

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8554-2022 (O & M)

Date of decision: 12.05.2022

Nand Kishore and ors.

..... Petitioners

V/s

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Munish Puri, Advocate,
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Harjeet Singh, Advocate,
for Ms. Deepti Rampal, Advocate,
for respondents No.2 to 6.

JASJIT SINGH BEDI, J. (Oral)

The Prayer in this petition is for the quashing of the FIR No.26 dated 16.05.2013 (Annexure P-1) registered under Sections 307, 365, 367, 326, 324, 325, 323, 148 and 149 IPC with Police Station Taragarh, District Pathankot and all consequential proceedings arising therefrom on the basis of compromise (Annexure P-2) arrived at between the parties.

Vide order dated 28.02.2022 this Court had directed the parties to appear before Illaqa Magistrate for getting their statements recorded in terms of certain parameters given in the aforesaid order dated 28.02.2022 with regard to the compromise (Annexure P-2).

In terms of the order dated 28.02.2022, passed by this Court parties have appeared before the court of Judicial Magistrate Ist Class, Pathankot and as per his report dated 16.04.2022, both the parties have got recorded their respective statements in Court.

A perusal of the aforesaid report would show that the parties have effected a genuine compromise without there being any pressure, coercion or undue influence. In view of the compromise there is a remote possibility of the complainant coming forward to support the prosecution case. The powers under Section 482 Cr.PC can be exercised in such like situation in order to prevent unnecessary vagaries of criminal trial to be faced by the parties, when there are remote chances of conviction of the accused. The compromise in question is found to be fully in consonance with the direction issued by the Court in ***Kulwinder Singh & Ors. Vs. State of Punjab 2007(3) RCR (Criminal) 1052 and Gian Singh Vs. State of Punjab & Anr., 2012(4) RCR (Crl.) 543.***

In the present case, undoubtedly, the FIR has been registered under Section 307 IPC and therefore, the question would be as to whether the FIR could be quashed.

This Court has been informed by the learned counsel for the petitioners that the statement of every injured/complainant has been recorded and compromise has been effected between the parties.

The Hon'ble Supreme Court in ***Narinder Singh and Others vs State of Punjab and Another, 2014 (2) RCR (Criminal) 482, and State of Madhya Pradesh vs Laxmi Narayan and Others, 2019(2) RCR (Criminal) 255***, have categorized those cases where quashing on the basis

of compromise was permitted and those in which, it was not permitted. It was further observed that the Court concerned may look into the medical evidence and examine the same to see as to whether the conviction under Section 307 of the IPC was possible or not.

Thus, mere registration of an FIR under Section 307 did not foreclose the right of the petitioner/accused to effect a compromise and get the FIR quashed.

I have perused the MLR of the injured-Vikrant Singh (Annexure P-5) and the opinion of the Board of Doctors (Annexure P-9). As per the MLR and opinion of the doctors, the injury No.5 is stated to be dangerous to life.

This Court has held a view that an injury which is described as dangerous to life is, in fact, an injury endangering life, and therefore, would fall under Section 320 IPC (Eighthly), and therefore, punishable under Section 326 IPC.

Section 320 Eighthly and Section 326 IPC are reproduced hereinbelow:-

“Section 320 IPC—The following kinds of hurt only are designated as “grievous”:-

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”.

“Section 326-- Voluntarily causing grievous hurt by dangerous weapons or means—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to

cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Various judgments have dealt with the issue in hand and some of them are as under:-

In “***Atma Singh versus The State of Punjab, 1982(2) CRL 496***, this Court held as under:-

11. It appears that the doctors who had been conducting the medico legal examinations have been using the term ' dangerous to life' as synonymous with an injury which ' endangers life.' Even the Court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code. In this regard reference can be made to Mohammad Rafi v. Emperor, AIR 1930 Lahore 305. In that the case the injury was on the right side of the neck about 2½" x ¾" in dimension inflicted with a sharp edged weapon. The doctor had, in fact, in that case deposed that there was every possibility of the deceased surviving but for the wound becoming septic apparently as a result of it being pressed with hands and bandaged with dirty cloth in the initial stages before the deceased was taken to the hospital. The Court held that though a finding that the appellant knew that his act was likely to cause death, was not justified but at the same time, a wound on the neck, must at least be considered to be ' dangerous to life'

within the meaning of Clause 8, Section 320 Indian Penal Code, and therefore, 'grievous'.

12. Palekar, J. too in Jai Narain Mishra and others v. State of Bihar, 1972 C.A.R. 19(S.C.), held, a penetrating wound 1¼" x ⅓" x chest wall deep on the right side of the chest caused with a bhala and described as 'dangerous to life', as grievous injury and in the later part of paragraph 11 called this injury as one endangering life.

13. The expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320 Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described it that the injury was 'dangerous to life', meaning both the time the same thing.

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17. We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as 'grievous hurt' of the description

mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code.

18. For the reasons afore-mentioned, we acquit the appellant of the offence under section 307 of the Indian Penal Code and convert his conviction into one for an offence under section 326 of the Indian Penal Code and maintain the sentence awarded to him. In the result, the appeal stands disposed of accordingly”.

In “**Mohinder Singh and others versus State of Punjab, 2012(4) RCR (Criminal) 214**, this Court held as under:-

“45. There is another aspect of the matter which can be viewed from a different angle. As per medical evidence, there was only one incised wound with sharp edged weapon on the person of PW3-Hamir Singh. This injury was kept under observation and X-Ray was advised. Subsequently, as per X-Ray report, there was a fracture of the left frontal bone on the person of PW3-Hamir Singh. In the wake of police request, PW1-Dr.Sat Pal gave his opinion on 10.04.1995 to the effect that as there was a fracture of the left frontal bone, so injury No. 1 could have proved dangerous to the life of the patient. But in the cross-examination, PW1 admitted that if there would have been no fracture on the skull, then the injury would not have been dangerous to life. He also admitted that unless the injury affects the brain and only bone is fractured (as in the present case), it cannot be termed as dangerous to life. It means, the words "dangerous to life" are equivalent to "endangering life" and such acts squarely covered within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. The distinction between the words "dangerous to life" and "endangering life" came to be determined by a Division Bench of this Court in Atma Singh v.

The State of Punjab, 1982(2) CLR 496 and it was held as under :-

"Held, that the expression ' dangerous' is an adjective and the expression ' endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as ' dangerous to life' and, therefore, when a doctor describes an injury as ' dangerous to life' , he means an injury which endangers life in term of clause 8 of Section 320 Indian Penal Code, for, it describes the injury ' dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which ' endangered life' described it as ' dangerous to life' , meaning both the time the same thing".

46. Likewise, this Court in Tej Ram v. The State of Punjab, 1978(6) CLR 76, observed that injury described by the doctor as ' dangerous to life' and if not treated i.e. to say that but for timely and medical aid the injured was likely to die. Such type of injury/opinion are not the type of the injury as would attract the provisions of Section 307 Indian Penal Code, which envisages an injury sufficient in the ordinary course of nature to cause death and such injury would fall within the ambit of clause Eighthly of Section 320 Indian Penal Code and would be punishable under Section 326 Indian Penal Code.

47. Similarly, this Court in case reported as State of Punjab v. Tara Singh 1987(1) Recent Criminal Reports (Criminal) 184, has observed that the opinion "possibility of injury No. 1 on the person of injured being dangerous to life could not be ruled out", in view of such opinion, charge under Section 307 Indian Penal Code cannot be sustained.

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49. Thus, seen from any angle, in the given facts and circumstances of the instant case, to me, appellant-Mohinder Singh cannot possibly be held guilty of an attempt to murder with the offence prescribed under Section 307 Indian Penal Code and his co-appellants under Section 307/34 Indian Penal Code as well. The act of appellant-Mohinder Singh squarely

falls within the ambit of clause Eighthly of Section 320 Indian Penal Code, which is punishable under Section 326 Indian Penal Code. To this extent, the trial Court appears to have gone legally wrong in this relevant behalf.

50. In the light of aforesaid reasons, appellant-Mohinder Singh is hereby acquitted of the charge framed against him under Section 307 Indian Penal Code. Be that as it may, he is held guilty and is hereby convicted under Section 326 Indian Penal Code. However, his conviction under Section 324/34 Indian Penal Code is maintained. Again, it is not a matter of dispute that appellant-Mohinder Singh has already undergone rigorous imprisonment for a period of about five months. He has already suffered the agony of protracted trial for the last fifteen years, so in my view, ends of justice would be sub-served, if his sentence of imprisonment under Sections 326 and 324/34 Indian Penal Code is reduced to the period already undergone by him. I order accordingly.”

In “Ashok Kumar versus State of Haryana, Criminal Appeal No.908-SB of 2001 decided on 17.12.2012”, this Court held as under:-

“15. The second question which arises before this Court is whether the injuries on the person of the complainant, Sat Pal, attract the provisions of Section 307 I.P.C. Before moving further, it would be appropriate to notice the provisions of Section 307 I.P.C., which reads thus:-

"Attempt to murder. - Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten year, and shall also be liable to fine; and if hurt is caused to any persons by such act, the offender

shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

As per the record, the complainant suffered following three injuries:

1. Stab wound 1-1/2 X 1/2 c.m. On chest right side 10 c.m.

Lateral to the nipple. Advised X-ray.

2. Stab wound 1-1/2 X 1/2 c.m. on abdomen left side below ribs. Advised X-ray.

3. Incised wound 1/2 X 1/6 c.m. on face left side.

A further perusal of the record shows that after the incident, the complainant was removed to the Civil Hospital, Gurgaon, where he was medically examined by PW5, Dr. R.K. Sachdeva, Medical Officer. Injury No.3 was declared as simple in nature, whereas, injury Nos.1 and 2, were kept under observation. During his cross-examination, this witness admitted that he was not a surgeon rather he was eye-specialist. It has also come on record that he did not declare either of Injuries No.1 and 3, as dangerous to life, in the MLR, Ex.PD. The injured was subsequently removed to Safdarjung Hospital, Delhi, where he was admitted by Dr. Anju Mishra and discharged by Dr. Rishab Sharma, Senior Resident. From this hospital, Dr. D. Bhatnagar, Medical Officer, was examined as PW8, who deposed that if timely medical treatment had not been given to the patient, his life would have been in danger.

In Jai Narain Mishra & others v. State of Bihar, 1972, Criminal Appeals Reporter (S.C.) 19, Hon' ble the Supreme Court has held that "the 4th injury caused by Surad, though endangering life could not be deemed to be an injury which would have necessary caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and in our opinion, the offence is not one under Section 307, Indian Penal Code but Section 326 Indian Penal Code. His conviction under Section 307 Indian

Penal Code is set aside and we convict him under Section 326, Indian Penal Code."

16. In Atma Singh v. The State of Punjab, 1982(2) Chandigarh Law Reporter 496 , it was held as under:-

"The Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert' s opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court to apply its own mind and form its own opinion with regard to the nature of injury, having regard to the factors that should weigh with the Court, already mentioned. We are also firmly of the view that what wherever a doctor describes an injury as ' dangerous to life' and the nature of the injuries are such which could merit such conclusion then such an injury has to be treated as 'grievous hurt' of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code."

17. In the present case, admittedly, there is no specific medical opinion on record to the fact that the injuries suffered by the injured were sufficient to cause death in the ordinary course. Moreover, the prosecution has also not been able to prove that the accused had the knowledge/intention that the injured would be killed because of these injuries. In the absence thereof, the accused-appellant cannot be held guilty for commission of offence punishable under Section 307 I.P.C. He is guilty of causing grievous hurt punishable under Section 326 I.P.C. Ordered accordingly.

A similar view has been taken by this Court in various judgments passed in the cases of ***Narender Singh versus State of Haryana and others, 2020(3) RCR (Criminal) 66, (ii) Mehmood Akhtar versus State of Punjab, 2014(16) RCR (Criminal) 43, (iii) Suresh versus State of Haryana (CRM-M-2582-2022 decided on 08.02.2022),***

In light of the aforementioned provisions of law as also the aforesaid judgments of this Court, a perusal of the opinion of Board of Doctors (Annexure P-9) would also reveal that there is no opinion to the effect that the injured would have died but for timely medical aid or that the injuries suffered by the injured were sufficient to cause death in the ordinary course of nature. Therefore, the conviction in the present case, if at all, in the absence of a compromise would have been recorded under Section 326 IPC.

Hence, with a view to put a quietus to the incident between the parties, it would be in the interest of justice to quash the proceedings on the basis of compromise.

In view of the above, the present petition is allowed and the FIR No.26 dated 16.05.2013 (Annexure P-1) registered under Sections 307, 365, 367, 326, 324, 325, 323, 148 and 149 IPC with Police Station Taragarh, District Pathankot and all consequential proceedings arising therefrom on the basis of compromise (Annexure P-2), along with all the consequential proceedings arising therefrom are hereby quashed.

May 12, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No