

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-2438-SB of 2004.
Date of Decision: 01.02.2016.**

SARDUL SINGH		APPELLANT.
	VERSUS	
STATE OF PUNJAB		RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. H.S. Brar, Advocate for the appellant.

Ms. Lavnya Paul, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Sardul Singh, assailing the judgment of conviction and order of sentence dated 30.11.2004 recorded by learned Additional Sessions Judge (Adhoc) Fast Tract Court, Muktsar, in case bearing First Information Report No.164 dated 01.07.2001 registered at Police Station Sadar Muktsar vide which he (appellant) was sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- under Section 326 of the Indian Penal Code (for short "I.P.C.") and in default of payment of fine to further undergo rigorous imprisonment for one month.

Precisely, the story of the prosecution is that on 29.06.2001 at

about 7:30 p.m., Gurdeep Singh son of Jabarjang Singh, resident of village Dohak (complainant) was returning home after doing work in the fields. As he reached the bus stand of the village, he saw that Lakha Singh son of Sardul Singh armed with a 'Dang' and Sardul Singh armed with a 'Gandasa' were standing there. Lakha Singh gave a 'Lalkara' to teach him (complainant) a lesson for not withdrawing the case regarding the land. Sardul Singh then gave a 'Gandasa' blow hitting on his forehead above the left eye. Hearing his shouts, Naib Singh, whose house is situated nearby and had witnessed the occurrence, rushed to the spot. Seeing him both the assailants ran away with their respective weapons.

A wireless message was received by ASI Gurdeep Singh at Police Station Bariwala from Police Station Sadar Muktsar about admission of Gurdeep Singh in Civil Hospital, Muktsar with injury on his person. ASI Gurdeep Singh alongwith Constable Kuldeep Singh collected the medico legal report of Gurdeep Singh from Police Station Sadar Muktsar and reached the hospital. On his application enquiring about the condition of the injured, the doctor declared the injured unfit to make statement. Same was the position on 30.06.2001. On 01.07.2001 when the injured was declared fit, his statement Ex.P1 was recorded on the basis of which a case under Section 326 I.P.C. was got registered and investigations commenced.

Appellant-accused Sardul Singh surrendered in the Court and was arrested. On interrogation, he made a disclosure statement in pursuance of which he got recovered a 'Gandasa' from the room meant for

storing chaff. The 'Gandasa' Ex.P9 was taken in possession vide memo Ex.P10. On 04.07.2001 on the application of the Investigation Officer the doctor gave opinion that except for medical treatment, the injury might have proved dangerous to life. Accordingly, the offence attracting Section 326 I.P.C. was substituted by Section 307 I.P.C. On completion of investigation and other formalities, appellant Sardul Singh was challaned and sent to the Court for trial. Lakha Singh, being a juvenile was separately challaned and sent for trial to the Juvenile Justice Board.

The appellant was charge-sheeted and subjected to face trial for commission of offence under Section 307 I.P.C.

To substantiate the charge, the prosecution examined as many as five witnesses namely, PW1 complainant Gurdeep Singh, PW2 Naib Singh, PW3 Dalip Singh Sachdev, PW4 Sub Inspector Gurdeep Singh and PW5 Dr. Meena Jagga.

After closure of evidence of the prosecution, in his statement recorded under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") the appellant denied the case of the prosecution and pleaded innocence and false implication due to party faction. He further pleaded that the police is inimical to him and after the alleged occurrence another false case under Sections 399, 402, 302 and 511 I.P.C. etc. was registered against him at Police Station Muktsar. The complainant suffered injury by fall and he has been falsely implicated as prior to the occurrence he had contested election of Sarpanch and the complainant and the witnesses had opposed him and were inimical towards him.

In his defence, the appellant examined DW1 Pritam Singh and DW2 Anil Kumar Gupta, Document and Handwriting Expert.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant and recording a finding that the offence committed does not fall under Section 307 I.P.C. the appellant was convicted for the commission of offence punishable under Section 326 I.P.C. and was sentenced by the trial Court as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 30.11.2004 passed by learned trial court, the appellant preferred the instant appeal.

The submissions made by Mr. H.S. Brar, learned counsel representing the appellant and Ms. Lavnya Paul, Assistant Advocate General for the State of Punjab have been heard and record has been perused.

To begin with, learned counsel for the appellant argued that complainant Gurdeep Singh had suffered a single injury allegedly caused with a sharp edged weapon but he implicated two persons namely the appellant and his minor son Lakha Singh for inflicting the same. The complainant was medico legally examined by PW5 Dr. Meena Jagga on the day of occurrence i.e. 29.06.2001 at 10:30 p.m. The medico legal report Ex.P13 and the testimony of the doctor PW5 was incompetent and insufficient to prove that the injury was grievous in nature and had been caused with a sharp edged weapon like 'Gandasa'. Neither the depth of the

injury was mentioned in the Medico Legal Report Ex.P13 nor X-ray examination of the injury was got done by the doctor. In absence of the radiological test, the opinion of the doctor PW5 that the injury was grievous could not be believed.

Learned counsel further argued that there was an intentional long delay in lodging of the First Information Report. The occurrence was alleged to have taken place at 7:30 p.m. on 29.06.2001 whereas the statement Ex.P1 of injured Gurdeep Singh was recorded by the Investigation Officer on 01.07.2001 at 10:00 a.m. The gap of one day and two nights was long enough for concocting a false and fabricated story for falsely implicating the appellant as the police and the complainant were inimical towards him due to party faction in the village.

Learned counsel pointed out that as per the case of the prosecution the appellant was interrogated in the presence of one Pritam Singh and in pursuance of his disclosure statement Ex.P8, a 'Gandasa' (Ex.P9) was alleged to have been recovered. The prosecution did not examine Pritam Singh the only independent public witness to the alleged recovery of weapon. During defence evidence of the appellant Pritam Singh stepped into the witness box as DW1 and stated that neither the appellant was interrogated nor any recovery from the appellant was effected in his presence. The appellant examined DW2 Anil Kumar Gupta, Document and Handwriting Expert who proved that the disputed thumb impressions i.e. 'Q1' on the disclosure statement Ex.P8, 'Q2' on the sketch of the blade of the 'Gandasa' (Ex.P9) and 'Q3' on the recovery

memo Ex.P10 do not tally with the standard/specimen thumb impression of Pritam Singh 'Mark-S1' under his statement in the Court. The thumb impressions on the memo of arrest and memo of personal search were also not found to be of Pritam Singh.

Learned counsel urged that once it becomes evident that the investigation was not fair and was tainted and the investigation officer had fabricated documents to implicate the appellant, the entire allegations of the prosecution become doubtful and unreliable.

The arguments of learned counsel for the appellant may appear to be attractive but are devoid of merit. It is a wrong conception that there was an intentional delay of one day and two nights in lodging the First Information Report. According to the Medico Legal Report Ex.P13 injured Gurdeep Singh had reached Civil Hospital, Muktsar at 10:10 p.m. on 29.06.2001. He was examined by PW5 Dr. Meena Jagga at 10:30 p.m. In her statement PW5 Dr. Meena Jagga proved the application Ex.P4 given by the police at 12:50 a.m. on 30.06.2001 on which she gave her opinion Ex.P4/1 that the injured was unfit to make a statement. Again on 30.06.2001 at 7:30 a.m. the application Ex.P3 was given by the police but the doctor opined vide note Ex.P3/1 that the patient was unfit to make statement. It is on the application Ex.P5 given on 01.07.2001 that vide note Ex.P5/1 the injured was declared fit for making statement by the doctor. Immediately thereafter the statement Ex.P1 of injured Gurdeep Singh was recorded and on the basis of the statement, Daily Diary Report was registered at 10:30 a.m. Needless to say that the delay, if any, has

been duly explained by the prosecution.

Admittedly, the appellant and injured Gurdeep Singh were residents of same village. There is nothing on the record to show that the injured was for any reason hostile towards the appellant because of which he could have implicated him falsely. In his statement Ex.P1 which formed the basis of First Information Report as well as when he appeared before the Court for deposing on oath complainant/injured stated that on the relevant date and time when he was returning home and had reached at the bus stop of the village, he saw Lakha Singh and Sardul Singh standing there. They were armed with a 'Dang' and a 'Gandasa' respectively. Lakha Singh raised a 'Lalkara' that "*dog like person has come and he be finished*", on which Sardul Singh gave a 'Gandasa' blow hitting on his forehead near the left eye. His shouts attracted Naib Singh whose house was nearby and on an alarm given by Naib Singh, the assailants fled away with their respective weapons.

Naib Singh PW2, eyewitness of the occurrence, was not related to the injured. He too was resident of the village Dohak of which the appellant and the injured were residents. He had no reason to favour the injured or depose against the appellant as for him both were co-villagers and were of equal importance. The statement regarding the occurrence of injured Gurdeep Singh was fully corroborated by PW2 Naib Singh and nothing such could be derived by the appellant in his cross-examination which could adversely affect his credibility. PW2 categorically stated that he was standing in the door of his house when he

saw the occurrence during which Lakha Singh raised a 'Lalkara' that they should not allow Gurdeep Singh to escape and he be finished and on this Sardul Singh gave a 'Gandasa' blow hitting on the left side of forehead of Gurdeep Singh. While the injured cried out he too shouted not to kill and seeing him the assailants ran away with their respective weapons.

Coming to the nature of injury suffered by injured Gurdeep Singh, it is worthwhile to refer to the injury described by PW5 Dr. Meena Jagga in the Medico Legal Report Ex.P13, which is as under:-

“An incised wound 6cm x .5cm on the forehead just above the left eyebrow 3cm away from the mid line. Underlying bone was cut. There was profuse fresh bleeding from the wound.”

The above injury was stated to be “grievous in nature” and the weapon used was said to be “sharp”. The pictorial diagram showing the seat of the injury is Ex.P13/1. It is further in the statement of the doctor PW5 that on an application Ex.P12 given by the police she had given her opinion Ex.P12/1 that the injury might have proved dangerous to life if timely treatment had not been given.

Indeed, the doctor is required to mention the depth of the injury and to get the injury X-rayed, but the facts of the present case are quite peculiar. For forming an opinion that the injury was grievous and had been caused with a sharp edged weapon, the nature of the injury seen with naked eye by the doctor was sufficient. It was an incised wound 6cm x 0.5cm on the forehead just above the left eyebrow i.e. 3cm away from

mid line. The underlying bone was cut and the wound was profusely bleeding.

In Para No.8 of the judgment, learned trial Court observed as under:-

“Moreover, in this case, the accused moved an application to the Court for re-examination of Gurdeep Singh, injured by the doctor, as according to the accused, there was no bone cut. On that application, the matter was referred to the Civil Surgeon who constituted a Board and after getting the opinion from the board, he sent the same to the court and the court ordered to place the same on the file and as per report of the board there was a fracture of bone of the left frontal part. Even 3 X-ray films were taken by the medical Board. As such, in this case, there is no doubt that the injury was grievous in nature. The injury was an incised wound caused with a sharp edged weapon. As such, the offence was under Section 326 IPC and not under Section 307 IPC.”

The above observation of learned trial Court leave no room for a doubt in the allegation of the prosecution that the injury suffered by complainant Gurdeep Singh was grievous in nature and had been caused with a sharp edged weapon. It was on an application given by the appellant himself that under the orders of the Court a Board of doctors was constituted to re-examine the complainant-injured and after getting

the injury of the complainant X-rayed the Board gave its opinion that the left frontal bone was fractured and that the injury which was an incised wound caused with a sharp edged weapon was grievous in nature.

The testimony of the witnesses namely DW1 Pritam Singh and DW2 Anil Kumar Gupta, Document and Handwriting Expert examined by the appellant may indicate that Pritam Singh was not the person whose thumb impressions appeared on the memo showing recovery of 'Gandasa' from the appellant, but for that solitary reason the case of the prosecution could not be left to fall on the ground. For any infirmity or defect in the investigation, the unequivocal deposition of PW1 complainant-injured Gurdeep Singh and of PW2 Naib Singh fully corroborated by medical evidence cannot be ignored. The said evidence is so consistent, cogent and truth inspiring that the conclusion irresistible is that the prosecution had succeeded in bringing home guilt to the appellant.

Accordingly, the judgment of conviction dated 30.11.2004 recorded by learned trial court, convicting the appellant under Section 326 I.P.C. is upheld. As regards, the quantum of sentence, the sentence awarded to the appellant is appropriate/adequate and calls for no intervention.

The appeal is dismissed.

The appellant is on bail in this case, his bail bond shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of

sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

01.02.2016.
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Note: Whether to be referred to the Reporter or not? Yes/No.