

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA S 990 – SB of 2003 (O&M)

Date of decision : 30.9.2015

...

Anoop Singh and others

.....Appellants

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. G.K. Mann, Advocate for the appellants.

Mr. Yogesh Gupta, Assistant Advocate General,
Punjab.

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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?*

P.B. Bajanthri, J.

This Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, by the advocate for the appellants against the judgment dated 3.5.2003 in trial No. 6/2003, SC No. 3318/28.1.2003/FTC, passed by Additional Sessions Judge (Adhoc), Amritsar, convicting the accused-appellants No. 1, 5, 4, 9, 7 and 8 for the offence punishable under Section 326 IPC, u/s 148/149 IPC, 324/149 IPC and 323/149 IPC.

(2) This Criminal Appeal having been heard and reserved on

23.9.2015 and coming on for pronouncement of judgment this day, the Court delivered the following judgment.

(3) The Sessions Court convicted the accused-appellants and sentenced them as follows:-

<i>Name of the accused</i>	<i>U/s</i>	<i>Sentence</i>
Harpal Singh	326 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	324/149 IPC	To undergo rigorous imprisonment for a period of one year.
	323/149 IPC	To undergo rigorous imprisonment for a period of six months
Anoop Singh	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	326/149 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	324 IPC	To undergo rigorous imprisonment for a period of one year.
	323/149 IPC	To undergo rigorous imprisonment for a period of six months
Dhir Singh	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	326/149 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	324/149 IPC	To undergo rigorous imprisonment for a period of one year.
	323 IPC	To undergo rigorous imprisonment for a period of six months
Baj Singh	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	326/149 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

<i>Name of the accused</i>	<i>U/s</i>	<i>Sentence</i>
	324/149 IPC	To undergo rigorous imprisonment for a period of one year.
	323/149 IPC	To undergo rigorous imprisonment for a period of six months
Jagbir Singh	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	326/149 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	324/149 IPC	To undergo rigorous imprisonment for a period of one year.
	323/149 IPC	To undergo rigorous imprisonment for a period of six months
Sahib Singh	148/149 IPC	To undergo rigorous imprisonment for a period of six months
	326/149 IPC	To undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	324/149 IPC	To undergo rigorous imprisonment for a period of one year.
	323/149 IPC	To undergo rigorous imprisonment for a period of six months

All the sentences were ordered to run concurrently. However, accused Harbhajan Singh, Harjinder Singh and Surjit Singh were acquitted of the charges against them by giving benefit of doubt.

(4) The facts lead up to this appeal are as follows:-

It is stated that as many as nine accused were tried on the allegations that they assaulted and caused injuries to PW-1 and PW-2, namely, Kuldip Singh and Sukhdev Singh, respectively, on 21.10.2000 at around 7.30 P.M., in the area of village Tola Nangal, Tehsil Ajnala, District Amritsar.

(5) PW-1 Kuldip Singh stated that about three months before the date of occurrence, Sahib Singh, Harjinder Singh and Surjit Singh

were found abusing indicating that the complainants were the target. In that condition, Sukhdev Singh and his brother Darbara Singh complained to Karaj Singh, Sarpanch of the village Tola Nangal, who had promised to enquire from the accused by holding a meeting in Panchayat. Thereafter, on 21.10.2000, at about 7.30 P.M. in the area of village Tola Nangal, Sahib Singh, Jagbir Singh, Anoop Singh armed with Kirpan, Harjinder Singh accused having spear, Baj Singh having gandasi, Surjit Singh @ Goldy accused having spiked dang, Harpal Singh, accused having gandasi, Dhir Singh carrying dang and Harbhajan Singh empty handed, as members of unlawful assembly, were found abusing Sukhdev Singh and Kuldeep Singh. It was alleged that accused were in drunken status. Sukhdev Singh and Kuldeep Singh sought explanation from Harbhajan Singh and others who were abusing them. Accused inflicted injuries with their weapons on PW-2 Sukhdev Singh and PW-1 Kuldeep Singh, due to which Sukhdev Singh and Kuldeep Singh were injured badly. Consequently, they were taken to hospital for treating their injuries. Kuldeep Singh gave the complaint on 22.10.2000 in Police Station Raja Sansi. Case was registered vide FIR No. 119 dated 22.10.2000 against the accused under Sections 307, 326, 325, 324, 323, 148, 149 IPC.

(6) Aggrieved against the order of conviction dated 3.5.2003, passed by the Additional Sessions Judge (Adhoc), Amritsar, the accused-appellants have preferred the present appeal.

(7) Learned counsel for the appellants contended that the appellants were unnecessarily implicated in the criminal proceedings

at the behest of Sukhdev Singh and Kuldip Singh, stating that there is a party factionalism in Tola Nangal village. Karaj Singh, Sarpanch belongs to one faction, namely, Shiromani Akali Dal Badal and the other party were supporters of another leader, which was opposed by the accused. Therefore, the complainant and Sukhdev Singh have falsely implicated the accused.

(8) Learned counsel for the appellants further contended that there is no evidence to implicate the accused-appellants. Weapons of offence were not seized, there is delay in filing the complaint, since the date of occurrence of incident was 21.10.2000 and the complaint was lodged on 22.10.2000. Further, learned counsel for the appellants contended that the Investigating Officer had failed to recover weapons stated to have been used by the appellants for causing injuries on Sukhdev Singh and Kuldip Singh. In the absence of the same, sufficient corroborated evidence is not available so as to implicate the appellants. PW-3 Dr. Gurmanjit Rai who was a Surgeon, has not given evidence that the injuries caused to Sukhdev Singh and Kuldip Singh were severe injuries, so as to dangerous to their lives. Moreover, there are serious discrepancies in the evidence, which have been grossly overlooked by the court below in holding that the case has been established against six accused, even in the absence of corroborative evidence.

(9) Learned counsel for the appellants also submitted that the appellants have undergone few days in the jail and they faced trial from the year 2000 to 2003, for about 3 years. They are on bail. The

appellants were implicated in the criminal proceedings for the first time in the aforesaid proceedings and till date they are not involved in any other criminal proceedings as is evident from the custody certificate produced in this matter. Therefore, it is contended that the accused may be released on probation. It will be too inequitable to subject them to actual sentence after more than 1- ½ decades from the date of occurrence of the alleged incident.

(10) On the other hand, learned State counsel would seek to justify the judgment of the court below. That both Kuldeep Singh and Sukhdev Singh were grievously hurt by the accused. Kuldeep Singh had suffered eight injuries whereas Sukhdev Singh had suffered two injuries. Serious injuries were evident from the medical evidence, as well as, evidence of Dr. Gurmanjit Rai, PW-3 and Dr. Ramesh Chander, PW-4. It was contended that there was enmity between the accused and the complainant and Sukhdev Singh, which is evident from the fact that complainant had approached the Sarpanch and complained before him and he had assured that he will call the accused and set right the same. Therefore, having regard to the nature of severe injuries caused to the complainant and Kuldeep Singh, rightly the trial Court convicted the accused. Therefore, there is no infirmity, whatsoever, is forthcoming from the order passed in the trial case. The appellants have not made out a case so as to interfere with the conviction order.

(11) Consideration of the rival submissions and perusal of the record, I am of the view that while it may not be appropriate to

uphold the conviction order at this stage, having regard to the nature and extent of injuries, the complainant and Kuldeep Singh (injured persons), deserve to be duly compensated.

(12) In the present case, following injuries were found on the person of Kuldeep Singh and Sukhdev Singh:-

Kuldeep Singh

- 1) Incised wound 6 x 1 cm obliquely placed on right side of forehead 6 cm above right eye brow. Margins were clean cut and fresh bleeding was present.
- 2) 5 X 0.5 cm incised wound on left side of head 8 cm above pinna of ear obliquely placed. Fresh bleeding was present.
- 3) Reddish bruises 7 x 4 cm on right orbit.
- 4) Reddish bruise 6 x 2 cm was present on left orbit.
- 5) 3 x 0.5 cm incised wound was present on back of right wrist/obliquely placed. Fresh bleeding was present.
- 6) 1.5 x 0.2 cm incised scab wound was present on right side of abdomen 13 cm from umbilicus at 9 O'clock position. Fresh bleeding was present.
- 7) Pt. was complaining of pain and tenderness on both shoulders.
- 8) Defused swelling with tenderness was present on left hand.

Sukhdev Singh

- 1) 4 X 1.5 cm incised wound on left parietal region of

head. 11 cm above upper margin of ear pinna obliquely placed and fresh bleeding was present.

2) Inj. No.2 reddish bruise, 15 x 3 cm on front of left side of chest 6 cm above nipple, obliquely placed.

(13) PW-3 Dr. Gurmanjit Rai, who is a Surgeon, had deposed that the injuries were so serious as to dangerous to life of the injured persons after perusal of X-ray and Surgeon reports. On the other hand, PW-4 Dr. Ramesh Chander, who is a Radiologist, has stated that injuries are of grave nature. That apart, prosecution has not seized weapons stated to have been used by the appellants for inflicting injuries on Sukhdev Singh and Kuldip Singh. In other words, no categorical statement was made by doctor that injuries caused to the victim were dangerous to life. It is relevant to reproduce the statement of PW-4:-

“ PW-4 Dr. Ramesh Chander, M.O. Deptt. Radio diagnosis, Medical College, Amritsar on S.A. On 27.10.2000.

I have conducted Medico Legal x-ray examination of Kuldip Singh s/o Inder Singh, 40 years, male r/o V. Tula Nangal, Amritsar. The following x-ray examination was conducted:-

1. X-ray skull – Rt. Lateral, Lt. Lateral, PA view for injury No. 1 and 2 – Fracture frontal bone on right side was seen.

2. X-ray both orbits.

X-ray PNS for inj. No.3 and 4: Fracture frontal bone on right side was seen.

3. X-ray right wrist joint: A P/Oblique view for inj. No.5. - No fracture was seen.

4. X-ray abdomen (spine standing) for inj. No.6 – No significant air fluid level was seen. No free air was seen under both the hemidomes of diaphragm.

5. X-ray both shoulders joints. AP view for inj. No.7 – No fracture was seen.

6. X-ray left hand APP view for inj. No.8 – Fracture third metacarpal at its upper end was seen.

Ex.PC is the report which is in my hand and bears my signatures. The skiagrams are PC/1 to 11.

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I have also conducted x-ray examination of Sukhdev Singh s/o Inder Singh of V. Tula Nangal, Amritsar, on 23.10.2000 and found the following observations:-

1. X-ray skull left lateral and AP view for inj. No.1 – No fracture was seen in mandible (facial bone) Fracture left parietal bone was seen.

2. X-ray chest AP left side for inj. No.2 – No fracture was seen :

Ex.PF is the report which bears my signatures and

Ex.PF/1 to 3 are skiagrams.”

Opinion of the doctor is evidence that on Kuldip Singh, injury No. 1, 2 and 6 are related to fractures and on Sukhdev Singh injury No.1 related to fracture (partial). Therefore, there is no report of dangerous to life by PW-4 on the injured persons. A 'grievous hurt' is defined under Section 320 of the IPC and the manner in which the injury is projected or a grievous hurt would probably fall under the definition as contemplated under the IPC. This aspect of the matter was required to be established by prosecution in the absence of any evidence in this regard, except to state that they were in the hospital on 21.10.2000. Therefore, there is no material evidence of grievous hurt so as to attract that the injuries attract dangerous to life.

(14) Learned counsel for the appellants confined her argument only to the quantum of sentence. She submitted that taking into consideration the fact that the appellants have already undergone imprisonment for few days, it would be appropriate that instead of putting them behind the prison, they should be released on probation, subject to such directions regarding payment of compensation and good conduct, as this Court may, in the circumstances of the case, deem fit.

(15) I have given my thoughtful consideration to the submissions put forth on behalf of the appellants. Taking into consideration the fact that the incident pertains to the year 2000 and the injuries which had been sustained by Sukhdev Singh and Kuldip Singh were not serious injuries, in other words, injuries caused to them were not

dangerous to their life and it is learnt that injured persons are living in peace, it would be but appropriate that instead of sending the appellants to prison, they should be released on probation under Section 4 of the Probation of Offenders Act, 1958, since accused are first time offenders. This Court in the case of **Maya Ram and others vs. State of Haryana 2005 (3) RCR (Criminal) 596** observed as follows:-

“11. It was submitted that the occurrence has taken place on 22.12.1983 and the petitioners were convicted on 18.8.1989 i.e. after more than five years. The appeal was dismissed by the Court of learned Additional Sessions Judge on 22.3.1991 and since then the instant revision petition is pending in this Court. It was further submitted that no other offence has been proved against the petitioners and, therefore, they are the first offenders. It was also submitted that the petitioners have already undergone ten days of imprisonment.

12. Further incarceration of the petitioners after elapse of more than 21 years will defeat the ends of justice. This will also make them hardened criminals and will strengthen the inimical feelings between the two parties which will disturb peace in the society. The fact that the petitioners had faced agony and trauma of this criminal prosecution for such a long period is a

befitting punishment for them. In such like cases, the principles of natural justice and equity are also to be kept in view. The petitioners must have lived every moment under extreme emotional and mental stress and strain and under a fear psychosis. Therefore, the ends of justice would be fully met if the petitioners are released on probation.”

(16) In the case in hand, incident occurred on 21.10.2000, conviction on 3.5.2003 and this appeal is pending till date (30.9.2015). Award of compensation to the victims, the Supreme Court in the case of **Manohar Singh vs. State of Rajasthan (2015) 3 SCC 449**, held as follows :-

“11. Just compensation to the victim has to be fixed having regard to the medical and other expenses, pain and suffering, loss of earning and other relevant factors. While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable under Section 357 and 357- A. While under [Section 357](#), financial capacity of the accused has to be kept in mind, [Section 357-A](#) under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation.

12. We may refer to some recent decisions on the subject. In *State of Gujarat and anr. vs. Hon'ble High Court of Gujarat*[1], it was observed:

"46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependents of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

* * *

94. In recent years, the right to reparation for victims of violation of human rights is gaining ground. The United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights. (see annexure)"

(17) In the light of the aforesaid ratio, the appellants are

released on probation on furnishing bond for Rs.25,000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Amritsar, for a a period of three years. During the aforesaid period of probation, appellants shall keep peace and be of good behaviour. In the present case, in the absence of any evidence about the medical expenses meted out by the injured persons, loss of earning etc. and the financial capacity of the accused, I am of the view that the appellants are directed to deposit a sum of Rs.20,000/- by each one of them which shall be equally paid as compensation to Sukhdev Singh and Kuldip Singh injured persons under Section 357 (3) Cr.P.C. If they are not alive, compensation is to be paid to their LRs. However, it is made clear that if the appellants fail to deposit the aforesaid amount of compensation and furnish the requisite bail bonds within a period of two months from the date of order, their appeal shall stand dismissed and they shall undergo the remaining period of their sentence.

(18) Subject to above modification, this appeal fails and is dismissed.

September 30th, 2015.
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(P.B. Bajanthri)
Judge