

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-1932-DB of 2014 (O&M)

Date of decision : 09.03.2015

Nirdosh Kumar Dhand

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Sidakmeet Singh Sandhu, Advocate
for the applicant-appellant.

Mr. Vinod S. Bhardwaj, Addl. AG, Punjab.

LISA GILL, J.

This appeal has been filed by the appellant - Nirdosh Kumar Dhand praying for convicting and sentencing respondents – Jatinder Singh @ Goldy and Amit Kumar @ Pinchu for the offence punishable under Section 326 Indian Penal Code (for short 'IPC') in addition to the offences punishable under Sections 307 and 324 IPC for which they have already been convicted by the learned Additional Sessions Judge, Ludhiana vide impugned judgment and order dated 01.08.2014.

The appellant was injured in the incident which took place on 13.07.2003 leading to registration of FIR No. 128 under Sections 307, 326, 324, 323, 34 IPC against respondents No. 2 and 3.

Above said FIR was registered on the statement of the

appellant's wife Smt. Meenakshi Dhand alleging that the respondents alongwith 5-6 other boys came to their house on 13.07.2003 at about 11.35 p.m. Amit Kumar @ Pinchu allegedly inflicted knife (Khanjar) blow in the stomach of her husband and Jatinder Singh @ Goldy gave a knife blow on the right and left side of his stomach as well as waist. On raising alarm, all the accused persons ran away alongwith their weapons. It was stated that the accused persons held a grudge on account of compromise which he had got effected with one Billu of New Kundan Puri. A blood stained *khanjar* (knife) was recovered on a disclosure made by Jatinder Singh @ Goldy.

Injured Nirdosh Dhand, despite being declared unfit to make a statement, by raising two fingers of the hand disclosed number of accused to be two. He was declared fit to make a statement on 29.07.2003 but he refused to do so by saying that he would get it recorded in a day or two. He did not make a statement on 31.07.2003 as well as 02.08.2003 but chose to make a statement on 14.08.2003 in the presence of his lawyer. He also named Jaswinder Singh @ Raji and Balwinder Singh @ Minta alongwith two unnamed persons to be present in addition to Jatinder and Amit. Jaswinder and Balwinder allegedly exhorted others to kill him.

On investigation Jaswinder and Balwinder were found innocent. Challan/report under Section 173 Cr.P.C. was presented against respondents Jatinder and Amit. Both of them were charge sheeted to which they pleaded innocence and claimed trial.

Prosecution examined as many as 10 witnesses to prove its case. Evidence of prosecution was closed by order.

The accused persons while alleging false implication averred that the injured had desisted from making the statement before the police on 29.07.2003 though he was declared fit to make a statement by the Doctor. Furthermore, the appellant made his statement on the dictation of lawyer on 14.08.2003. Appellant is a property dealer and is involved in a number of other cases against him. No evidence had been led to prove any kind of settlement or compromise got effected by him, as averred in the FIR. The Doctor who had examined the appellant – injured, was not examined.

The trial Court on appreciation of evidence, convicted respondents No. 2 and 3 for the offences punishable under Sections 307 and 324 IPC.

Learned counsel for the appellant contends that offence under Section 326 IPC is clearly made out against the accused persons. It is proved on record that grievous injuries have been caused by both the above mentioned respondents. Non examination of the Doctor is not relevant in the facts and circumstances of the case as he had left the institution.

We have heard learned counsel for the parties.

The trial Court while convicting the accused for the offence under Section 307 IPC has held that as many as nine injuries were caused in the stomach of the appellant, therefore, their intention to kill can very well be gathered from this fact itself. Appellant remained admitted in the hospital for about 2½ months and was found unfit to make a statement till 29.07.2003. However, in the absence of the examination of the doctor which resulted in a loss

of opportunity to the accused to cross examine and confront the doctor, nature of injuries were declared to be simple by the trial Court and accused convicted under Section 307 IPC read with Section 324 IPC.

Dr. Surjit Kumar, who examined the appellant has admittedly not been examined. PW10 Surinder Singh Negi, Supervisor of Dayanand Medical College, Ludhiana has been examined, who identified signatures of Dr. Surjit Kumar Mehar on injury report Ex. PW10/A, pictorial diagram Ex. PW10/B and the record regarding nature of injury Ex. PW10/C as well as admission record of patient Ex. PW10/D. As per the said record, there were nine injuries on the person of the appellant. Injuries No. 1 to 4, 7 and 8 were declared dangerous to life, 5 and 6 as simple and injury No. 9 to be grievous. In the peculiar circumstances of the case, there is no infirmity in not convicting the accused for the offence punishable under Section 326 IPC.

We find no perversity or illegality in the conviction of the accused under Section 324 IPC in the facts and circumstances of the case.

This appeal is consequently dismissed. It is made clear that any observation made hereinabove shall have no bearing on any appeal/appeals by respondents No. 2 and 3 challenging their conviction.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 09, 2015
rts