

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**Criminal Appeal No.S-2027-SB of 2003**

Date of Decision : January 20, 2016

Harvinder Singh

.....Appellant

**VERSUS**

State of Punjab

.....Respondent

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

Present : Mr. Sandeep Sharma, Advocate  
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

**T.P.S. MANN, J.**

The appellant and his father Balbir Singh were tried for committing offences punishable under Sections 328/326/324/34 IPC. Vide judgment and order dated 11.10.2003, learned Additional Sessions Judge, (Fast Track Court), Kapurthala, acquitted accused Balbir Singh of the charges against him. The appellant was also acquitted of the charges under Section 328 IPC. He was, however, convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further rigorous imprisonment for two months. He was also convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- and in default of payment of fine, to undergo further rigorous imprisonment for two months. Both the sentences were ordered to run concurrently. The period of his detention

during inquiry, investigation and trial, was ordered to be set off against the sentence awarded to him.

The case of the prosecution, in nutshell, is that on 13.5.2002, appellant Harvinder Singh came to the shop of complainant Sukhwinder Singh at about 3.00 p.m. and asked him to visit his shop for repairing the fridge lying at his house. Accordingly, the complainant accompanied the appellant to his house for the aforementioned purpose. In the meantime, the electric supply went off and the complainant, alongwith appellant Harvinder Singh and one Bhola went towards Railway Station. At about 8.15 p.m., when the electric supply resumed, the complainant accompanied the appellant to his house and started repairing the fridge. The appellant sent Bhola for bringing meat from the market. At about 11.00 p.m., the appellant called the complainant on the first floor to take meals. While taking meals, the complainant started feeling dizzy and told the appellant that he was not feeling well and, thus, be taken to the ground floor. He wanted a cot so that he may lie down and have rest. At this, the appellant hit something on his head besides giving injuries on various parts of his body. As a result, the complainant became unconscious. The appellant and his father Balbir Singh caused more injuries on his person in the presence of Bhola. The occurrence was witnessed by Bhola and one Kulwinder Singh. The motive behind the occurrence was that the complainant had got the dispute between the appellant and his wife settled and was impressing upon the appellant to keep his wife with him.

Further, case of the prosecution is that on the statement of complainant Sukhwinder Singh, FIR No.72 dated 15.5.2002 came to be registered at Police Station City, Phagwara under Sections 328/326/324 IPC. During the investigation, the appellant was arrested. Statements of witnesses were recorded. Upon completion of investigation, challan was presented against him only. The case was, thereafter, committed to the Court of Sessions where Balbir Singh, father of the appellant, who was earlier kept in column No.2 of the challan, was also summoned to face trial and the trial Court charged them for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Sukhwinder Singh, complainant, PW2 Dr. Inderpal Singh, PW3 Inderjit Singh, Radiologist and PW4 ASI Manjit Singh. After giving up PW Kulwinder Singh as having been won over by the accused and tendering report Ex.PX of the Chemical Examiner, learned Additional Public Prosecutor closed the prosecution evidence.

When examined under Section 313 Cr.P.C., the appellant and his father Balbir Singh pleaded their false implication. In their defence, they examined DW1 Mohinder Singh.

After going through the record and hearing learned counsel for the parties, the trial Court acquitted Balbir Singh, co-accused of the appellant, of the charges against him. The appellant was also acquitted under Section 328 IPC. He was, however, convicted under Sections 326 and 324 IPC and sentenced, as mentioned above.

Learned counsel for the appellant has submitted that no such occurrence as alleged by the prosecution had taken place as is clear from the statement of DW1 Mohinder Singh, a neighbourer of the appellant. It is also submitted that there is no corroboration to the statement of complainant Sukhwinder Singh with regard to causing of injuries to him by the appellant. Kulwinder Singh, who was said to be an eye witness of the occurrence, has not been examined by the prosecution. It is further submitted that there has been delay in lodging the FIR. Besides there are contradictions in the version of the complainant which create doubt regarding truthfulness of the version put forth by him.

Per contra, learned State counsel has submitted that the prosecution has led cogent and convincing evidence to prove the involvement of the appellant in the commission of the crime. Merely because Kulwinder Singh, an eye-witness was not examined, is not sufficient to out-rightly reject the testimony of the complainant. It is also submitted that the delay in lodging of the FIR has been duly explained by the prosecution.

Having heard learned counsel for the parties and on going through the record, this Court finds that complainant Sukhwinder Singh, while appearing as PW1 before the trial Court, reiterated the version put forth by him in his initial statement, on the basis of which FIR came to be registered. He testified that after being called by the appellant to his house for repairing his fridge, he accompanied him. Thereafter, it was the appellant who gave kirpan blow on his head. It was followed by Balbir Singh catching hold of him and then the appellant gave kirpan blows on

his person. At about 4.30 a.m., the appellant and Balbir Singh took him towards Railway Station, where their scooter was parked. They took him on their scooter towards railway track when the police intercepted them. The appellant was caught at the spot while Balbir Singh managed to escape. He was then taken to Civil Hospital, Phagwara. In his cross-examination, he deposed that the accused continued causing injuries to him for about two hours. According to him, he did not take liquor. Even on the day of occurrence, he had not taken liquor.

PW2 Dr. Inderpal Singh, Medical Officer, Civil Hospital, Phagwara has testified that on 14.5.2002 at about 10.00 a.m., complainant Sukhwinder Singh was admitted in Civil Hospital, Phagwara and as many as 19 injuries were found on his person. Weapon used was sharp for all the injuries. Duration of injuries was within six hours. On receipt of X-ray report, he had declared injuries No.10, 11, 12 as grievous in nature.

PW4 ASI Manjit Singh had testified that on 14.5.2002 on receipt of MLR Ex.PD, he, alongwith other police officials, went to the Civil Hospital, Phagwara and moved an application Ex.PW4/A on which patient Sukhwinder Singh was declared unfit to make statement vide endorsement Ex.PG/9. Patient was, once again, declared unfit on the same day. It was only on 15.5.2002 that the patient was declared fit and, accordingly, his statement Ex.PA was recorded on 15.5.2002 at 3.15 p.m. in Civil Hospital, Phagwara and on its basis FIR Ex.PA/2 came to be registered at Police Station City, Phagwara on the same day on 3.30 p.m.

Going by the nature of injuries found on the person of complainant Sukhwinder Singh and the testimony of PW4 ASI Manjit Singh who had twice made an attempt to seek opinion regarding the fitness of complainant Sukhwinder Singh but remained unsuccessful and later on recorded the statement Ex.PA on 15.5.2002 at 3.15 p.m., it cannot be said that there was any delay in lodging of the FIR. Whatever delay occurred has been satisfactorily explained.

As regards the non-examination of Kulwinder Singh, who was said to have been projected as an eye-witness of the occurrence, suffice it to say that said Kulwinder Singh was given up by the prosecution as having been won over by the accused. This fact is also established as before the summoning of Balbir Singh, father of the appellant under Section 319 Cr.P.C. and when the trial had proceeded only against the appellant, Kulwinder Singh was examined as PW1 but had not supported the prosecution case. Rather, he had stated that he had not witnessed any occurrence nor seen the accused committing any offence in his presence nor also any injury being caused on the person of Sukhwinder Singh in his presence. In such a situation, the prosecution was justified in giving him up as won over during the subsequent trial against the appellant and his father Balbir Singh. On that ground alone, the prosecution case cannot be discarded as complainant Sukhwinder Singh has unequivocally testified that it was the appellant who had given injuries to him. His testimony is duly corroborated by the medical evidence. He also stood the test of cross-examination and testified that it was the

appellant who had taken him to his house and, thereafter, given kirpan blows to him.

In view of the above, no case is made out for any interference in the conviction of the appellant for the offences under Sections 326 and 324 IPC.

Coming to the question of sentence of imprisonment, this Court finds that the appellant has been facing the agony of criminal prosecution for the last more than thirteen years. He claims himself to be the sole bread winner of his family. He is also not shown to be a previous convict. Taking into consideration the totality of the circumstances, this Court is of the view that the imprisonment of three years awarded to him for the offences under Section 326 IPC is on the higher side. Ends of justice will be suitably met if the said sentence of imprisonment is reduced to two years.

Resultantly, the conviction of the appellant under Sections 326 and 324 IPC is upheld. His sentence of imprisonment for three years under Section 326 IPC is reduced to rigorous imprisonment for two years. His sentence of imprisonment for one year under Section 324 IPC is maintained. The sentences of fine imposed on each count, alongwith their default clauses, are maintained. The substantive sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

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

January 20, 2016