

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

Reserved on 14th of September, 2022

Pronounced on 17th of October, 2022

CRA-S No.1675-SB of 2004

Sawinder Singh

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Gursharan K. Mann, Sr. Advocate assisted by
Mr. A.P.S. Mann, Advocate
for the appellant.

Mr. Gurdarshan S. Sidhu, Asstt. Advocate General, Punjab
for the respondent/State.

PANKAJ JAIN, J.

Appellant is aggrieved of judgment of conviction dated 11th of August, 2004 whereby he has been held guilty of offence punishable u/s 326 of the Indian Penal Code, 1860 and the order of sentence awarding the rigorous imprisonment of 4 years along with fine of Rs.1,000/- in FIR No.163 of 1999, registered for the offences punishable u/s 302, 307, 34 IPC, at Police Station Lapoke.

2. As per allegations, it is alleged that on 30th of June, 1999, Subeg Singh and his son Resham Singh had gone to the house of one Pargat Singh to see fair held in the memories of muslim faqir.

Resham, deceased S.P. was a friend of said Pargat Singh. When they were coming back, Resham Singh had quarreled with Rachhpal Singh @ Bunti and Sawinder Singh. Allegedly Resham Singh was murdered by Rachhpal Singh. Hardev Singh was one of the accused. After occurrence, at about 2:30/3:00 p.m., Swaran Singh and his son Hardev Singh, Dilbagh Singh and Baljit Singh were present at their house. Swainder Singh (accused) and Ramanjit Singh (co-accused) came there on Phirni and started hurling abuses at them. Dilbagh Singh objected, to which Sawinder Singh gave him *gandasi* blow on his head. Dilbagh Singh in self-defence caused him injuries with Kirpan. Thereafter, brothers of Sawinder Singh i.e. Pargat Singh and Mehel Singh came there. Pargat Singh was having 12-bore gun. Out of fear, Baljit Singh went upstairs, gun shot fired at him by Pargat Singh on back of his shoulder. He succumbed to injuries.

3. Appellant Sawinder Singh was charge-sheeted for offence punishable u/s 326 IPC. During investigation, Dilbagh Singh was medico-legally examined by Dr. Gurmanjit Rai, who proved on record following injuries :

- (i) Incised wound 9 X 1 cm on the left side temporal perital region of head.
- (ii) Reddish brown abrasion 4 X 1 cm with scab formation on right side of ace were found.

(iii) On receipt of X-ray examination Report Ex.PC, injury no. 1 was declared grievous.

4. Copy of Medico Legal Report was proved on record as Exhibit PB. Injured Sawarn Singh himself appeared as PW-3 and deposed reiterating the contents of the complaint. After analyzing the evidence on record, Trial Court found appellant guilty of offence punishable u/s 326 IPC and awarded him rigorous imprisonment of 4 years.

5. During the pendency of appeal sentence of the appellant was suspended vide order dated 25th of October, 2004 noticing that he has already undergone conviction of 1 year, 4 months and 1 day as on 19th of August, 2004.

6. Ld. Counsel for the appellant has emphatically argued that it is a case wherein both the parties suffered injuries. Rather, the complainant i.e. Sawarn Singh and his son Dilbagh Singh were the aggressors and received injuries after the appellant acted in self-defence. She submits that the appellant Sawinder Singh received injuries at the hands of Dilbagh Singh by sword (*Kirpan*) blow. She has drawn attention of this Court towards the statements suffered by witnesses namely Sawarn Singh, PW-3 and Dilbag Singh, PW-4, to submit that there are major discrepancies between their testimonies.

She submits that Dilbagh Singh admits that he brought sword (*Kirpan*) from his house which would show that it was the complainant party who was aggressor.

7. I have heard Ld. Counsel for the parties and have gone through the evidence on record.

8. The argument raised by Counsel for the appellant w.r.t. discrepancies between the statements of PW-3 and PW-4 regarding source of sword (*Kirpan*) in the hands of Dilbag Singh, who is stated to have caused injuries on the person of appellant is of not much consequence. As per settled law witnesses are not required to reiterate the version in a parrot like manner. With the passage of time some discrepancies are bound to occur.

9. Injured witness has fully supported the version of the prosecution. So far as plea of self-defence is concerned, the same also does not cut any ice in the absence of cogent evidence to prove the same. Injury suffered by complainant is grievous as opined by the Doctor. Weapon stands recovered on the statement made by appellant accused. Section 320 IPC defines grievous hurt as under:-

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous” :—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. ”

10. As per the allegations levelled in the FIR complainant was hit by appellant on head by *Gandasi* thus, it cannot be said that he did not intent to cause hurt on the complainant. As per medical evidence injury suffered by the complainant falls within the definition of grievous hurt as enumerated u/s 320 IPC. Thus, no fault can be found with the findings recorded by the Trial Court holding the appellant guilty of offence punishable u/s 326 IPC.

11. Ld. Counsel for the appellant also argued that the appellant has no criminal antecedents and has already undergone more than 1 year and 4 months of rigorous imprisonment. It was further submitted that the appellant is now in advance age. He has already faced protracted trial for more than 18 years.

12. Taking into consideration the cumulative effect of all the circumstances stated hereinabove especially in view of the fact that it is a case of warring factions, the sentence of the appellant is reduced to

03 years rigorous imprisonment. Appellant is directed to surrender before the Trial Court on 1st of November, 2022 to undergo remaining sentence.

13. As a sequel of discussion held hereinabove, the present appeal is allowed in part.

October 17, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No