

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3477-SB-2018
Date of Decision:14.11.2019

Achhar Singh and others

...Appellants

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Anurag Chopra, Advocate for the appellants.
Mr.Hittan Nehra, Addl. A.G., Punjab.
Mr.Chandeep Singh, Advocate for the first informant.

ANIL KSHETARPAL, J.

This appeal has been filed against the judgment of conviction dated 16.08.2018 passed by the Court of the Sessions, awarding following sentence:-

Convict Achhar Singh

Under Section 450 IPC read with Section 34 IPC.	Rigorous Imprisonment for five years and fine of Rs.20,000/- (Twenty thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.
Under Section 326 IPC read with Section 34 IPC	Rigorous Imprisonment for three years and fine of Rs.10,000/- (Ten thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.
Under Section 506 IPC read with Section 34 IPC	Rigorous Imprisonment for one year and fine of Rs.5,000/- (five thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

<u>Convict Manjit Singh</u>	
Under Section 450 IPC read with Section 34 IPC	Rigorous Imprisonment for five years and fine of Rs.20,000/- (Twenty thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.
Under Section 326 IPC with Section 34 IPC	Rigorous Imprisonment for three years and fine of Rs.10,000/- (Ten thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.
Under Section 506 IPC read with Section 34 IPC.	Rigorous Imprisonment for one year and fine of Rs.5,000/- (five thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.
Under Section 25 of Arms Act	Rigorous Imprisonment for one year and fine of Rs.5,000/- (five thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.
<u>Convict Ranjit Singh</u>	
Under Section 450 IPC read with Section 34 IPC	Rigorous Imprisonment for five years and fine of Rs.20,000/- (Twenty thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.
Under Section 326 IPC read with Section 34 IPC	Rigorous Imprisonment for three years and fine of Rs.10,000/- (Ten thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.
Under Section 506 IPC read with Section 34 IPC	Rigorous Imprisonment for one year and fine of Rs.5,000/- (five thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.
Under Section 27 of Arms Act	Rigorous Imprisonment for one year and fine of Rs.5,000/- (five thousand) in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

The case set up by the prosecution is that on 12.08.2013

medico legal reports of Amit Kumar, Pushpa Rani, Achhar Singh and Manjit Singh were received in the Police Station, Samrala from Civil Hospital, Samrala. ASI Jaswinder Singh went to Christian Medical College & Hospital, Ludhiana. After seeking opinion/permission from the doctor, recorded the statement of Amit Kumar-first informant/injured, who stated that Sangat Singh @ Guna was deputed by Narinder Singh, Panch of the Gram Panchayat to clean the drains of village in Ward No.6. On 11.08.2013 at about 06:00 PM, his cousin Tirath Kumar informed him that Guna had thrown garbage in the drain outside his house. Thereupon he, along with Jasvir Singh, Ex-Sarpanch asked Guna as to why he has thrown garbage in front of the house of Tirath Kumar. Guna replied that he has thrown such garbage at the instance of Achhar Singh- appellant. Thereafter, first informant asked Guna @ Sangat Singh to remove the garbage and requested Tirath Kumar to level the land. When Tirath Kumar started levelling the land, the injured along with Jasbir Singh went inside the house. At about 06:15 PM, noise was heard that Tirath Kumar be also buried there and at that moment Tirath Kumar entered the house while making noise "save me save me". Following him, Achhar Singh and Manjit Singh armed with gandasa, Ranjit Singh armed with rifle and Rajinder Kaur wife of Achhar Singh armed with barcha entered his house. Manjit Singh tried to give a gandasa blow to Tirath Singh, but the injured went ahead to save him, on which the gandasa blow struck on his head. He gave second blow with gandasa, which struck on the right arm of the injured. Thereafter, Manjit Singh caught hold of rifle from the hands of Ranjit Singh and pointed towards Tirath Singh and threatened that if he moves, he will be killed. Ranjit Singh thereafter took gandasa from Manjit Singh and gave blow

which struck on his right arm. Pushpa Rani, aunt of the injured, came to rescue him and thereafter Achhar Singh gave a gandas blow to Pushpa Rani, but the injured put his left arm in order to save her and thus blow struck on his left arm. Jasbir Singh tried to pacify, however accused while giving filthy abuses and threats to his life, fled away from the spot with their weapons. His brothers Rahul Kumar and Sanjeev Kumar came at the spot and took the injured to the Civil Hospital, Samrala from where, injured was referred to Christian Medical College & Hospital, Ludhiana. Motive behind occurrence is that earlier also there remains a dispute between the parties. Medical record was taken into possession and accused was arrested.

On presentation of challan, copies of same as well as documents relied upon by the prosecution were supplied to the accused free of cost and the Magistrate finding the case to be exclusively triable by learned Court of Sessions committed the case to the Court of Sessions.

The learned Court of Sessions, on finding a prima facie case, formed an opinion and charge-sheeted the appellants.

In order to bring home the guilt of the appellants, prosecution examined following witnesses:-

PW-1	Amit Kumar	First informant/injured
PW-2	Dr. Paul Sudhakar John	Doctor
PW-3	Dr. Shashank Jain	Doctor
PW-4	Dr. Aparajita Singh	Doctor
PW-5	Sanjeev Kumar	Witness
PW-6	Pushpa Rani	Injured
PW-7	Tirath Kumar	Eye-Witness
PW-8	ASI Jagtar Singh	Investigating Officer
PW-9	HC Sukhdev Singh	Witness
PW-10	ASI Jaswinder Singh	Investigating Officer
PW-11	Dr. Sukhwinder Kaur	Doctor

Incriminating circumstances appearing in the evidence of prosecution was put to the appellants while recording their statements under

Section 313 Cr.P.C., to which they denied and claimed trial.

It was claimed that injured Amit Kumar is an employee of a Member of Legislative Assembly belonging to ruling party and therefore, the police did not conduct fair investigation. It was claimed that in fact the injured accompanied by various persons came to the plot where cattles were re kept by the appellants and assaulted them. It was stated that appellants were not armed with any weapon. But they were wearing iron Kara (a metal circular piece heavier than bangle, which is usually worn by the Sikhs on the wrist) and that might have struck Amit Kumar during scuffle when they resisted assault.

As noticed above, the learned Court of Sessions, on the basis of evidence led, convicted the appellants.

Learned Counsel appearing for the appellants has submitted that Jasbir Singh, the former Sarpanch of the village who was cited as a prosecution witness, has not been examined. He submitted that remaining witnesses examined by the prosecution are members of one and the same family and in fact Sanjeev Kumar himself admitted that he was not present at the time of alleged occurrence. Appellants namely Achhar Singh and Manjit Singh had also suffered injuries and medical-legal report thereof was forwarded by the Civil Hospital, Samrala to the Police Station including medico-legal report of the injured along with Pushpa Rani, however, the Investigating Officer, due to bias, did not register the cross-case. He submitted that from the reading of the statement of the doctor, it is apparent that the incident/occurrence, as suggested by the prosecution, is not proved on the file. He further submitted that even Guna @ Sangat Singh, who is stated to be the genesis/origin of the occurrence, has not been examined to prove that any garbage was thrown by Guna @ Sangat Singh on the directions of Achhar Singh-appellant No.1.

On the other hand, learned counsel appearing for the State assisted by counsel for the first informant have defended the judgment and pleaded that the injured Amit Kumar had suffered fracture of left parietal-bone. They further submitted that taking into consideration the condition of injured, the doctor of hospital at Samrala had referred the injured to Christian Medical College & Hospital, Ludhiana, where he remained admitted for a period of more than three days.

In this case, first of all, it is to be examined as to whether offence as alleged under Section 326 of Indian Penal Code is established or not. Evidence of Dr. Paul Sudhakar John-PW-2 is very important, relevant

part thereof is extracted as under:-

“It is correct that in my report Ex.PW2/B, my opinion about injury is “May be grievous”, volunteer CT scan report shows the fracture left parietal. CT scan is not done by me but it is of the hospital where I am working. I do not know if Gandasa is sharp edged weapon and heavy weapon. It is correct that if a heavy weapon like gandasa is wielded with force then it will not cause linear abrasion on the skull. I have seen the X-Ray report of the C.M.C. of this patient and there is no fracture in the same.”

As noticed above, the injury is stated to be “may be grievous”. It is also important to note that doctor has specifically stated that the nature of head injury does not prove that it was given by gandasa, which is sharp edged heavy weapon on one side.

On careful reading of the statement of the injured Amit Kumar, it is apparent that he has stated that Manjit Singh thwacked on his head with gandasa. In other words, as per the case of the prosecution, the weapon used for giving injury on the head is gandasa and it was used with force.

On the other hand, it is the case of the defence that the injury in question may have been caused by *Kara* (which is normally made of iron worn by the Sikhs on the wrist).

The case set up by the prosecution appears to be more improbable and the statement of doctor creates a doubt about the correctness of the case of the prosecution and the manner in which the incident took place.

It is a positive case of the prosecution that Ex-Sarpanch Jasbir Singh had accompanied Amit Kumar/injured when Tirath Kumar, his cousin, had informed them about throwing of garbage in front of his house.

It is also the case of the prosecution that Ex-Sarpanch Jasbir Singh had

accompanied injured Amit Kumar to the place where alleged garbage had been thrown and instructions were given to Sangat Singh @ Guna to remove the garbage. Thereafter, Amit Kumar has specifically stated that he along with Ex-Sarpanch Jasbir Singh went inside the house of Tirath Kumar when appellants allegedly launched their attack. Injured-Amit Kumar and Jasbir Singh came forward to rescue Tirath Kumar. Jasbir Singh also tried to pacify the appellants. Jasbir Singh was cited as a prosecution witness in the police report submitted under Section 173 Cr.P.C. However later on Ex-Sarpanch Jasbir Singh was not examined, given up by the prosecution while stating that he has been won over. Still further, the genesis/origin of the dispute is the act of Guna @ Sangat Singh i.e., throwing garbage allegedly on the instructions of Achhar Singh. He has also not been examined. Sangat Singh @ Guna was a labourer employed by the Gram Panchayat to clean drains. His deposition would have thrown light as to how the dispute started.

Further, prosecution has failed to explain as to how appellants Achhar Singh and Manjit Singh suffered injuries. There is no explanation from the side of the prosecution. It is proved on the file that Achhar Singh and Manjit Singh suffered injuries which is established from their medico-legal reports which were sent by the Civil Hospital, Samrala along with medico-legal reports of Amit and Pushpa Rani, injured in the fight of the first informant. When Investigating Officer appeared in evidence, he admitted that he had received four medico-legal reports, however, did not register any cross-case as the injuries were simple in nature and, therefore, offence under Section 323 IPC was made out, which is non cognizable. At this stage, it may be noted here that careful perusal of the medical legal

reports of Achhar Singh Ex. C-9 and Ex. D-1, prove that Achhar Singh received as many as four injuries. Injuries No.1, 2 and 4 were declared simple but with respect to injury No.3, X-ray of the skull was advised. Further the prosecution has not produced any evidence as to what happened to the aforesaid X-ray. As per medico legal report, Achhar Singh-appellant was 60 years old on the date of incident. Similarly, Manjit Singh-appellant No.2 had also suffered two injuries. First one was declared simple, whereas second injury on the left side of chest was referred for X-ray. Prosecution has not collected any further evidence on behalf of appellants.

This aspect can be examined from another angle. It is the admitted case of injured Amit Kumar when he appeared in evidence that he is working for Jeevan Singh Akali, the then Member of Legislative Assembly of the area. It has also come in evidence that injured had unsuccessfully contested election for the post of Sarpanch against Gurinder Singh. In one sentence, Amit Kumar claims that he contested the election at the behest of Jeevan Singh but thereafter took a somersault and deposed that he had contested the election on his own. This part of statement is to be read in the context of delay in lodging the FIR. It is the case of the injured that the occurrence in question took place at 06:15 PM on 11.08.2013 and he accompanied by his brothers Rahul Kumar, Sanjeev Kumar, cousin Tirath Kumar and aunt Pushpa Rani reached Civil Hospital, Samrala at 7.00 PM, which is at a distance of about 7 KM. As per medico legal report also Amit Kumar reached Hospital at 07:00 PM. It is undisputed that the Police Station is also in Samrala. Injured states that he did not go to Police Station because first priority would be to get the injured medically examined. However, there is no report lodged with the police even thereafter, although

he was accompanied by four persons including two brothers and a cousin. As per the case of prosecution, Amit Kumar was referred to Christian Medical College & Hospital, Ludhiana where he reached at about 09:00 PM. It may be noted here that his wounds had been stitched in Civil Hospital, Samrala itself which would be clear from the report of Christian Medical College. After reaching Christian Medical College, still no information was sent to the police, although injured Amit Kumar was admittedly working for local Member of Legislative Assembly belonging to the then ruling party. The police for the first time recorded the statement of Amit Kumar at about 02:30 PM on 12.08.2013. Thus, the duration between the time of occurrence and first report to the Police is approximately 19 ½ hours. Perusal of Ex.PW 10/C proves that the First Information Report was received by the Judicial Magistrate 1st Class, Samrala through Constable Santok Singh at 10:00 PM. The information in the Police Station was received at 04:10 PM. In the considered view of the Court, it remains unexplained in the facts and circumstances of the case.

It may be significant to mention here that although Rajinder Kaur wife of Achhar Singh is alleged to be armed with barcha and had entered the house of Tirath Kumar but she has not been attributed to have caused any injury to Pushpa Rani in the first information report. However while deposing in Court, improvement has been made, Rajinder Kaur is also sought to be implicated by making allegations that Rajinder Kaur had given barcha blow on the right hand of Pushpa Rani-injured. As per First Information Report, the aforesaid alleged injury on the right hand of Pushpa Rani is stated to have been given by Achhar Singh but Amit Kumar had put his left arm ahead to save her. In fact as per FIR no injury was suffered by

Pushpa Rani.

Further it is surprising that dispute, if any, was with Tirath Kumar, because as per the case of prosecution, garbage had been thrown by Sangat Singh @ Guna at the instance of appellant-Achhar Singh in front of the house of Tirath Kumar. Appellants had attacked Tirath Kumar. Appellants entered the house of Tirath Kumar with the intention to hurt him but Tirath Kumar did not suffer any injury. Amit Kumar lives 100 yards away from the place of occurrence. It is also the case of the prosecution that Achhar Singh was about to give gandas blow to Tirath Kumar but injured Amit Kumar (first informant) came in between and suffered a blow landed on his head. Ranjit Singh-appellant is alleged to be armed with a rifle. Manjit Singh took the rifle from Ranjit Singh and pointed at the chest of Tirath Kumar and threatened him to stop, otherwise he will shoot him. Still no injury was caused to Tirath Kumar. Firearm was never used.

Further the place of occurrence/incident/scuffle is not established. It is the case of prosecution that occurrence took place in the house of Tirath Kumar, whereas it is the case of defence that the occurrence took place at the plot where appellants tie their cattles. The evidence produced by the prosecution does not inspire confidence of the Court to establish that the place of occurrence is residence of the house of Tirath Kumar. In absence thereof, it is difficult to conclude that which of the disputing party was the aggressor party.

Still further as per the case of the prosecution, there was old enmity between the parties. Therefore, false implication cannot be ruled out. Further there are material contradictions/improvements/variations in the ocular evidence. Sanjiv Kumar when appeared in evidence on behalf of

prosecution has stated that he was not in the village at the time of incident. When he reached the village, Amit and Pushpa Rani had already left for Civil Hospital, Samrala, whereas when Amit Kumar was examined in Court, deposed that he went to Civil Hospital, Samrala along with Rahul Kumar and Sanjiv Kumar. It is the case of the first informant in his deposition before the Court that Rajinder Kaur gave a barcha blow to Pushpa Rani which is conspicuously absent in the first information report. On investigation, the investigating agency found that Rajinder Kaur was not involved in the incident. As per FIR no injury was suffered by Pushpa Rani. Further as per the case of injured-Amit Kumar, Investigating Officer, Tirath Kumar and Ex-Sarpanch Jasbir Singh were present at the time of occurrence. However, Smt. Pushpa-injured deposed that Jasbir Singh was not present at the time of occurrence.

Keeping in view the cumulative effect, what has been discussed above, this Court is of the considered view that the prosecution has failed to prove its case beyond shadow of reasonable doubt. Hence the Court of Session has erred in overlooking these aspects of the matter.

Accordingly, the present appeal is allowed. The judgment under challenge is set aside. The appellants are acquitted of the charges by giving them “benefit of doubt”. Pending application(s), if any, shall also stand disposed of, in terms thereof.

14.11.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No