

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

Crl. Appeal No. 1945-SB of 2003

Date of Decision : 07.1.2015

Bhupinder Singh and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : MsMalkiat Mann, Advocate
for the appellant no.1.

Appellant No. 2 Tota Singh died.

Ms. Shivali, AAG, Punjab

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

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction and order of sentence dated 12.09.2003. During the pendency of the appeal, appellant Tota Singh has died and appeal qua him stands abated. Appellant Bhupinder Singh was held guilty and convicted for the offences punishable under Sections 325, 323 read with Section 34, Section 324 and 323 of Indian Penal Code

(for short IPC). Appellant Bhupinder Singh was sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 323 read with Section 34 IPC, rigorous imprisonment for a period of one year for the offence punishable under Section 324 IPC and rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month for offence punishable under Section 325 read with Section 34 IPC. He was further sentenced to undergo rigorous imprisonment for a period of one year for offence punishable under Section 323 IPC. All the sentences were ordered to run concurrently.

2. As per the prosecution allegations, on 03.04.2002 at about 3.30.p.m, complainant Jagdev Singh along with his father Surjan Singh was watering the fields known as Thethawala field by borrowing the water from the tubewell motor of Chira. Jagdev Singh was cutting the out-let of the fields and was looking after the fields. Meanwhile, accused Tota Singh (since deceased) armed with a wooden stick (Soti) and appellant Bhupinder Singh armed with a Gandasa came there. They stopped Surjan Singh and Jagdev Singh from passing the water through their water course. The injured told them that there Khata was joint. If they had any

grouse, they should not get the land partitioned. Then, deceased Tota Singh accused opened the assault and gave a Soti blow on the head of Surjan Singh. He further gave three blows on the right arm, left shoulder and thigh of Surjan Singh. Jagdev Singh-complainant started raising alarm. Tota Singh shouted that he should be done to death. At this, appellant Bhupinder Singh gave a Gandasa blow from the sharp side on the head of Jagdev Singh. He fell down on the ground. Bhupinder Singh thereafter, gave Gandasa blows on the right leg, index finger, left arm, left leg and left thigh of Jagdev Singh. Thereafter, they ran away from the spot. On receiving the information, ASI Gurbachan Singh visited civil hospital, Sardulgarh and obtained the copies of MLRs of both the injured. The injured were declared unfit to make the statement on that day. On 04.04.2002, complainant Jagdev Singh and Surjan Singh were declared fit to make the statement. The Investigating Officer recorded the statement of complainant Jagdev Singh Ex.PN and on the basis of which formal FIR Ex.PN/2 was registered. The Investigating Officer took into possession the blood stained shirt worn by complainant Jagdev Singh vide memo Ex.PQ. He inspected the spot and prepared the site plan Ex.PS. He also took into possession spade lying at the spot vide memo Ex.PO. On 05.04.2002, accused Tota Singh was arrested.

He produced Soti before the Investigating Officer, which was taken into possession vide memo Ex.PU. On 11.04.2002, appellant Bhupinder Singh was also arrested in this case and the Gandasa was recovered from him, which was taken into possession vide memo Ex.PV/1 after preparing the sketch Ex.PV. On completion of the investigation, the report under Section 173 Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

3. The accused-appellants were charge sheeted for the offences punishable under Sections 307, 325/ 34, 323/ 34, 324 and 323 vide order dated 17.08.2002 to which they pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as eight witnesses. Learned Public Prosecutor also tendered into evidence the report of Forensic Science Laboratory Ex.P-4.

5. When examined under Section 313 Cr.PC, they pleaded that they are innocent and have been falsely implicated. Accused Tota Singh pleaded that he is an old man and could not walk without the help of stick. His eye sight is also weak and was not present at the spot. Appellant Bhupinder Singh pleaded that Rajinder Singh and Kala Singh son of Chhota Singh were distilling illicit liquor, when he reached their fields to bring the green fodder for

buffaloes on the day of occurrence at about 3.30.p.m, complainant Jagdev Singh was sitting along with them. When he was cutting the green fodder, Jagdev Singh switched on the electric motor of Chira and tried to irrigate his standing crop by using their water course. He was drunkard at that time. In the meanwhile, Surjan Singh father of Jagdev Singh complainant also reached there. They grappled with him. Only Surjan Singh fell in the Khal and suffered minor injuries. Later on Rajinder Singh caused injuries to them to falsely implicate the appellants.

6. In the defence evidence accused examined Mithu Singh Patwari as DW-1. He proved the site plan of place of occurrence as Ex.DA. Accused also tendered in evidence copy of Jamabandi Ex.DB.

7. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held that the offences punishable under Section 307 IPC was not made out. However, deceased appellant Tota Singh was held guilty and convicted for the offences punishable under Sections 325, 323, 324/34 and 323/ 34 IPC. Appellant Bhupinder Singh was held guilty and convicted for the offences punishable under Sections 325/ 34, 323/ 34, 324 and 323 IPC and was awarded sentenced as mentioned in the upper

part of the judgment.

8. I have heard Ms. Malkiat Mann, Advocate, learned Advocate for the appellants, Ms Shivali, learned Assistant Advocate General, Punjab and have meticulously examined the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that there is one day's delay in lodging the FIR, which has not been satisfactorily explained. She further contended that the injured and eye witness are closely related to each other. No independent witness has been associated or examined to corroborate their version. She further contended that in-fact deceased-accused Tota Singh was not present at the spot as he was an old man of about 65 years of age. He was having weak eye sight and was unable to walk without the support of the stick. Injured Jagdev Singh was drunkard and raised the dispute with appellant Bhupinder Singh. Both the injured grappled with him. Surjan Singh suffered minor injuries as a result of fall. They suffered the injuries from Rajinder Singh son of Chhota Singh and falsely implicated the appellants.

10. She further contended that appellant Tota Singh to whom the grievous injury was attributed on the person of Surjan Singh has already died. No grievous injury has been attributed to appellant Bhupinder Singh. He has been

convicted for the offence punishable under Section 325 IPC only with the aid of Section 34 of IPC. All the injuries attributed to appellant Bhupinder Singh are simple in nature. He has already undergone about nine months of sentence, which is a quite sufficient period and pleaded for reduction in the matter of sentence.

11. On the other hand learned State counsel contended that the delay in lodging the FIR is well explained as the injured were unfit to make the statement. There is nothing to disbelieve the testimonies of the injured witnesses. It is not established that the occurrence was witnessed by any other independent witness. Moreover, the testimonies of the injured witnesses can be acted upon even without any corroboration. But, in this case their testimonies are corroborated from the statements of PW-4 Sant Kaur as well as the medical evidence. There is no evidence to establish the defence plea raised by the appellant that the injuries on the person of complainant Jagdev Singh and his father Surjan Singh were suffered from the friendly hand.

12. She further contended that appellant Bhupinder Singh has caused eight injuries on the person of complainant Jagdev Singh. So, sentence awarded to him is fully justified and does not call for any reduction.

13. I have duly considered the aforesaid contentions.

14. The present occurrence has taken place on 03.04.2002 at about 3.30.p.m. The injured reached the hospital on the same day at 5.20 p.m, which is evident from their MLR's Ex.PA and Ex.PE. The doctor has sent the memo Ex.PH to the S.H.O, Police Station Sardulgarh giving the information about admission of the injured in the hospital. The Investigating Officer moved application Ex.PJ with respect to Jagdev Singh and Ex.PK with respect to Surjan Singh on the same day, but injured were declared unfit to make the statement vide endorsements Ex.PJ/1 and Ex.PK/1 dated 03.04.2002 at 8.25 p.m and 8.30 p.m respectively. However, they were declared fit to make statement on 04.04.2002 at 10.30./ 10.35 a.m and thereafter the statement of complainant Jagdev Singh Ex.PN was recorded at 11.35 a.m on 04.04.2002. In this manner the delay in lodging the FIR is almost explained as previous to that the injured were declared unfit to make the statement.

15. The prosecution has examined injured complainant Jagdev Singh as PW-2. He has deposed in detail about the present occurrence and categorically deposed that the accused-appellant Bhupinder Singh have caused injuries to him and Tota Singh caused injuries with

a Soti to his father Surjan Singh. His testimony is fully corroborated from the statement of PW-3 Surjan Singh. Both these witnesses are the stamped witnesses being injured. It is settled principle of law that the testimonies of the injured witnesses carries great evidentiary value as their presence at the spot is certified from the injuries on their person. The testimonies of the injured witnesses can be acted upon even without any corroboration. The statements of both injured are fully corroborated from the statement of PW-4 Sant Kaur, the witness of the occurrence. She has also categorically stated that she saw Tota Singh and Bhupinder Singh armed with their weapons running away from the spot and both complainant Jagdev Singh and her husband Surjan Singh were lying on the ground in injured condition. The aforesaid ocular evidence is fully corroborated from the medical evidence. Ex.PA is the MLR of injured Surjan Singh, which shows that he has suffered four injuries on his person including the fracture of greater trochanter of right femur. Complainant Jagdev Singh as per the MLR Ex.PE has suffered eight injuries on his person. There is no clear evidence on record to establish that any independent person was attracted to the spot. It is well settled principle of law that mere relationship of the witness with the victims is no ground to discard his/her testimony.

So, there is no ground to ignore the statement of PW-4 Sant Kaur simply on the ground that she happens to be the mother of the complainant and wife of injured Surjan Singh. Learned defence counsel has not been able to point out any material contradiction in the statements of the injured witnesses and the eye witness on the mode of occurrence. So, there is nothing to disbelieve their testimonies.

16. The plea raised by appellant Bhupinder Singh that the injured suffered the injuries at the hands of Rajinder Singh son of Chhota Singh in order to falsely implicate the appellants does not appeal to the reasons. Firstly, there is no evidence on record to establish the presence of said Rajinder Singh at the time of occurrence. Secondly, it is not possible that complainant Jagdev Singh and injured Surjan Singh would suffer so much injuries from the friendly hand just to falsely implicate the appellants, when this target can be achieved even with few minor injures. PW-3 Surjan Singh has suffered four injuries on his person including the fracture of greater trochanter of right femur. Complainant Jagdev Singh has suffered eight injuries. Five injuries out of those are incised wound. Injury no. 7 is on the right parental region. The number of injuries suffered by the injured witnesses totally belies the version of the appellants.

17. Thus, from the cogent, consistent, reliable evidence adduced by the prosecution, there is no escape from the conclusion that the accused have caused injuries to complainant Jagdev Singh and his father Surjan Singh in furtherance of their common intention and the conviction of the appellants recorded by the learned trial Court is well founded and does not call for any interference.

18. Learned counsel for the appellant has also pleaded for the reduction of sentence. The grievous injury on the person of Surjan Singh was attributed to deceased-appellant Tota Singh, who has died during the pendency of the present appeal on 01.06.2008 and appeal qua him already stands abated. So, now in the present appeal we are only concerned with the appellant Bhupinder Singh. No injury on the person of Surjan Singh, who has suffered the grievous injury is attributed to the present appellant. As per the prosecution version, he has caused injuries with a Gandasa to complainant Jagdev Singh. The MLR of Jagdev Singh is Ex.PE, which shows that complainant Jagdev Singh has suffered eight injuries on his person. Injury no. 7 measuring 3 cm X 0.5 cm is on the right parietal region of complainant Jagdev Singh. All other seven injuries are on the non vital part of the body. Vide MLR Ex.PE itself, injuries no. 2, 3, 4 and 8 were declared simple in nature.

After receipt of the x-ray report remaining injuries i.e injury no. 1, 5, 6 and 7 were also declared simple vide opinion of the doctor Ex.PF. Thus, all the injuries attributed to the present appellant Bhupinder Singh on the person of complainant Jagdev Singh are simple in nature.

19. The occurrence has also taken place due to trifle dispute i.e the dispute regarding irrigation of the field. Both the parties are closely related to each other. Appellant Bhupinder Singh is the nephew of injured Surjan Singh and cousin brother of complainant-injured Jagdev Singh. The present occurrence has taken place on 03.04.2002. The appellant has faced the agony of this litigation for the last more than twelve years. The custody certificate of appellant Bhupinder Singh shows that he has already undergone eight months and twenty nine days out of the sentence awarded to him. The maximum sentence awarded to the appellant Bhupinder Singh was two years. Out of that he has already undergone eight months and twenty nine days i.e. about nine months. Keeping in view the facts and circumstances of this case and the nature of the injuries attributed to the appellant, the period already undergone by him in jail is quite sufficient punishment. In addition to that appellant Bhupinder Singh can be directed to pay a reasonable amount of compensation to the injured.

20. Thus, keeping in view my aforesaid discussion, the conviction of the appellant Bhupinder Singh as recorded by the learned trial Court is hereby confirmed. However, impugned order on quantum of sentence stands modified. Appellant Bhupinder Singh is sentenced to the imprisonment already undergone by him. He is also ordered to pay a compensation of Rs. 20,000/- (i.e. Rs.10,000/- each) to injured Surjan Singh and complainant injured Jagdev Singh. The compensation amount shall be deposited with the learned trial Court within a period of one month from the date of this judgment and thereafter, it shall be disbursed to injured Surjan Singh and Jagdev Singh as per rules.

21. With this modification in the order of sentence, there is no merits in the appeal qua Bhupinder Singh and the same is hereby dismissed. The appeal qua Tota Singh stands abated due to his death.

January 07, 2014

s.khan

**(DARSHAN SINGH)
JUDGE**