

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1715-SB-2012 (O&M)
Date of decision: 06.07.2019

Prince Kumar

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Randhawa, Advocate (legal aid counsel)
for the appellant.

Mr. C.L. Pawar, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Present appeal has been filed challenging the judgment of conviction dated 21.02.2012, vide which the appellant was held guilty of offence punishable under Section 307 of the Indian Penal Code (for short 'the Act') and the order of sentence of even date, vide which the appellant was sentenced to undergo R.I. for a period of 07 years with a fine of Rs.5,000/- and in default of payment of fine, to further undergo R.I. for six months.

This appeal is taken up in the category of cases, which are listed on Saturdays, as per directions of the Hon'ble Supreme Court and the

appellants are being prosecuted by the legal aid counsel.

Brief facts of the case are that on 21.02.2010 at about 11.30 a.m., complainant Pikash Kumar Sinha came out of his house and when he was going in the street, appellant Prince Kumar, who was residing in the same street and was holding a kirch in his hand, intercepted the complainant and said that he would teach a lesson to the complainant, by showing arrogance to him in the playground. On hearing noises, Sh. Panu Sinha, father of the complainant, came in the street and in the meantime, the appellant-accused stabbed the complainant in his stomach with kirch, with an intention to kill him and they pulled out the same forthwith. Resultantly, the kirch pierced through his stomach and the accused-appellant ran away from the spot along with kirch. Father of the complainant got admitted him in Deep Hospital, Fatehgarh Churian Road, Amritsar. The motive behind the incident was that a few days back, there was a quarrel between the appellant and the complainant, while playing cricket in the playground and the accused-appellant kept grudge and due to the same, he inflicted injury to the complainant with intention to kill him.

After completion of the investigation and other formalities, challan for the offence punishable under Section 307 IPC was presented before the Court. Finding that the offence under Section 307 IPC is triable by the Court of Sessions, the case was committed to the Sessions Court. Thereafter, the trial Court framed the charge vide order dated 09.08.2010, to which the appellant pleaded not guilty and claimed trial.

The prosecution, in support of its evidence, examined PW1 Rishi Ram, Draftsman, District Courts, Amritsar, who prepared the scaled map Ex.PA, PW2 Pikash Kumar Sinha, injured/eyewitness, PW3 Panu Sinha, father of the injured-complainant, PW4 Dr. Kamal Kishore, Medical Officer, Mata Kartar Kaur Memorial Hospital, Amritsar, who has given the treatment to injured, PW5 ASI Maan Singh, the Investigating Officer, PW6 HC Rajinder Singh, MHC, Police Station Sadar Amritsar, PW7 HC Charanjit Sinha and PW8 ASI Paramjit Singh and thereafter, closed the prosecution evidence. Statement of accused under Section 313 Cr.P.C. was recorded, in which all the incriminating evidence against the appellant was put to him, however, the accused denied the allegations and pleaded false implication. In the defence, the accused did not lead any evidence. Thereafter, the trial Court, vide judgment of conviction dated 21.02.2012 and order of sentence of even date, convicted and sentenced the appellant under Section 307 IPC.

Learned counsel for the appellant, at the very outset, submits that since the appellant has already undergone two years and seven months of actual sentence, out of 07 years R.I. awarded by the trial Court, he is restricting his arguments only to the point that Section 307 IPC is not made out in view of medical evidence on record. Learned counsel has referred to the opinion given by the doctor Ex.PF and the statement of PW4 Dr. Kamal Kishore, who has given an opinion that definitely the injury sustained by injured witness PW2 Pikash Kumar Sinha, was dangerous to life and submits that the injury would fall under Section 326 IPC. It is further argued that it is

a case of single injury sustained by the injured in sudden provocation and relies 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.”

Learned counsel for the appellant has thus submitted that the injury sustained by the injured would fall under Section 326 IPC.

Learned counsel has further relied upon **Nand Singh Vs. State of Punjab, 2007 (1) RCR (CrI.) 801**, wherein the injured suffered as many as 17 injuries, out of which 09 injuries were declared dangerous to life but the doctor, in his opinion, has not stated that the injuries sustained by the injured were sufficient to cause death in the ordinary course of nature. The Court, in such circumstances, has held that the conviction is liable to be converted under Section 326 IPC. Learned counsel has also relied upon a judgment of this Court in **Harkishan Vs. State of Punjab, 2016 (1) RCR (CrI.) 609**, wherein, considering the injuries sustained by injured, it has been held that 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. ”

Learned counsel for the appellant has thus argued that in the absence of any specific opinion of the doctor that the injury sustained by the injured PW2 was sufficient to cause death in ordinary course of nature, the case would fall under Section 326 IPC, in view of Clause 8 of Section 320 IPC. It is further argued that since this appeal is being prosecuted by a legal aid counsel, as the appellant is an unemployed person and has no source of income, the father of the appellant, who is a scooter mechanic, can afford to

pay a compensation of Rs.30,000/- to the injured-victim.

On the other hand, learned State counsel has submitted that the injury sustained by PW2 was on vital part of the body i.e. stomach, therefore, it was dangerous to life, however, on the basis of custody certificate, he could not dispute the fact that the appellant has already undergone 02 years and 07 months of actual sentence, out of 07 years R.I. awarded by the trial along with a fine of Rs.5,000/-.

After hearing learned counsel for the parties, I hold that the findings recorded by the trial Court that the offence committed by the appellant would fall under Section 307 IPC, are not correct, as it is a case, which would fall under Section 326 IPC in view of **Pritam Singh's** case (supra).

Admittedly, in the opinion of the doctor Ex.PF, it is stated that the injury was definitely dangerous to life, however, the doctor has not given the specific opinion that the injury sustained by PW2 was sufficient to cause death in the ordinary course of nature.

In the statement of doctor PW4, it has also come that the patient was discharged from the hospital in a satisfactory condition. Therefore, the injury sustained by PW2 is an injury, which would fall in the category of grievous hurt as per Section 320(8) IPC and therefore, offence under Section 307 IPC is not made out as it is a case under Section 326 IPC.

After hearing learned counsel for the parties and considering the fact that the appellant has already undergone 02 years and 07 months of

actual sentence, however, no compensation was awarded by the trial Court, this appeal is partly allowed, while modifying the order of sentence to the extent that the sentence awarded to the appellant is reduced to the period already undergone by him, however, an amount of Rs.50,000/- as compensation in terms of Section 357A Cr.P.C. is granted to the injured PW2 Pikash Kumar Sinha. Out of this amount, the appellant/his father will pay Rs.30,000/- and the remaining amount of Rs.20,000/- will be paid by the District Legal Services Authority, Amritsar.

The appellant is directed to deposit the amount of Rs.30,000/- with the trial Court within a period of three months from today, failing which this appeal shall be deemed to be dismissed.

Since sentence of the appellant has already been suspended vide order dated 24.09.2012, his bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

06.07.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No