

CRA-S-5324-SB-2014
CRR-810-2015

Neutral Citation No. 2023:PHHC:077319
Neutral Citation No. 2023:PHHC:077320

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRA-S-5324-SB-2014
Date of Decision: May 24, 2023

Manpreet Singh @ Manna ... Appellant

Versus

State of Punjab ...Respondent

2. CRR-810-2015
Date of Decision: May 24, 2023

Sandeep Singh ... Petitioner

Versus

State of Punjab and Manpreet Singh @ Manna ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Pritam Singh Saini, Advocate assisted by
Ms. Vibha Nagar, Advocate for the appellant
in CRA-S-5324-SB-2014 and
for respondent in CRR No.810 of 2015.

Mr. Sandeep K. Sharma, Advocate for the petitioner
in CRR No.810 of 2014 and for injured
in CRA-S-5324-SB-2014.

Mr. Gurpreet Singh Shergill, AAG, Punjab.

DEEPAK GUPTA, J.

Two cases titled above have arisen out of same proceedings.

2. In Sessions case bearing CIS NO.SC/000281/2013, arising
out of FIR No.23 dated 12.03.2013 registered at Police Station Naya
Gaon, District SAS Nagar, Mohali, accused Manpreet Singh @ Manna
(appellant in CRA-S-5324-SB-2014) has been convicted under Sections
323 & 326-A of IPC vide judgment dated 03.12.2014 by the Court of

learned Additional Sessions Judge, SAS Nagar, Mohali. Vide separate order of the even date, he has been sentenced as under: -

Conviction u/s	Sentence imposed	Fine	Default sentence
323 IPC	RI. for 01 year	₹1,000/-	RI. for 01 month
326-A IPC	RI. for 10 years	₹50,000/-	RI. for 01 year

Both the sentences were directed to run concurrently.

3. The aforesaid judgment of conviction and order of sentence have been assailed by the accused by filing appeal bearing CRA-S-5324-SB-2014; whereas one of the injured of the case, namely Sandeep Singh has filed revision bearing CRR No.810 of 2015 seeking enhancement of sentence.

4. (a) According to the prosecution, Major Singh (PW1) is resident of village Wadi Karora, PS Naya Gaon and has been working in the fields of Gurnam Singh. On 12.3.2013, he made statement Ex.PW1/A to the police, as per which, on that day, he along with Sandeep Singh (PW2) son of Gurnam Singh was going to the fields on the motor cycle bearing registration No. PB65- N-9624 being driven by Sandeep Singh and he being the pillion rider. At about 12.30 pm, accused Manpreet Singh @ Manna (appellant herein), who was bringing fodder in a bullock cart coming from Tanda side crossed their motor cycle. All of a sudden, accused opened the bottle containing acid and threw it on him (complainant Major) and Sandeep Singh. They both fell down due to the acid burns. Accused taunted that he had taught them a lesson for causing obstruction in grazing his cattle. In the meanwhile, Gurpal Singh reached there and took them to Civil Hospital Phase-6, Mohali for treatment.

(b) On the basis of above statement, formal FIR Ex.PW7/F

under section 323/341/506 IPC was registered against the accused. During investigation, conducted by SI Harbans Singh (PW7), rough site plan Ex.PW7/K was prepared. MLRs of both the injured were collected. Based on medical opinion, offence under section 326-A IPC was added on 21.3.2013. Statements of witnesses under section 161 Code of Criminal Procedure, 1973 (Cr.P.C in short) were recorded. Accused was arrested. On completion of investigation, challan was presented before Ld. Area Magistrate, who made compliance of Section 207 Cr.P.C and committed the case to Court of Sessions.

5. Accused was charged under Section 323, 326-A and 506 IPC, to which he pleaded not guilty and claimed trial.

6. In order to substantiate the charges, prosecution examined following witnesses:-

(a) PW-1 Major Singh is one of the injured of the case, who testified that on 12.03.2013, he along with Sandeep Singh was going to the fields of Gurnam Singh on motor cycle being driven by Sandeep Singh, on which he was a pillion rider. At about 12.30 pm, accused (Manpreet Singh @ Manna) coming from the side of fields on his bullock cart keeping fodder thereon made a signal to stop the motor cycle. As Sandeep Singh stopped the motor cycle, accused took out a bottle containing acid from the cart and threw it on them, due to which both of them fell down. After pouring the acid, accused stated “*Dekh Liya Suad Sanu Majjan Rokan Baste*” (meaning – they had been taught lesson for obstructing grazing of the cattle). PW-1 deposed that acid fell on his left and right arm, left side of abdomen; whereas the same fell on the head,

left side shoulder and arm of Sandeep Singh. In the meantime, Gurpreet Singh and Gurpal Singh reached the spot, who took both of them to Government Hospital, Phase-VI, Mohali, where treatment was provided. The doctor took into possession his acid stained shirt and trouser. Due to acid burns, Sandeep Singh was not able to speak on that day. PW-1 proved his statement Ex.PW1/A made to S.I. Harbans Singh in the hospital at about 4 pm. He further deposed that he had also taken his photograph, which was not taken into possession by the police. Copy of that photograph is mark A. During his cross-examination, PW-1 disclosed that they had gone to take a round of the fields, where crop was standing, without taking any agricultural equipment. He denied that they along with Sajjan Singh had taken the acid bottle or attacked the accused, when he was coming back towards his home taking the fodder for his animal. He denied that Sandeep Singh gave blow with *kulhari* (axe) on the ear of the accused or that Sandeep Singh and Sajjan Singh forcibly pulled Manpreet Singh from his bullock cart. He further denied that he was carrying the acid bottle, which he tried to sprinkle on the accused, who caught his hand and that in that struggle, major portion of the acid fell on Sandeep Singh, who was standing near them and that some of the acid fell on his arms and some on the arms of Manpreet Singh. He specifically denied that acid fell on the arms of the accused when he tried to save himself.

(b) PW2-Sandeep Singh is the other injured, who fully supported the version of the incident as stated by PW1 Major Singh and deposed that on the day of incident, he was unable to speak as eye sight

of his left eye was diminished and he was unable to hear from the left side ear. He was referred to PGI, Chandigarh from Civil Hospital, Phase-VI, Mohali and that his statement was recorded by S.I. Harbans Singh at PGI, Chandigarh on 17.03.2013. He also proved copies of his photographs as Mark B and Mark C, though the same were not taken into possession by the police. This witness also denied the suggestions put on behalf of the accused to the effect that acid fell on him (PW2) and Major Singh, when they were trying to throw acid on the accused.

(c) PW-3 Dr. Parvinder Kaur, Medical Officer at Civil Hospital, Mohali deposed that Major Singh was brought to the hospital on 12.03.2013 at about 1.25 pm by Gurpal Singh and that on medical examination, various burn injuries were found on this person as described in MLR Ex.P3/A along with pictorial diagram as Ex.PW3/B. She also proved the medical examination of Sandeep Singh, who was also brought to the hospital by Gurpal Singh and proved MLR Ex.PW3/C along with pictorial diagram Ex.PW3/D. During cross-examination, she disclosed that there was no acid injury on the right portion of face of Sandeep Singh nor there was any acid injury on the head or scalp of Major Singh. She also stated that there was no complaint about loss of vision or hearing by injured Sandeep Singh.

(d) PW-4 Dr. Sourabh Rawat, Plastic Surgeon in the Department of Plastic Surgery, P.G.I., Chandigarh, on the basis of record deposed that Sandeep Singh S/o Gurnam Singh was admitted in PGI, Chandigarh on 13.03.2013 and discharged on 17.03.2023. Said Sandeep Singh had sustained acid burn injuries on face, chest, both upper limbs and he was

managed conservatively. The injuries sustained by Sandeep Singh were grievous in nature. Dr. Sourabh Rawat proved medico legal case summary prepared on the basis of treatment file as Ex.PW4/A. During cross-examination, he stated that some damage was caused to the left eye of Sandeep Singh, though there was no report regarding hearing loss. There was also no acid injury on the right eye or face.

(e) PW5-MHC Dharam Chand tendered his affidavit Ex.PW5/A regarding deposit of the case property by him; whereas PW6 Head Constable Bhupinder Singh tendered his affidavit PW6/A regarding taking the case property to the Chemical Examiner in safe condition.

(f) PW7 S.I. Harbans Singh is the Investigating Officer of the case, who testified that on 12.03.2013 after getting information about the incident, he went to the Civil Hospital, Mohali, where applications Ex.PW7/A and Ex.PW7/B were moved regarding fitness of Major Singh and Sandeep Singh to make the statement. Though, injured Major Singh was declared fit to make statement vide endorsement Ex.PW7/C, but Sandeep Singh was unfit to make statement as per Ex.PW7/D. He then recorded statement Ex.PW1/A made by Major Singh, on which he put endorsement Ex.PW7/E and sent the same to police station through Constable Sandeep Singh for registration of the FIR. ASI Kaka Singh recorded formal FIR Ex.PW7/F. He obtained MLR of the injured. Dr. Parvinder Kuar produced two sealed parcels along with two envelopes containing partial burnt clothes of the injured, which were taken into possession vide recovery memo Ex.PW7/G. The parcels along with envelope were deposited with MHC of the police Station. On the same

day, he received the information that accused Manpreet Singh @ Manna was also admitted in Civil Hospital, Mohali. He reached there for recording the statement of the accused and after recording statement made endorsement that after inquiry action will be taken. PW7 testified that on inquiry, he found that accused had made statement to save himself and so no action was initiated on his complaint. S.I. Harbans Singh further proved application Ex.PW7/H moved before the S.M.O., PGI, Chandigarh on 17.03.2023 regarding fitness of injured Sandeep Singh, who was declared fit vide endorsement Ex.PW7/J. He then recorded statement of Sandeep Singh. He then went to the spot of the crime and prepared rough site plan Ex.PW7/K. Medico legally case summary was collected from PGI, Chandigarh, wherein nature of injuries was declared grievous and so Section 326-A IPC was added. Accused was arrested on 27.05.2013 vide memo Ex.PW7/M. The injuries on the person of Major Singh were declared by the concerned doctor to be simple in nature on the basis of surgical opinion and the burn was found to be 11%. He also proved report of Chemical Examiner as PW7/P. During cross-examination, though PW7 admitted that statement of accused Manpreet Singh @ Manna was also recorded on the same day, but volunteered to say that the accused admitted himself later on. No separate/cross FIR on the statement of accused Manpreet Singh @ Manna was recorded, as it was found during investigation that the incident stated by the accused was false. Though, he admitted that accused had burn injuries on both of his arms but voluntarily stated that the same might have been self suffered, though he did not obtain any medical opinion in this regard. He

further stated that statement of accused Manpreet Singh @ Manna was mentioned in the DDR. He also stated that he had not taken into possession the bullock cart as the same was disposed of and due to which he incorporated Section 201 IPC. He did not take into possession cap of the acid bottle or the empty acid bottle nor took in possession the motorcycle. According to him, he did not recommend any FIR on the basis of statement of accused regarding which he had recorded rapat Ex.D1.

7. In his statement recorded under section 313 Cr.P.C, accused was confronted with incriminating circumstances appearing against him in the evidence produced by the prosecution, but he controverted the same, pleaded innocence and alleged his false implication. According to him, he was returning home after cutting fodder, when complainant Major Singh, Sandeep Singh and Sajjan Singh came on a motor cycle and blocked his way. They pulled him off the cart and Sandeep Singh gave him a kulhari blow at the back of his ear. Major Singh tried to open the bottle of acid. He caught hold of Major Singh's hands to save himself. In this struggle, the acid fell on Sandeep Singh and Major Singh. Then the three of them gave him severe beatings. He took lift from a car driver and came home, from where he was taken to the Civil Hospital.

8. In his defence, accused examined:

(a) DW1 Dr. Harkirat Kaur, who had conducted medico legal examination of the accused and proved copy of MLR Ex.DW-1/A.

(b) DW-2 Manish Kapoor, record keeper, Complaints Cell ADGP Crime, brought summoned record regarding complaint moved by accused Manpreet Singh in the office of DGP, Punjab.

(c) DW3 C. Rakesh Kumar brought summoned record regarding complaint filed by accused in the office of DGP, Punjab and proved Ex. DW-3/A – covering letter issued by ADGP Crimes; Ex. DW-3/B – original complaint filed by Manpreet Singh; and Mark DX - complaint filed by Manpreet Singh before S.S.P, Mohali.

9. The accused also tendered into evidence following documents, though objected to by the prosecution:

- Ex.DX/1 – attested copy of the complaint made by accused before the Magistrate,
- Ex.DX/2 – certified copy of MLR,
- EX.DX/4 – certified copy of statement of Dr. Harkirat Kaur and
- Ex.DX/5 – certified copy of Doctor's report.

10. After hearing contentions of both the sides, learned Trial Court recorded the conviction and sentenced the accused as has been referred above, against which accused and one of the injured have come to this Court.

11. It is contended by learned counsel for the appellant-accused that the accused also received acid burns and other injuries in the same occurrence, which have not been explained by the prosecution despite taking specific plea of self defence. The genesis of the occurrence has been suppressed by the prosecution and that the Trial Court ought to have drawn adverse inference and should have given the benefit of doubt to

the accused. It is contended that complainant party knew that accused was in the fields, whereas accused did not know that complainant would be coming towards the fields on any particular point of time. It is the complainant party, who were aggressor and that accused acted in right of his self defence. Still further, it is contended that Sandeep Singh and his family is involved in number of cases and that his entire family is influential and it is because of this reason that no action has been taken on the complaint of the accused-appellant; that the material discrepancies in the statements of witnesses going to the root of the case, have been ignored and therefore, the judgment of conviction and order of sentence recorded by the Trial Court deserve to be set aside by acquitting the appellant.

12. On the other hand, it is the contention of counsel for petitioner-injured Sandeep Singh that sentence of 10 years rigorous imprisonment for offence under Section 326-A IPC is quite on the lower side having regard to the nature of injuries and age of the injured and so the said sentence deserves to be enhanced.

13. Learned State counsel has opposed the appeal filed by the accused, though he supported the revision petition filed by injured for enhancement of sentence awarded to the accused by the Trial Court.

14. I have considered submissions of both the sides and have perused the record carefully.

15. Section 326-A & 326B were inserted in Indian Penal Code by way of amendment Act No.30 of 2013. Said Sections read as under:-

“326A. Voluntarily causing grievous hurt by use of acid etc. -

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term, which shall not be less than ten years but which may extend to imprisonment for life and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily throwing or attempting to throw acid – *Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.*

Explanation 1 – *For the purpose of section 326A and this section, “acid” includes any substance, which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.*

Explanation 2. *for the purpose of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.”*

16. Thus, following ingredients should be proved to attract under Section 326-A IPC:-

- (i) that accused caused
 - a. permanent or partial damage or deformity to, or
 - b. burns or maims or disfigures or disables,

any part or parts of the body of a person; or

c. grievous hurt

(ii) by

a. throwing acid on or

b. administering acid to that person, or

c. using any other means

(iii) with the intention of causing or with the knowledge that he is likely to cause such injury or hurt.

17. In the present case, the medico legal report Ex.PW3/A proved by PW3 Dr. Parvinder Kaur reveals the following injuries on the person of injured-complainant PW1 Major Singh:-

“1. Burn injury on the face on the right side near the ear extending 2.5 cm x 1 cm. Superficial to deep in nature.

2. Burn superficial to deep in nature on left arm over the deltoid region 10 cm x 5 cm.

3. Superficial to deep burn on right arm extending from lower 1/3rd of forearm covering the cubital fossa extending up to upper 2/3 of the forearm.

4. Superficial burn on left side of abdomen multiple superficial in nature.”

Ex.PW3/B, the pictorial diagram reveals the seat of injuries. Though the aforesaid injuries were declared simple on the basis of surgical opinion, but resulted in burns to the extent of 11%, as has been testified by PW7 S.I. Harbans Singh.

18. MLR Ex.PW3/C pertaining to the injured PW2 Sandeep Singh as proved by Dr. Parvinder Kaur reveals following injuries on his person:-

“1. Superficial to deep burn involving whole of the scalp. Hair intact. Advised surgical opinion.

2. Superficial to deep burn involving whole of the forehead.

3. *Superficial to deep burn involving left side of face continuing with left ear. ENT opinion and management.*
4. *Superficial to deep burn on left eye, left upper eye lid swollen, redness in conjunctiva. Advised eye opinion and management.*
5. *Superficial to deep burn involving whole of the medial surface of right arm.*
6. *Superficial to deep burn involving whole of the medial surface of left arm.*
7. *Superficial to deep burn involving dorsal surface of both knees.*
8. *Superficial to deep burn in right eye, right upper eye lid swollen. Advised eye opinion and management. Surgical opinion for all the injuries and further management was advised.”*

As per the medico legal case summary Ex.PW4/A prepared on the basis of treatment file, the injuries to Sandeep Singh were declared grievous as has been proved by PW4 Dr. Sourabh Rawat, the Plastic Surgeon, PGI, Chandigarh.

19. Thus, it stands proved that injuries falling in the scope of Section 326A IPC had been caused on the person of PW-1 Major Singh and PW-2 Sandeep Singh. Now, it is required to be seen as to who is responsible for causing these injuries to both of them.

20. It has been specifically deposed by PW-1 Major Singh and corroborated by PW-2 Sandeep Singh that both of them were coming on a motorcycle on 12.03.2013 towards the fields and at about 12.30 pm, accused coming on his bullock cart taking fodder therein, signaled Sandeep Singh, driving the motorcycle to stop and as Sandeep Singh stopped the motorcycle, accused took out the bottle containing acid and threw on them causing injuries to them and then accused declared to have taught lesson to them for causing obstruction in grazing of his cattle.

Both the witnesses-injured deposed about the injuries sustained by them on the various parts of the body, which find corroboration from the medical evidence as referred above. Both these witnesses have withstood lengthy cross-examination but they remained firm on their statements.

21. It is fairly conceded by the learned counsel for the appellant-accused that neither the involvement of accused; nor the time and place of occurrence nor the injuries sustained by PW-1 and PW-2 are in dispute. The main contention raised by learned counsel is plea of self defence that injuries have been suffered by PW-1 Major Singh and PW-2 Sandeep Singh during the struggle, when Major Singh was trying to pour acid upon the accused and that in that process, acid fell on both of them and major portion of the acid fell on Sandeep Singh, standing near to them.

22. To substantiate the aforesaid defence, learned counsel has drawn attention towards MLR Ex.DW1/A of accused-appellant as proved by DW1 Dr. Harkirat Kaur, revealing following injuries:-

“(1). Superficial to deep burns on the right arm in the middle 5 to 6 cm diameter, advised surgical opinion.

(2) Superficial to deep burns on left side of the arm near the cubical fossa in 4 cm diameter. Advised surgical opinion.

(3). Bruise at the mastoid area of the left ear with abrasion swelling in the 3 cm of diameter on the mastoid area. Advised ENT opinion.

(4). Abrasion 2 to 3 in number reddish in colour in left knee. All the injuries were declared to be simple with a blunt weapon.”

23. The testimony of DW-1 Dr. Harkirat Kaur reveals that accused had arrived at Civil Hospital, Mohali at 3 pm. DW1 did not rule out the possibility that injuries can be self suffered. Besides, she

disclosed that all the injuries were simple in nature.

24. The effect of non-examination of injuries on the person of the accused has been explained by Hon'ble Supreme Court in *Surender Paswan Vs. State of Jharkhand 2004(1) Recent CR (Criminal) 805* while dealing with a murder case. Hon'ble Supreme Court also referred to *Lakshmi Singh vs. State of Bihar (as relied by Ld. counsel for the appellant in this case)* and *Hare Krishan vs. State of Bihar AIR 1988 SC 863*. It was held that it cannot be laid down that in each and every case, where prosecution fails to explain the injury found on person of the accused, the prosecution case should automatically be rejected without any further proof. However, explanation of the injuries is important and that following inferences could be drawn from the non-explanation:-

- (1) *that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;*
- (2) *that the witnesses who have denied the presence of the injuries on the persons of the accused are lying on a most material point and, therefore, their evidence is unreliable;*
- (3) *that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. 1968 (3) SCR 525 and 1976 (4) SCC 394 relied.*
- (4) *Prosecution not to explain, when injuries are minor or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. AIR 1972 SC 2593.*
- (5) *Non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution.*

- (6) *It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. AIR 1988SC 863 relied.*
25. Similar view was taken in *Shri Ram vs. State of M.P. 2004(1) RCR (Crl.) 117* by Hon'ble Supreme Court; and in *Surender Pal vs. State of Haryana 2006(1) RCR (Crl.) 886* by a Division Bench of Hon'ble Punjab and Haryana High Court.
26. In another case *Krishna Vs. State of U. P. 2007(3) RCR (Criminal) 620*, Hon'ble Supreme Court considered at depth as to what is right of private defence and when it is available. Observing that expression 'right of private defence' is not defined in Section 96 IPC, Hon'ble Supreme Court held:
- *Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case.*
 - *It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea.*
 - *Under Section 105 of Evidence Act burden of proof is on the accused, who sets up the plea of self-defence. Burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.*
 - *An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself.*
 - *Accused must satisfy the court that harm caused by him was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused.*
 - *If a person has a right of private defence of body under Section 97 IPC,*

that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault.

- *Accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities in favour of his plea.*
- *Number of injuries is not always a safe criterion for determining who the aggressor was.*
- *Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance, but injuries should be minor and superficial.*
- *To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be cause to him.*
- *Right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. AIR 1963 Supreme Court 612 relied.*
- *A person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. 1991(3) RCR(Crl.) 91 (SC) relied.*
- *Person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.*
- *A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.*

Same view was taken by Hon'ble Supreme Court in ***Hanumantappa Bhimappa Dalavai Vs. State of Karnataka 2010 (5) RCR (Criminal) 156.***

27. Besides above, in ***State of Karnataka Vs. Selvi J. Jayalalitha***

2017 (1) RCR (Cri.) 802, it has been held by Hon'ble Supreme Court that burden of proof is on the prosecution, but law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may on this basis believe in the existence of the fact in issue. For recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty but only beyond reasonable doubt.

28. Having noticed the legal position as above, it is required to be seen as to whether the plea of self defence pleaded by accused is even probable or it is a concocted plea. There are many circumstances, which indicate that the plea of self defence has been concocted by the accused.

29. Occurrence admittedly took place at about 12.30 pm on 12.03.2013. Although as per accused, after the incident he was lifted by a car driver, who brought him to his house where he became unconscious as pleaded in complaint Ex.DX dated 25.03.2013 made to the Senior Superintendent of Police, SAS Nagar, Mohali and in the complaint dated 30.03.2013 Ex.DW3/B made to DGP, Headquarter, Punjab and when he gained consciousness, he found himself to be in the hospital, but he neither disclosed the person, who brought him to his house nor disclosed the car number nor examined any family member, who brought him to the hospital. Statement of DW1 Dr. Harkirat Kaur reveals that accused arrived in hospital at his own at 3 pm. At that time, he was fully conscious, cooperative, well oriented to time, place and the person. No explanation is given, why he did not reach the hospital within reasonable

time from the time of incident.

30. As per complaint Ex.DX and Ex. DW3/B made by the accused to the Senior Superintendent of Police and DGP, Punjab on 25.03.2013 and 30.03.2013 respectively, i.e. more than 13 days after the occurrence, the complainant party stopped his cart, pulled him down and a pin blow of kulhari was given on his ear. He was then given severe beatings and then complainant party sprinkled acid upon him, which fell on his body, due to which he fell down and raised alarm and in that process, complainant party also gave blows to him and then fled away. There is absolutely no mention in this version given to the higher officers of the police even after more than 13 days of the occurrence that Major Singh had tried to pour acid upon him or that he struggled to save himself and in that process, acid fell on him as well as on Major Singh and as Sandeep Singh was standing near by, major portion of the acid fell upon him. In Ex.DX and DW3/B, there is absolutely no mention that any acid fell on Major Singh or Sandeep Singh.

31. Further, on 12.03.2013 itself, as Investigating Officer of the case S.I. Harbans Singh came to know about the admission of the accused in the hospital, he reached there and recorded his statement. Based on that statement, DDR No.26 dated 12.03.2013 was recorded. As testified by PW7 S.I. Harbans Singh, on inquiries he came to know that version given by the accused was false, having been concocted to save himself and so he recorded DDR No.12 dated 20.03.2012 in this regard. There is no suggestion to the contrary on the part of accused to PW7 SI Harbans Singh that his report was wrong nor there is anything to suggest

that accused made any complaint to the higher officers against S.I. Harbans Singh. No enmity to the investigation of the case has been suggested on the part of the accused.

32. Further, as per the defence pleaded by the accused, one Sajjan Singh had given kulhari blow from back side on the back of his ear hitting him severely and that he was also thrashed by the complainant pretty badly. However, MLR Ex.DW1/A reveals simple bruise at the mastoid area of the left ear with abrasion and no injury on the other parts of the body except abrasion in the left knee. In case, axe blow had been given on the ear of the accused hitting him severely as stated by him, there must be at least laceration or bleeding or contusion on the ear. There is nothing to this effect.

33. Further, the manner of incident as stated by the accused is not probable at all having regard to the nature and number of injuries caused on the person of PW-1 Major Singh and PW-2 Sandeep Singh. No motive is disclosed by the accused except that injured Sandeep Singh and his family wanted to create terror due to their criminal nature, whereas on the other hand, PW1 and PW2 disclosed that after throwing acid upon them, accused declared to have taught them a lesson for obstructing him to graze the cattle. Presence of any person by the name of Sajjan Singh as referred by accused in his defence, is not at all proved. In case, the occurrence had taken place in the manner as suggested by the accused, he would have received burn injuries on other parts of his body as well, particularly, on legs or abdomen etc. as they were standing as per him but except simple injuries on arms, there is no injury on any other part of his

body, ruling out the manner suggested by him.

34. On the other hand, the testimony of PW-1 Major Singh and PW-2 Sandeep Singh is quite consistent and creditworthy, fully supported by the medical evidence and in these circumstances of clear and cogent evidence, prosecution is not obliged to explain the minor injuries on the person of the accused, as has been held by Hon'ble Supreme Court in *"Laxmi Singh and others v. State of Bihar" (1976) 4 Supreme Court Cases 394*.

35. Learned counsel for the appellant-accused also raised the plea of certain omissions left by the Investigating Officer, inasmuch as he did not take into possession the motorcycle, on which both the injured were riding or the acid bottle or the cap of bottle. Although, said omissions are not vital to the prosecution case, but even if it be assumed that this is lapse or omission on the part of the Investigating Officer, there is no reason to disbelieve the prosecution only for these lapses, as it does not affect the prosecution case.

36. In *Paras Yadav Vs. State of Bihar 1999(1) RCR (Crl.) 628*, it was held by Hon'ble Supreme Court that when there are lapses and omissions on the part of investigating officer, prosecution evidence is required to be examined dehors such omissions to find out whether the evidence is reliable or not.

37. In another case titled *Ambika Prasad Vs. State 2000(1) RCR (Criminal) 643*, it was held by Hon'ble Supreme Court that a Judge is not only to see that innocent man is not punished, but he is also to see that guilty does not escape. It was further held that if there is defective

investigation by the investigating officer, it would not be proper to acquit the accused, if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of erring investigating officer.

38. It has been held by Hon'ble Supreme Court in *Manhu Yadav vs. State of Bihar 2002(2) RCR (Crl.) 769* that if ocular evidence is truthful and inspires confidence, then lapses in investigation cannot cause any doubt. In the case before Hon'ble Supreme Court conviction was upheld under section 302 IPC despite lapse of non-lifting of the blood stained earth.

39. Learned counsel for the appellant also tried to take benefit of some improvement made by PW-1 and PW-2 to the extent that when they were riding on the motorcycle, accused had signaled them to stop, which was not mentioned in the statement Ex.PW1/A. The said improvement is absolutely immaterial, not going to the root of the case and so, no benefit thereof can be given to him.

40. In view of the entire discussion as above, it is held that the prosecution successfully proved its charges against the accused-appellant Manpreet Singh @ Manna and so, the Trial Court rightly recorded the conviction of the appellant-accused. This Court finds no reason to interfere in the well reasoned judgment passed by the Trial Court. So appeal against conviction as well as order of sentence is hereby dismissed.

41. Coming to the impugned order of sentence as well as the revision petition filed by injured Sandeep Singh on the point of

enhancement of sentence, it is noticed that accused-appellant was aged 20 years at the time of commission of offence as per his MLR proved by DW1. He has already been sentenced to undergo rigorous imprisonment for a period of 10 years for committing offence under Section 326-A IPC, which is the minimum sentence provided under the said provisions of law. Fine of ₹50,000/- has also been imposed upon the accused. This Court does not find the sentence to be excessive or less in any manner. However, the order of sentence is modified only to the extent that amount of ₹50,000/- imposed under Section 326-A IPC, on being recovered, shall be paid to the injured Major Singh and Sandeep Singh in the ratio of ₹10,000/- and ₹40,000/- respectively, having regard to the nature of injuries sustained by both of them, as compensation.

42. With the modification to the extent as indicated above, the appeal of the accused-appellant against the judgment of conviction and order of sentence as well as revision of the injured Sandeep Singh for enhancement of sentence, are hereby dismissed.

43. Since sentence of the appellant-accused was suspended by this court vide order dated 27.09.2017, so he is directed to surrender immediately before Chief Judicial Magistrate, Mohali, who shall send him to jail along with the jail warrants. A copy of this judgment be sent to concerned court for necessary compliance. Another copy be placed on the connected case file.

May 24, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No