

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

CRA-S No.1416-SB of 2004
Date of decision: 1st October, 2018

Mangat Singh

... Appellant

Versus

State of Punjab & another

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. K.S. Dhaliwal, Advocate for the appellant.

Mr. H.S. Sullar, Dy. Advocate General, Punjab
for respondent No.1/State.

Respondent No.2 – died.

FATEH DEEP SINGH, J.

This appeal has come about against the judgment of conviction and order of sentence dated 07.07.2004 of the Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur whereby, in a criminal complaint filed by complainant Avtar Singh against accused Mangat Singh (present appellant), Piar Kaur alias Piaro and Inderjit Kaur alias Goga, wife and daughter of Mangat Singh, respectively, the latter two were found innocent and acquitted giving them benefit of doubt, whereas the present appellant was held guilty of commission of offences under Sections 308 as well as 323 of the Indian Penal Code and upon conviction, sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- or in default of

payment of fine to undergo further rigorous imprisonment for three months under Section 308 IPC. He was further sentenced to undergo rigorous imprisonment for three months under Section 323 IPC. Both the sentences were ordered to run concurrently. The same is subject matter of challenge before this Court in the present appeal.

It is worthwhile to refer here that complainant Avtar Singh, who was proforma respondent in this appeal, had died during its pendency.

Complainant Avtar Singh filed the instant complaint on 24.12.1998 before the Court of learned Judicial Magistrate 1st Class, Gurdaspur against three accused namely Mangat Singh, his wife Piar Kaur alias Piaro and daughter Inderjit Kaur alias Goga. The brief allegations of the complainant in his complaint are that he was posted as a school teacher in village Jaura Chhitran and resides in Sant Nagar, Gurdaspur. It is alleged that on 20.11.1998 around 6.30 p.m. when the complainant was watching TV in his house, accused Mangat Singh, who was working in State Bank of India, came at his gate and called him out by giving lalkara and when the complainant went out, accused Mangat Singh who was armed with a dang, gave a blow of the same on the head of the complainant, as a consequence of which the complainant fell down and thereafter, the accused had pulled the genitals of the complainant at which accused Inderjit Kaur alias Goga armed with a saria (iron rod) and Piar Kaur alias Piaro armed with a dang came there and it is alleged that

Inderjit Kaur gave a saria blow on the testicles whereas Piar Kaur gave two-three blows of her dang upon the complainant followed by thrust wise blow of dang by accused Mangat Singh hitting on the right eye of the complainant, at which he raised rroula and all the accused ran away from the spot. The motive behind this occurrence attributed by the complainant is that both, the accused as well as the complainant, are neighbours and in-between their houses is a ditch which is common and which Mangat Singh did not fill up and even on earlier occasion both sides have entered into a heated argument over it. The injured was rushed to hospital where he was medically examined, leading to filing of the present complaint on 24.12.1998 Ex.PD.

Upon preliminary evidence, vide orders dated 09.08.1999 the Court of learned Chief Judicial Magistrate, Gurdaspur summoned the accused under Section 323 read with Section 34 IPC. Upon revision by the complainant, the Court of learned Additional Sessions Judge, Gurdaspur vide orders dated 27.01.2000, ordered summoning of accused under Sections 323/308/34 IPC. Vide orders dated 16.07.2002, the Court of learned Chief Judicial Magistrate, Gurdaspur committed the case to the Court of Sessions and the then learned Additional Sessions Judge, Gurdaspur vide orders dated 03.08.2002 framed charges under Section 308 IPC against Mangat Singh and co-accused Inderjit Kaur alias Goga and Piar Kaur alias Piaro under Section 308 read with Section 34 IPC, whereas Inderjit Kaur alias Goga was also charged with offence under

Section 323 IPC and her co-accused Mangat Singh and Piar Kaur alias Piaro under Section 323 read with Section 34 IPC. It is worthwhile to refer here that the charges against all the three accused were amended vide orders dated 05.07.2004.

The prosecution, at the trial, examined PW1 Dr.H.S. Bhatia, Surgical Specialist, Civil Hospital, Gurdaspur who proved medical record comprising of bed-head ticket of Avtar Singh Ex.PA and entries Ex.PA/1 to Ex.PA/5. PW2 Dr. Sudhir Kumar, Medical Officer, Civil Hospital, Gurdaspur proved the MLR of the injured Ex.PB and detailed five injuries observed by him. Thereafter, complainant Avtar Singh testified as PW3 serializing the events leading to the occurrence and the role attributed to each of the accused, proving copy of the DDR as Ex.PC and complaint filed before the Court Ex.PD. Thereafter, Jagsharan Singh PW4 gave eye-witness account of the occurrence followed by the testimony of PW5 ASI Jagdish Raj, who testified having received MLR of Avtar Singh and having recorded the statement of injured Avtar Singh as well as the DDR Ex.PC and after tendering copy of the judgment dated 27.01.2000 Ex.PX, prosecution closed its evidence.

Each of the accused was put the entire evidence, oral as well as documentary, incriminating to them but they denied the allegations in their separately recorded statements. In their defence, the accused examined DW1 Inder Kaur, Headmistress, a neighbourer of the parties, to bring about the fact that at the time of the occurrence, Piar Kaur alias

Piaro and Inderjit Kaur alias Goga were present at the house of PW4 Jagsharan Singh regarding ladies sangeet. Thereafter, DW2 Surjit Singh also corroborated the fact that on the date and time of the alleged occurrence, there was a function at the house of PW4 Jagsharan Singh where this witness was catering at the ladies sangeet. Thereafter, defence evidence was closed, leading to passing of the impugned judgment.

Upon hearing Mr. K.S. Dhaliwal, Advocate learned counsel for the appellant, Mr. H.S. Sullar, learned Deputy Advocate General, Punjab representing respondent No.1/State and on perusal of the records.

It is a golden principle of criminal jurisprudence that in a criminal trial, the onus lays heavily upon the prosecution to prove its case beyond shadow of reasonable doubt. Reliance placed on **‘V.D. Jhingan vs. State of U.P.’ AIR 1966 SC 1762**. The occurrence, in this case, has taken place on 20.11.1998 whereas the complaint has been filed on 24.12.1998, after a delay of one month and four days. There is no worthwhile explanation coming forth, either in the complaint Ex.PD filed by the complainant or otherwise, for explaining this delay, when it is the own case of the complainant that the police recorded his statement on 21.11.1998 and while appearing as PW3 Avtar Singh complainant himself admits that his statement was recorded leading to DDR Ex.PC but nowhere submits why no action was initiated and the same is sought to be proved by PW5 ASI Jagdish Raj and when he also states that the original statement is not available in the police record. How, without

adducing secondary evidence that the original statement is not available in the police record, the same has been exhibited as Ex.PC, is anybody's guess. More so, no worthwhile explanation for explaining this delay in filing of the criminal complaint is coming forth and has been rightly argued so by the learned counsel for the appellant and learned State counsel Mr. H.S. Sullar, Deputy Advocate General, Punjab could not controvert the same by any means; therefore, puts the Court on its guard to scrutinize the prosecution evidence with more care and caution.

PW1 Dr.H.S. Bhatia, Surgical Specialist, Civil Hospital, Gurdaspur, under whose supervision the complainant was admitted to the hospital, in his opening lines of examination in-chief, states that Avtar Singh was admitted in emergency with multiple injuries to the ENT ward, when the allegations are pertaining to injuries of head and scrotum, and was shifted to the ward of this witness on 26.11.1998 when there were stitches and infected wound was present on the scrotum and this doctor has only resutured them on 27.11.1998, thus, sufficiently shows that this doctor PW1 has never initially treated or performed surgery on the injured patient. Though, he has brought the bed-head ticket Ex.PA, but only proved entries Ex.PA/1 to Ex.PA/4 and rest of the entries are claimed to have been made by a house surgeon which are proved to be Ex.PA/5. The cross-examination, as has been pointed out by Mr.Dhaliwal, of this witness is very crucial where this witness distinguishes that scrotum is a pouch containing the testicles whereas

testicle is a gland which reproduces sperm for reproduction, and **that the injury was on the scrotum only which was simple in nature, and further states that there is no injury on the testicles apparently** and admits that there is no entry on the record from 22nd to 25th November, 1998, are matters putting a big question mark on the veracity of the medical record.

The other medical witness is PW2 Dr. Sudhir Kumar, Medical Officer, Civil Hospital, Gurdaspur, who performed the medico-legal examination of Avtar Singh and proved the MLR as Ex.PB. In his examination in-chief, **he states that all the injuries were declared simple** and adds that **it is correct that injury No.1 could have proved fatal but for proper medical treatment**, and further states that **when the patient receives injuries on scrotum and immediately the patient goes into shock then it can become dangerous to life.**

Learned State counsel, to the very specific query of the Court, could not point out from any medical record that the patient on account of this injury on scrotum had been in shock or by what means he was treated to bring the case within the ambit of Section 308 IPC. Even in the cross-examination of this witness PW2 Dr. Sudhir Kumar, he admits that at the time of examination, injured was not under shock and the injury was only on the scrotum and has given explanation that he has stated in his examination in-chief that injury could prove fatal because the simple injury was on the sensitive part; rather invariably suggests that

injury was simple and there was no occasion to term the same to be dangerous to life.

Thus, from this own admission of the two doctors examined by the prosecution, it is clearly proved that the injury on the person of injured Avtar Singh complainant were mere simple in nature by all means; besides the fact if we have a look at the examination in-chief of complainant Avtar Singh PW3, he claims that Mangat Singh gave dang blow on his head and he fell down and thereafter pulled his testicles; and has only taken an ambiguous and vague stand that Inderjit Kaur and Piar Kaur also gave him injuries with their respective weapons. Nor any weapon has been detailed, much less the medical of the injuries or the parts of the body, but subsequently, after his examination in-chief was deferred, on the next date this witness had sought to improve upon his stand by attributing injuries to Inderjit Kaur by means of a saria near his testicles and that Piar Kaur gave three dang blows which hit on his leg. Both these accused, Piar Kaur alias Piaro and Inderjit Kaur alias Goga, have since been acquitted by the learned trial Court and which findings qua them have not been challenged till date and have thus attained finality and therefore, the principal accused who is alleged to have caused injury on the scrotum having gone scot-free, how could the appellant Mangat Singh be hauled up for commission of the offence under Section 308 IPC, is anybody's guess. Rather to the mind of this Court, the ocular version and the medical evidence contradict each other when it is alleged

that it was Inderjit Kaur alias Goga who has given a thrust wise blow of saria which hit near the testicles of the complainant, and complainant Avtar Singh in his cross-examination admits that the skin of his testicles when pulled by accused Mangat Singh, was torn and blood started oozing from the said injury; are matters which undermine the very sanctity and acceptability of such a dithering piece of evidence, when there is no such mention of fresh bleeding in the MLR of the injured.

It is the case of the complainant that three blows of dang were given by Piar Kaur alias Piaro on his legs and which could be injuries No.2 which is on the right leg, injury No.3 which is on the right knee joint and injury No.4 which is on the right thigh, and they are all shown to be simple in nature. Injury No.5 is on the right eyebrow and had been advised for x-ray, but learned State counsel readily accepts that there is no evidence regarding x-ray examination of this injury, therefore, makes it to be simple in nature as well and which probably, if we go by the allegations of the complainant, is as a result of the very first blow given by Mangat Singh. Even this injury is shown to be on the right eyebrow, though the witness states that the injury hit him on the head. Thus, at much variance between what is alleged in the complaint and the testimony of the witness and what is there in the medical evidence.

More so, the complainant himself admits that on that date and time, there was sangeet ceremony at the house of Jagsharan Singh PW4 in connection with the marriage of his daughter where his wife was also

called along with her sister. Even it is the own case of Jagsharan Singh PW4, another witness of the occurrence, that Mangat Singh accused gave dang blow on the head of Avtar Singh and also squeezed his testicles, and in his cross-examination he admits that family of Mangat Singh i.e. Piar Kaur and Inderjit Kaur were invited for ladies sangeet on that date and that ladies sangeet was from 4:00 to 6:30 p.m. and thus, it was the time of the occurrence when this function was going on. On the other hand, DW2 Surjit Singh, the caterer, has detailed that Piar Kaur and Inderjit Kaur were present at the house of Jagsharan Singh PW4 at the ladies sangeet till 7:30 p.m. and even DW1 Inder Kaur, one of the neighbours, has detailed it so and has categorically stated that till 7:00 p.m. when this witness left the place of ladies sangeet, Inderjit Kaur and Piar Kaur were very much present at the ceremony, and therefore, accepting this plea the learned trial Court had drawn the conclusion that only an altercation between Avtar Singh and Mangat Singh had taken place, while the ladies sangeet was being held and thus, had given the benefit of doubt to the accused Inderjit Kaur and Piar Kaur. Since the allegations of the complainant made in the complaint and his evidence have been found to be apparently falsified therefore, his remaining evidence needs to be taken with a pinch of salt, especially when the ocular version is in sharp contradiction to the medical evidence.

As has been contended by Mr. Dhaliwal, learned counsel for the appellant, even assuming that Mangat Singh had squeezed the

testicles of the victim then causing of lacerated wound is improbablized and rather could be a result of some instrument or weapon which struck at the scrotum. Even otherwise, the doctors have clearly opined these injuries to be simple in nature, thus the very applicability of Section 308 IPC certainly is a doubtful proposition and how the learned trial Court, accepting the fact that injuries on the testicles were simple in nature, certainly had reached a conclusion that Section 308 IPC was attracted in the present case.

It was a case of sudden fight between the two sides at a function in their neighbourhood and there is no premeditation in the mind of the accused. Merely on the premise, the Court below had held that this injury on the testicles must have caused immense pain to the complainant, when there is nothing suggestive that stitches were ever put up or any surgery was done by any of the doctors. When the material witness, PW1 Dr.H.S. Bhatia had denied having done it so and it was when he examined the injured, it was found to be a case of infected wound, which was resutured and stitches were already present; are matters of much relevance. The prosecution has certainly failed in its endeavour to satisfy the Court over the very truthfulness and veracity of the testimony of the complainant, his stand and the fact that the medical evidence has failed to support the attraction of offence under Section 308 IPC.

In the light of what has been discussed and detailed above and the cumulative effect of all this, certainly the learned Court below has fallen into an error by convicting the accused under Sections 308 and 323 IPC. The impugned judgment certainly suffers from material irregularity and illegality and thus needs to be set aside by way of acceptance of the present appeal. The appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

October 1, 2018

rps

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