

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

CRA-S-4588-SB-2018 (O&M)
Reserved on : May 22, 2019
Date of Decision: May 31, 2019

Avtar Singh and another ...Appellant

Versus

State of Punjab ...Respondent

and

CRA-AD-130-2019 (O&M)

Surjit Singh ...Appellant

Versus

State of Punjab and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Anmol Partap Singh Mann, Advocate for the appellants
in CRA-S-4588-SB-2018 and
respondent No.2 in CRA-AD-130-2019

Mr.SPS Tinna, Additional Advocate General, Punjab.

Mr.Navkiran Singh, Advocate for the appellant in
CRA-AD-130-2019 and complainant in CRA-S-4588-SB-2018

HARINDER SINGH SIDHU, J.

Since common questions of law and facts are involved in the
aforesaid appeals these are taken up together and disposed of by a common
judgment.

2. Criminal Appeal No.CRA-S-4588-SB-2018 has been filed by the
appellants against their conviction and sentence vide judgment and order

dated 17.11.2018 of the learned Additional Sessions Judge, Jalandhar in Sessions case No.419 of 2015 whereby they were charged with and tried for offences punishable under Sections 307, 324, 341 read with Section 34 of the Indian Penal Code (in short 'IPC') along with co-accused Buta Singh. For the offence under section 307 IPC the appellants were sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.2000/- each, and in default to further undergo RI for one month. For offence under Section 341 IPC the appellants were sentenced to undergo RI for one month. The sentences were ordered to run concurrently. Buta Singh was acquitted.

3. Criminal Appeal No.CRA-AD-130-2019 has been filed by the complainant Surjit Singh challenging the acquittal of Buta Singh.

4. The case of the prosecution in a nutshell is that on 16.7.2014 ASI Jagtar Singh received one MLR No.VR/33-2014 from Civil Hospital Nurmahal relating to Surjit Singh s/o Lamber Singh in which two injuries were described. Injury No.1 was with sharp weapon and injury No.2 was with blunt weapon. Upon this the ASI along with other officials reached Civil Hospital Nurmahal and moved an application to the doctor regarding fitness of the injured to make statement. But the doctor opined that the injured was unfit to make statement.

On the same day he received MLR regarding injuries to Davinder Singh and he recorded his statement.

5. On 17.07.2014 he went to Civil Hospital, Jalandhar where he was informed that Surjit Singh had not been admitted there but was admitted in Oxford Hospital Jalandhar. He then went to Oxford Hospital, Jalandhar

and moved application Ex.PW8/B and was informed that the injured was unfit to make statement. On 19.7.2014 and 21.7.2014 also the injured was declared unfit to make statement. However, on 24.7.2014 Surjit Singh was opined as being fit to record his statement, but Surjit Singh stated that he was unable to make a statement. Ultimately on 25.7.2014 the statement (Ex.PW1/A) of Surjit Singh was recorded. He stated that he is an agriculturist and a resident of Village Aujla, Tehsil Phillaur, District Jalandhar. On 16.07.2014 at about 3:15 p.m he was watering his fields. When he went to divert the course of water he found that Avtar Singh accused and his son Daljit Singh were putting sand on the common Watt. His fields are adjoining to the fields of Avtar Singh. As a result of throwing of sand by Avtar Singh his crops were pressed. He asked Avtar Singh why he was doing so. On that Avtar Singh and his son bluntly replied that they would do just that and dared him to stop them from doing so. When he persisted with his opposition they asked him to run away from the spot or he would be killed and would suffer dire consequences. He persisted in his stand and asked the accused to remove the sand which they had thrown on the common Watt. Then the dispute turned into a quarrel. Thereafter accused Avtar Singh exhorted his son to go away from the spot. Accused called Buta Singh Dhadhi. Buta Singh along with his son Davinder Singh having Gandasi came to the spot. Daljit Singh the son of accused Avtar Singh was having dang in his hand. Buta Singh Dhadhi raised lalkara that Surjit Singh be taught a lesson. Avtar Singh caught him from his arms. Davinder Singh hit him on the left side of his head with the gandasi which he had in his hand. He became semi-conscious. Then Buta Singh made him

to fall on the ground by hitting his leg. Then, Daljit Singh attacked him with dang on his right shoulder. On his raising noise, accused ran away from the spot along with their respective weapons. Meanwhile his son Amandeep Singh came there. He called his uncle Gardawar Singh. After arranging a vehicle he was shifted to Civil Hospital, Nurmahal. As he had received serious injury on his head, he was referred to Civil Hospital, Jalandhar on 16.07.2014 but instead of going there he was admitted in Oxford Hospital, Jalandhar. The motive behind the occurrence was that there was a common Watt in between the land of the complainant and accused Avtar Singh due to which there used to remain a dispute between them.

6. FIR Ex.PW1/2 was registered. Site plan Ex.PW8/H was prepared by the IO ASI Jagtar Singh. Accused Avtar Singh and Buta Singh were arrested on 30.8.2014. Thereafter investigation of the case was entrusted to ASI Jaswinder Singh. On 9.9.2014 ASI Jaswinder Singh arrested accused Devinder Singh. During interrogation he suffered disclosure statement Ex.PW8/C/1 and got recovered a gandasi. On completion of investigation, challan was presented.

7. During trial the prosecution moved an application under section 319 CrPC to summon Daljit Singh s/o Avtar Singh Singh which was allowed. Vide order dated 19.8.2015 accused Daljit Singh was declared as juvenile and directed to be tried by the Juvenile Justice Board, Jalandhar.

8. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them. They pleaded that they had been falsely implicated in the present case.

9. Accused Avtar Singh in his statement under Section 313 Cr.P.C. stated that in fact the complainant Surjit Singh and his other co-accused in a cross- case were the aggressors. He along with his son Davinder Singh were in his field preparing for their Basmati crop and strengthening the common Watt between his fields and that of Surjit Singh. The complainant gradually used to cut the Watt over a period of years. The common watt had become very weak and water from the field of Surjit Singh used to flow into his field. He had got the watt demarcated several times. Surjit Singh was not admitting the demarcation. Finally the Watt was demarcated on 15.6.2016 and his land was found to have been encroached upon which is mentioned in the demarcation report. Stones (Burjies) were installed on the encroached area by the Revenue department. The land was demarcated in the presence of the panchayat. The Burjies and the watt were created as per the demarcation. The Panchayat and other respectables signed But Surjit Singh refused to put his signatures. The watt raised by Panchayat is in existence till today. Surjit Singh filed a case regarding the said watt at Civil Court, Phillaur by concealing the true facts.

10. He further stated that on the day of occurrence he along with Davinder Singh was strengthening the common watt. In the meantime Surjit Singh came with gandasi and threatened them not to put earth on the common watt. He started quarrelling with them and called his co-accused Girdawar Singh who was armed with danda and raised lalkara. Amandeep Singh son of Surjit Singh also came there along with Gulzara Singh and the verbal exchange of words continued and they tried to over awe him (Avtar Singh). In order to save him Davinder Singh stepped in to separate them.

Meanwhile Girdawar Singh and other companions of Surjit Singh shouted that Davinder Singh be caught and taught a lesson. Surjit Singh gave a gandasi blow towards his head, which he warded off by his hand which was injured. Surjit Singh tried to give another blow. In order to save himself, Davinder Singh gave a daat blow on the person of Surjit Singh in self defence. Major Singh came there and the matter was defused. Davinder Singh was taken to hospital where he was got admitted and was medico legally examined. He further stated that at the time of occurrence Buta Singh and Daljit Singh were not present. Buta Singh was on the western side of the village where he was working on the land that he had taken on lease. On receiving information he came to the house of Davinder Singh and took him to the hospital. He further stated that the injury on the head of Surjit Singh was not dangerous to life. He was never subjected to CT scan and the alleged report of CT scan is false and fabricated. At the time of alleged operation no report was given by the doctor that injury was dangerous to life. It was only later that it was manipulated by the complainant party in connivance with doctors. The medical record of Surjit Singh was manipulated in Oxford Hospital, Jalandhar as per the wishes of Surjit Singh and his relations. The police was working under political pressure.

11. The accused also examined several witnesses in their defence.
12. The appellants were convicted and sentenced as referred to above. Hence, this appeal.
13. We have heard learned counsel for the parties and have gone through the judgment and record.

14. PW1 Surjit Singh reiterated the version as per his statement Ex PW 1/A. He stated that on 16.7.2014 at about 3.15 pm he was watering his fields through a pipe. When he went to divert the course of water he saw Avtar Singh and his son Daljit Singh throwing sand on the common field boundary (Watt) by taking sand from their field. His field was adjoining to the field of Avtar Singh. By their act of throwing the sand his crops were pressed. He asked Avtar Singh to desist from doing so. But he and his son replied in the negative. Instead they dared the complainant to stop them from doing so. They threatened the complainant to run away from the spot otherwise he would be killed. Despite their threats the complainant asked them to remove the sand which they had thrown in the fields and which had damaged his crop. This dispute turned into a quarrel. Accused Avtar Singh raised Lalkara. He asked his son to run away from the spot and called Buta Singh Dhandi. Daljit Singh, Buta Singh and Davinder Singh s/o Buta Singh came to the spot. Davinder Singh had a gandasi in his hand. Daljit Singh had a dang. Buta Singh raised lalkara that Surjit Singh be caught and not let to go. Then Avtar Singh caught hold of him from his arms. Davinder Singh inflicted injury on the left side of his head with the gandasi. The complainant became unconscious. Then Buta Singh hit him with his leg and threw him on the ground. Daljit Singh caused injury on his right shoulder with a dang. On the complainant raising raula the accused ran away from the spot with their weapons. Hearing his cries his son Amandeep came to the spot. He also called his uncle Gardawar Singh. The complainant was taken to Civil Hospital Nurmahal. On 16.7.2014 he was referred to Civil Hospital Jalandhar as the injury on his head was grievous.

He however was got admitted in Oxford Hospital, Jalandhar as his condition was serious.

The reason for quarrel was that the fields of the accused and complainant are adjoining each other. There is always a quarrel going on between them regarding the common watt.

15. PW2 Amandeep Singh son of Surjit Singh stated that he was studying in 10th class. On 16.7.2014 at about 2.15 pm after school he had gone to his house and taken his meals. Thereafter, he went to their well. When he was present there he heard the cries of his father Surjit Singh. He ran to the spot and saw that his father had fallen on the ground and had suffered multiple injuries on his person. Blood was oozing from the head of his father. He saw Buta Singh, Davinder Singh, Avtar Singh and Daljit Singh going towards their houses raising Lalkaras. On seeing the condition of his father he got perplexed. He called his uncle Gardawar Singh at the spot. He and his uncle Gardawar Singh took Surjit Singh to Nurmahal. As his father's condition was serious he was referred to Civil Hospital Jalandhar, but they got him admitted in Oxford Hospital, Jalandhar.

16. PW2 HC Harjit Singh (wrongly mentioned as PW2 second time.) stated that in his presence ASI Jagtar Singh the Investigating Officer arrested accused Buta Singh, Avtar Singh and Daljit Singh vide arrest memos Ex.PW4/A & PW4/B. Their personal search memos are Ex.PW4/C & Ex. PW4/D.

17. PW3 Dr. Bharat Gupta stated that on 16.7.2014 he was posted as Consultant Neurosurgery in Oxford Hospital, Jalandhar. On that day, the patient Surjit Singh present in the Court was admitted in the hospital and

was under his treatment. He was admitted with history of alleged assault on 16.07.2014 at approximately 2.00 PM at village Aujla. The patient was stated to have been assaulted by Dattar on head. It was a case of bleeding from scalp. There was history of inability to talk, right sided weakness of body and vomiting was present. The patient had been taken to Civil Hospital, Noormahal where suturing of scalp was done and he was referred to higher centre. At admission the patient Gcs was E2VIM5 bilateral pupile were equal and reacting to light. The patient was aphasic with right hemis paresis 2/5. CT head was done showing large extra dural hematoma of 31 MM thick on left fronto Temporal Parietal region with midline shift of 7 MM. The patient had 6 cm linear sutured wound on left parietal region. The patient was operated same day 16.07.2014 in emergency life saving condition in form of left FTP craniotomy with evacuation of extra dural hematoma. The patient improved after the surgery and was discharged on 26.07.2014 in satisfactory condition.

18. PW3 Dr. Bharat Gupta, was re-called for re-examination. He stated that on 16.07.2014 he had examined patient Surjit Singh son of Lehmbur Singh. After examining him he had declared injury on the person of Surjit Singh as dangerous to life and which is sufficient in the ordinary course of nature to cause death. His opinion is Ex.PW3/B.

19. PW4 Anwar Masih stated that on 9.9.2014 he was posted at Police Station Bilga, district Jalandhar. On that day accused Davinder Singh was arrested. He made disclosure statement Ex.PW4/C to the Investigating Officer. On the basis of the disclosure statement he got recovered iron gandasi which was taken into police possession by the IO through recovery

memo Ex.PW4/D. He had attested the disclosure statement as also the recovery memo, both of which were also signed by the accused. He also identified accused Davinder Singh in court.

20. PW5 Dr. Veena stated that on 16.07.2014 she was posted as Medical Officer at Community Health Centre, Noor Mahal. On that day she medico-legally examined Surjit Singh son of Lhember Singh r/o VPO Ojla, Bilga. On examination patient was semi conscious, not responding to verbal commands. BP 110/70 pulse 80p/m. Injuries noted were as under:

“1. Incised wound 8cmx1.5cm with profuse bleeding on the left frontoparital area. Advise expert ortho opinion.

2. history of unable to move right shoulder. Advise ortho opinion.”

After first aid treatment patient was referred to Civil Hospital, Jalandhar.. She proved the MLR Ex.PW5/A and pictorial diagram as Ex.PW5/B.

21. PW6 HC Boota Ram stated that on 9.9.2014 he was posted as Head Constable in Police Station Bilga, District Jalandhar. ASI Jaswinder Singh Investigating Officer deposited with him case property i.e. one gandas. After making relevant entry he deposited the case property in malkhana. In cross-examination he stated that the said weapon was 2 feet 10 inches in length. It was not sent to the Serologist. It was not in a parcel nor was it covered by any paper or cloth. There was also no seal on it. He however denied that the weapon was foisted on the accused to strengthen the case.

22. PW7 Dr. Ashish Kalra, Radiologist, Kap Scan & Diagnostic Centre, Jalandhar stated that on 18.7.2014 the patient Surjit Singh came for

CT scan head to their centre. Plain CT scan of head was done. The entry regarding this was made in the register. He produced it in the court. The photocopy of the same is Ex.PW7/B. He stated it was a post operative follow up case of head injury. He proved his report Ex.PW7/A and certificate u/s 65-B of Evidence Act Ex.PW7/C. His findings were:

“Thin acute left fronto-parietal subdural haematoma below the operative site.

Air is also seen within the collections.

Small, haemorrhagic contusions are seen in the left temporal and parietal region.

Left lateral ventricle is compressed.

Minimal shift of midline seen towards right.

Fracture left temporo-parietal bone also noted.

Note is made of left temporo-parietal craniotomy.”

He stated that the original film of CT scan was not available in the record of the centre as it had been handed over to the patient Surjit Singh.

23. PW8 ASI Jagtar Singh stated that on 16.7.2014 he was posted as Head Constable in Police Station Bilga, District Jalandhar. On 16.7.2014 he received MLR regarding admission of Surjit Singh in Civil Hospital Nurmahal. He proved the various applications Ex.PW8/A dated 16.7.2014, Ex.PW8/B dated 17.7.2014, Ex.PW8/C dated 19.7.2014, Ex.PW8/D dated 21.7.2014 for taking opinion regarding fitness of injured Surjit Singh for making statement and the opinion of the doctor that he was unfit to give a statement. He further proved his application Ex.PW8/E dated 24.7.2014 wherein the doctor opined that the patient was fit to make a statement. But

Surjit Singh stated that he was unable to give statement and would give

statement the next day. He proved the statement PW1/A of Surjit Singh recorded by him on 25.7.2014 on basis of which FIR Ex.PW8/G was registered. He stated that he formally arrested Avtar Singh and Buta Singh vide arrest Memo Ex.PW4/A and Ex.PW4/B who joined investigation as per orders of the Court. Thereafter, the case file was entrusted to ASI Jaswinder Singh.

24. PW9 ASI Jaswinder Singh stated that on 9.9.2014 he was posted as ASI in Police Station Bilga, District Jalandhar. On that day he received the file of the case for investigation. Same day he arrested accused Davinder Singh. Accused made disclosure statement Ex.PW4/C/1 which was attested by HC Anwar Masih and C. Rakesh Kumar. Accused also signed it. On the basis of the disclosure statement one gandasi was recovered which was taken into police possession through recovery memo Ex.PW4/D/1 which was attested by the same witnesses. He prepared site plan of the place of recovery Ex.PW9/A and a sketch of the gandasi Ex.PW4/E. He identified the gandasi in court. In Cross-examination he admitted that after recovery the gandasi was not taken into a sealed parcel.

25. PW10 Dr. Satvinder Singh, Radiologist, Civil Hospital, Jalandhar stated that an application was moved by accused Avtar Singh for constitution of Board of doctors to re-examine complainant Surjit Singh for his injuries. On the said application Ex.PW10/A, Civil Surgeon, Jalandhar constituted a Board of doctors vide order dated 19.09.2014 consisting of Dr. Des Raj, Assistant Civil Surgeon, Jalandhar, Dr. T.P. Singh, Surgeon, CHC, Adampur, Dr. Amit Orthopadicion, Jalandhar and he himself. The Board also called Dr.Veena Medical Officer CHC Nurmahal who had conducted

MLR of injured Surjit Singh and recorded her statement Ex.PW10/C. Dr.Bharat Gupta, Neurosurgeon of Oxford Hospital, Jalandhar who treated and gave opinion regarding nature of injury which was declared dangerous to life was also called. His statement and opinion is Ex.PW10/D. The Board also re-examined Surjit Singh. The Members of the Board agreed with the opinion of Neurosurgeon Dr.Bharat Gupta and declared injury No.1 as dangerous to life. He proved the opinion of the Board Ex.PW10/E. He produced the entire file comprising 33 pages as Ex.PW10/F.

26. DW1 Baldish Singh, Kanungo, Sub- Tehsil Nurmahal, District Jalandhar proved application Ex.DW1/A, which was moved by accused Avtar Singh for demarcation of land. He stated that after demarcation, he sent the demarcation report Ex.DW1/C. He stated that he sent notice Ex.DW1/E to parties through Patwari. Before starting demarcation he obtained the signatures of parties and respectables on Ex.DW1/F. Surjit Singh refused to sign the same. The demarcation was conducted in the presence of respectables.

27. DW2 Satish Kumar, Patwari Village Poadhara, Tehsil Phillaur, District Jalandhar deposed that the demarcation of the land was conducted in his presence. He prepared document of presence of parties (Ex.DW1/F) at the time of demarcation. Surjit Singh son of Lehembar Singh was present at the spot but he left the spot when demarcation was going to start. On the request of the defence he was declared hostile. In cross-examination by the counsel for the accused he stated that Surjit Singh was present at the time of preparation of report Ex.DW1/C. He stated that the demarcation was started in the presence of Surjit Singh but thereafter he left the spot. He denied that

the demarcation was completed in the presence of Surjit Singh.

28. DW3 Manish Nagar, Ahlmad attached to the Court of Sh. Raj Pal, Principal Magistrate, Juvenile Justice Board, Jalandhar brought the original files of case titled as 'State Vs. Amandeep Singh', bearing FIR No.112 dated 25.07.2014 under Sections 307/324/34 IPC, registered at Police Station Bilga, Jalandhar and case titled as 'State Vs. Daljit Singh', bearing FIR No.112 dated 25.07.2014 under Sections 307/323/341/506/34 IPC, Police Station Bilga, Jalandhar.

He stated that in case titled as State Vs. Daljit Singh, the statements of Gurdawar Singh as PW6 and Dr. Bharat Gupta as PW4 (Ex.DW3/A and Ex.DW3/B) were recorded. Similarly, in case titled as 'State Vs. Amandeep Singh', the statement (Ex.DW3/C) of SI Satnam Singh as PW 5 was recorded.

29. DW4 SI Satnam Singh, stated that he had appeared as PW5 in case titled as 'State Vs. Amandeep Singh' pending before the Juvenile Justice Board, Jalandhar on 04.08.2016. He proved his statement as Ex.DW3/C. In cross-examination he stated that he had seen the site plan of the place of occurrence Ex.PW5/B which was prepared by him and bore his signatures. The site plan was prepared at the instance of Avtar Singh. He stated that point 'B' shown in the site plan falls in the land of Surjit Singh. He stated that there was no litigation pending between the parties regarding demarcation of the land and as such no record regarding demarcation was taken into possession by him.

30. DW5 Dr. Piyush Khanna stated that on 16.7.2014 he was posted as Emergency Medical Officer at PHC Bilga, District Jalandhar. On that

day, he conducted the medico- legal examination of Davinder Singh (Ex.DW5/A). He also proved the pictorial diagram showing the seats of injuries as Ex.DW5/B. He found the following injuries : -

1. *Linear incised wound on the left hand middle finger 1.2 cm x 1mm, 4 cm from the margin of palm. Advised X-ray.*
2. *Linear incised wound on the left hand ring finger 2 cm x 1 mm, 1.5 cm away from the margin of palm. Advised X-ray.*
3. *Linear incised wound 4 cm x 2 mm, fresh to bleed, 10 cm from the wrist joint on the dorso lateral side. Advised X-ray.*

Injury No.1, 2, 3 were kept under observation. Probable duration of injuries was within six hours. Kind of weapon used was sharp. After radiologist report from Civil Hospital Jalandhar no fracture was seen. Hence all the injuries were declared simple nature vide report Ex.DW5/C.

31. In cross-examination, DW5 Dr. Piyush Khanna admitted that as per bed head ticket Ex.PW4/D there is an entry dated 16.07.2013 Ex.PZ/1 at 9:00 p.m. which is in the hand writing of Davinder Singh and signed by Avtar Singh. It is mentioned that they are leaving the hospital and would come the next day after getting X-ray done. Similarly on the next day, they again left the hospital. He stated that as per the bed head ticket, patient Davinder Singh never stayed for any night in the hospital

32. DW6 Joga Singh stated that he was Member Panchayat of village Aujla. He knew all the villagers. There was a boundary dispute between Surjit Singh and Avtar Singh. The demarcation of the land of Surjit Singh and Avtar Singh was conducted in his presence but Surjit Singh denied to sign on demarcation proceedings stating that he would sign the same after consulting his Advocate. He also stated that no Watt was carved

at the time of demarcation . It was said that all the Burjis would be erected

after cutting the paddy crop. Thereafter the Watt was carved out after 4-5 months.

33. DW7 Mohinder Singh stated that he was running a dairy farm. He deposed that at the time of occurrence Buta Singh was not present at the place of incident. He was busy in watering his paddy crop.

34. From the aforesaid evidence it is clear that the land of complainant Surjit Singh and accused Avtar Singh is adjoining each other. There was a long pending dispute between them regarding the common watt. Both the parties had at various times submitted applications for demarcation. As per DW1 Baldish Singh, Kanungo, Sub- Tehsil Nurmahal, District Jalandhar on an application of accused Avtar Singh, demarcation of land had been done and he had sent demarcation report Ex.DW1/C. Though various respectables had signed on Ex.DW1/F in token of their presence but Surjit Singh refused to sign the same.

35. DW2 Satish Kumar, Patwari Village Poadhara, Tehsil Phillaur, District Jalandhar deposed that the demarcation of the land was conducted in his presence. Surjit Singh son of Lehembar Singh was present at the spot but he left the spot when demarcation was going to start. In cross-examination by the counsel for the accused he stated that Surjit Singh was present when the demarcation was started but thereafter he left the spot. He denied that the demarcation was completed in the presence of Surjit Singh.

36. According to the complainant Surjit Singh the present incident was triggered when he objected to the accused Avtar Singh and his son throwing sand on the common Watt as the sand fell on his crop which got

pressed. But the accused stated that they would continue doing so and dared him to stop them. They threatened him with dire consequences and that he would even be killed. The verbal duel soon degenerated into a quarrel. Accused Avtar Singh raised Lalkara. He asked his son to run away from the spot and called Buta Singh Dhandi. Daljit Singh, Buta Singh and Davinder Singh s/o Buta Singh came to the spot. Davinder Singh had a gandasi in his hand. Daljit Singh had a dang. Buta Singh raised lalkara that Surjit Singh be caught and not let to go. Then Avtar Singh caught hold of him from his arms. Davinder Singh inflicted injury on the left side of his head with the gandasi. The complainant became unconscious. Then Buta Singh hit him with his leg and threw him on the ground. Daljit Singh caused injury on his right shoulder with a dang. On the complainant raising raula the accused ran away from the spot with their weapons. Hearing his cries his son Amandeep came to the spot. He also called his uncle Gardawar Singh. The complainant was taken to Civil Hospital Nurmahal. On 16.7.2014 he was referred to Civil Hospital Jalandhar as the injury on his head was grievous. He however was got admitted in Oxford Hospital, Jalandhar as his condition was serious.

37. The case of the accused was that the complainant was the aggressor. Avtar Singh in his statement under Section 313 Cr.P.C. stated that on the day of occurrence he along with Davinder Singh was strengthening the common watt. In the meantime Surjit Singh came with gandasi and threatened them not to put earth on the common watt. He started quarrelling with them and called his co-accused Girdawar Singh who was armed with danda and raised lalkara. Amandeep Singh son of Surjit Singh

also came there along with Gulzara Singh and the verbal exchange of words continued and they tried to overawe him (Avtar Singh). In order to save him Davinder Singh stepped in to separate them. Meanwhile Girdawar Singh and other companions of Surjit Singh shouted that Davinder Singh be caught and taught a lesson. Surjit Singh gave a gandasi blow towards his head, which he warded off by his hand which was injured. Surjit Singh tried to give another blow. In order to save himself Davinder Singh gave a daat blow on the person of Surjit Singh in self defence. Major Singh came there and the matter was defused. Davinder Singh was taken to hospital where he was got admitted and was medico legally examined. Complainant Surjit Singh had got fabricated the injury on his head in connivance with the doctor at Oxford Hospital. The police had not correctly recorded the statement of Davinder Singh as one of his relative was in the police department.

38. Both the parties have admitted their presence at the spot. While complainant's case is that the serious injury which was dangerous to life was inflicted on him by the accused, the case of the accused is that the injury came to be inflicted in self defence.

39. The Ld. Trial Court referred to the cross examination of DW4 SI Satnam Singh wherein he stated that the site plan of the place of occurrence Ex.PW5/B had been prepared by him at the instance of Avtar Singh. Point 'B' shown in the site plan falls in the land of Surjit Singh. This indicates that the injuries were caused to the complainant in his land which demolishes the defence version of the complainant being aggressor. Moreover the nature of the injuries go a long way in establishing as to which party was the aggressor. The injury caused on the head of

complainant Surjit was opined as being dangerous to life. The defence had seriously contended that the injury was simple. This was conclusively demolished by PW10 Dr. Satvinder Singh, Radiologist, Civil Hospital, Jalandhar. He stated that an application was moved by accused Avtar Singh for constitution of Board of doctors to re-examine complainant Surjit Singh for his injuries. On the said application Ex.PW10/A, Civil Surgeon, Jalandhar constituted a Board of doctors vide order dated 19.09.2014 consisting of Dr. Des Raj, Assistant Civil Surgeon, Jalandhar, Dr. T.P. Singh, Surgeon, CHC, Adampur, Dr. Amit Orthopadicion, Jalandhar and he himself. The Board also called Dr.Veena Medical Officer CHC Nurmahal who had conducted MLR of injured Surjit Singh and recorded her statement Ex.PW10/C. Dr.Bharat Gupta, Neurosurgeon of Oxford Hospital, Jalandhar who treated and gave opinion regarding nature of injury which was declared dangerous to life was also called. His statement and opinion is Ex.PW10/D. The Board also re-examined Surjit Singh. The Members of the Board agreed with the opinion of Neurosurgeon Dr.Bharat Gupta and declared injury No.1 as dangerous to life.

40. As contrasted with the injury on the complainant Surjit Singh the injuries on the person of Davinder Singh – the injured on the side of the accused were declared to be simple in nature. DW5 Dr. Piyush Khanna stated that on 16.7.2014 he was posted as Emergency Medical Officer at PHC Bilgah, District Jalandhar. On that day, he conducted the medico-legal examination of Davinder Singh (Ex.DW5/A). He found the following injuries : -

“1.Linear incised wound on the left hand middle finger 1.2 cm x 1mm, 4 cm from the margin of palm. Advised X-ray.

2.Linear incised wound on the left hand ring finger 2 cm x 1 mm, 1.5 cm away from the margin of palm. Advised X-ray.

3.Linear incised wound 4 cm x 2 mm, fresh to bleed, 10 cm from the wrist joint on the dorso lateral side. Advised X-ray.”

Injury No.1, 2, 3 were kept under observation. Probable duration of injuries was within six hours. Kind of weapon used was sharp. After radiologist report from Civil Hospital Jalandhar no fracture was seen. Hence all the injuries were declared simple nature vide report Ex.DW5/C.

41. In cross-examination he admitted that as per bed head ticket Ex.PW4/D patient Davinder Singh never stayed for any night in the hospital.

42. Besides the superficial nature of injuries on his person it is also significant that the statement of Davinder based on which cross case against the complainant was registered was recorded three months and twenty four days after the incident. Thus it is conclusively proved that the accused were the aggressor and caused injuries to Surjit Singh on his head with a sharp weapon which was dangerous to life.

43. The delay of nine days between the occurrence dated 16.07.2014 and recording the statement of Surjit Singh on 25.07.2014 has been satisfactorily explained as it was only on 24.07.2014 that the complainant was declared fit to record his statement. On 24.07.2014 Surjit Singh stated that he was unable to give his statement. The very next date his statement was recorded.

44. The fact that the gandasi, the alleged weapon of offence was not put in a sealed parcel and not sent to the serologist is not sufficient to dent the case of the prosecution. The accused cannot get the benefit of this lapse

45. The prosecution has succeeded in proving the case against the appellants beyond reasonable doubt. There is no reason to interfere with the well reasoned judgment of the trial court.

Criminal Appeal No.CRA-AD-130-2019 :

46. This appeal is filed by the complainant against the acquittal of Buta Singh.

47. While acquitting Buta Singh the Ld. Trial Court has noticed that even as per PW1 Surjit Singh - complainant, no injury was caused to him by Buta Singh. The only allegation against Buta Singh was that he had caused the complainant to fall to the ground by hitting his leg against him. From the evidence Ld. Trial Court concluded that the presence of Buta Singh at the spot was doubtful.

48. This finding has not been shown to be perverse or erroneous.

49. Accordingly there is no merit in this appeal and the same is also dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 31, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No