

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1097-SB of 2004

Date of Decision: 06.04.2017

Surjit Singh and Another

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Dr. Shekher Dhawan.

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellants.

Mr. Amarinder Singh Klar, Assistant Advocate
General, Punjab for the respondent.

Shekher Dhawan, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 6.5.2004, passed by learned Additional Sessions Judge (Adhoc)-cum-Presiding officer, Fast Track Court, Rupnagar, whereby both the appellants were convicted for the commission of offence under Section 326 IPC and were sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of ₹ 2,000/- each.

2. Facts relevant for the purpose of decision of the instant appeal that on 20.9.2000, PW.1 Satpal Dass, complainant, who is also an eye witness in this case, got recorded his statement before PW.11 Assistant Sub Inspector Gurinder Singh of Police Station Kharar, at Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as “PGI, Chandigarh”).

3. As per complainant-Satpal Dass, on 19.9.2000 at about 8.00 a.m., he was standing outside his house. Mani Singh, son of Mangal Singh came to meet her daughter, namely Kuldeep Kaur, who was married with Surjit Singh, accused/appellant No.1. The house of Surjit Singh is adjacent to the house of complainant. Mani Singh was standing outside the house of Surjit Singh and he called his daughter Kuldeep Kaur, who came out of her house. Mani Singh handed over one *jhola*, containing fruits, to Kuldeep Kaur. Meanwhile, appellants Surjit Singh (son-in-law of Mani Singh) and Balbir Singh son of Gurdev Dass came out of their house. They were armed with *gandasis*. Surjit Singh raised *lalkara* that Mani Singh should not be spared. Mani Singh fled away from the spot to save himself. Both the accused, namely Surjit Singh and Balbir Singh had chased him. The complainant further stated that he was also hiding himself along with Mani Singh. In order to make his escape, Mani Singh entered the courtyard of Jagar Singh and at that time, Surjit Singh and Balbir Singh encircled Mani Singh. Surjit Singh gave a *gandasi* blow on the head of Mani Singh, upon which he fell down. Thereafter, Balbir Singh also gave a *gandasi* blow on the head of Mani Singh. After that, both the accused gave several blows on the person of Mani Singh with their respective *gandasis*. Mani Singh was lying on the ground and crying for help and thereafter, he became unconscious and accused persons had fled away from the spot believing that Mani Singh had died. At that time, accused/appellants found that complainant Satpal Dass had witnessed the entire occurrence. So, they advanced threats to the complainant as well to teach him appropriate lesson.

Both the appellants ran after the complainant along with their respective

gandasis. The complainant raised an alarm “*bachao bachao*” and entered into his house. Appellants Surjit Singh and Balbir Singh also entered into the courtyard of house of the complainant, where his wife, namely Baljit Kaur was present and preparing meal. Surjit Singh gave a *gandasi* blow to Baljit Kaur, which hit on her mouth and right eye, upon which she fell down on the ground. Thereafter, Balbir Singh gave a *gandasi* blow to Baljit Kaur, which hit on the left side of her mouth below eye. Both the accused gave several blows with their respective *gandasis* to Baljit Kaur, wife of the complainant. She became unconscious. Kuldeep Kaur wife of accused Surjit Singh and Bhupinder Singh, son of complainant, reached at the spot. Both the accused fled away from the spot along with their respective weapons. Thereafter, complainant Satpal Dass, with the help of his son and Kuldeep Kaur, got admitted Mani Singh and Baljit Kaur to PGI, Chandigarh. Both the injured remained unconscious and they were under treatment. As per complainant, if Kuldeep Kaur and Bhupinder Singh had not come to their rescue, accused persons would have caused injuries to the complainant as well. Both the appellants had caused injuries to Mani Singh and Baljit Kaur, wife of the complainant with an intention to kill them. The motive for causing injuries to Mani Singh and Baljit Kaur was that Surjit Singh, accused, used to beat his wife, namely Kuldeep Kaur and Mani Singh came there just to make him understand. On the statement of complainant-Satpal Dass, FIR was registered. During investigation, accused persons were arrested, weapons i.e. *gandasis*, used for the commission of offence, were recovered on the basis of disclosure statements so made by the appellants and after completion of investigation, challan was presented in the Court.

4. During trial, the learned trial Judge proceeded with the trial of the case, framed charges under Sections 324, 326 & 307 IPC read with Section 34 IPC, recorded statements of prosecution witnesses and after considering the statements of both the accused/appellants, recorded under Section 313 Cr.P.C., also recorded the statements of a defence witness. Thereafter, learned trial Court held both the accused/appellants guilty for the commission of offence under Section 326 IPC, whereas learned trial Judge did not find any material or evidence so as to convict the appellants for the commission of offence under Section 307 IPC, and sentenced them as above. Appellants are in present appeal against the said judgment of conviction and order of sentence dated 6.5.2004.

5. Learned counsel for the appellants contended that prosecution case has not been proved in accordance with law and yet the learned trial Court recorded the judgment of conviction. Learned counsel mainly contended that the alleged occurrence had taken place on 19.9.2000 at about 8.00 a.m., whereas FIR was recorded on 20.9.2000 at about 10.00 p.m. after recording the statement of complainant Satpal Dass in PGI, Chandigarh. Such an inordinate delay has not been explained. Learned counsel further contended that ocular testimony, by way of statements of injured PW.2 Baljit Kaur, complainant-eye witness PW.1 Satpal Dass and another eye witness PW.3 Kuldeep Kaur, is at complete variance with medical evidence by way of medicolegal summary of injured Baljit Kaur, prepared at PGI, Chandigarh. As per ocular testimony, by way of statement of injured PW.2 Baljit Kaur, complainant-eye witnesses PW.1 Satpal Dass and PW.3 Kuldeep Kaur, accused/appellants had given *gandasi* blows to Baljit Kaur on her face

and head. The injured as well as the eye witnesses have not attributed any injury to the appellants on either of the hands of Baljit Kaur. But as per medicolegal case summary Ex.PE, the seat of injury is on the hand of Baljit Kaur and the said injury is a fracture and the learned trial Court has convicted the appellants on such a contradictory ocular and medical evidence.

6. Learned counsel for the appellants further contended that there was an interpolation in the medical record as it had come in the medicolegal summary of Mani Singh Ex.PW.4/A, whereby word “unknown” was interpolated as Mani Singh and this fact has been clarified by the doctors, who were summoned from the PGI, Chandigarh to prove the medical record.

7. Learned counsel also contended that as per medicolegal case summary Ex..PE, date of admission of Baljit Kaur in PGI, Chandigarh is 22.9.2000 and date of her discharge is 25.9.2000, whereas the alleged occurrence had taken place on 19.9.2000 and such a medical evidence does not connect the appellants with the alleged crime and the learned Court below has completely ignored all these facts.

8. Learned counsel for the appellants also contended that the learned Court below has not appreciated any reliance made upon the statement of DW.1 Kuldeep Singh, the sole witness examined in defence. As per DW.1, the basis of false implication of the appellants in the case was long drawn civil litigation pending between the parties.

9. While arguing on these points, learned counsel for the respondent-State contended that the learned trial Judge has rightly appreciated ocular as well as medical evidence. There is no dispute that as

taken place on 19.9.2000 in village Makhraan, Tehsil Kharar and Mani Singh and Baljit Kaur had sustained injuries in the said occurrence, which are serious in nature and the head injury on the person of Mani Singh was dangerous to life and ultimately he died during the course of trial. Both of them were taken to PGI, Chandigarh for medical treatment. Thereafter, it took some time to send an intimation to the concerned police station by PGI, Chandigarh and on receipt of intimation, PW.11 Sub Inspector Gurinder Singh (Investigating Officer) visited the PGI and moved applications Ex.PW.11/B & Ex.PW.11/C, respectively, for seeking opinion of the doctor so as to record the statement of injured persons. But vide his opinion Ex.PW.11/D & Ex.PW.11/E, respectively, the doctor declared both the injured, namely Mani Singh and Baljit Kaur to be unfit to make statement and ultimately statement of PW.1 Satpal Dass was recorded on 20.9.2000 and investigation was started.

10. Learned State counsel further contended that ocular version, by way of statement of injured PW.2 Baljit Kaur and eye witnesses PW.1 Satpal Dass and PW.3 Kuldeep Kaur and medical evidence by way of statement of doctors, who had prepared medicolegal summary and got radiological examination of Baljit Kaur done, have stated in so many words that Baljit Kaur had sustained injuries of fracture of her hand and her Medicolegal Report is Ex.PE and radiological report is Ex.PW.7/F. There was no reason for the injured to depose falsely against the accused/appellants. More so, the relationship between the parties is of such a nature that there was no dispute regarding identification of the accused persons and regarding interpolation by way of mentioning the name of Mani Singh on medicolegal case

summary Ex.PW.4/A, the same has been explained as per statement of PW.4 Dr. Om Parkash Parsad, Senior Resident, Department of Neurosurgery, PGI, Chandigarh and PW.5 B.L.Sharma, Deputy Central Registrar & Convenor, Disability Board, PGI, Chandigarh as it had come in cross-examination that name of Mani Singh was added on the basis of affidavit of his son and thus, present appeal is without any merit and the same be dismissed.

11. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the alleged occurrence had taken place on 19.9.2000 at village Makhran, Tehsil Kharar. Injured Mani Singh had sustained injuries which were dangerous to life but unfortunately his statement could not be recorded by the learned trial Court as he appeared during the course of trial but was unable to depose and ultimately he died during that process and the learned trial Judge acquitted both the appellants qua injuries caused to Mani Singh.

12. As regard to injuries caused to Baljit Kaur, she stepped into the witness box as PW.2 and deposed specifically that both the accused/appellants, namely Surjit Singh and Balbir Singh were armed with *gandasis* and had caused injuries on her head, face and her other body parts. The similar version was of PW.1 Satpal Dass, complainant that the injuries were caused to Baljit Kaur with *gandasi* by the appellants and similar was the deposition of PW.3 Kuldeep Kaur. All these three witnesses have not been proved to be liars during their cross-examination. More so, there was no motive for injured PW.2 Baljit Kaur to depose falsely against the present appellants so as to allow the real culprit to go scot-free. There was no dispute regarding identification of the appellants by the injured.

on the point is settled that delay in itself is not fatal for the prosecution. The Court is to see whether delay remains unexplained giving any reason or motive for falsely implicating some innocent person. However, in this case, delay has been duly explained by the prosecution. In light of the fact that the alleged occurrence had taken place on 19.9.2000 in village Makhran, Tehsil Kharar, injured had sustained grievous injuries, which were dangerous to life and as such they were taken to PGI, Chandigarh. Thereafter, intimation was to be sent to the police station and in that process some delay was caused. But that does not show that the present appellants have been roped in falsely and the learned trial Judge has rightly ignored the delay which has been well explained by the prosecution during the course of trial.

14. As regard to discrepancies pointed out by learned counsel for the appellants regarding variance of the seat of injuries. If statement of PW.2 Baljit Kaur, injured, is considered minutely, she had stated in so many words that she had sustained injuries on her face and other parts of her body and weapon used by the appellants was *gandasi*. The injured had explained the seat of injury and that injury was fracture on the hand of Baljit Kaur as well. It was not expected from the injured to explain each and every injury caused to her as she had taken the plea that she had become unconscious after causing of first injury by the appellants by *gandasi* blow on her face. The nature of injury caused to Baljit Kaur is fracture, which is punishable under Section 326 IPC and the learned trial Judge has rightly convicted both the appellants for the commission of offence under Section 326 IPC and sentenced them.

stands dismissed. As both the appellants are on bail, they be taken into custody to serve their remaining sentences. In that case, their bail/surety bonds shall stand cancelled. The trial Court shall comply with this order forthwith under intimation to this Court. The Registry shall keep track of the submission of compliance report and put up the papers accordingly after a period of three months.

(Shekher Dhawan)
Judge

April 06, 2017
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No