

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

CRA S-1251-SB of 2004

Date of Decision : September 30, 2016

Gurdial Singh and others	Versus	Appellants
State of Punjab		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

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

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN, J. (Oral)

Instant appeal has been preferred by Gurdial Singh, Jagtar Singh and Paramjit Singh, residents of village Leelan Megh Singh, Police Station Sidhwan Bet, District Ludhiana, for challenging the judgment and order dated 27.5.2004 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana.

Vide impugned judgment and order, the trial Court convicted Jagtar Singh under Section 324 IPC and Gurdial Singh and Paramjit Singh under Sections 324/34 IPC and sentenced them to undergo rigorous imprisonment for two years each.

According to the prosecution on 3.11.2001 at about 8.00 a.m. complainant Balwinder Singh, who used to

cultivate the land of Hardial Singh after taking it on lease, along with cousin Karamjit Singh was ploughing the said land. Karamjit Singh was driving the tractor whereas the complainant was following him on foot. They were also to sow wheat in the land of Hardial Singh. At about 8.00 a.m., Gurdial Singh accused, who was present in his land, which adjoined the land of Hardial Singh, started abusing the complainant besides not allowing him to sow wheat in the fields of Hardial Singh. He was having a spade with him, with which, he tried to cause injury to the complainant, but the complainant snatched the spade and threw it away. In the meantime, Jagtar Singh and Paramjit Singh accused also came there. Gurdial Singh raised a lalkara exhorting his son Jagtar Singh to pick up spade and finish the complainant. Paramjit Singh held the complainant from his arm whereas Jagtar Singh accused with an intent to kill the complainant, tried to give spade blow on his head but the complainant in order to ward off the blow, moved his head backward and the spade hit near the nose in between eyes of the complainant. Karamjit Singh rescued complainant Balwinder Singh and in the meantime, all the three accused decamped from the spot.

Complainant Balwinder Singh was medico-legally examined by Dr. Kulwant Singh on 3.11.2001 at about 8.30 a.m.

who found following injury on his person:-

“Incised wound semilunar in shape, with concavity downwards. 5 cms long with flap of flesh cut downwards for 3 cms x bone deep present on forehead between the eye brows, involving base of nose downwards. It was bleeding profusely. X-ray examination was advised.”

The aforementioned injury was subjected to X-ray by Dr. Ashok Raswant, who vide report Ex.PD opined that he did not detect any bony injury on the person of Balwinder Singh.

At the trial, the prosecution examined complainant Balwinder Singh as PW1 and his cousin Karamjit Singh as PW2. Both of them described the manner in which the three accused had come present at the spot and one of them, namely, Jagtar Singh, used the spade in giving an injury on the person of complainant Balwinder Singh. Their testimonies are duly corroborated by the medical evidence consisting of the testimony of PW3 Dr. Kulwant Singh, who had medico-legally examined the complainant and also proved the report Ex.PD prepared by Dr. Ashok Raswant. It is true that the occurrence in question had taken place on 3.11.2001 and the FIR came to be registered on 7.11.2001, but that is no ground to disbelieve the prosecution case. It has come on the record that the police officials had

repeatedly moved applications to the attending doctor to find out the fitness of complainant Balwinder Singh to make the statement but every time he was found unfit to make statement. It was only on 7.11.2001 that he was declared fit and, accordingly, statement Ex.PJ was got recorded by him with PW4 Assistant Sub-Inspector Balwinder Singh.

In view of the above, no case is made out for any interference in the conviction of the appellants, as recorded by the trial Court.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last about fifteen years. At the time of the trial, Gurdial Singh appellant was seventy eight years of age whereas Jagtar Singh appellant was fifty four years of age. At present Gurdial Singh is aged about ninety years whereas Jagtar Singh is in his mid sixties. The only role attributed to Paramjit Singh appellant, who was twenty two years of age, was of catching hold of complainant Balwinder Singh from his arms. All the three appellants belong to one family. Only a solitary injury was caused by appellant Jagtar Singh. There is no material on the record, which might indicate that the appellants are involved or convicted in any case. Under these circumstances, this Court is of the view

that the sentences of imprisonment of the appellants can be set aside. Instead, they can be extended the benefit of probation.

Resultantly, the conviction of Jagtar Singh appellant under Section 324 IPC and of Gurdial Singh and Paramjit Singh appellants under Sections 324/34 IPC are upheld. Their sentences of imprisonment are set-aside. Instead, they are ordered to be released on probation subject to their furnishing bonds to keep peace and be of good behaviour for a period of one year and to receive sentence as and when called upon to do so.

Necessary bonds be furnished to the satisfaction of the Chief Judicial Magistrate, Ludhiana, within two months from today.

The appeal is, accordingly, disposed of.

September 30, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No