

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Appeal No.345-SB of 2006
Date of Decision: 10.02.2018

Balwant Dass alias Bant Dass and others Appellants

Versus

The State of Punjab Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. H.R. Nohria, Advocate
 for the appellants.

M. Luvinder Sofat, A.A.G., Punjab.

DAYA CHAUDHARY, J.

The appellants were accused in case FIR No.69 dated 15.05.2003 registered under Sections 148, 307, 325, 324, 323 and 149 IPC at Police Station Sehna. They faced trial and were convicted and sentenced by the trial Court vide judgment dated 27/28.01.2006. The details of their conviction and sentence are reproduced as under :-

1	<i>All the four convicts u/s 148 IPC</i>	<i>R.I for two years and fine of Rs.200/- each and in default of payment of fine to further undergo RI for two months (each)</i>
2	Accused Balwant Dass u/s 307 IPC while remaining three convicts u/s 307/149 IPC	R.I for 7 years and fine of Rs.700/- each, in default of payment of fine to further undergo RI for seven months (each)
3	Accused Jagtar Dass u/s 307 IPC while remaining three convicts u/s 307/149 IPC	RI for 7 years and fine of Rs.700/- each and in default of payment of fine to further undergo RI for 7 months (each)

4	Harbhagwan Dass under Section 325 IPC while his three co-convicts under Section 325/149 IPC	R.I for two years and fine of Rs.200/- each and in default of payment of fine to undergo further R.I for two months (each).
5	Balwant Dass convict under Section 324 IPC while other three co-convicts under Section 324/149 IPC	R.I for one year and fine of Rs. One hundred each and in default of payment of fine to further undergo R.I for one month (each).
6	Harbhagwan Dass convict u/s 323 IPC whereas the other three convicts u/s 323/149 IPC	R.I for six months (each)
7	All the four convicts also are sentenced under Section 323/149 of IPC for the blows given by Mohinder Dass (since dead)	R.I for six months (each)

All the sentenced were ordered to run concurrently.

The trial Court, while exercising the powers under the provisions of Section 357 C.P.C., awarded compensation of Rs.20,000/- to injured complainant-Harjit Singh.

Initially, the said FIR was registered against five accused, namely, Balwant Dass @ Bant Dass, Harbhagwan Dass @ Bhana, Jagtar Dass @ Jagga, Gurdeep Dass and Mohinder Dass and two were summoned by the Court under Section 319 Cr.P.C. One of the accused, namely, Mohinder Dass died during pendency of the proceedings.

The judgment of conviction and order of sentence has been challenged by the accused appellants by raising various grounds.

Learned counsel for the appellants submits that no offence under Section 307 IPC is made out as the alleged injuries were caused without having any intention and as per opinion of the doctor, none of the injuries caused to injured Harjit Singh were dangerous to life and as such, there was no reason for the trial Court to convict the accused appellants under Section 307 IPC. Learned counsel also submits that there was an

inordinate delay in lodging of the FIR as the matter was reported to the police after due deliberations and consultations to rope in all the family members. The occurrence took place at 9.30 p.m on 14.05.2003 and the FIR, in question, was registered after an inordinate delay which has not been explained. Brother of the injured, namely, Amarjit Singh was an alleged eye-witness to the occurrence but he did not report the matter to the police. It is also the argument of learned counsel for the appellants that the hospital was on the way from the village to Barnala, still the FIR was not registered by his brother Amarjit Singh. The alleged incident was also witnessed by one Shivji Ram but he was not examined to corroborate the prosecution version and no explanation, whatsoever, has been given. The statement of the witness, who was closely related, was relied upon by the trial Court and there was no independent testimony to corroborate the testimony of the official witnesses and to support the case of the prosecution. Even the medical evidence does not corroborate the oral statement of the witnesses. Learned counsel also submits that the injury was found to have an 'L' shape wound on the forehead of the injured and the said injury could not have been caused by *dang*, *gandasa* or *gandasi*, whereas, as per allegations, the aforesaid weapons were used to cause injury to the injured. The incident occurred in front of the gate of the Gurudwara in the presence of Amarjit Singh, the real brother of the injured and one Shivji Ram but both of them did not come forward to save the injured and even no efforts were made by either of these two witnesses to stop the accused persons to cause injury. Learned counsel for the appellants further submits that accused-appellant Gurdeep Dass was found to be innocent during investigation and he was subsequently summoned on moving an

application under Section 319 Cr.P.C. He was a student and has falsely been implicated in this case.

At the end, learned counsel for the appellants submits that the appellants have undergone sufficient period of sentence and they are facing the agony of trial since lodging of FIR i.e 15.05.2003. He further submits that the accused appellants are not the habitual offenders as there is no other case pending against them and by considering the long period of facing trial and custody period, their sentence may be reduced to the period already undergone.

Learned counsel for the respondent-State submits that the judgment of the trial Court is well reasoned and as per opinion of the doctor, there was cumulative effect of the injuries and death could have occurred due to impact of all injuries. The judgment of the trial Court is based upon proper appreciation of evidence of the witnesses. The reasons for delay in reporting the matter has properly been explained. Repeated action of the accused to cause injury shows that there was intention to cause injury which falls under the purview of Section 307 IPC as the intention of causing injury, the elements of knowledge and intent are there.

Heard the arguments of learned counsel for the parties and have also perused the relevant record of the trial Court and also the statements of the witnesses.

The FIR, in question, was registered on the basis of statement of injured-Harjit Singh, wherein, he has stated that on 14.05.2003, he along with his brother Amarjit Singh was going to Temple. While returning along with his brother and one Shivji Ram, who met him in the Mandir and on reaching near Gurudwara Sahib at about 9.30 p.m, accused Bant Dass @

Balwant Dass (here-in-after to be referred as Balwant Dass) armed with *Gandasa*, Jagtar Dass @ Jagga armed with *dang*, Bhagwan Dass @ Bhana armed with *gandasi* and Mohinder Dass armed with *dang* met them. Accused Balwant Dass raised *lalkara* stating that Harjit Singh should not escape unhurt and be taught a lesson for securing the stay order. As per statement of injured-complainant, accused Balwant Dass gave a blow by *gandasa* hitting on the right upper eye-brow of Harjit Singh and accused Jagtar Dass @ Jagga gave two consecutive blows with his *dang* hitting on the right side of the head of the complainant, whereas, accused Mohinder Dass gave a *dang* blow on the right side of the head of injured. Accused Balwant Dass gave two consecutive blows by reverse side of his *gandasi* hitting on the wrist and elbow of left arm of Harjit Singh. Meanwhile, accused Mohinder Dass also gave a *dang* blow on the left knee of the injured and accused Bhagwan Dass gave *gandasa* blow hitting on the left leg below the knee. One blow was given by accused Balwant Dass by reverse side of his *gandasa* on the right hand of the injured. On raising *raula* by Amarjit Singh and Shivji Ram, the accused ran away from the place of occurrence with their respective weapons. On the basis of statement of the injured, the FIR, in question, was registered. After presentation of challan in the Court, it was committed to the Court of Sessions. Charges were framed against the accused under Sections 307/325/324/323/34 IPC.

The prosecution, in support of its version, examined as many as nine witnesses and in defence, statement of one witness was recorded.

One accused, namely, Mohinder Dass died during pendency of the trial and the proceedings against him were abated vide order dated 11.03.2005. Said Mohinder Dass and accused Gurdeep Dass were found

innocent during investigation but they were summoned under Section 319 Cr.P.C.

In the statements of the witnesses and especially the statement of Doctor, who medico-legally examined the injured, it has not been mentioned as to how the injuries caused to the injured were likely to be dangerous to life. The opinion given by the doctor is reproduced as under :-

“In my opinion, all the injuries collectively (on the person of Harjit Singh s/o Karam Singh r/o Sehna, vide M.L. No.AS-10/03 dated 14.5.03) are less likely to be dangerous to life.”

It is apparent from the statements of the injured and the doctor that there was no intention of the accused to cause death. Mere inflicting injury does not attract Section 307 IPC. As many as nine injuries were found on the person of injured and all injuries were the result of blunt weapon. Only two injuries were there which were declared grievous and as per opinion of the doctor, none of the injury was sufficient to cause death. Had there been any intention of the accused to cause death of the injured, they would have not stopped from inflicting injury. Accordingly, the approach of the trial Court by ignoring the opinion of the doctor is not in right prospective as the prosecution has failed to prove that the injury inflicted on the person of the injured was dangerous to life. It has also been proved on record that there was a land dispute between the complainant party and the accused. There may be motive to falsely implicate the accused for serious offence. Otherwise also, the motive can be on the other hand as well. The details of the injuries are reproduced as under :-

- “1. An incised wound was present obliquely above right eye brow measuring 6 cm x .3 cm x bone deep.*
- 2. Lacerated bleeding wound shaped, 2 cm x 2 cm x*

bone deep was present 4 cm above injury No.1 over right frontal bone.

3. *A lacerated bleeding wound was present over right parietal region measuring 2 cm x .5 cm x bone deep, 7 cm above right ear.*

4. *A lacerated bleeding wound was present over the left parietal region measuring 7 cm.3 cm x bone deep.*

5. *Diffuse swelling and tenderness was present over lower 1/3rd of left fore-arm on dosral aspect.*

6. *Diffuse swelling was present over left elbow joint and upper 1/3rd of fore-arm. A liner abrasion was also present behind the left elbow joint.*

7. *Lacerated bleeding wound was present over shin of right leg measuring 1 cm x .5 cm x bone deep, situated 24 cm below right patella.*

8. *Reddish abrasion was present over an area of one cm x one cm below left knee joint.*

9. *A lacerated bleeding wound was present over right middle finger tip. The nail was separated partly from nail bed.”*

On perusal of injuries and opinion of the doctor, only two injuries are grievous in nature. Due to cumulative effect of all injuries, the death could have occurred. There were two fractures by way of injuries No.2 and 5 which are on non-vital part of the body. One was on the left arm by reverse side with blunt weapon. There is nothing on record to suggest that these injuries were sufficient to cause death in the ordinary course of nature. As per opinion of the doctor, these injuries were ‘less likely to be dangerous to life.’ The opinion of the doctor is not specific as the word ‘less’ has been used benefit of which goes to the accused. Accordingly, no offence under Section 307 IPC is made out as none of the injuries were declared grievous or dangerous to life.

Accordingly, the accused are acquitted for offence convicted under Section 307 IPC.

The conviction of the accused-appellants awarded by the trial Court under other offences is upheld except appellant-Gurdeep Dass.

A perusal of statement of the witnesses shows that nothing has come on record with regard to involvement of appellant-Gurdeep Dass as he has been convicted with the aid of Section 149 IPC. Moreover accused-Gurdeep Dass was found innocent during investigation and he was kept in column No.2 of the challan. Accused-Gurdeep Dass is therefore acquitted of the charge against him. However, appellant No.1-Balwant Dass has undergone about 19 months, appellant No.2-Harbhagwan Dass alias Bhana has undergone more than one year of imprisonment, appellant No.3-Jagtar Dass alias Jagga has undergone about 16 months and are facing trial since lodging of FIR i.e 15.05.2003, their sentence is reduced to the period already undergone. However, an amount of Rs.30,000/- as compensation is awarded to the injured, which shall be deposited by the accused i.e Rs.10,000/- each with the trial Court within a period of one month from the date of receipt of copy of the order, failing which, they are required to undergo the remaining part of their sentence.

The appeal is disposed of accordingly.

(DAYA CHAUDHARY)
JUDGE

10.02.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No