

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

CRA-S-1157-SB of 2002

DATE OF DECISION :- July 07, 2015

Karnail Singh and others

...Appellants

Versus

The State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. L.S. Sidhu, Advocate for the appellants.

Ms. Ritu Punj, 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/No

M.JEYAPPAUL, J.

1. Accused Karnail Singh, Baldev Singh, Sukhwinder Kaur and Kuldeep Singh faced trial under Sections 307, 326, 324 and 323 read with Section 34 of the Indian Penal Code. Accused Sukhwinder Kaur who stood principally charged under Sections 326 of the Indian Penal Code was acquitted of the charge. No appeal was preferred by the State as against such acquittal recorded by the trial Court.

2. Accused Baldev Singh and Karnail Singh were charged

under Sections 324 of the Indian Penal Code. Kuldip Singh was convicted under Section 324 read with Section 34 of the Indian Penal Code. Karnail Singh and Baldev Singh were also convicted under Sections 324 read with Section 34 of the Indian Penal Code. Karnail Singh had died and as a result of which the appeal qua Karnail Singh abated on 8.4.2015. The remaining accused were convicted under Section 326 read with Section 34 IPC.

3. The brief case of the prosecution is that when PW2 Joginder Singh, the complainant in this case, was irrigating his fields, accused Karnail Singh objected to the act of PW2. Karnail Singh raised a lalkara. Immediately thereupon, accused Baldev Singh armed with Takwa, Kuldip Singh armed with Gandasi and Sukhwinder Kaur armed with Kirpan came over there. Karnail Singh gave Takwa blow on the head of PW2 Joginder Singh. Joginder Singh raised an alarm which attracted his sons PW3 Kulwant Singh and PW7 Harvinder Singh. Baldev Singh gave Takwa blow on Harvinder Singh on the right side of his back. Sukhwinder Kaur inflicted Kirpan blow on the left leg and left hand of Kulwant Singh. Thereafter, Karnail Singh gave Takwa blow to Kulwant Singh on the right side of his back. He also gave a Kirpan blow to Joginder Singh on the back side of his left shoulder. Thereafter, all the accused ran away. Injured were admitted to Civil Hospital, Patti. First Information Report was registered based on the statement suffered by PW2 Joginder Singh. The injuries found on the person of Joginder Singh

were declared as simple in nature. An incised wound on the left lower leg on the person of Kulwant Singh was declared as grievous in nature. The other injuries were certified as simple in nature. An incised wound found on the right side of the forehead of Harvinder Singh was declared as dangerous to life. The other injury was declared simple in nature by PW1.

4. On the side of the defence, DW6 Dr. Sukhwinder Singh was examined. He has spoken about three incised wounds found on accused Baldev Singh and four incised wounds found on the person of Karnail Singh. One injury found on the person of Baldev Singh was certified as grievous in nature.

5. The entire evidence on record was adverted to by me in the background of the submissions made on either side.

6. The fact remains that the main accused Sukhwinder Kaur who was charged under the principal offence under Section 326 IPC was acquitted by the trial Court but unfortunately, accused Baldev Singh and Kuldip Singh were convicted under Sections 326 with the aid of Section 34 IPC. As rightly pointed out by the counsel appearing for the appellants, when the principal offender was acquitted, the question of convicting the other accused with the aid of Section 34 does not arise. Therefore, at the very inception, it is held that the conviction recorded by the trial Court as against accused Baldev Singh and Kuldip Singh for the offence under Section 326 read with Section 34 is found not sustainable.

7. Accused Baldev Singh and Kuldip Singh had allegedly caused injury to PW7 Harvinder Singh. The medical evidence referred to above also would go to show that PW7 Harvinder Singh had received simple injuries. The evidence of PW2, PW3 and PW7 would go to show that Baldev Singh and Kuldip Singh were armed with axe and Gandasi respectively. Therefore, in my view, the trial Court has rightly convicted Baldev Singh under Section 324 and Kuldip Singh under Section 324 read with Section 34 IPC.

8. PW2 Joginder Singh had deposed that accused Karnail Singh delivered axe blow on his head and caused simple injury as certified by PW1. As it is found that Baldev Singh also joined hands, in my view, the trial Court has rightly convicted accused Baldev Singh under Section 324 read with Section 34 IPC.

9. I am impressed with the submission made by learned counsel appearing for the appellants Baldev Singh and Kuldip Singh that some leniency will have to be shown to accused/appellants in the special facts and circumstances of this case. The fact remains that accused Karnail Singh was none other than the blood brother of PW2 Joginder Singh. Accused Baldev Singh and Kuldip Singh were none other than the sons of late Karnail Singh. In other words, the first informant and the accused are closely related to each other. The occurrence had taken place during the course of irrigating the fields by PW2 Joginder Singh. The occurrence had taken place about 21 years ago. Much water had flown under the bridge from the date of

occurrence. Though accused Baldev Singh and Kuldip Singh were armed with deadly weapons, they had caused simple injury as noticed by the trial Court. The learned counsel appearing for the State would very fairly submit that there was no other criminal case against accused Baldev Singh and Kuldip Singh.

10. In view of the above, acquitting accused Baldev Singh and Kuldip Singh for the offence under Section 326 read with Section 34 and confirming the conviction recorded by the trial Court against accused Baldev Singh under Sections 324 and 323 read with Section 34 and against Kuldip Singh under Sections 324 read with Section 34 and 323 read with Section 34 and setting aside the sentence thereunder imposed upon them, they are released on probation of good conduct for a period of one year. They are directed to enter into a bond with two sureties before the learned Chief Judicial Magistrate Tarn Taran, within 15 days from the date of this judgment. They shall appear and receive the sentence as and when directed by this Court during such period, in case, they fail to keep peace and show good behaviour. The appeal is disposed of accordingly.

**(M. JEYAPPAUL)
JUDGE**

July 07, 2015
p.singh