

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

**CRA-AD-26-2021
DECIDED ON: 11th JULY, 2022**

SOHAN LAL **.....APPELLANT**

VERSUS

STATE OF PUNJAB AND OTHERS **.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Peeush Gagneja, Advocate, for the appellant.

SANDEEP MOUDGIL, J

Instant appeal has been preferred against the judgment and order 26.02.2020 passed by learned Additional Sessions Judge, Fazilka, (for short 'trial Court') whereby, the private respondents No.2 to 4 stands acquitted under Sections 307/326 IPC but convicted Gauri Shankar and Vijay Pal respondents No.2 and 4 respectively for commission of offence punishable under Section 323/325/34 IPC and released on probation on furnishing probation bonds to the tune of 25,000/- with one surety of the like amount for a period of one year with an undertaking not to commit such offence again and to maintain peace and tranquility during all this period, failing which they shall be called upon to receive the sentence.

Brief facts of the case are that on 14.07.2016, ASI Jagtar Singh, IO received MLR No.124/AN/2016/FZK, MLR No. 125/AN/2016/FZK, MLR No. 126/AN/2016/FZK and MLR No. 127/AN/2016/FZK for conducting further proceedings. On receiving the MLRs, ASI Jagtar Singh alongwith PHG Major Singh reached Civil Hospital, Fazilka and asked the injured persons to get recorded their statements with him. Then on 16.07.2016 ASI Jagtar Singh along-with PHG Bachan Singh again went to Civil Hospital, Fazilka where he recorded the statement of first party i.e.

Vijay Kumar which was endorsed by his brother Gauri Shankar and that from their statements and MLR No.124/AN/2016/FZK and MLR No.128/AN/2016/FZK offence under Section 323 IPC was made out and PHG Bachan Singh was sent to police station for getting entered a *rapat* in this regard. Thereafter, ASI Jagtar Singh recorded the statement of injured Sohan Lal as his brother Subhash Kumar had already been referred to GGS Medical College and Hospital, Faridkot. Sohan Lal, aged 25 years, son of Ram Pal resident of Village Kaurian Wali got recorded his statement with the IO to the effect that he is studying in B.A. They are three brothers, namely, Subash Chander, he (Sohan Lal) and Ramesh Kumar wherein his father and three uncles had partitioned their land in four shares, along-with water from the tubewell as well, in equal shares. On 13.07.2016 at 10.00 A.M., it was the turn of their father and Subash Kumar to get water for irrigation. Vijay and Gauri Shanker sons of Sukh Ram, who are the cousins of the complainant, caught Subash Kumar. Accused Sukh Ram kept holding him (Subash Kumar) while accused Vijay and Gauri Shanker caused injuries to Subash Kumar with 'dang' on his waist and left eye. Subash Kumar somehow got himself released from the clutches of accused persons. He further stated that thereafter while he was taking Subash Kumar for treatment on motorcycle, then all the three accused chased them on tractor and caught them near the drain and caused injuries to him on his head, left arm, right wrist and on the middle finger of right hand. They caused him other internal injuries also. When he raised hue and cry then all the accused ran away on their tractor from the spot while extending threats that on that day they have been spared but they will be done to death. Thereafter, Aasa Ram and Raja Ram got them admitted in the civil hospital.

In the afore-said occurrence, Sohan Lal (complainant) sustained

as many as seven injuries out of which four were kept pending for final medical opinion to await the report of Radiologist after X-ray examination and on receipt of MLR No.24/AM/16/FZK dated 13.07.2016 of Subash Kumar, injuries No.1 to 3 were declared to be grievous in nature resulting into registration of present FIR. Later on, the fracture on left eye of Subash Kumar was revealed which caused loss of eye sight leading to addition of offence under Section 307 IPC.

In order to prove the charges against accused, prosecution had examined as many as 7 witnesses whereas the accused denied all the allegations and pleaded false implication and innocence at the time of recording of statements under Section 313 Cr.P.C.

In their defence, accused examined one witness namely Narinder Singh as DW1 and then closed their defence evidence.

Learned counsel for the appellant submits that the trial Court has not appreciated the oral as well as documentary evidence properly. His assertion is that the trial Court has not appreciated the fact that the accused-persons had caused injuries to Subash, brother of the appellant, on his left eye, nose, right eye, jaw and face and even thereafter inflicting injuries to the complainant at the time when he was taking the injured to hospital for treatment.

Learned counsel for the appellant further contends that the testimony of Sohan Lal-complainant/appellant is duly corroborated from the deposition of PW-3 Subhash Kumar (injured) and also finds support from the medical evidence in the form of PW-4 Dr. Aseem Maini, PW-5 Dr. Manpreet Singh and PW-7 Dr. Gajinder Shekhawat along-with other material as well as formal witnesses to bring home the guilt of the accused persons.

Much stress has been laid on behalf of the appellant to the deposition of himself urging that he identified the accused persons, proved his statement recorded by the IO as Ex.P1 and tendered into evidence all the relevant documents sufficient to prove that he had swelling on upper and lower eye lids of both sides.

We have heard learned counsel for the appellant and examined the evidence on record.

On a careful examination of the statement made by Vijay Pal-respondent No.4 it emanates that statement to whom the investigating officer referred to as the first party, was recorded in which he narrated that he and Gauri Shankar had received injuries, but said statement has not been made the part of the judicial file. However, there is no such documentary evidence putforth. Apart from this, the complainant Sohan Lal, while appearing as PW-2, has proved his earlier statement (Ex.P-1) recorded under Section 161 Cr.P.C in which he has not stated about any injury caused either to him or to his brother Subhash Kumar (PW-3).

There is another vital aspect involved which is that the prosecution case discloses two occurrences of the same day. First occurrence is stated to have taken place at 10.00 a.m., and the injured thereof is Subhash Kumar (PW-3), but the complaint made in this regard gives a general version about the occurrence and lacks specificity. As regards second occurrence, which is stated to have taken place near Sem Nala of the village regarding which injured Sohan Lal narrated that he received injuries on head, left arm, right wrist and fingers of right hand. However, this too is vague and generalized in nature. It does not record as to which accused caused him which injury. Further, in the initial version, the injuries are said to have been caused to Sohan Lal, but while appearing in the witness box, the injured

have made improvements to the effect that injuries were caused to Subhash Kumar also. This improvement has not been explained by the prosecution. Further, no specific role is attributed to Sukhram (respondent No.3). There is no medical evidence on record to suggest that any grievous injury was caused to bring the offence, if any, within the ambit of Section 326 IPC what to talk of causing any injury with the intention to kill.

We, having examined the submissions and evidence on record, are fully in consonance with the findings and the judgment vide which Vijay Pal and Gauri Shanker have been convicted under Sections 323 and 325 IPC only while acquitting all the accused of other offences. Before recording our verdict we will not be fulfilling our duty without considering the aspect of sentence.

While considering the aspect of sentencing, the trial Court has observed that Gauri Shankar and Vijay Pal also sustained injuries in the occurrence, but no action was taken on their complaint, so much so, the version given by Vijay Pal was not made part of the judicial file. In such circumstances, keeping in view the principles of criminology and penology, the trial Court has rightly released them on probation which is in consonance with the judicial consciousness.

In the light of discussions made hereinabove, we do not find any reason to interfere with the findings and the judgment recorded by the trial Court. Hence, the present appeal is dismissed which lacks merit.

Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

11th JULY, 2022

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No