

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

**CRA-S No.1462-SB of 2004 (O&M)
Date of Decision.22.10.2018**

Ashok Kumar

...Appellant

Vs

State of Haryana

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the appellant.

Mr. Samrath Sagar, Addl. A.G., Haryana.

Mr. K.S. Dhanora, Advocate
for the complainant.

-.-

AMIT RAWAL J. (ORAL)

The appellant, Ashok Kumar, assailed judgment dated 14.07.2004 whereby he has been convicted and sentenced to undergo three years rigorous imprisonment with imposition of fine of ₹20,000/- and in default of payment of fine, to further undergo rigorous imprisonment of six months for commission of offence under Section 326 IPC.

The appeal was admitted on 29.07.2004 whereby bail granted by the trial Court was extended on the same terms and conditions.

Facts, which are unfolded by the prosecution before the Court below, were that on 25.07.2002, *ruqa* Ex.PA was received from Gaba Hospital, Yamuna Nagar that one Amit Kumar was admitted on account of suspected injury due to assault. On the basis of statement

recorded on 27.07.2002, FIR No.123 dated 27.07.2002 was registered under Sections 323, 324, 326, 307, 506 and 34 IPC at Police Station, Chhappar.

Police after collecting evidence submitted challan under Section 173 Cr.P.C wherein the appellant is stated to have allegedly inflicted knife blow on the left arm pit, left arm and right leg of Amit Kumar along with Satpal and Ranjit, who were also charge-sheeted for commission of the offence under aforementioned Sections read with Section 34 IPC.

The trial Court on the basis of evidence brought on record, acquitted both the co-accused Sat Pal and Ranjit by granting benefit of doubt but convicted Ashok Kumar for guilty of offence punishable under Section 326 IPC with rigorous imprisonment for a period of three years and fine of ₹20,000/- and in default of payment of fine, further rigorous imprisonment for a period of six months.

There is no appearance on behalf of counsel for the appellant. In view of the ratio decidendi culled out by Hon'ble Supreme Court in **K.S. Panduranga Vs. State of Karnataka 2013(2) RCR (Criminal) 79; 2013 (3) SCC 721**, I proceeded to decide the appeal on merits in the absence of the counsel appearing for the appellant.

As per the memorandum of appeal, it has been alleged that police has failed to explain any reason for not recording statement of Amit Kumar on 25.07.2002, for, as per the statement of Dr. Manju, he was in conscious state to give statement at the time of admission in the hospital. The complainant was not taken into any

Government hospital but instead was taken to the private hospital. Liyakat Ali, independent witness, named in the FIR has not been examined for the reasons best known to the prosecution.

It was a case of sudden provocation with no intention to commit crime which unfolded during the cross-examination of injured-Amit Kumar as PW6 and Maan Singh as PW9. No expert opinion whether the complainant had received any disability due to injuries or the injuries were grievous in nature has been obtained or brought on record to bring the case within the provisions of Section 326 IPC.

Learned counsel appearing for the State and for the complainant supported the finding of the trial Court by contending that it was not a case of sudden provocation on account of the fact that there were three injuries on the person of the complainant/victim. On 01.08.2002, appellant-Ashok Kumar made a disclosure statement, resulting into recovery of knife, though he tried to improve upon the disclosure statement Ex.PN/2. Delay of 2 days cannot be fatal, as the complainant was under the influence of sedatives given to him at the time of admission in the hospital. As abandon precaution, the injured was taken to the private hospital owing to better medical facilities. Non-examination of independent witness cannot be fatal. Moreover, injuries were on the vital part, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a fit case for acquittal. Both Amit Kumar and Maan Singh in cross-examination admitted that

appellant-Ashok Kumar was not holding knife in his hand but had taken out from his dub. Prior to the incident they were not having any enmity but having cordial relation. It was also admitted that after coming on the main road of Jagadhari-Ambala Road from his village, there was police station Chhappar. As regards the statement made to the police, it has come on record that he was not in a position of giving statement but PW7 Dr. Manju stated that at the time of admission, patient was conscious nor had given any opinion regarding the condition of the patient to make statement but the same was given by some other doctor i.e. Dr. Seema. Even duration of the injuries was conspicuously absent in the MLR. Maan Singh father of the complainant cannot be termed as independent but only interested witness. No reasons have come forward of not examining Liyakat Ali, who also witnessed the occurrence.

There is an admission that remaining family was in house but did not hear hue and cries of injured except his father Maan Singh. House of Liyakat Ali was at a distant of 1½ killa in other side from the place of occurrence. The aforementioned specific piece of evidence has not been appreciated in the correct perspective and instead the case generally set up by the prosecution has been held to be proved, which in my opinion, is not correct finding. The element of *mens rea* or common intention for causing three injuries was conspicuously absent for attracting provisions of Section 326 IPC.

As an upshot of my finding, the judgment passed by the trial Court suffers from perversity and is hereby set aside. The appellant is acquitted from all the charges levelled/framed under

Section 326 IPC. Resultantly, the appeal is allowed. Since the appellant has already been enlarged on bail, no separate order is necessary for release of the appellant.

(AMIT RAWAL)
JUDGE

October 22, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No