

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

1. CRA-S-2289-SB-2004

Sanjay and another

...Appellants

Versus

State of Haryana

...Respondent

2. CRA-S-2295-SB-2004

Pardeep Kumar

...Appellant

Versus

State of Haryana

...Respondent

Date of decision: 10.07.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Shiv Charan Bhola, Advocate (Legal Aid Counsel)
for the appellants in CRA-S-2289-SB-2004.

Mr. Vishwajeet, Advocate (Legal Aid Counsel)
for the appellant in CRA-S-2295-SB-2004.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two criminal appeals as they arise out of the same FIR and challenge the same judgment of conviction and order of sentence.

These appeals have been filed challenging the judgment of conviction dated 22.09.2004 and order of sentence dated 25.09.2004, vide which, three accused/appellants herein, namely Pardeep Kumar, Sanjay and

Bijender, were held guilty for commission of offence punishable under Sections 323/307 IPC read with Section 34 IPC and were sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs. 5,000/- each; in default of payment of fine, they were ordered to further undergo rigorous imprisonment for 02 years.

Brief facts of the case, as per prosecution, are that on 24.08.2001, V.T. message regarding admission of injured, namely Vijay and Narender, sons of Ram Kishan, in Civil Hospital was received, subsequent to which, HC Sat Narain along with Constable Narender Singh reached Civil Hospital, Sonapat and after obtaining the ruqa from the doctor and the copy of the MLR, he recorded the statement of injured Vijay, wherein, Vijay stated that he is an agriculturist and they are three brothers. On, 24.08.2001 at about 6.15 PM, he and his brothers, namely Vinod and Narender, were coming back after doing their work in the field and Vinod was walking about two killas behind them and when they reached in the field of Pirthi, which is at a distance of about two killas from the tubewell, accused Pardeep son of Rohtas was standing armed with a Kassi and he came near the complainant and his brother Narender and stated that a lesson is being taught to them for giving a slap while wrestling with his brother Vinod in the Arena. Then Pradeep gave a lalkara and consequently, Sanjay and Bijender, sons of Dharampal, armed with Jelwa, came out of the field of Harar. Pardeep gave direct Kassi blow on the head of complainant Vijay and Sanjay gave Jelwa blow on the right hand of the complainant which hit his elbow. When the complainant fell down on the ground, Bijender gave a blow of Jelwa from the prong side which hit the right thigh of the complainant. Then accused Sanjay also gave Jelwa blow on the head of

Narender while Bijender gave Jelwa blow on the head of Narender thrust wise from the side of prongs, on which, skin of the skull of Narender was ruptured, as a result of the blow given by Bijender with Jelwa. Thereafter, the complainant and his brothers raised alarm and on hearing the same, Joginder son of Jai Kumar and his brother Vinod and several other persons from the village came and rescued them, however, accused persons fled away from the spot with their respective weapons threatening to kill them on some other day. Thereafter, Vinod and Joginder took the injured to the hospital. The aforesaid statement was sent to the police station for registration of the case, on the basis of which, formal FIR was registered; X-ray reports etc. were collected. Thereafter, accused persons were arrested and on completion of the investigation, challan was presented.

The trial Court framed the charge under Sections 323/326/307 IPC read with Section 34 IPC, to which accused persons pleaded not guilty and claimed trial.

The prosecution in its evidence examined Dr. S. K. Gosain as PW-1, Om Parkash Patwari as PW-2, SI/SHO Ram Kishan as PW-3, HC Subhash Chander as PW-4, Constable Sanjay Kumar as PW-5, Dr. G. D. Sharma as PW-6, Dr. Pushpa Punia as PW-7, Vijay Sharma as PW-8, Narender Kumar PW-9, Vinod as PW-10, Constable Rajpal as PW-11 and HC Sat Narain as PW-12.

Dr. Pushpa Punia PW-7, who medico-legally examined the injured persons, namely Vijay and Narender, in her statement, stated that Vijay suffered the following injuries:

1. Incised wound 6 x 1 cms present over the volt of the skull. Fresh bleeding was present. Advised X-ray skull and surgeon's opinion.

2. Abrasion present over the lateral aspect of right thigh 5 x .5 cms.
3. Contusion 2.5 x 1 cms present over the right elbow reddish in colour.

As per the MLR of injured Narender, it was found that he suffered one lacerated wound of 4.5 x 1 cm present over the volt of the skull vertically placed. Fresh bleeding was present. Advised X-ray and surgeon's opinion. This witness further stated that as per her opinion Ex. PK/1, injury on the person of injured Vijay was dangerous to life.

PW-8 Vijay Sharma, one of the injured witnesses, supported the prosecution version and stated that Pardeep Kumar gave Kassi blow on his head from its sharp pointed side and Sanjay gave a lathi blow on his right elbow and when he fell down, Bijender gave Jelwa blow on his right thigh with the reverse side of the prongs. It is further stated that thereafter, Sanjay, by using his Jelwa as a lathi, gave a blow on the head of Narender. Thereafter, they were rescued and taken to hospital.

PW-9 Narender, another injured witness, also supported the prosecution version. The prosecution further examined PW-10 Vinod who also supported the prosecution version.

The other official witnesses deposed about the investigation conducted by them and proved all the documents which were prepared during the course of investigation.

Thereafter, in the statement recorded under Section 313 Cr.P.C., the accused persons set up a defence that the complainant party caused injuries to one of the accused namely Pardeep and other accused persons saved him.

While leading the defence evidence, the appellants have

examined DW-2 Dr. A. S. Ahlawat, Medical Officer, Faridabad, who stated that as per MLR, conducted by him, he found the following injuries on the person of accused Pardeep Kumar:

1. Incised wound 1.25 x 0.2 cms was present over lateral surface of left thigh. Clotted blood was present.
2. Two incised wound 1.25 x 0.2 cms each over lateral surface of left arm placed adjacently, clotted blood was present.
3. Contusion 6 x 2 cms over posterior abdominal wall left side 6 cms from mid line red in colour.

This witness also stated that the clothes of Pardeep were blood stained and proved his shirt as Ex. D1 and Pyjama as Ex. D2 and also proved diagram and MLR as Ex. DA.

DW-1 HC Satbir Singh also proved the clothes worn by Pardeep Kumar as Ex. D1 and Ex. D2.

The trial Court, after hearing both the parties and appreciating the evidence on record, held the appellants guilty for commission of offence punishable under Sections 323/307 IPC read with Section 34 IPC and were sentenced as noticed above.

Hence, aggrieved against the said judgment of conviction and order of sentence, accused/convicts have filed the present appeals.

It is worth noticing here that during the pendency of these appeals, one of the accused/appellant namely Bijender has died and the appeal qua him stands abated, vide order dated 25.04.2017.

Learned counsel for the appellants have argued that the trial Court has wrongly held that charge under Section 307 IPC is proved against the appellants.

It is argued on behalf of the appellants that it was a case of sudden fight in which even, appellant Pardeep Kumar sustained injuries and

none of the prosecution witnesses has been able to prove as to how he has sustained injuries which is proved by MLR Ex. DA as well as from the statement of DW-2 Dr. A. S. Ahlawat.

Learned counsel for the appellants have referred to the opinion given by doctor Ex. PK/1, wherein, an application moved by the police Ex. PK, seeking opinion, whether the injury sustained by Vijay was dangerous to life in ordinary circumstances and as per the opinion, it was dangerous to life but the doctor on 07.09.2001 opined that after going through the reports of X-ray skull, CT Scan, which is associate with EDH, the nature of injury No. 1 of Vijay is dangerous to life and it was never opined that the injury sustained by the injured was sufficient to cause death.

Learned counsel for the appellants have relied upon ***Pritam Singh and another Vs. State of Punjab, 2010 (3) RCR (Crl.) 395***, wherein this Court has held as under: -

“Be that as it may, even PW5 has simply declared the injury; as could be dangerous to life. Meaning thereby, the words “dangerous to life” are equivalent to “endangering life” and such acts squarely covered within the ambit of clause Eighthly of Section 320 IPC, which is punishable under Section 326 IPC. The distinction between the words “dangerous to life” and “endangering life” came to be determined by a Division Bench of this Court in ***Atma Singh Versus The State of Punjab, 1982 (2) CLR 496*** and it was held as under:-

“Held, that the expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means

an injury which endangers life in term of clause 8 of Section 320, Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life' described it as 'dangerous to life', meaning both the time the same thing”.

The same view was expressed by this Court in cases *Tej Ram Versus The State of Punjab, 1987 (1) RCR (Criminal) 611; 1978 (6) CLR, 76 and State of Punjab Versus Tara Singh, 1987(1)* Recent Criminal Reports (Criminal) 184, that injury described by the doctor as 'dangerous to life' and if not treated i.e. to say that but for timely and medical aid the injured was likely to die. Such type of injury/opinion is not the type of the injury as would attract the provisions of Section 307 IPC, which envisages an injury sufficient in the ordinary course of nature to cause death, such injury would fall within the ambit of clause Eighthly of Section 320 IPC, would be punishable under Section 326 IPC and in view of such opinion, charge under Section 307 IPC cannot be sustained. The law laid down in the aforesaid judgments mutatis-mutandis is applicable to the facts of this case. Therefore, it is held that appellant-Pritam Singh did not intend to attempt to commit murder of PW1, but he only intended to and caused the grievous injury. He cannot possibly be held guilty of an attempt to murder with the offence prescribed under Section 307 IPC. This act of appellant Pritam Singh squarely falls within the ambit of clause Eighthly of Section 320 IPC, which is punishable under Section 326 IPC. To this extent, the trial court appears to have gone legally wrong in this relevant connection.”

To buttress their arguments, learned counsel for the appellants

have also relied upon *Nand Singh Vs. State of Punjab, 2007 (1) RCR (Crl.) 801* and *Harkishan Vs. State of Punjab, 2016 (1) RCR (Crl.) 609*.

Learned counsel for the appellants have thus argued that in the absence of any specific opinion that the injuries sustained by injured Vijay were sufficient to cause death in ordinary course of nature, the trial Court has erred in holding the appellants guilty for commission of offence punishable under Section 307 IPC, therefore, the conviction under Section 307 IPC is liable to be converted into Section 326 IPC.

Learned counsel for the appellants have further submitted that it was a case of sudden fight due to provocation on account of an event of wrestling, which was held in the village, however, as per the version given in the FIR and in the absence of a cross version as accused Pardeep Kumar also received injuries, the conviction of the appellants under Section 307 IPC is not sustainable.

Learned counsel for the appellants have further argued that injury No. 1, sustained by injured Vijay, is attributed to appellant Pardeep Kumar who has already undergone a period of 10 months and 10 days, as per the custody certificate filed today in Court and the injuries attributed to appellant Sanjay are simple, therefore, their conviction under Section 307 IPC is not sustainable.

Learned State counsel, on the basis of the custody certificates, filed today in Court, could not dispute the arguments raised by learned counsel for the appellants.

As per the custody certificates, both the appellants have undergone 03 months, 16 days and 10 months, 10 days, respectively and they are not involved in any other case.

Learned State counsel could not dispute the fact that the FIR pertains to the year 2001 and subsequent thereto, a period of almost 16 years has lapsed and in the intervening period, there is no complaint from the complainant side that the appellants have repeated any such incident, rather they have shown substantive improvement in their character.

After hearing learned counsel for the parties and perusing the record and evidence, I find merit in the present appeals.

In view of the statement of PW-7 Dr. Pushpa Punia as well as the opinion given by her, which shows that while forming the opinion, injury No. 1, sustained by Vijay, was stated to be dangerous to life without recording her satisfaction based on the medical report that the injury sustained by Vijay was sufficient to cause death in ordinary course of nature, therefore, in view of the judgment rendered in *Pritam Singh's case (supra)*, it is found that the findings recorded by the trial Court that the offence falls under Section 307 IPC are not correct as it is a case which in fact falls under Section 326 IPC.

It is held by this Court in *Harkishan Vs. State of Punjab, 2016 (1) RCR (Crl.) 609* that while considering the injuries sustained by injured, the victim is entitled to compensation under Section 357A Cr.P.C. and before awarding the compensation, it is duty of the Court to take into consideration the financial position of the accused-appellant to pay the compensation. The operative part of the judgment reads as under: -

“Before parting with this judgment, it is pertinent to mention that complainant-Narinder Kaur has suffered 13 injuries in this case. She was not awarded any compensation by the learned trial Court for the injuries suffered by her under Section 357 Cr.P.C. Before

awarding the compensation, it is the duty of the Court to take into consideration the financial position of the accused-appellant to pay the amount of compensation. Otherwise, the awarding of compensation shall be a futile exercise if the same could not be recovered due to the weak financial position of the convict. In the instant case, the appellant is an old man of 74 years of age. He is being represented in the present appeal by the Legal Aid Counsel as he was not even able to engage his counsel to defend him in the present appeal and was provided the Legal Aid Counsel. Thus, the appellant has no sound financial position to pay the compensation. However, the injured complainant-Narinder Kaur can still be granted compensation under the Victim Compensation Scheme as provided under Section 357-A Cr.P.C, by the District Legal Service Authority, Kapurthala. Thus, the case of complainant-Narinder Kaur is referred to the District Legal Service Authority, Kapurthala to consider for grant of compensation to her under the Victim Compensation Scheme as per Section 357(A) Sub Section (2) Cr.P.C.”

Both the learned counsel, appearing on behalf of the appellants, submitted that since they are the legal aid counsel and the appellants are the poor labourers, the compensation may be paid to injured persons Vijay and Narender by the District Legal Services Authority, Sonapat.

Accordingly, considering the above facts and circumstances, these appeals are partly allowed, while modifying the order of sentence to the extent that the sentence awarded to the appellants is reduced to the period already undergone by them, however, in terms of Section 357A Cr.P.C., injured Vijay and Narender are awarded compensation of Rs. 25,000/- and Rs. 15,000/- respectively. Since the trial Court has

imposed a fine of Rs. 5,000/- each, the appellants are directed to deposit Rs. 5,000/- each with the trial Court/Illaqu Magistrate within a period of three months from today and the same will be treated as part of the compensation to be paid to the aforesaid injured persons and the balance amount shall be paid by the District Legal Services Authority, Sonapat.

It is made clear that if the appellants fail to deposit the amount of fine with the trial Court within the time stipulated, these appeals shall be deemed to have been dismissed.

Bail/surety bonds, if any, would stand discharged, accordingly.

A photocopy of this order be placed on the file of other connected case.

10.07.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No