

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

251

CRR-3340-2016**Date of decision : 16.08.2023****Nirmala****..... Petitioner****versus****Rakesh Kumar and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Taqdeerjeet Singh Sidhu, Advocate
for the petitioner.

None for the respondents.

PANKAJ JAIN, J.

1. Complainant is in revision challenging the acquittal of the respondents qua charge of offences punishable under Sections 326/341/34 IPC.
2. On the complaint made by the petitioner, FIR No.64 dated 25.01.2007, registered for the offences punishable under Sections 326, 324, 341 and 34 of IPC, at Police Station Civil Line, Batala came into being alleging as under:-

“xx xx xx

She was resident of above said address and was house hold lady. On 24.04.2007 at about 7:30 PM she was coming to her village Bode di Khuhi from Batala and when she reached near by-pass Bode di Khuhi, then accused Rakesh son of Minis hi Ran armed with datar, Sheesho son of Rakha Ran armed with dang, Samma w/o Sheesho empty handed came there. Accused Samma, Gurmit Singh raised Lalkara to catch hold her and accused Rakesh Kumar gave datar blow on the person of complainant. She raised her right hand to save her and the said datar hit on her right hand's little finger and accused Sheesho gave fist blow on her

neck and she (complainant) fell down on the ground and accused Samma gave kicks blow on the person of complainant. The complainant raised alarm, hearing which Ashok Kumar son of Bahadur Chand and Bal Krishan who came on the spot and witnessed whole the occurrence and on seeing them, all the accused fled away the spot alongwith weapons. In the meantime her (complainant) husband also came on the spot who admitted her to Civil Hospital, Batala for medical treatment. The motive behind the occurrence is that previously fight took place with his nephew because accused persons involved his nephew in theft case.”

3. After trial, the respondents were held guilty for offences punishable under Sections 323/34 IPC, but were acquitted of charges framed under Sections 326/341 IPC.

4. Petitioner preferred appeal which stands partly allowed holding the respondents guilty of offence punishable under Section 324 IPC, but maintaining their acquittal qua offence punishable under Section 341 IPC.

5. Counsel for the petitioner has attacked the findings recorded by Lower Appellate Court contending that the Lower Appellate Court has ignored the fact that the injury was declared grievous in nature. Reliance has been placed upon opinion of the Radiologist at **Annexure P-1**.

6. I have heard counsel for the petitioner and have gone through the records of the case.

7. In order to appreciate the argument raised by counsel for the petitioner, it would be apposite to peruse Section 320 IPC that defines grievous hurt. The same reads 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,

Forthly — 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.

8. Counsel for the petitioner submits that the case of the petitioner would fall within clause (7) and (8) as enumerated under Section 320 IPC.

9. Law w.r.t. fracture stands settled by Apex Court in the case of ***Hori Lal vs. State of U.P. AIR 1970 SC 1969***, wherein the Apex Court observed as under:-

“xx xx xx

6. It now remains to consider whether the conviction of the appellants under Section 326 for grievous hurt is justified. The answer to this question would depend on the nature of the injuries which have been found on P.W. 2, namely, whether they are simple or grievous. In order to justify conviction under Section 326, injuries on P.W. 2 must satisfy the requirements of clause (7) or clause (8) of Section 320 of the Indian Penal Code, otherwise they will be treated as simple injuries. Clauses (7) and (8) of Section 320 Indian Penal Code provide that an injury could only be designated as grievous if it is (1) a fracture or dislocation of a bone or tooth, or (2) 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.

7. It is contended by the learned counsel for the appellant that none of the injuries 2 to 6 which were inflicted on P.W. 2 discloses that there is a fracture or dislocation of any bone. These injuries, it is said, at the most show that the particular bones on which the injuries were inflicted were cut which however does not amount to a fracture. It is true that fracture has not been defined in the penal code. It is sometimes thought as in the case of ***Po Yi Maung v. Ma E Tin, AIR 1937 Rangoon 253***, that the meaning of the word fracture would imply that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that the crack must extend from the. outer surface of the skull to the inner surface. In ***Mutukdhar Singh vs. Emperor, AIR 1942 Patna 376***, it was observed that if the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether a deep one or a mere scratch on the surface of the bone, it will be difficult to infer that the injury is a grievous hurt within the meaning of Section 320 of the Penal Code. In our view, both these assumptions are misleading. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, would amount to a fracture within the meaning of clause 7 of Section 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them. The nature of the injuries as spoken to by the doctor in his evidence, discloses the length, breadth and depth of each injury. So. far as the depth of

the injuries Nos. 3, 4, 5 and 6 is concerned, each one of the injuries shows that it is bone deep and they are described as cutting the underlying bone. In injury 3 left humerus, in injury 4 radius, in injury 5 both the bones of the left forearm and in injury 6 the tibia bone shaft have been cut which would show that they are fractures. Apart from this the doctor as noticed earlier has in his evidence said that these injuries are grievous. It is contended that the doctor has not disclosed the reason why he thinks that the injuries were grievous. But in our view the doctor would not be unaware of what injuries are grievous or what are simple. At any rate, the nature of the injuries considered with the evidence of the doctor would undoubtedly establish that all the aforesaid injuries were grievous. These injuries were inflicted by kantas which are dangerous weapons and hence the conviction under Section 326 is fully justified.”

10. In the present case, as per MLR, following injuries were found on the person of the petitioner:-

- “1. Incised wounds on terminal phalanx of right hand on index finger.
2. Complaint of pain neck region.
3. Complaint of pain lower abdomen.”

11. Injury No.1 was declared to be grievous in nature by Radiologist Dr. Mohinder Singh. Admittedly, he has not come in the witness box. Thus, in view of observations made by Apex Court in the case of Hori Lal (supra), this Court has no hesitation in holding that offence punishable under Section 326 IPC is not made out and Lower Appellate Court was right in convicting the respondents for a lower offence punishable under Section 324 IPC by resorting to Section 222 Cr.P.C.

12.
- In view of above, finding no legal infirmity in the impugned order passed by Lower Appellate Court. This Court finds no reason to interfere in the present case while exercising revisional jurisdiction.
13.
- Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

16.08.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No