

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

CRM A-1749-MA of 2016

Date of Decision: September 11, 2017

Hardip Singh	Versus	Applicant
State of Punjab and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Gagandeep Singh Sirphikhi, Advocate
for the applicant.

T.P.S.MANN, J.

The applicant, who had received injuries in the occurrence in question and, thus, a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure has filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 31.5.2016 passed by the learned Additional Sessions Judge, Gurdaspur, whereby, respondent No.2 to 5, namely, Jagdish Singh, Narinder Singh, Gajjan Singh and Baldev Singh stood acquitted of the charges under Sections 326 IPC.

Respondents no. 2 to 5 alongwith Lal Singh and Dalbir Singh were tried for the offences under Sections 326, 324, 323 read with Section 149 and Section 148 IPC. Vide judgment and order dated 7.6.2013, the Judicial Magistrate 1st Class, Batala, acquitted Dalbir Singh accused of all the charges against him. Respondents No. 2 to 5, namely, Jagdish Singh, Narinder Singh,

Gajjan Singh and Baldev Singh alongwith Lal Singh accused were convicted under Sections 326/324/323/149 and 148 IPC and sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/- each. Aggrieved of their conviction and sentence, respondents No.2 to 5 filed an appeal whereas their co-convict-Lal Singh filed a separate appeal. Vide judgment dated 31.5.2016, learned Additional Sessions Judge acquitted them of the charge under Section 326 IPC. However, their conviction for the offences under Sections 324, 323, 149 and 148 IPC were upheld and they were admitted to benefit of probation of good behaviour and conduct under Section 4(1) of the Probation of Offenders' Act.

Dissatisfied with the acquittal of respondents No. 2 to 5 under Section 326 IPC and admitting them to probation qua offences under Sections 324/323/149/148 IPC, the applicant has filed the present application under Section 378(3) Cr.P.C. seeking grant of leave to appeal.

According to the prosecution on 24.9.2000 at about 6.00 p.m., Hardip Singh alongwith his son Gurinder Singh and nephew Jaspinder Singh went to their sugarcane field. At about 9.00 p.m., Wassan Singh son of Gurbax Singh resident of their village also reached there. At that time Jagdish Singh accused armed with dattar, Narinder singh armed with chhavi, Gajjan Singh accused armed with dang, Baldev Singh accused armed

with a sword, Lal Singh accused and Dalbir Singh accused armed with dattars were cutting the sugarcane. When the complainant party stopped them from doing so, Jagdish Singh exhorted that they be taught a lesson for stopping them. On this Jagdish Singh accused gave a dattar blow on the head of Gurinder Singh. Narinder Singh accused also gave a dattar blow from its reverse side on his head. Gajjan Singh gave dang blow on his right arm. When Hardip Singh stepped forward, Baldev Singh gave two sword blows hitting him on his right index finger. Jaspinder Singh stepped forward but Dalbir Singh gave a dattar blow from its reverse side on his head. The complainant party raised hue and cry and the accused fled away from the spot. According to complainant-Gurinder Singh, litigation was pending between the parties and there was an injunction order in their favour but the accused were bent upon in destroying their crop.

According to the prosecution, injury No.1 on the person of complainant Gurinder Singh was a grievous injury and, therefore, the accused had committed the offence under Section 326 IPC. However, after his examination-in-chief PW1 Gurinder Singh did not step into the witness box for *de novo* examination-in-chief subsequent to summoning of Jagdish Singh, Narinder Singh and Gajjan Singh accused under Section 319 Cr.P.C., as they were found innocent during the investigation of the case and the challan was presented only against Lal Singh

and Baldev Singh accused. Therefore, the incomplete statement of PW1 Gurinder Singh was not legally admissible to be used by the prosecution to sustain charge under Section 326 IPC against the accused. Therefore, no case is made out for setting aside the acquittal of the accused of the charge under Section 326 IPC.

As regards extending the benefit of probation to the accused, it may be noticed that they stood convicted under Sections 323 and 324 IPC which are punishable with imprisonment upto three years only. The accused had faced trial for more than 15 years. No previous conviction stood proved against them. Therefore, there was no legal bar to extend the benefit of probation to them.

In view of the above, no case is made out for any interference in the impugned judgment passed by the learned Additional Sessions Judge, Gurdaspur, to the extent of acquitting the accused/respondents No. 2 to 5 of the charge under Section 326 IPC and in extending the benefit of probation to them. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

September 11, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

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