

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

Crl. Appeal S-952-SB of 2004
Date of Decision : April 23, 2016

Buldhari Lal and othersAppellants
Versus
State of Punjab Respondent

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

Present : Mr. Bikram Chaudhary, Advocate
Dr. Deipa Singh, Addl. A.G., Punjab.

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

The appellants were tried for committing offences under Sections 307/34 and 323 IPC on the allegations that on 7.12.1997 at about 9.30 a.m., they had caused simple as well as dangerous to life injuries to PW3 Kuldip Singh and PW4 Amandeep Singh. Vide judgment and order dated 3.4.2004, learned Additional Sessions Judge (Adhoc) Ludhiana, convicted them for the aforementioned offences and sentenced them as below:-

Urmal Parkash	U/s 307 IPC	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;
	U/s 307/34 IPC	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;

	U/s 323 IPC	To undergo R.I. for six months and to pay a fine of Rs.200/- and in default to suffer further R.I. for seven days;
Gulshan Rai	U/s 307 IPC	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;
	U/s 307/34	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;
	U/s 323 IPC	To undergo R.I. for six months and to pay a fine of Rs.200/- and in default to suffer further R.I. for seven days;
Buldhari Lal	U/s 307/34	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;
	U/s 323 IPC	To undergo R.I. for six months and to pay a fine of Rs.200/- and in default to suffer further R.I. for seven days;
Gurcharan Kumar	U/s 307/34 IPC	To undergo R.I. for seven years and to pay a fine of Rs.2000/- and in default to suffer further R.I. for one month;
	U/s 323 IPC	To undergo R.I. for six months and to pay a fine of Rs.200/- and in default to suffer further R.I. for seven days;

All the substantive sentences of imprisonment were ordered to run concurrently. The period of detention during inquiry, investigation and trial was ordered to be set off against the period of sentence awarded to them.

The case of the prosecution is that on 7.12.1997 at about 9.30 a.m., complainant Kuldeep Singh along with his nephew

Amandeep Singh was returning to village Jawaddi and when they reached near their out house, they saw Dharam Singh @ Dhamma and Rajiv Kumar along with some other boys playing cricket in the adjoining vacant plot. Amandeep Singh joined them whereas Kuldip Singh went to a latrine to answer the call of nature. Accused Buldhari Lal, whose house and plot adjoined the play ground came there and proclaimed that he would not allow playing of cricket there. He started abusing those who were playing cricket. Amandeep Singh restrained him on which Buldhari Lal returned home. Soon thereafter, Buldhari Lal armed with hockey stick, his sons Urmal Parkash armed with Kirpan and Gulshan Rai armed with Gandasi and his grand son Gurcharan Kumar @ Gaggi armed with angle iron came there. They started proclaiming that they would teach a lesson for playing cricket there. Kuldip Singh came out of the latrine and in his presence Urmal Parkash gave a kirpan blow on the back of the head of Amandeep Singh. Buldhari Lal gave two blows with the hockey stick on the back of Amandeep Singh's head. Gulshan Rai gave a gandasi blow from its reverse side on the head of Amandeep Singh whereas Gurcharan Kumar @ Gaggi gave two blows with the angle iron which landed on the upper side as well as on the back of the left shoulder of Amandeep Singh. Resultantly, Amandeep Singh fell down. Gulshan Rai gave two blows with gandasi on the back of Amandeep Singh. Buldhari Lal gave a hockey blow on the left knee and Gurcharan Kumar @ Gaggi gave an angle iron blow on the right foot of Amandeep Singh.

Kuldip Singh, Dharam Singh and Rajiv Kumar tried to rescue Amandeep Singh. Gulshan Rai gave gandasi blows from its reverse side on the nose of Kuldip Singh. Buldhari Lal gave a hockey blow on his forehead whereas Gurcharan Kumar @ Gaggu gave an iron angle blow which landed below his nose. Kuldip Singh raised an alarm which attracted Harvinder Singh to the spot. All the four accused with their respective weapons decamped from the spot. Kuldip Singh and Amandeep Singh were, thereafter, removed in injured condition to Civil Hospital Ludhiana. On receipt of information regarding arrival of the injured in the hospital, ASI Bakshish Singh reached there. Both the injured were declared unfit to make statements. On 8.12.1997, ASI Bakshish Singh again went to Civil Hospital Ludhiana but this time also both the injured were declared unfit. On 9.12.1997, when Kuldip Singh was declared fit, ASI Bakshish Singh recorded his statement on the aforementioned lines. According to Kuldip Singh, the motive behind the occurrence was an early dispute of Buldhari Lal with his brother-in-law Himmat Singh, which matter stood compromised due to Buldhari Lal seeking an apology. Despite the same Buldhari Lal kept on nursing a grudge.

It is also the case of the prosecution that on the basis of statement of Kuldip Singh, FIR No. 274 dated 9.12.1997 was registered against the appellants at Police Station Sarabha Nagar Ludhiana under Sections 323 and 324/34 IPC. During the investigation of the case, the police recorded the statements of the witnesses. The appellants were arrested. On completion of

investigation final report under Section 173 Cr.P.C. was submitted in the Court for prosecuting the appellants under Sections 323, 324 and 307 read with Section 34 IPC. This was followed by commitment of the case to the Court of Sessions where the appellants were charged for committing offences under Sections 307/34 and 323 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Ashok Raswant, who testified about conducting of x-ray examination of Kuldeep Singh and stated that X-ray of skull showed fracture of frontal bone. He also deposed conducting the X-ray examination of Amandeep Singh but did not find any bony injury. PW2 Dr. Manmohan Singh testified that on 7.12.1997, he conducted medico-legal examination of Kuldeep Singh and found following injuries on his person:-

1. Multiple abrasion in an area of 1½" X ¾" on forehead between the eye brow;
2. Defused swelling 2½" X 1" on forehead between the eye brow. X-ray advised.
3. Bleeding from both the nostrils. Kept under observation.
4. Nose depressed and deviated to right side. Advised X-ray.

Dr. Manmohan Singh further testified that he also medico-legally examined Amandeep Singh and noticed the following injuries on his person:-

1. Lacerated wound 2" X ½" left side of scalp. Bone deep, Advised X-ray.
2. Lacerated wound 2" X 1" back of skull, near top. Bone deep. Advised X ray.
3. Incised wound 1" x ½" on top of head. Bone deep. Advised. X-ray.
4. Lacerated wound 2" X ½" right side of head. Bone deep. Advised X-ray.
5. Lacerated wound 1" X ½" on left knee.
6. Defused swelling right foot dorsum 3" X 2". Advised X-ray.
7. Abrasion on the back in oblique fashion in an area of 15" x 3" extending right upper side to the left side of the back lower side.
8. Lacerated wound 1" x ½" left side of back near shoulder.
9. Abrasion in an area of 6' X 2" on abdomen right lateral aspect.
10. Defused swelling painful in an area of 5" X 3" on left shoulder. Advised X-ray.

Dr. Manmohan Singh also proved opinion Ex.PW2/F vide which he had declared injury No. 2 on the person of Kuldeep Singh as dangerous to life.

Complainant Kuldeep Singh while appearing as PW3 reiterated the facts stated by him while making statement Ex.PC before ASI Bakshish Singh, on the basis of which, FIR Ex.PW4/H

was registered. His testimony stands duly corroborated by PW4 Amandeep Singh, who had received injuries in the occurrence and PW7 Rajiv Kumar who had witnessed the occurrence.

The investigation part of the case was brought on record by PW5 ASI Bakshish Singh, PW6 HC Satwant Singh and PW8 Harvinder Singh, Draftsman.

When examined under Section 313 Cr.P.C. all the appellants denied the allegations and pleaded that they were innocent. They also stated that the injured with dishonest intention had come to their plot and when they were stopped from playing cricket, they abused them and gave injuries to Urmal Parkash.

The trial Court, after going through the evidence brought on record and hearing learned counsel for the parties, believed the prosecution case and convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that the occurrence in question had taken place in the vacant plot of the accused party, which was opposite to their house. According to the defence, the complainant party had come present on the vacant plot with a dishonest intention as while playing cricket they had started abusing the accused party besides causing injuries to appellant-Urmal Parkash. However, the defence has not been able to substantiate that appellant-Urmal Parkash had received injuries. The doctor, who was said to have medico-legally examined appellant-Urmal Parkash has not been

examined by the defence as its witness. Merely because, the doctor, who had medico-legally examined Urmal Parkash and was examined in the cross-case is no ground to hold that Urmal Parkash had received injuries in the occurrence. Both the cases were tried and decided by the trial Court simultaneously but separately. The prosecution case relating to causing of injuries to PW3 Kuldeep Singh and PW4 Amandeep Singh by the appellants has been duly accepted by the trial Court. On the other hand, cross-case relating to causing of injuries to Urmal Parkash belonging to the accused party did not find favour with the trial Court and, accordingly, the complainant party was acquitted of the charges against them. The said judgment of acquittal of the complainant party has not been challenged by the defence by taking recourse to law. Under these circumstances, no benefit can accrue to the appellants for the reason that the place of occurrence was owned by the accused party.

The prosecution case as set up by PW3 Kuldeep Singh, first while making statement Ex.PC before ASI Bakshish Singh and, thereafter, by stepping into the witness box as PW3 stands duly corroborated by PW4 Amandeep Singh. Both of them had received injuries at the hands of the appellants. Though PW7 Rajiv Kumar, who was also projected as an eye witness did not support the prosecution case in the first instance and was accordingly got declared hostile yet during his cross-examination by the Additional Public Prosecutor, PW7 Rajiv Kumar turned around and corroborated the testimonies of PW3 Kuldeep Singh and PW4

Amandeep Singh. The ocular account stands corroborated by the testimony of PW2 Dr. Manmohan Singh, who had medico-legally examined the injured, namely, Kuldip Singh and Amandeep Singh. PW1 Dr. Ashok Raswant has testified that he conducted X-ray examination of Kuldip Singh, which showed fracture of his frontal bone and the nature of the injury was depressed fracture. After going through the report regarding X-ray examination of Kuldip Singh, PW2 Dr. Manmohan Singh declared injury No. 2 on the person of Kuldip Singh, which was a defused swelling on the forehead between the eye brows, as dangerous to life.

In view of the above, no fault can be found with the impugned judgment of conviction passed by the learned trial Court.

As regards the quantum of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than eighteen years. Out of the sentences of seven years imposed upon them, appellant Buldhari Lal has already undergone total sentence including remission of one year, seven months and seven days, appellant Gulshan Rai and Urmal Parkash have undergone three years, ten months and two days whereas appellant Gurcharan Kumar @ Gaggi has undergone three years, eight months and seven days. Details regarding the various period already undergone by the appellants out of the sentence of imprisonment imposed upon them as reflected in the custody certificates produced by the learned State counsel. It may also be noticed that appellant-Buldhari Lal is an old man. When he

was heard by the trial Court under Section 235 Cr.P.C. on the quantum of sentence, he had stated that he was 82 years of age. It is also the case of the appellants that none of them is involved in any other criminal case.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the appellants, who are on bail for the last about eleven years and have not misused the concession in any manner, need not be sent behind the bars, once again, to undergo their remaining sentences of imprisonment. Ends of justice would be amply met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. At the same time, each of the appellants can be directed to pay an additional amount of Rs.10,000/- as fine, so that the same be disbursed to the injured, namely, PW3 Kuldip Singh and PW4 Amandeep Singh in the ratio of 75:25, as compensation.

Resultantly, the conviction of the appellants as recorded by the trial Court is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine along with their default clauses already imposed upon them by the trial court are upheld. In addition, each of the appellants shall pay an amount of Rs.10,000/- as fine and in default thereof, the concerned appellant shall suffer rigorous imprisonment for six months. The entire amount of fine including the additional amount of fine shall be deposited by the appellants with the trial Court within a period of three months from today. The

additional amount of fine, when deposited, shall be disbursed to PW3 Kuldeep Singh and PW4 Amandeep Singh in the ratio of 75:25, as compensation.

But for the modification in the substantive sentences of imprisonment imposed upon the appellants and issuance of directions regarding payment of amount as fine, the appeal fails and is, therefore, dismissed.

April 23, 2016
amit rana

(T.P.S. MANN)
JUDGE