

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

CRA D-736-DB of 2015

Date of Decision: January 19, 2016

Vijay Kumar

.....Appellant

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Daljeet Singh Kahlon, Advocate

T.P.S.MANN. J.

Appellant-Vijay Kumar, who had received injuries in the occurrence and, thus, a 'victim' as defined under Section 2 (wa) of the Code of Criminal Procedure has filed the present appeal for challenging the judgment and order dated 16.3.2015 passed by the learned Judge, Special Court, Pathankot, to the extent of acquitting respondents No. 2 to 6 of the charges under Section 326 IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act'). He has also

prayed for enhancing the sentences of the accused for the offences under Sections 148, 452, 325/149, 324/149 and 323/149 IPC.

The accused, respondents No. 2 to 6 herein, were tried for committing offences punishable under Sections 148, 149, 452, 326, 325 and 323 IPC and Sections 3(1)(x) and 3(2)(v) of the Act. Vide impugned judgment and order, learned trial Court acquitted them of the charges under Section 326 IPC and Sections 3(1)(x) and 3(2)(v) of the Act. They were, however, convicted for the remaining offences and sentenced as under:-

<u>Offence</u>	<u>Punishment</u>
Section 148 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month;
Section 452 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months;
Sections 325/149 IPC	Rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months;
Sections 324/149 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each

and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months; and
Sections 323/149 IPC Rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.

The period of detention already undergone by the accused during the inquiry, investigation and trial of the case was ordered to be set off under Section 428 IPC against the sentences of imprisonment awarded to them. They were also directed to deposit an amount of Rs.10,000/- jointly in equal shares for disbursing the same to the complainant/injured, as compensation. All the sentences were ordered to run concurrently.

The case of the prosecution, in nutshell, is that on 21.1.2010 at about 9.00 p.m., the appellant alongwith his mother and brother was sitting in his shop at village Sarna, when all of a sudden, the accused, while armed with drat and hockey sticks came there and attacked him. Vijay Pathania gave drat blow on the left side of his head whereas all the accused passed casteist remarks with reference to the caste of the appellant. The other accused also used filthy language. In order to save himself, he started running towards his house but the accused chased him and gave blows with hockey sticks. On the appellant raising hue

and cry, the boys from his locality came and, thereafter, accused ran away from the spot. Due to the attack, his neck bone was fractured. Even one of his right rib was broken. He remained admitted in Civil Hospital for twenty one days. Despite the same, no action was taken by the police against the accused. The appellant then moved an application to the Human Rights Commission pursuant to which FIR No. 27 dated 27.4.2011 for the aforementioned offences was registered at Police Station Kanwan, Pathankot.

Having heard learned counsel for the appellant and on going through the impugned judgment as well as the record, this Court finds that in his statement made before the trial Court as PW2, the appellant made no mention that the accused did not belong to a Scheduled Caste or Scheduled Tribe or that he himself belonged to a caste, which was a Scheduled Caste. It is also not mentioned that the accused knew that the complainant was member of a Scheduled Caste or a Scheduled Tribe or had intentionally insulted to humiliate him in the name of his caste at a place within public view. Even otherwise, certificate Ex.PW2/A produced by the appellant before the trial Court was not formally proved by calling the officials from the office of the Issuing Authority or by calling record of office. Mere exhibiting of a document does not dispense with its mode of proof and the document has to be proved as per the provisions of the Evidence

Act. Under these circumstances, the Scheduled Caste certificate produced by the appellant cannot be taken into consideration.

As regards the commission of offence under Section 326 IPC is concerned, it may be noticed that the grievous injury i.e. fracture of a rib was on account of causing blow with a hockey stick blow by one of the accused. For that the accused have already been held guilty under Section 325 IPC. The provisions of Section 326 IPC are sought to be made applicable to the facts and circumstances of the present case on the ground that the appellant remained hospitalized for more than twenty days on account of severe pain or unable to follow his ordinary pursuits. However, there is no evidence on the file that the appellant was in severe bodily pain or unable to follow his ordinary pursuits. No bed head ticket or doctor has been examined in that regard. Even in his testimony before the trial Court, the appellant did not utter a single word in that regard. Merely, remaining hospitalized for twenty days is, thus, not sufficient to attract the provisions of Section 326 IPC. Thus, the trial Court rightly acquitted the accused of the charge under Section 326 IPC.

Coming to the quantum of sentence awarded to the accused for the various offences, for which, they stand convicted, suffice it to say that the sentence of imprisonment and fine awarded are commensurate with the crime committed by them. All of them have been sentenced to undergo various periods of

imprisonment besides paying an amount of Rs.5,000/- each as fine and another amount of Rs.10,000/- jointly in equal shares for being disbursed to the appellant, as compensation.

In view of the above, there is no merit in the appeal.
The same is, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

January 19, 2016
amit rana

**(RAMENDRA JAIN)
JUDGE**