

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

CRA-S No.1529-SB of 2004
Date of Decision.22.10.2018

Hansa Singh and anotherAppellants
Vs
State of Punjab ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Sidhu, Advocate
for the appellant.

Mr. H.S. Sitta, AAG, Punjab.

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AMIT RAWAL J. (ORAL)

The appellants, Hansa Singh and Jaswant Singh convicted for commission of offence under Sections 323 and 342 IPC, Jaswant Singh under Section 325 IPC & Hansa Singh under Section 325 read with Section 34 IPC, to run concurrently, are in appeal claiming acquittal.

As per the case of prosecution, Jamela Singh suffered a statement Ex.PA before the police disclosing that on 29.01.2002, when his elder son Baldev Singh was passing through the street and had reached near the house of Hansa Singh, dog of Hansa Singh tried to bite him. On that Baldev Singh gave a stick blow to the dog, following which Hansa Singh and his son Jassa Singh hurled abuses. On the very same day at about 6 PM, when his son Baldev Singh reached near the house of Hansa Singh then Jaswant Singh @ Bhindi and Bhola Singh also hurled abuses at him. On altercation, Jaswant Singh alias Bhindi and Bhola Singh dragged his son Baldev Singh into the house of Hansa Singh. Jaswant Singh was armed with *gandasi* whereas Bhola Singh was armed with *dang* and Hansa Singh

with wooden arm of cot. Jaswant Singh gave *gandasi* blow on the back of Baldev Singh and Hansa Singh gave wooden arm blow on the shoulder of Baldev Singh and Bhola Singh gave four *dang* blows to Baldev Singh. Manpreet Singh and his daughter-in-law, who came to save him also received injuries at the hands of aforementioned persons. After narration of the injuries, an FIR bearing No.9 of 1.2.2002 was registered under Sections 342/325/323/34 IPC at Police Station Nahianwala.

Prosecution brought on record the medical record of Pritam Kaur as Ex.PB, Baldev Singh as Ex.PC, Jamela Singh as Ex.PD and Manpreet Singh as Ex.PE. On the basis of evidence brought on record and taking into consideration the statement made under Section 313 Cr.P.C convicted the accused for the offences as indicated above.

Learned counsel appearing on behalf of the appellants submitted that there was an unexplained delay 3 days in registration of the FIR, as the occurrence had allegedly taken place on 29.01.2002 but the FIR was registered on 1.2.2002. One of the injured was admitted in the hospital on 30.01.2002, after more than 24 hours of the occurrence but no explanation has come forth. It was a false and fabricated story with an intention to implicate the appellants. The explanation that injured were under the effect of sedation, therefore, were unfit for giving statement is not cohesive.

PW6 Dr. Avtar Singh Sekhon ruled out the injury having been suffered on 29.1.2002 at 6 PM or in the night. Even Hansa Singh was also admitted in the hospital for 8 days. There is

inconsistency between the oral and medical evidence. The Investigating Officer did not take the cloth into custody, which was unrebutted.

Learned counsel appearing for the State supported the judgment on the basis that five injuries on the person of Jamela, two injuries inflicted upon Manpreet Singh and Pritam Kaur whereas six injuries on the person of Baldev Singh were grievous, though few of the injuries were declared to be simple. Baldev Singh was dragged into the house and given beatings, resulting into injuries aforementioned. Statement made under Section 313 Cr.P.C is also silent with regard to false implication. Motive had also been proved as Baldev Singh had given a stick blow to the dog of accused party. Admission of Hansa Singh in the hospital was actually an intentional act to wriggle out of the involvement. Injuries as per the testimony of the doctor were fresh.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sidhu. The core issue, which emanated in the present case is on account of stick blow given to the dog of complainant party. Both the parties are neighbours and they should not be indulging into such kind of litigation. No explanation came forward in lodging the FIR after three days. Injuries even if said to be fresh, cannot be attributed to the accused owing to such gap. In statement made under Section 313 Cr.P.C, Hansa Singh stated that neither he nor his son caused any injury to Jamela Singh, Baldev Singh, Manpreet Kaur and Pritam Kaur rather Jamela Singh and other

persons trespassed into his house and caused injuries to him for which he remained admitted in the hospital situated at Goniana Mandi, thus, Jamela Singh and others after fabricating injuries on their person, got admitted in the hospital and obtained false MLRs in connivance with the doctor and police.

The circumstances allegedly noticed by the trial Court in explaining delay, in my view, is not correct approach as the Investigating Officer visited the hospital only on 30.01.2002 and 31.01.2002. No such application has come on record as submitted to the doctors for the purpose of recording statement of the injuries. Out of four injuries suffered on the person of Hansa Singh, one injury of swelling on right fore arm and other was lacerated wound. Noticing the fact that the injuries were not serious on the complainant party, the trial Court remained oblivious of the fact that fall out of the controversy was an attempt by the dog to bite. Such harsh approach, in my view, ought not to have been adopted by the Court below.

As an upshot of my finding, the judgment rendered by the trial Court convicting the appellants is perverse and the same is hereby set aside. Resultantly, the appeal is allowed and the appellants are acquitted.

(AMIT RAWAL)
JUDGE

October 22, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No