

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.S-1624-SB of 2004

.....

Date of decision:1.3.2018

Bhagwant Singh and another

...Appellants

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Pardeep Goyal, Advocate for the appellants.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab
for the respondent-State.

.....

Inderjit Singh, J.

Bhagwant Singh and Chamkaur Singh-appellants have filed this appeal challenging the impugned judgment of conviction and order of sentence dated 31.7.2004 passed by learned Additional Sessions Judge (Ad hoc), Fast Tract Court, Sangrur, whereby they have been held guilty and convicted for the offences punishable under Sections 326/325 read with Section 34 IPC. Bhagwant Singh has been sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹1,000/- and in default thereof to further undergo rigorous imprisonment for one month for the offence under Section 326 IPC. He has also been sentenced to undergo rigorous imprisonment for one year and to a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offence under Section 325 read with Section 34 IPC. Chamkaur

Singh has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offence under Section 326 read with Section 34 IPC. He has also been 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 one month for the offence under Section 325 read with Section 34 IPC. Both the sentences have been ordered to run concurrently. However, accused Paramjit Kaur, Ramandeep Kaur alias Rano and Kulwinder Kaur alias Kale were acquitted of the charges framed against them.

The brief facts of the prosecution case are that FIR No.339 dated 7.12.2002 in the present case has been lodged on the statement of Harpreet Kaur-complainant, who stated that she was studying in B.A.-I at Government College, Malerkotla. She was residing with her maternal uncle, namely, Darshan Singh at Village Hathoa and she used to go to the said college daily from the said village. On 6.12.2002 at 12.00 noon, she was at her residence, as it was holiday due to Eid. Bhagwant Singh, his brother Chamkaur Singh, Rano and Kale all her neighbours were passing in front of the house of Darshan Singh and were loudly abusing Darshan Singh. She came out of the house and saw these persons. At that time, Darshan Singh, maternal uncle of the complainant, his uncle Amarjit Singh and his son Jagsir Singh were also present there. The complainant including other persons asked the accused as to why they were abusing Darshan Singh. Then, accused Bhagwant Singh armed with Gandasa, accused

Chamkaur Singh armed with stick, accused Rano and Kale armed with sticks came out of their house at the road and then, accused Bhagwant Singh inflicted Gandasa blow on the head of Darshan Singh while Chamkaur Singh inflicted stick blow on the head of Darshan Singh. Darshan Singh then fell down on the surface and bleeding started from his head. Then accused Rano inflicted stick blow on the forehead of complainant while accused Kale gave blows, on the right leg of complainant and Paramjit Kaur accused gave stick blow to the complainant. Complainant along with Jagsir Singh raised alarm, on which the accused persons ran away from the spot along with their respective weapons. Thereafter, Jagsir Singh arranged a vehicle and took Darshan Singh and the complainant to Civil Hospital, Malerkotla, where they were given treatment. The motive behind the occurrence was that the houses of Darshan Singh and Bhagwant Singh were near to each other and family of Bhagwant Singh raised false allegations against the son of Darshan Singh which led to this incident. Investigation was started. The Police reached the spot and after getting fitness certificates from the doctor, recorded the statement of injured Harpreet Kaur and Darshan Singh. Rough site plan was prepared. Statements of the witnesses were recorded. After necessary investigation, the challan against the accused was presented in the Court.

On presentation of challan, the trial Court finding prima facie case against the accused, framed charges for the offences under Sections 307, 323, 325, 148 and 149 IPC, to which they pleaded not guilty and claimed the trial.

In support of its case, the prosecution examined as many as 11 witnesses. PW-1 Harpreet Kaur-complainant consistently deposed as per prosecution version. PW-2 Darshan Singh-injured also deposed as per prosecution version. PW-3 HC Gurmej Singh and PW-4 Constable Balwinder Singh are formal witnesses who tendered in evidence their affidavits Exs.PC and PD respectively. PW-5 Amrik Singh Bhangu, Draftsman mainly proved the scaled site plan Ex.PE. PW-6 HC Jagroop Singh mainly deposed regarding the recovery of Gandasa on the disclosure statement of Bhagwant Singh which was blood stained. PW-7 Dr. Birkamal Singh Pannu mainly deposed regarding conducting of medico-legal examination of Darshan Singh. He found the following injuries on his person:-

- “1. Incised wound on the front and right side of the forehead. It is 5.5 cm x 0.8 cm x bone deep. Underlying bone is cut and two chips of bone are sealed in a glass vial and sent to the police. Injury is 0.5 cm from the mid line and 3.5 cm above the right eye brow and going backwards and to the right. Bleeding profusely. Kept under observation.
2. Lacerated wound 6 cm. 0.4 cm x bone deep on the head, 4 cm to the right of the mid line 9 cm above the right ear pinna going backwards. Kept under observation for X-ray. Bleeding profusely.”

He also deposed that after going through the X-ray report, injury No.1 had been declared grievous. He further deposed that the Police had taken

the opinion on 28.2.2003, where he declared that injuries No.1 and 2 could be dangerous to life without immediate medical treatment.

PW-8 Balwinder Singh, Clerk, Civil Hospital, Malerkotla mainly produced the documents Ex.PN. PW-9 SI Bahadur Singh (Retd.) mainly deposed regarding conducting of partial investigation in this case. PW-10 HC Jagtar Singh deposed regarding recovery of Dang etc. He also deposed regarding joining the investigation with ASI Ajit Singh. PW-11 ASI Ajit Singh is the Investigating Officer of this case, who deposed regarding conducting the investigation in this case.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and they were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent.

Vide the impugned judgment and order, the learned trial Court convicted and sentenced the appellants Bhagwant Singh and Chamkaur Singh and acquitted three accused Paramjit Kaur, Ramandeep Kaur and Kulwinder Kaur as stated above.

At the time of arguments, learned counsel for the appellants argued that there is delay of 27 hours in recording the FIR. Secondly, X-ray report and films have not been proved. He further argued that the appellants-accused have been falsely implicated as they had not caused injuries. He further argued that as per injured Darshan Singh he had given bribe of ₹7,000/- to the doctor so the version of the doctor cannot be believed. Therefore, he argued that a reasonable doubt exists in the

prosecution case and benefit of doubt should be given to the appellants. In the alternative, he prayed for reducing the sentence of the appellants.

On the other hand, learned State counsel argued that the prosecution has duly proved its case by leading cogent evidence and the injured PWs have duly corroborated the prosecution version. The ocular evidence has been supported by medical evidence and investigation of the case. The weapons of offence had also been recovered in the present case. As stated above, the challan in the present FIR was presented against five accused out of which two have been convicted and three of the accused, namely, Paramjit Kaur, Ramandeep Kaur and Kulwinder Kaur alias Kale have already been acquitted by the trial Court. The learned State counsel further argued that delay in recording the FIR itself cannot be held as fatal to the prosecution case. She further argued that the doctor has declared the injuries as grievous on the basis of X-ray report. She also argued that there is nothing on record to show false implication. Even if some money was given to the doctor for the operation, it no where shows that these injuries were not given to the injured. She argued that there is no merit in the appeal which should be dismissed.

I have heard learned counsel for the appellants and learned Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, first of all I find that as regards the delay of 27 hours in recording the FIR, the trial Court has scrutinized the evidence carefully and cautiously and three co-accused have already been acquitted

by the trial Court. It is settled law that the delay in recording the FIR itself cannot be held as fatal to the prosecution case but in the case of delay the Court is to scrutinize the evidence cautiously and carefully to find out whether any other family member or person has been falsely implicated or not. In this case, the trial Court after appreciating the evidence carefully has already acquitted three co-accused.

As regards the statements of the injured, I find that both the injured had consistently deposed regarding the prosecution version. Even the defence counsel had given the suggestion to the injured PWs by admitting the presence of Bhagwant Singh on the spot that he had come to make complaint against the son of Darshan Singh and at that time a quarrel took place. The place of occurrence, date of occurrence etc. and the presence of Bhagwant Singh-accused is admitted by giving this suggestion. As per the complainant, injury with Gandasa had been given by Bhagwant Singh on the head of Darshan Singh. This injury cannot be falsely created. The doctor PW had stated that it was a bone deep injury and two chips of the bone injury had been kept in a closed vial and sent to the Police. This injury itself shows that the bone was fractured though in the present case X-ray report and X-ray films were not proved as per law by bringing the Radiologist or doctor but this shows that a grievous injury with sharp edged weapon had been caused by Bhagwant Singh to Darshan Singh.

As regards the second injury which is lacerated wound, the X-ray film or X-ray report had not been proved as per law by bringing Radiologist. Therefore, this injury had not been proved as grievous by the

prosecution and this injury No.2 on the person of Darshan Singh will be treated as simple injury. The findings of the trial Court convicting the appellants under Sections 325 and 325 read with Section 34 IPC are not as per law and the same are set aside and the injury being simple, the accused are convicted under Sections 323 and 323 read with Section 34 IPC instead of under Sections 325 and 325 read with Section 34 IPC.

As regards allegations against Chamkaur Singh, he was stated to be armed with stick, therefore, he had been rightly convicted for causing that injury which now is held to be simple injury with blunt weapon.

As regards the false implication of the accused, there is nothing on the record as to why the PWs are deposing falsely. The motive for causing the occurrence is rather admitted by the defence counsel when he had given suggestion that Bhagwant Singh had come to complain against the son of Darshan Singh with their girls (Bhagwant Singh's family). As regards the argument qua the bribe of ₹7,000/- injured Darshan Singh had stated that ₹7,000/- were paid to the doctor for conducting operation and he had paid the sum but no receipt was given. PW Darshan Singh stated that the doctor was demanding more money for operation but he had not paid the same and the doctor has not performed the operation.

Keeping in view this statement of complainant, Darshan Singh, in no way, it can be held that false MLR had been prepared.

A perusal of the evidence on record shows that the injured PWs have consistently deposed regarding the prosecution version. No material contradictions or improvements have been pointed out in the statements

which may go to the root of the case. There is nothing in the cross-examination which may make their statements unreliable. The ocular evidence is duly supported by medical evidence.

Therefore, from the above discussion, I uphold the findings given by the learned trial Court convicting accused Bhagwant Singh under Section 326 IPC and Chamkaur Singh under Section 326 read with Section 34 IPC. As regards the conviction under Section 325 IPC, as already discussed, the grievous injury with blunt weapon had not been proved, therefore, Chamkaur Singh is convicted under Section 323 IPC and Bhagwant Singh under Section 323 read with Section 34 IPC.

The appellants are suffering from the long protracted criminal proceedings i.e. since 2002 and 15 years have already been passed and they had suffered a lot. It has been stated that they are the only bread earners of their families.

Therefore, keeping in view the facts and circumstances of the present case, the sentence of Bhagwant Singh is reduced and he is ordered to undergo rigorous imprisonment for two and half years for the offence under Section 326 IPC instead of rigorous imprisonment of four years. The sentence of fine and in default of payment of fine will remain the same. He is further convicted and sentenced to undergo rigorous imprisonment for six months for the offence under Section 323 read with Section 34 IPC and the sentence of fine and in default of payment of fine will remain the same. As regards Chamkaur Singh, his sentence is reduced and he is ordered to undergo rigorous imprisonment for one year for the offence under Section

326 read with Section 34 IPC and he is further convicted and sentenced to undergo rigorous imprisonment for six months under Section 323 IPC. The sentence of fine and in default thereof will remain the same for the offence Section 326 IPC.

Therefore, from the above discussion, the appeal is accordingly partly allowed. The sentence of imprisonment of the appellants was suspended vide order dated 21.8.2004 passed by this Court in respect of Chamkaur Singh and order dated 29.10.2004 in respect of Bhagwant Singh and they were released on bail during the pendency of the appeal. As they are on bail, their bail/surety bonds stand cancelled. They are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

March 1, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No