

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

**CRA-S-2016-SB-2005
Decided on: 08.03.2019**

Krishan**.... Appellant**

Versus

State of Haryana**..... Respondent****CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Ms. Monika Singh, Advocate for
Mr. Amit Kumar Jain, Advocate
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the order dated 05.11.2005/07.11.2005 passed by Additional Sessions Judge, Jind, vide which the accused/appellant was convicted under Section 326 of Indian Penal Code (in short 'IPC') and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
326 IPC	Rigorous imprisonment for a period of three years and fine of ₹5000/-, in default of payment of fine, to undergo rigorous imprisonment for a period of six months.

2. The prosecution case can be summed up as follows:-

“PW-5 complainant Dhup Singh lodged a report on 12.05.2003 at about 11.30 a.m. Ex. PU (FIR No. 83 dated 12.05.2003) with the police to the effect that his son Virender was attacked on his right thigh with a knife by their neighbour appellant-Krishan. The complainant stated that on the preceding night, when the complainant alongwith his family members were sitting on the roof top of their house, the appellant started abusing them. The complainant party tried in vain to make the

appellant see reason, but the appellant instead inflicted a knife blow on the right thigh of the complainant's son, Virender. The complainant and his other family members tried to rescue Virender from the clutches of the appellant but he fled from the spot with the weapon of offence. Injured Virender was shifted immediately to Civil Hospital, Narwana and from there referred to PGIMS, Rohtak, but he could not be saved and succumbed to his injury on 12.05.2003. The appellant was arrested on 12.05.2005. During his interrogation the appellant suffered a disclosure statement Ex.PG. In pursuance to his disclosure statement, recovery of knife Ex.P-1 which was used by him in the commission of crime, was effected. After the completion of the investigation, challan was presented against the accused.

3. After completion of all the requisite formalities and filing of report under Section 173 Cr.P.C., the accused was sent up for trial in the Court of Sessions where he was charged for the offences punishable under Sections 304 IPC and 25 of the Arms Act, to which he pleaded not guilty and claimed trial.

4. In support of his case, the prosecution examined as many as 13 witnesses and tendered all the relevant documents.

5. Complainant PW-5 Dhup Singh and PW-6 Nafe Singh both eye witnesses gave a vivid account of the occurrence in hand and fully supported the prosecution case.

6. When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant denied the correctness of the prosecution version and pleaded to have been falsely implicated in the instant case by the police.

7. The learned trial Court believed the prosecution version and convicted and sentenced the appellant under Section 326 IPC as only a single

the doctor had opined that had timely medical aid been given, the appellant would have been saved.

8. I have heard learned counsel for the parties and gone through the evidence on record with their assistance.

9. The learned counsel for the appellant has assailed the impugned judgment and conviction by urging that the prosecution version was highly improbable inasmuch as there were three persons excluding the deceased at the alleged place of occurrence and hence it was impossible for the appellant to have attacked the deceased with the knife and thereafter also manage to flee. He further urged that there were major contradictions in the statements of the prosecution, which the learned trial Court failed to take note of and the alleged eye witnesses were interested witnesses being close relatives of the deceased. Hence, the learned trial Court erred in placing reliance on their testimonies.

10. The learned State counsel on the other hand vehemently argued that it was a case of ocular testimony well corroborated by medical evidence as well and accordingly he prayed for dismissal of the instant appeal.

11. The testimonies of the eye witnesses including the complainant PW-1 Dhup Singh find full corroboration with each other on each and every material fact of the case. The complainant has given a vivid account of the entire sequence of events culminating in the infliction of knife blow on the right thigh of his deceased son. Their testimonies find further corroboration from the medical evidence, wherein the attending doctor PW-1 Hari Singh Saini specifically opined that the injury on the person of the deceased was possible with the knife Ex.P1 recovered from the appellant in pursuance to his disclosure statement. It cannot be disputed that an occurrence did indeed take place and that too on the rooftop of the house of the complainant party as PW-9 HC Ram Avtar on visiting the scene of

slippers (Ex. PM) from the spot. It would be very relevant to point out that a V shaped slipper belonging to the accused was also recovered and lifted from the scene of occurrence (Ex. PN) which conclusively establishes the presence of the accused at the scene of crime and thus also nails him in the commission of crime. The presence of the complainant party cannot be doubted in their own house at the time of occurrence. There was no occasion for the complainant party to falsely implicate the appellant by fabricating a version against him specially when the complainant has denied a suggestion put to him during his cross examination about some serious dispute between the families. No doubt the complainant has hinted at some discord between the families qua the use of canal water, but it cannot be believed that the complainant, who is none other than the father of the deceased would falsely implicate the appellant and exculpate the real culprit since it was a case of single accused.

12. Dr. Hari Singh Saini PW-1 medico legally examined deceased Virender on 11.05.2003 soon after his admission in the hospital. PW-1 Dr. Hari Singh Saini found the following injury on the person of Virender at the time of his admission at Civil Hospital, Narwana:-

“Incised gaping wound 1 inch x 1 cm on the medial aspect of the right thigh about 12 inches above the right knee. Profused bleeding was present. Patient was kept under observation. The weapon used was sharp in nature and probable duration was within six hours.”

13. It would be relevant to notice that PW-1 Dr. Hari Singh Saini during his testimony before the learned trial Court gave a definite opinion that the injury which had been inflicted on Virender was possible with the knife Ex.P1 recovered from the appellant.

14. I do not find any merit in the arguments of the learned counsel for the

witnesses. The discrepancies are too trivial to be taken note of and cannot by any stretch of imagination adversely affect the prosecution case. Even though, the complainant and the eye witness PW-6 Nafe Singh were examined after a gap of almost two years, yet they stood their ground and the defence could not create any dent in the prosecution case.

15. In the light of the aforementioned discussion, I do not find any infirmity in the impugned judgment and the same is dismissed. The judgment of conviction and order of sentence passed by the learned trial Court is affirmed. The accused-appellant is on bail. His bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure his custody.

08.03.2019

Dinesh

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No