

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

(Sr. No.344)

CRA-S-1804-SB-2005

Date of decision: April 19, 2017.

Rachhpal Singh and another

... Petitioners

Vs

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. H.C. Rahi, Advocate, for the appellants.

Mr. D.S. Virk, DAG Punjab.

Mr. Malkiat S. Hundal, Advocate,
for Mr. R.S. Bains, Advocate,
for the respondent/complainant.

A.B. Chaudhari, J. (Oral):

The present appeal has been filed by the appellant against the judgment and order dated September 29, 2005 passed by the Additional District Judge (Adhoc), Jalandhar, by which the appellants were convicted for the offence under Sections 325 and 324 of Indian Penal Code, 1860 and were sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for 2 months.

Heard learned counsel for the appellants as well as the learned counsel for the respondent-State and the complainant.

The case of the prosecution in brief is that on the date of incident the appellants had entered in the house of one Nand Singh S/o Raj Mal and Harwinder Singh-appellant No.2 had given a fist blow on the mouth of the victim as a result of which his tooth fell down. The other appellant Rachhpal Singh had given a Gandasi blow on the head of the victim, who ultimately became unconscious. The FIR was lodged after 24 hours from the incident. The trial Judge, thereafter heard the evidence. The complainant victim and his daughter-in-law supported the prosecution case in full. The learned trial Judge found that the offence under Section 307 was not at all made out or proved and, therefore, recorded acquittal for the aforesaid charge. The learned trial Judge further found that the prosecution did not prove the CT-Scan that was taken in the government hospital. The medical report from private hospital should not be relied upon as held in the case of **Charan Singh versus State of Punjab, 2002(4) R.C.R. (Criminal) 527** as there is every likelihood of the private doctor supporting the party seeking opinion. The finding is recorded in Para-10, which I quote hereunder:-

“10.After going through his entire statement, it is evident that he himself did not carried out C.T. Scan. The Scan film on the basis of which this report was given has not been produced in the court for the reasons best known to him, Nand Singh was not referred by any medical institute including civil hospital, Jalandhar, for carrying out C.T. Scan, although Dr. Kamal Gupta says otherwise. When the scan film has not been produced a person who carried out C.T. Scan has not examined, coupled with the fact that this medical report is not meant for medico legal purposes. It hold that this report from a private institution has not been duly proved on the record and no notice can be taken of the conclusion arrived in this report.”

The trial Court thus found that the prosecution had failed to prove any fracture. Consequently, conviction could be recorded only under Section 324 of IPC. The submission made by the learned counsel for the appellants that the prosecution had miserably failed to prove its case and, therefore, ought to have acquitted the appellants does not appeal to me. The evidence of the complainant Nand Singh and his daughter-in-law has been found trustworthy by the Court. I, therefore, concur with the finding of guilt of the appellants, insofar as the offence under Section 324 is concerned.

The learned counsel for the appellants then submitted that the trial Court did not properly appreciate the defence contention that the accused party was the victim, and not the appellants and further that there was injury to Rachhpal Singh-appellant no.1, which was not explained by the prosecution. The trial Court has, however, recorded the finding in Para 11 of the judgment, which I quote hereunder, in which I agree:-

“11. Now coming to the next point raised by the learned defence counsel i.e. non-explanation of injuries on the person of the accused Rachpal Singh. It may be stated that no doubt Dr. B.R. Mittal as DW1 has proved 3 injuries on the person of Rachpal Singh but all the injuries are simple and superficial in nature. Dr. says that the possibility of these injuries having been caused with friendly hand cannot be ruled out. The prosecution was under obligation to explain the injuries on the person of the accused only if they are grievous in nature. Simple and superficial injuries which can be caused by friendly hand need not be explained and no adverse inference can be taken. If the prosecution has not made any attempt to explain these minor injuries on the person of Rachpal Singh, the prosecution case is not adversely affected.”

I, therefore, hold that the finding of conviction recorded against the appellants is legal, correct and proper.

The next question is what offence was proved by the prosecution. The trial Court has held the appellants guilty of the offence under Sections 324 and 325. In my opinion, in the wake of the finding that no fracture was proved according to law by the prosecution, offence under Section 325 was not proved. But since the appellants had assaulted with Gandasa, the offence under Section 324 was proved. Therefore, the conviction against the appellants recorded under Section 325 will have to be converted into Section 324 of Indian Penal Code, 1860. I, therefore, hold the appellants guilty of the offence under Section 324 IPC by modifying the conviction recorded by the trial Court.

The next question is about the award of sentence. The trial Court has awarded the sentence of one year and to pay a fine of ₹1,000/- for offence under Section 324 and 325 of the IPC.

In my opinion, since I have come to the conclusion that the offence under Section 324 only was proved before the trial Court by the prosecution, the sentence under Sections 324 IPC deserves to be reduced the one already undergone by the appellants. However, the sentence of fine will have to be increased in order to compensate the victim. Accordingly, modifying the impugned judgment and order of conviction and sentence, I make the following order:-

ORDER

1. CRA-S-1804-SB-2005 is partly allowed.

2. The impugned judgment and order of conviction and sentence under Section 324 and 325 is set aside and modified by recording the conviction against the appellants under Section 324 of Indian Penal Code, 1860.
3. The appellants are sentenced to undergo the sentence which they have already undergone after their arrest.
4. However, the appellants shall pay fine in the sum of ₹25,000/- which shall be deposited within two months from today and thereafter the same shall be disbursed over to the victim-Nand Singh or his legal heirs.
5. In the light of the above, the appeal is disposed of.

April 19, 2017.

pankaj

[A.B. Chaudhari]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No