

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

CRA-S-1808-SB of 2003

DATE OF DECISION :- September 04, 2015

Dial Singh @ Gurdial Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. J.S. Gill, Advocate for the appellant.

Mr. Premjit Singh Hundal, Additional Advocate General,
Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Dial Singh @ Gurdial Singh has challenged the judgment of conviction and sentence passed by the trial Court vide which he was sentenced to undergo two years of rigorous imprisonment and to pay a fine of ₹1000/- and in default to undergo a further period of two month's simple imprisonment for the offence proved under Section 459 of the Indian Penal Code.

2. It is the case of the prosecution that on 19.7.1999 at

about 4.00 A.M. in village Gharyala, the accused while lurking house trespass, attacked PW1 Palwinder Singh and committed an offence punishable under Section 459 of the Indian Penal Code.

3. PW1 Palwinder Singh has deposed that on 19.7.1999 at about 4.00 A.M. when he was sleeping in his house along with his family members, accused armed with gandasi in his hand delivered blow on him and thereby he sustained injuries on his right arm and right hand. PW2 Mukhtiar Singh the father of PW1 Palwinder Singh and Lachhman Singh, the uncle of PW1 caught hold of the accused. PW1 Palwinder Singh was taken to the hospital for treatment. The motive for the attack was that accused was the mediator in Palwinder Singh's marriage. A few days prior to the occurrence, PW1 had a dispute with his wife and accused came to settle the dispute.

4. PW2 Mukhtiar Singh, the father of PW1 corroborated the evidence of PW1.

5. PW5 Dr. Manjit Singh, who medico legally examined PW1 on 19.7.1999 at about 10.00 A.M. found an incised wound measuring 3 x 1.15 c.m. on the back of the right forearm and an abrasion measuring 3 x 1 c.m. on the medial back portion of the right hand. X-Ray was advised for the 2nd injury. Though the first incised wound was found to be simple in nature, the 2nd injury was declared as grievous in nature by PW5, as fracture of 5th metacorporal bone was detected in X-Ray examination.

6. PW4 ASI Gurnam Singh investigated the case and filed a final report.

7. The accused set up a plea in his statement under Section 313 Cr.P.C. that he was innocent, but was implicated in this false case while he was in illegal custody of the police.

8. DW1 Head Constable Bikram Singh spoke of another F.I.R. registered under Section 25 of the Arms Act on 20.7.1999. DW2 MHC Naresh Kumar spoke of two other criminal cases booked as against the accused.

9. The trial Court having thoroughly adverted to the evidence on record, came to the conclusion that the prosecution established beyond reasonable doubt that the accused committed the offence punishable under Section 459 of the Indian Penal Code.

10. The evidence of PW1 Palwinder Singh who was an injured witness, has categorically deposed that the accused having entered into the house, attacked him on his right arm and right hand and as a result of which, he sustained injuries. PW1 also has spoken about the motive for the attack. It is his version that the accused was the mediator in his marriage. Few days prior to the occurrence, there was a dispute between PW1 and his wife and accused came down to settle the said dispute.

11. Learned counsel appearing for the accused referring to the cross examination portion of the evidence of PW1 submitted that PW1 was in fact living with his wife at the time of occurrence. He

also admitted that no one gathered in his house for settlement of matrimonial dispute. Therefore, it is his submission that the motive attributed to the accused for the attack was totally false even as per the evidence of PW1.

12. On a careful perusal of the entire evidence of PW1, it is found that he deposed that he had some dispute with his wife but many persons had no one gathered for settlement of the dispute with his wife. Despite such a dispute, his wife was residing in the matrimonial house. The accused came a few days prior to the occurrence to resolve a dispute between PW1 and his wife.

13. The above evidence of PW1 would indicate that in fact, the accused had come down to the house of PW1 in his capacity as a mediator in the marriage to settle the dispute between PW1 and his wife. The accused might have got some grievance against PW1 for the dispute he had raised before the accused who was the mediator.

14. It is a well settled position of law that in a case where there is ocular testimony available on record or the injured witness testifies to the occurrence, the Court need not go into the motive for such an occurrence. In other words, the motive projected by the prosecution in such circumstances pales into insignificance.

15. PW2 is the father of PW1. The occurrence had taken place at about 4.00 A.M. in the house of PW2. No wonder PW2, a natural witness to the occurrence, testified and corroborated the

evidence of PW1. Though no corroboration is required to substantiate and strengthen the evidence of injured witness, in the instant case there is corroboration from the testimony of PW2.

16. PW5 Dr. Manjit Singh noted down an incised wound on the back of the right arm of PW1 which was certified as simple in nature. He also noted a fracture injury on the backside of the right hand which was certified as grievous in nature based on the X-Ray examination.

17. Referring to the evidence of PW5 during the course of cross examination, the learned counsel appearing for the accused submitted that it was possible for PW1 to sustain injury no. 1 by self suffering and injury no. 2 by falling against a hard surface.

18. Firstly, the above evidence of doctor was based on his opinion. Secondly, he had spoken about only the possibility. Such a possibility spoken to by PW5 cannot be taken as the truth as PW1 who sustained injury has come out with a real story as to how he sustained injury.

19. Learned counsel appearing for the accused submitted that the very next day of the occurrence, a case under the Arms Act was booked against the accused. It would go to show that the accused was in fact kept in police custody and the present false case was booked against him, he contended.

20. The present case was booked a day earlier to the case booked under the Arms Act against the accused. In fact, when the

accused was apprehended he possessed illegal arms and, therefore, a case was booked as against him. There is no material to establish that the accused was kept in illegal custody when the present case was booked against him.

21. It is true that PW1 and PW2 deposed that the accused escaped from the clutches of the family members when the family members made an attempt to take photographs of the accused. Learned counsel appearing for the appellant referring to the above evidence of PW1 and PW2 would submit that if at all the accused was apprehended by the family members of PW1, there would have been no occasion for the accused to slip away from their clutches.

22. The evidence of PW4 ASI Gurman Singh who investigated the case deposed that the accused had bruises when he was apprehended. Such a version of PW4 was not challenged by the accused. The very fact that the accused had sustained bruises would also establish the case of the prosecution that the accused was in fact apprehended by the family members at the time of occurrence. He would have sustained bruises on account of the aggressive approach of the family members of PW1. Even otherwise, there is some possibility for the accused to escape as he would have apprehended danger to his life at the hands of the family members of PW1 who sustained injuries at his hand.

23. I find that the trial Court has rightly evaluated the evidence and convicted the accused. I do not find any merit in the

appeal and, therefore, the appeal stands dismissed. Accused Dial Singh @ Gurdial Singh is on bail. He shall surrender within 15 days from the date of this judgment before learned Chief Judicial Magistrate, Amritsar, failing which the learned Chief Judicial Magistrate, Amritsar shall issue warrant of arrest and send him to jail to undergo the unexpired portion of sentence.

**(M. JEYAPPAUL)
JUDGE**

September 04, 2015

p.singh