs.500/-	Three months

Name of the Convict	Under Section	R.I	Fine	In default
Sahib Ram	326/34 IPC	3 years	Rs.1000/-	Six months
	325/34 IPC	2 years	Rs.500/-	Three months

2. The brief facts giving rise to this prosecution are that on the night intervening 22/23.04.2002, at about 12.30 a.m, injured-complainant Ajay Kumar along with his younger brother Sandeep Kumar and his maternal uncle Bharat Singh had gone to take a round of their fields. When they reached near 'kotha' constructed in their fields, the present appellants along with their co-accused Prem Kumar, Dhing Raj, Surinder, Krishan Kumar, Sanjay Kumar and Manoj Kumar (since acquitted) came there on a jeep and tractor armed with weapons. Appellant Brij Lal was armed with 'sword'. Appellant Sahib Ram was armed with a pistol. Appellant Gulab Ram was armed with 'gandasi'. Their co-accused were also having the weapons like 'gandasi' 'sword' and 'dang' (lathi). All the accused were identified due moonlit night. Appellant Sahib Singh raised 'lalkara' that Ajay Kumar should be done to death as the disputed land is

their ancestral land. At this, appellant Brij Lal gave a 'sword' blow on his person, which landed on the right elbow of complainant Ajay Kumar. Gulab Ram gave a 'gandasa' blow from the reverse side on the right palm of the complainant. The complainant raised alarm. Bharat Singh and Sandeep Kumar tried to intervene. In the meantime, the complainant ran away from the spot. His brother Sandeep Kumar and his maternal uncle Bharat Singh also followed him out of fear. At this, Sahib Singh fired a shot from his pistol and they managed to take shelter in their house at village Panjkosi. Thereafter, complainant-injured Ajay Kumar was shifted to Civil Hospital, Abohar after arranging the vehicle where he was medico legally examined. The motive for the occurrence was stated that Bua (Father's sister) of the mother of complainant had executed a Will of her land in his favour and he was in cultivating possession of the said land. He was also the power of attorney of the said lady in her lifetime. Appellant Brij Lal etc. were asserting their claim on the said land and they wanted to take the possession thereof from the complainant. On receiving the information concerning the admission of Ajay Kumar in injured condition in the Hospital, ASI Surinder Kumar rushed to the hospital and after obtaining opinion of the doctor recorded the statement of Ajay Kumar Ex.PB. On the basis of which

the formal FIR Ex.PJ was recorded and the investigation started.

3. The Investigating Officer inspected the spot and prepared the rough site plan of the occurrence Ex.PF. Appellants were arrested and the weapons of offence were recovered and on completion of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

4. The case was committed to the Court of Sessions for trial by the learned Judicial Magistrate Ist Class, Abohar, vide order dated 16.01.2003.

5. The accused-appellants and their co-accused since acquitted were charge sheeted for the offences punishable under Sections 148, 307, 326, 325, 149 IPC, to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as seven witnesses.

7. When examined under Section 313 Cr.P.C, the accused-appellants pleaded their innocence and false implication. Appellant Sahib Singh further pleaded that he has got registered a case under Section 452, 323, 506/34 IPC against complainant Ajay Kumar and others. However, the accused-appellants did not lead any evidence in their defence.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the appellants for the offences punishable under Section 326, 325 read with Section 34 IPC and was sentenced as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mr.N.L.Sammi, Advocate, learned counsel for the appellants, Mr.Ajaib Singh, learned Additional Advocate General, for the State of Punjab and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the occurrence is alleged to have taken place in the night intervening 22/23.04.2002, at about 01.00 a.m. But, the report has been lodged with the police on the next morning at 10.00 a.m. So, there is delay of 10 hours in lodging the FIR. It is alleged that the information was given to Rai Singh, Sarpanch of the village. But, he has not been examined. He further contended that the telephone facility was available in the village as well as in the house of the complainant. The police could have been informed even telephonically. Thus, he pleaded that the

delay in lodging the FIR has been utilized to concoct the prosecution story and to involve nine members of the family just for two injuries.

12. He further contended that learned trial Court has itself disbelieved the prosecution version regarding the involvement of nine persons. Only the appellants have been convicted and their six co-accused have been acquitted. It shows that the false version has been projected by the prosecution and the entire prosecution version was liable to be rejected. The appellants were also entitled to the same concession as enlarged to their co-accused.

13. He further contended that the prosecution story is also improbable. The occurrence is alleged to have taken place in mid night. There was no occasion/ purpose for the complainant and the prosecution witnesses to visit the fields at that hours of the night. Bharat Singh, who has been shown as a witness of occurrence, is maternal uncle of the complainant and was residing in some other village in the State of Haryana. The presence of Sandeep Kumar and Bharat Singh is extremely doubtful as if they would have been present, they would also have suffered the injuries at the hands of accused.

14. He further contended that no blood stained earth has been found at the spot. The version of the prosecution

that Sahib Singh has fired the shot has been disbelieved by the learned trial Court. In-fact, the entire occurrence is doubtful. Even, as per the version of the prosecution only 'lalkara' has been attributed to appellant Sahib Ram. It is alleged that he was armed with a pistol. If, that would have been so, he must have give the fire arm injury to the complainant. Sahib Ram has only been implicated as he has got registered a criminal case against the complainant and his associates, which was pending trial in the Court.

15. He further contended that PW-1 Dr. Neerja Gupta, Medical Officer, Civil Hospital, Abohar has categorically stated that possibility of the injuries cannot be ruled out as a result of fall from the scooter. Thus, he contended that the complainant had suffered the injuries as a result of fall from the scooter and due to enmity and land dispute, the false case has been got registered against the appellants and their co-accused.

16. In the alternative, he contended that the injuries suffered by complainant Ajay Kumar were on the non vital parts of the body. He has suffered only two injuries. One injury has been attributed to appellant Brij Lal and the other injury has been attributed to appellant Gulab Ram. The sentence awarded to them is very harsh. More than 13 years have passed since the date of occurrence. So, their

sentence should be reduced to the imprisonment already undergone by them.

17. On the other hand, learned State counsel contended that from the consistent statement of injured-complainant Ajay Kumar and PW-3 Sandeep Kumar, the witness of occurrence, it comes out that grievous injuries were caused on the person of complainant by appellants Brij Lal and Gulab Ram. Appellant Sahib Ram has given the 'lalkara' and extorted his co-accused to open the assault. He was armed with a pistol. All the appellants were having the strong motive for the commission of the offence as Smt. Chand Kaur (sister-in-law) of the accused had executed the Will in favour of the complainant with respect to her land. The appellants were laying the claim over that land. The civil and criminal litigation between them was pending. Thus, he contended that conviction of the appellants has been rightly recorded by the learned trial Court.

18. I have duly considered the aforesaid contentions.

19. As per the prosecution version, the occurrence has taken place on the night intervening 22/23.04.2002, at about 12.30 a.m. The statement of complainant Ex.PB has been recorded by ASI Surinder Kumar at 10.00 a.m on 23.04.2002 and the FIR has been registered at 11.00 a.m on same day. So, there is some delay in lodging the FIR. But,

the delay in lodging the FIR is almost explained. The occurrence has taken place in the dead hours of the night. Due to fear, injured complainant Ajay Kumar and the eye witness of the occurrence had fled away and reached their house. After arranging the vehicles they went to Civil Hospital, Abohar for treatment. This fact has not been disputed that the Government Hospital was also available in Village Panjkosi itself. But, it is evident from the medical evidence that complainant has suffered two serious injuries and due to that reason the complainant and his family members might have decided to shift him to Civil Hospital, Abohar for better treatment and the management. To seek the treatment is the foremost concern of the injured and his family members. It is not expected that bearing the pain of the injuries, the complainant and his family members would have indulged in the legal technicalities then to approach the hospital for getting relief. Moreover, if the case is based on cogent, consistent and reliable evidence, the delay in lodging the FIR is immaterial. At the most, in the cases where there is delay in lodging the FIR, the Court is required to scrutinize the prosecution evidence carefully and consciously. The delay itself can not be a ground to outrightly reject the prosecution case.

20. PW-2 Ajay Kumar has categorically deposed that

appellant Brij Lal gave 'sword' blow from the sharp side below his right elbow as he has raised hand to ward off the attack. Then, appellant Gulab Ram gave the 'gandasi' blow from the reverse side on the right palm of the complainant. This version of the complainant is also fully corroborated from the testimony of PW-3 Sandeep Kumar. This ocular evidence is also corroborated from the medical evidence. PW-4 Dr. Harkirat Singh Sandhu, Medical Specialist, Civil Hospital, Abohar has medico legally examined injured Ajay Kumar and proved medico-legal report Ex.PC and found the following injuries:-

1. An incised wound 3.5 cm X 1 cm on right forearm on dorsal aspect upper portion. Fresh clotted blood was present and advised x-ray.
2. Tenderness present on the right palm of the right hand. Advised x-ray.

After receipt of the x-ray report Ex.PA, the injuries were declared as grievous. It appears that on the basis of some orders passed by learned Judicial Magistrate, re-medico legal examination of the complainant was conducted on 26.06.2002. PW-7 Dr. K.K.Aggarwal, Associate Professor, Forensic Medicine GGS, Medical College, Faridkot along with Dr.A.S.Thind, Associate Professor and Navkaran Kaur, Associate Professor as members of the Medical Board constituted by the Principal of the GGS, Medical College,

Faridkot has carried out the re-medical examination of the complainant. They also find the same injuries on the person of complainant Ajay Kumar as reported by PW-1 Dr. Harkirat Singh Sandhu, in the initial medico legal examination. From the statement of Dr. Neerja Gupta, it comes out that complainant Ajay Kumar has suffered the fracture of the forth metacarpal bone of right hand. He also suffered the fracture of right ulna bone. The report of Dr. Neerja Gupta to this effect is Ex.PA. These fractures have also been confirmed on the basis of x-ray report Ex.PK obtained by the Medical Board. Dr. K.K.Aggarwal has also proved the report Ex.PL vide which injuries no.1 and 2 on the person of complainant Ajay Kumar were declared as grievous. Thus, the ocular evidence adduced by the prosecution is fully corroborated from the medical evidence.

21. There is nothing to doubt the presence of the prosecution witnesses. Bharat Singh is the maternal uncle of complainant Ajay Kumar. Complainant has stated that he had come to their house at village Panjkosi 3-4 days prior to the occurrence and stayed with them till a day after the occurrence. PW-3 Sandeep Kumar is the real younger brother of the complainant. It is quite natural that if complainant was going to visit the field in the night, PW-3 Sandeep Kumar and Bharat Singh might had accompanied

him. Mere this fact that no injury has been caused to them is no ground to render their presence doubtful. Particularly when the complainant has categorically stated that after suffering injuries at the hands of appellants Brij Lal and Gulab Ram, he fled away from the spot and both the witnesses also followed him out of fear. In those circumstances, there was no occasion for the accused to inflict injuries to PW-3 Sandeep Kumar and Bharat Singh.

22. There is nothing unnatural in the conduct of the complainant to visit his fields in the night. He has categorically stated that he has gone to the fields along with his brother Sandeep Kumr and maternal uncle Bharat Singh for a round. The occurrence has taken place in the month of April, 2002, which is the harvesting season. Thus, it can not be stated that the appellant had no purpose or occasion to visit or have round of fields in the night time.

23. PW-6 ASI Surinder Kumar, the Investigating Officer of the case has not been questioned by the learned defence counsel in the cross examination about the blood stained earth available at the spot. Moreover, the non lifting of the blood stained earth from the spot may be a lapse on the part of the Investigating Officer. These type of lapses is no ground to render the substantive evidence on the point of occurrence doubtful. As already mentioned PW-2 Ajay

Kumar injured has deposed in detail about the injuries inflicted to him by appellants Brij Lal and Gulab Ram. PW-2 Ajay Kumar is an injured witness. The presence of injuries on his person adds to the evidentiary value of his testimony. He being stamped witness, his presence at the spot can not be doubted at all. His oral testimony is fully corroborated from the medical evidence. The statement of complainant is also corroborated by PW-3 Sandeep Kumar, the witness of occurrence. In view of the above substantive evidence available on record, the absence of blood stained earth is no ground to create any dent in the prosecution case.

24. The motive for the occurrence is also established. Complainant Ajay Kumar has deposed that Chand Kaur, the Bua of his mother has executed Will of her land in his favour. He was also power of attorney of the Bua of his mother and was cultivating the land since her lifetime. Accused were claiming the said land to be their ancestral land. Accused Brij Lal, Sahib Ram and Gulab Ram were the brothers-in-law (Devar) of Bua of his mother. He has also deposed that earlier also they had picked up a quarrel with them in the same field. The criminal and civil cases qua the aforesaid quarrel was pending between them at Abohar.

25. PW-1 Dr. Neerja Gupta has only expressed the possible opinion that such fractures can be the result of fall

from scooter. Which cannot be said to be certain or definite as it is only a opinion. Moreover, PW-7 Dr. K.K.Aggarwal, a forensic medicine expert, has categorically stated that both the injuries on the person of injured cannot be said to be possible due to fall, injury no.2 alone can be possible due to fall. Thus, there is no reason to disbelieve the prosecution version qua the injuries attributed to appellants Brij Lal and Gulab Ram.

26. No doubt, total nine persons were sent up for trial. Learned trial Court has acquitted six accused. Only the three appellants have been convicted. Learned trial Court has also disbelieved the version of the prosecution about the firing of shot by appellants Sahib Ram when the complainant and the witnesses were fleeing away from the spot. Mere this fact that evidence adduced by the prosecution has not been found sufficient to show the involvement of co-accused Prem Kumar, Dhing Raj, Surinder, Krishan Kumar, Sanjay Kumar and Manoj Kumar and prosecution has also not been able to establish the offence punishable under Sections 307 IPC is no ground to render the entire case of the prosecution doubtful, particularly when there are specific allegations against appellants Brij Lal and Gulab Ram. The complainant as well as PW-3 Sandeep Kumar have consistently deposed that

appellant Brij Lal has given 'sword' blow on the right elbow of the complainant and Gulab Ram has given the 'gandasi' blow from the reverse side on right hand of the complainant. This version is also fully corroborated from the medical evidence. So, there is nothing to doubt the version of the prosecution qua the role and involvement of appellants Brij Lal and Gulab Ram in the present occurrence.

27. However, the case of the appellant Sahib Ram is entirely on different footing. As per the prosecution allegations, accused Sahib Ram was armed with a pistol. He gave 'lalkara' that Ajay Kumar be done to death as the land claimed by Ajay Kumar is their ancestral land. Then, it is alleged that when the complainant and witnesses were fleeing away from the spot, he fired the shot from the pistol from behind in order to kill them. No empty cartridge has been recovered by the Investigating Officer from the place of occurrence. Even, no pistol has been recovered from the possession of appellant Sahib Ram. Learned trial Court has given the categoric findings that the aspect of firing shot by Sahib Ram seems to be nothing more than exaggeration as no empty cartridge was found on the place and no pellet hit on any of the person out of the complainant party. These findings of the learned trial Court on the basis of which the accused were acquitted for the offences punishable under

Section 307 IPC have not been challenged by the prosecution and had attained the finality. Now, the only allegation that remains against appellant Sahib Ram is that he gave 'lalkara'. There is the common tendency to implicate the innocent person with the real culprit. When, no active role can be attributed to such persons generally the 'lalkara' is attributed. In order to convict appellant Sahib Ram, learned trial Court has observed that he has got registered a criminal case against the complainant party under Sections 452, 323, 506, 34 IPC, which is pending for decision. So, exhortation by him reflects seriousness of his enmity. But, it is the settled principle of law that enmity is double edged weapon. It can also be a cause for the false implication. It is an admitted fact that appellant Sahib Ram has got registered the criminal case against complainant Ajay Kumar and his associates. So, that can also be a ground for his false implication along with real culprits i.e. appellant Brij Lal and Gulab Ram who have caused the injuries to the complainant. Moreover, if appellant Sahib Ram armed with a pistol would have been present at the spot. There was nothing to prevent him from using the fire arm to cause more severe injuries to the complainant, who was within the firing range and easy target being empty handed. So, all these circumstances renders the presence of appellant

Sahib Ram extremely doubtful at the spot and it appears that the 'lalkara' has been attributed to him just to implicate him in this case.

28. A Division Bench of this Court in case **State of Punjab Vs. Tehal Singh 1992(2) R.C.R (Criminal) 184**, has laid down as under:-

“5. Tehal Singh accused is attributed only Lalkra. In terms of the observation made in **Fatta V. Emperor, AIR 1931 Lahore 63: Garib Singh and others V. State of Punjab AIR 1973 Supreme Court 460: Amar Singh Vs. State of Haryana, AIR 1973 Supreme Court 222 and Jainul Haque Vs. State of Bihar, AIR 1974 Supreme Court 45**, it was difficult well nigh impossible for the learned trial Court to convict him of the constructive liability for murder on the basis of Lalkara allegedly raised by him. The relevant observations read:-

“Allegations of participation by giving lalkaras are sometimes made only to show additional over acts so as take in at least five persons and make out the ingredients of an offence under Section 149 Indian Penal Code against all of them.

If the appellant had shouted lalkara, it would be difficult to sustain the conviction.

The evidence of exhortation is, in the nature of things, a weak piece of evidence. There is quite often tendency to implicate some

person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contributory and far from convincing. The appeal was accepted and the conviction was set aside.

When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. This method is more often adopted in cases in which a certain person is sought to be punished for the constructive liability as regards the commission of crime of violence. It is highly unlikely that the accused would be so foolish as to proclaim his intentions before committing the attack, as by doing so he was sure to be thwarted by the persons present.”

Finding of acquittal recorded by the trial Court qua him is, therefore, affirmed.”

The same legal position has been reiterated in cases **Mohinder Singh and others Vs. State of Punjab**

2005(2) Law Herald 630(DB) and Jugraj Singh and another Vs. State of Punjab 2007(2) R.C.R (Criminal)

276. Thus, the conviction of appellant Sahib Ram as recorded by the learned trial Court is not sustainable in the eye of law. Whereas, there is no fault in the conviction of appellants Brij Lal and Gulab Ram as recorded by the learned trial Court.

29. I found substance in the contentions raised by learned counsel for appellants that the grievous injuries suffered by complainant Ajay Kumar are not on the vital part of the body. Only one injury each has been attributed to appellant Brij Lal and Gulab Ram. There is no allegation that they had repeated the blow of their respective weapons. They have been facing the agony of these proceedings for the last more than 13 years. So, even the lenient view in the matter of sentence will suffice the ends of justice.

30. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed qua appellant Sahib Ram. His conviction and sentence as recorded by learned trial Court is hereby set aside and he stands acquitted of the charges as a result of the benefit of doubt. However, there is no legal infirmity in the conviction of appellants as recorded by the learned trial Court for the offences punishable under Sections 326, 325 read with Section 34 IPC and the same is

hereby maintained and confirmed. However, the sentence awarded to the appellants is hereby modified as under:-

Name of the accused-appellant	Under Section	R.I	Fine	In default
Brij Lal	326 IPC	2 years	Rs.1000/-	2 months
	325/34 IPC	1 years	Rs.500/-	1 month

Name of the accused-appellant	Under Section	R.I	Fine	In default
Gulab Ram	326/34 IPC	2 years	Rs.1000/-	2 months
	325 IPC	1 years	Rs.500/-	1 month

The aforesaid sentences shall run concurrently.

31. Thus, with aforesaid modification in the sentence, the present appeal qua appellants Brij Lal and Gulab Ram being devoid of merits is hereby dismissed.

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

(DARSHAN SINGH)
JUDGE

December 01, 2015
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