

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

CRA-S-1679-SB-2007(O&M)

Date of decision:-21.09.2022

Ram Bhagat @ Karambir and others

....Appellants

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Shalender Mohan, Advocate and
Mr.Pawan Hooda, Advocate
for the appellants.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 24.7.2007 passed by Additional Sessions Judge (Fast Track Court), Hisar vide which on conclusion of trial in case FIR No.16 dated 18.1.2000, under Sections 307, 326, 324, 323, 34 IPC, PS Narnaund, the Court had convicted accused Ram Bhagat @ Karambir, Dilbag and Shamsher for the offences under Sections 307, 326, 34 IPC and vide order dated dated 27.7.2007, such accused were sentenced as follows:

Under Section	Sentence	Fine	In default
307/34 IPC	Five Years	Rs.1,000/-(one thousand) each	One month
326/34 IPC	Five Years	Rs.1,000/-(one thousand) each	One month

All the sentenced were ordered to run concurrently.

2. Vide the judgment in question, one of the accused, namely, Balwan had been acquitted of the charge framed against him and another accused, namely, Surrender, who had also been challaned had died during the pendency of the trial and proceedings against him stood abated.

3. Briefly stated, facts of the case as per the prosecution version are that criminal machinery in this case was set into motion by complainant Sita Ram, who in the statement got recorded by him with the police on 10.1.2000 stated that on 9.1.2000 at about 5:00 p.m., an elephant had come to their village and on seeing it, buffalo of Kapura got panicky, broke off the string with which it was tethered with the peg and attacked buffalo of accused Shamsher, for the said reason an altercation had taken place between Shamsher and Kapura; though the matter was compromised at about 7:00 p.m. on the same day.

On 10.1.2000 while Kapura was passing near house of accused Shamsher, he was surrounded by the accused persons. Accused Shamsher gave a *lalkara* that Kapura be taught a lesson on which accused Ram Bhagat @ Karambir gave a gandasi blow on the head of Kapura; when the complainant Sita Ram along with Tirth and son of Kapura on seeing such injury being caused to Kapura, rushed to the spot from their house, accused Ram Bhagat @ Karambir aimed a gandasi blow on the head of complainant, whereas accused Shamsher gave a lathi blow on the head of Harkesh and accused Dilbag inflicted injuries on the left hand of Harkesh with a lathi; accused Balwan gave a lathi blow on the head of Tirth; in the meanwhile Sheela wife of complainant also arrived at the spot; she was given a *darat* blow on her left wrist by

accused Rajo wife of Ram Bhagat @ Karambir; on hearing alarm raised by the complainant and other injured, 3-4 persons arrived at the spot at which the assailants slipped away.

4. After verification of the facts, FIR No.16 dated 18.1.2000 for the offences under Sections 323, 324, 34 IPC was registered at Police Station Narnaund. The investigation in the case started. Since the head injury on the person of Kapura had been declared to be dangerous to life offences under Section 326 and 307 IPC were added. The accused were arrested in this case. During the course of investigation, accused Rajo was found to be innocent, whereas finding sufficient material to forward accused Ram Bhagat @ Karambir, Balwan, Surender, Shamsheer and Dilbag to face trial, they were challaned accordingly and challan for the offences under Sections 307, 326, 148 read with Section 149 IPC was filed against them in the Court of learned Judicial Magistrate Ist Class, Hansi.

5. On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Hansi, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 307 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Hansi committed the case to the Court of learned Sessions Judge, Hisar vide order dated 7.9.2002 from where it was entrusted to the Court of learned Additional Sessions Judge, Hisar.

6. On receipt of case in the Court, learned Additional Sessions Judge Hisar, observing that prima facie charge for offences under Sections 148, 307, 326 read with Section 149 IPC was disclosed against

all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined the following witnesses:

PW1 Dr.D.N. Bagri, deposed that on 10.1.2022 at 9:30 a.m., he medico legally examined Kapura, resident of Bass, P.S. Narnaund, who had been brought by his son Rajesh and he found the following injuries on his person:

(1) There was incised wound of size 10 cm x 2 cm x bone deep with brain matter coming out. The wound was started found 1 cm above left eyebrow. The weapon was sharp for this injury and patient was kept under observation. X-rays and general surgeon's opinion was advised. The duration of injuries was within six hours of the examination.

His pulse was 110 per minute and BP was 100/60 MM of HG. Patient was talking irrelevantly and his both pupils were dilated.

He proved MLR of Kapura as Ex.PA and diagram as Ex.PA/1 showing the seats of injuries.

This witness further stated that on the same day at about 10:00 a.m., he also medico legally examined Sita Ram son of Dharma, resident of Bass, P.S. Narnaund and found following injuries on his person:-

(1) There was incised wound of size 3 cm x ½ cm on the index finger of left hand. X-rays was advised for this injury and the weapon was sharp. The duration of injuries was within six hours of the examination.

His pulse was 80 per minute and BP was 110/80 MM HG. He proved MLR of Sita Ram as Ex.PB and diagram as Ex.PB/1 showing the location of injuries.

He further stated that he sent ruqa Ex.PC and Ex.PD to the police post for information and on police request Ex.PE, he declared the patient Kapura fit to make statement vide his opinion Ex.PE/1. He gave opinion Ex.PF regarding injury No.1 on MLR No.DN/227/99 and declared this injury as dangerous to life. He further stated that on application Ex.PG moved by the police for production of gandasi before him, opened the seal of the parcel and gandasi was taken out and after seeing the weapon i.e. gandasi, he gave opinion Ex.PG/1 that injury No.1 on the person of Kapura may be caused by that gandasi and thereafter the gandasi was again sealed. He further stated that after seeing x-ray report of injured Sita Ram regarding MLR No.DN/228/2000, injury No.1 on the person of Sita Ram was declared to be grievous in nature.

PW2 Harkesh and PW7 Kapura, both the injured had provided the ocular account of the incident deposing in consonance with the prosecution story.

PW2 ASI Jagdish Chander (wrongly re-numbered) stated that on 18.1.2000 while he was posted at Police Station Narnaund, on that day on receipt of report Ex.PH recorded by ASI Hari Chand on the statement of Sita Ram, formal FIR Ex.PJ was recorded by him under his signatures.

PW3 HC Rajbir Singh stated that on 10.1.2000, while he was posted as MC at Police Post Bass under Police Station Narnaund, he

had received statement Ex.PK of Sita Ram with endorsement Ex.PK/1 appended by ASI Hari Chand through Constable Shamsheer Singh, on the basis of which he had recorded report No.15 dated 10.1.2000.

PW4 Subhash Chand, Draughtsman, SP Office, Hisar stated that on 10.1.2000, he visited the spot and on pointing out of complainant Sita Ram, he had prepared scaled site plan Ex.PL with correct marginal notes, using scale one inch is equal to eight feet.

PW5 Inspector Davender Kumar deposed that on 25.2.2000, he was posted as SI/SHO at P.S. Narnaund and on that day on completion of investigation of this case, he had prepared final report under Section 173 Cr.P.C. under his signatures.

PW6 SI Vinod Kumar stated that on 10.5.2000, he was posted as AS/Incharge at PP Bass and on that day, he had recorded statement of PW Kapura injured under Section 161 Cr.P.C and on the same day, he had arrested the accused in this case.

PW8 SI Hari Chand deposed that on 10.1.2000 while he was posted as Incharge, PP Baas, on that day he had got checked the challan of case FIR No.269/2000 under Sections 363, 366, 376 IPC from ADA in the Court at Hansi; Constable Shamsheer and Constable Bhagat Singh had brought two medical ruqas along with two MLRs of Sita Ram and Kapura and he had also received one V.T. regarding admission of Ram Bhagat @ Karambir etc. in G.H. Hisar; he went to Government Hospital Hansi and found Sita Ram and Kapura to be admitted there and he sought opinion of the doctor for recording their statements on which Kapura was declared unfit whereas Sita Ram was declared fit to make statement on application Ex.PM. He recorded statement of Sita Ram as

Ex.PK. According to this witness, after recording statement of Sita Ram, he had put his endorsement Ex.PK/1 thereon and sent the statement through Constable Shamsheer to the police post for registration of the report in report roznamcha. According to this witness, thereafter, he went to Government Hospital, Hisar and recorded statement of Ram Bhagat @ Karambir and an entry was made in that regard in daily diary register. Going further, the witness deposed that on 18.1.2000, he verified the facts of the DDR No.15 dated 10.1.2000 and thereafter the present case was registered against accused under Sections 323, 324, 34 IPC. He had inspected the spot and prepared rough site plan Ex.PN and recorded statements of witnesses. On 5.2.2000, he had arrested accused Dilbag, Shamsheer and Sunder. Offence under Section 326 IPC was added since head injury on the person of Kapura was grievous in nature. Vide application Ex.PG moved by him on 22.4.2000, he had obtained opinion of the doctor regarding the weapon used to cause injuries. On 23.3.2000, he arrested accused Ram Bhagat @ Karambir and recovered a gandasi, which was fitted in a bamboo stick of 2.5 feet. Rough sketch of the gandasi was prepared as Ex.PO and it was taken into police possession vide recovery memo Ex.PQ. Accused Ram Bhagat @ Karambir was arrested. The case property was deposited with the MHC. Statements of witnesses were recorded. The gandasi had been converted into a sealed parcel.

8. With that the prosecution evidence stood closed.

9. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence were put to them but they denied the allegations

contending that they were innocent and had been falsely involved in this case.

Accused Balwan stated that he has no connection with the incident and he was not present at the spot at that time.

Accused Dilbag took up a plea that it is a false case, which has been planted upon them in connivance with Master Ajit Singh; the real facts are that on 10.1.2000 when Ram Bhagat was going to his office and when he had reached near the house of one of son of Shambhu, then Rajesh empty handed, Tirth, Ghisa and Harkesh armed with lathies, Ram Mehar armed with Kasola, Kapura armed with jelly and Roshan armed with lathi suddenly came there and caused injuries to Ram Bhagat and his brothers, who had come to save Ram Bhagat; such brothers were also injured by Kapura etc; on 9.1.2000 at about 2:00 p.m. Kapura had got entered his buffalo in his house at which an altercation arose and matter was compromised in the Biradri and Kapura felt sorry, however for that reason injuries had been caused to them. This accused further stated that they had not caused any injury to any person from the complainant party.

The pleas taken by accused Ram Bhagat @ Karambir, Surender and Shamsher were also on similar lines.

10. In their defence evidence, accused examined the following witnesses:

DW1 Dr.Arun Gupta, SMO GH, Hisar stated that on 11.1.2000, he had radiologically examined Ram Bhagat son of Baje Singh, resident of village Bass vide MLR No.DLB/13/2000 dated 10.1.2000 and there was fracture of the right ulna bone of right forearm.

He proved report in that regard as Ex.D1.

DW2 Dr.B.L. Bagri, Medical Officer, General Hospital, Hisar stated that on 10.1.2000 while he was posted as MO, GH, Hisar, on that day, he had medico legally examined Ram Bhagat, resident of Bass and following injuries on his person:

- 1. Abrasion 3 ½ x ½ cm was on the posterior part of right parietal region which was painful. X-ray was advised and referred to the surgeon.*
- 2. Lacerated wound 1 x ¼ cm was on the lateral part of left upper lip which was painful.*
- 3. Abrasion 16 x 1 cm was on the posterior part of left forearm which was painful.*
- 4. Lacerated wound 1 x ¼ cm was on the palmer aspect and mid of left little finger which was painful. X-ray was advised and referred to Ortho Surgeon.*
- 5. Defused painful swelling was on the posterior and mid of right forearm. X-ray was advised and referred to Ortho Surgeon.*
- 6. Abraided bruise 8 x 3 cm was on the medial and upper part of right scapular region which was painful and referred to the Surgeon.*

Injuries No.1, 4, 5 and 6 were kept under observation and rest were simple in nature. The weapon used was blunt for all the injuries and the duration was within 6 hours. He proved MLR of such injured as Ex.D2.

On the same day, he also medically examined Dilbag, resident of Bass and found two injuries on his person. He proved his

MLR as Ex.D3. He stated that all the injuries were kept under observation and weapon used was blunt and duration was within 6 hours.

On the same day, this witness also examined Shamsheer, resident of Bass and found five injuries on his person. He proved his MLR as Ex.P4. Injuries No.1, 2 and 3 were kept under observation and rest were simple in nature; the weapon used was blunt and duration was within 6 hours.

On that very day, he also medically examined Sunder, resident of Bass and found three injuries on his person. He proved his MLR as Ex.D5. Injury No.1 was advised x-ray and rest were simple in nature; the weapon used was blunt and the duration was within 6 hours.

DW3 Constable Devi Lal had brought the original DDR No.18 dated 10.1.2000 and proved the same as Ex.D6.

11. After hearing arguments, learned trial Court convicted accused Ram Bhagat @ Karambir, Dilbag and Shamsheer and sentenced them as mentioned above, which left them aggrieved and they had filed the present appeal, which was taken up on 24.8.2007 when it was admitted and recovery of fine was ordered to remain stayed during the pendency of appeal. On applications under Section 389 Cr.P.C. having been filed on behalf of the appellants, their remaining sentence was suspended during the pendency of the appeal.

12. Now the appeal has come up for final hearing.

13. It may be mentioned here that status report by way of affidavit of DSP, Narnaund has been filed mentioning that appellant/accused No.3 Dilbag has died. Death certificate of

appellant/accused No.3 Dilbag has also been placed on record.

14. In view of the same, the present appeal qua appellant/accused No.3 Dilbag stands abated.

15. I have heard learned counsel for the appellants – accused - convicts, learned Additional Advocate General for the State of Haryana besides going through the record.

16. Here both the eye-witnesses i.e. PW2 Harkesh and PW7 Kapura have fully supported the prosecution story. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. Both these PWs have received injuries in the incident and are stamped witnesses and their presence at the spot cannot be doubted. Such injured having been hurt in the occurrence have been the last persons to try to screen the actual culprits and involve the accused in this case falsely since it is always the earnest endeavour of injured to ensure that the persons responsible for causing injuries to them are brought to book and are punished suitably rather than attempting to shield the actual culprits and involve some innocent persons in their place without any rhyme or reason.

17. The ocular evidence is duly corroborated by medical evidence in the form of statement of PW1 Dr.D.N. Bagri, who had medico legally examined injured Kapura and Sita Ram on 10.1.2002 while being posted at General Hospital, Hisar preparing MLRs Ex.PA and Ex.PB, respectively. He stated that vide his opinion Ex.PF he had opined that injury No.1 on the person of Kapura was dangerous to life and when IO moved an application Ex.PG and produced the parcel of gandasi, he had opened the parcel, took out gandasi and vide his opinion

Ex.PG/1 he had opined that injury No.1 on the person of Kapura could be caused by the said gandasi and the gandasi was again sealed. He further stated that after x-ray report of Sita Ram, injury No.1 on his person was declared to be grievous in nature.

18. Thus the prosecution had successfully proved its charge against the appellants/accused by bringing oral as well as documentary evidence as well as medical evidence, which is found to be reliable and trustworthy.

19. Learned counsel for the appellants has however attacked the impugned judgment on several grounds contending that it suffers from various infirmities and illegalities. His such contentions are discussed hereunder one by one.

20. There has been gross delay in registration of the FIR inasmuch as the incident took place on 10.1.2000 at 5:00 p.m. and the FIR is of dated 18.1.2000, which was recorded after about 8 days, which creates a doubt about the truthfulness of the prosecution story.

This objection is without any merit. In this case, the incident had taken place on 10.1.2000. After the incident the injured were taken to Government Hospital, Hansi from where intimation was sent to police station concerned with regard to admission of injured there. On receipt of that information PW8 SI Hari Chand had gone to Government Hospital, Hansi and sought medical opinion regarding fitness of injured Kapura and Sita Ram to make statement. Kapura was opined to be unfit for that purpose, whereas Sita Ram was declared to be fit. Thereafter, the statement of Sita Ram was recorded. The version given by Sita Ram in his statement to SI Hari Chand is the same, which

is contained in the FIR. SI Hari Chand for the reasons best known to him did not think it proper to register formal FIR and rather he directed that an entry in the DDR be made, which was accordingly done. Subsequently, on getting medical opinion offences under Sections 326 and 307 IPC were added. Formal FIR was registered, which according to SI Hari Chand was after verification of the facts. Thus, it cannot be said that there has been any inordinate unexplained delay in reporting the matter to the police, which was utilized by the complainant party in fabricating a false story. If the police for some unknown reasons did not opt to register FIR at the earliest and delayed the matter on the pretext of verifying the facts, the prosecution case cannot suffer for the said reason since the version of the incident soon thereafter had been narrated by the injured Sita Ram to the police while he was admitted in Government Hospital, Hansi.

21. The second ground of attack of learned counsel for the appellants was that there has been version and cross version of the incident and according to cross version Ram Bhagat @ Karambir had also suffered injuries and he was admitted in Government Hospital, Hisar. PW8 SI Hari Chand in his cross-examination admitted it as correct that the complainant party was also challaned in this case on the statement Ram Bhagat @ Karambir, however he hastened to add that since no cognizable offence was disclosed from the statement of Ram Bhagat @ Karambir, hence it was recorded in DDR dated 10.1.2000. The trial Court in the impugned judgment has dealt with this aspect exhaustively. The plea raised on behalf of the accused that as a matter of fact the complainant party was aggressor and had caused injuries to

them was discussed in detail in the impugned judgment. It has been observed that injuries on the person of accused were simple in nature in the form of abrasion or complaint of pain and those injuries were not there on the vital part of the body. Thus, non explanation of these injuries cannot affect the prosecution case and further referring to case law the Court had observed that the prosecution is not bound to explain injuries found on the person of accused in all cases. The judgment of the Apex Court 2001(1) RCR SC 157 State of Rajasthan Versus Hanuman has been referred to in that regard. In para No.50 of the impugned judgment and in this very para referring to judgment Dilbag Singh and ors. Versus State of Haryana, 2007(1) RCR(Criminal)775, it has been observed that right of private defence was not available to the accused party.

I do not find myself in disagreement with the trial Court in that regard.

22. As regards the plea raised by learned counsel for the appellants that gandasi recovered from appellant/accused Ram Bhagat @ Karambir was not sent to FSL so as to find out as to whether any blood stains were there or not, I find that this is not an omission, which could effect the credibility of the prosecution story. The recovery of gandasi is said to have been effected at the instance of accused Ram Bhagat @ Karambir after passage of long time from the date of incident. There could be every possibility of the gandasi having been wiped, cleaned or washed with water in the meanwhile. Therefore, little possibility of blood stains remaining there. Nevertheless, the gandasi which had been taken into police possession and converted into a sealed

parcel had been shown to the doctor, who had medically examined the injured and doctor after seeing the gandasi had opined that injury on the person of Kapura could be caused with the said gandasi. The gandasi is a sharp edged weapon. The plea raised by learned counsel for the appellants that it was not so sharp so as to cause injury dangerous to life is least convincing. When there is specific medical evidence of the doctor, who had medically examined injured that the injury could be possible with the gandasi got recovered by accused Ram Bhagat @ Karambir then such medical opinion cannot be disputed without any reason.

23. Another contention of learned counsel for the appellants was that Tirth, Harkesh and Sheela etc., who had also received injuries in the incident as per the prosecution case were not hospitalized and medico legally examined and they had not appeared in the Court to get their statements recorded during the trial that creates a doubt in the mind about the credibility of the prosecution story.

24. However, I do not find myself in agreement with learned counsel for the appellants in that regard. It depends upon the nature and extent of injuries suffered by an injured whether he/she opts to go to hospital or not. If injuries suffered are of minor type and on non-vital parts, the injured may not go to hospital for treatment of such injuries and sometimes get those treated from some local doctor or by using home remedies. At times womenfolk hesitate to go to Government hospital at a distance from their home on account of social stigma and considering that their admission in the hospital may cause disruption in their daily chores for the family causing inconvenience and harassment

to the family members.

25. The involvement of appellants/accused Ram Bhagat @ Karambir and Shamsher is clearly proved in the incident. Therefore, they were rightly convicted by the trial Court. The prosecution had proved its case against the accused conclusively and affirmatively beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

26. As regards the sentence part, the counsel for the appellants has prayed for taking a lenient view in the matter stating that the incident took place about more than 22 years back and presently appellants Nos.1 and 2 namely Ram Bhagat @ Karambir and Shamsher are senior citizens, aged about 64 and 69 years, respectively and they have not indulged in any criminal activity after being granted concession of suspension of sentence and grant of bail to them by this Court till date.

27. However, keeping in view the fact that appellant/accused Ram Bhagat @ Karambir by means of gandasi, which is a dangerous weapon used for cutting had given a blow therewith on head of Kapura, which is a very vital part of the body and he had further given a blow with gandasi on the head of Sita Ram complainant, whereas appellant/accused Shamsher having a lathi had caused injuries to the other persons and as deposed by the doctor on the head injury on the person of Kapura, brain matter was coming out of that injury. Therefore, no leniency can be shown to the appellants/accused in the matter of

sentence, otherwise a message in the society would go that one can take law into his hands, causing serious injuries to innocent persons and then get away with a very light punishment, resultantly very potential criminals would be tempted to tread the path of crime, which can certainly be not allowed. Therefore, 5 years of imprisonment awarded to the appellants cannot be held to be on higher side and there is no scope for reduction in sentence.

28. As such, the judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

29. The concession of suspension of sentence and grant of bail granted to the appellant No.1 Ram Bhagat @ Karambir and appellant No.2 Shamsheer was withdrawn vide order dated 18.7.2022. Chief Judicial Magistrate, Hisar is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

21.09.2022
Brij

(H.S.MADAAN)
JUDGE

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