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**(2007) 09 P&H CK 0142**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 1411-SB of 2001 and Criminal Revision No. 912 of 2002

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| Kishori and Others | | APPELLANT |
| | Vs | |
| State of Haryana | | RESPONDENT |

**Date of Decision:** Sept. 25, 2007

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 307

**Hon'ble Judges:** Ranjit Singh, J

**Bench:** Single Bench

**Advocate:** Salil Bali, for the Appellant; S.K. Hooda, Senior DAG, for the Respondent

**Judgement**

Ranjit Singh, J.
This order will dispose of Criminal Appeal No. 1411 -SB of 2001 and Criminal Revision No. 912 of 2002 as these are directed against the common judgment.

2. A minor bickering between two families about their manure pits existing adjoining to each other, has led to this conviction of the appellants u/s 307 IPC and other offences and the award of various sentences. They have tiled appeal to impugn their conviction and the sentence.

3. On 08.10.1996, Snehlata PW6 and her daughter Saroj PW10 were preparing dung cakes in their manure pit allotted to them at the lime of consolidation. The appellants were un-loading their camel cart filled with manure at their manure pit. adjoining the pit of complainant Snehlata. Appellants stately asked Snehlata not to prepare dung cakes in their manure pit. Snehlata. in turn, replied that she was doing so in her own manure pit. Appellants stately asked her to leave the place immediately. Snehlata and her daughter returned to their house located nearby and accosted the appellants to raise the issue in the presence of male members of their family. Upon this, Fateh Singh threatened complainant to teach her a lesson. They all then entered the house of Snehlata armed with weapons. Fateh Singh. Kishori. Shish Ram were carrying spade, whereas Rani and Santosh were armed with lathis.

Appellant Fateh Singh allegedly gave blow with the axe on the head of Snehlata. Rajender Prashad PVV7, elder brother of husband of Snehlata, intervened when Fateh Singh gave another blow on his head. Rajender Prashad fell down when Shish Ram gave blow on his face with the axe carried by him. Kishori appellant is also alleged to have given blow with axe on his head, whereas Santosh allegedly gave a lathi blow on the left hand of Snehlata. Rani is also alleged to have given a lathi blow on the left eye. Rajender Prashad became unconscious. His son Ashok Kumar PW5 intervened when Rawat gave blow with the spade on his back. Rawat is further alleged to have given another blow from spade on his left hand. Rani and Santosh are attributed blows with dunda to Smt. Shanti and Saroj, grand-mother and cousin of Ashok Kumar. Fateh Singh is also alleged a blow with axe on the head of Saroj. Allegations of blows to different persons with their respective weapons carried by the appellants are also alleged. When the injured cried for help. Satbir PW2, Ajit, Hari Singh PW3 and Jai Singh PW9 got attracted to the scene. They rescued the victims from the clutches of the appellants. The appellants had left the place extending threat to the injured. The injured were removed to Civil Hospital, Mahendergarh. Rajender and Snehlata were referred to PG1MS, Rohtak for treatment. On a statement made by Ashok Kumar, FIR was recorded. The arrest of the appellants followed. After recovery of the weapons and the blood stained clothes etc., the investigation was proceeded further. The injury on the head of Snehlata was declared dangerous to life, whereas injury suffered by Rajender Prashad was declared grievous. On completion of investigation, the appellants were put to trial for offences under Sections 148.324,325,452,326,307,308,506 IPC. Accused Santosh was found innocent and shown in column No. 2. Appellants Kishori, Shish Ram, Rawat and Fateh Singh were found guilty under Sections 323,324,452 and 307 read with Section 34 IPC. Offences under Sections 326 and 506 IPC were not found proved and they were accordingly acquitted in these sections. Charge against Shashi @ Rani was not proved beyond reasonable doubt and she was acquitted. The appellants, who were convicted, were sentenced to suffer different sentences as under:-

a) Rigorous imprisonment for a period of five years and to pay a fine of Rs. 1,000/ - each u/s 307 IPC. In default of payment of fine they shall further undergo rigorous imprisonment for three months;

b) To undergo simple imprisonment for three months u/s 323 IPC;

c) To undergo rigorous imprisonment for one year u/s 324 IPC; and

d) To undergo rigorous imprisonment for two years u/s 452 IPC. All the sentences were, however, ordered to run concurrently.

4. The appellants have now filed the present appeal. Mr. Salil Bali, the Learned Counsel appearing for the appellants has raised a limited plea in support of the appeal tiled by the appellants. He would say that the nature and gravity of injuries

could not be properly established by admissible evidence on record. Co-relating this plea with the evidence on record, the counsel would submit that the prosecution was unable to prove the offence u/s 307 IPC. According to the counsel, at the most offence u/s 308 IPC may be made out from the facts as established. He has accordingly restricted his plea to this limited extent for converting the conviction of the appellants from offence u/s 307 to 308 IPC. It is seen from the record that it was even submitted before the trial court at the time of framing of charge that offence u/s 307 IPC was not made out from the facts in this case. However, this submission of the defence was not accepted by the court and the appellants were charged for offence under Sections 307 as well as other offences.

5. Mr. Bali has referred to the fact that Satbir PW2. who was cited as an eyewitness, deposed on oath that he had no knowledge about the case and he has wrongly been mentioned as eye-witness. He was declared hostile and cross-examined by the Public Prosecutor, but he denied the statement recorded during investigation and attributed to him. Hari Singh PW3 again was declared hostile and permitted to be cross-examined by the Public Prosecutor, when he stated that he cannot tell what happened and who all caused injuries and to whom. Case of the prosecution, thus, received support from Ashok Kumar PW5, Snehlata, the victim, Rajender Prashad PW7, Saroj PW10 and the police witnesses. Mr. Bali appears to be justified in saying that the medical evidence brought on record through the doctors may not be admissible as the doctors, who had conducted the examination etc. were not examined. Dr. R.A. Gupta, Principal Medical Officer. General Hospital, Bhiwani appeared as PWI5 and deposed that injured were medico-legally examined by Dr. Lalit Mohan Sharma, who has since passed away. He gave the evidence in regard to the injuries noted by late Dr. Lalit Mohan Sharma by saying that he had worked with him for one year and was conversant with his writing. His evidence in regard to the injuries and the opinion thereon is totally hear-say. PW15 never examined the injured to place him in any competent position to depose about the injuries noticed, observed or their nature etc. Any report about the injuries prepared by the deceased doctor cannot take the shape of substantive evidence. His statement before the Court alone would be substantive evidence. Section 32 of Indian Evidence Act would be of no avail as statement which does not relate to any of the matters referred to in the Section is not admissible under the Section. The matter is further compounded when it is noticed that Snehlata, though was examined by Dr. Arvind Makkar and treated by him, but in his place Dr. J.S. Bhargava PW 17 was examined. His evidence would suffer from the same infirmity as that of PW 15 as he never examined Snehlata to depose about the nature of injuries suffered by Snehlata and about her treatment. Evidence of both these witnesses is clearly a hear-say derived from the medical documents. Thus, it can be stated that the nature, extent and gravity of the injuries could not be sufficiently established by the prosecution by relevant evidence. The opinion about the injuries being dangerous to life was thus not established. The doctor opining so never appeared before the court. It would be

thus difficult to say that the offence u/s 307 IPC" is said to be made out from the admissible evidence on record.

6. Apart from the fact that the nature of injuries proved in the manner as above noted, it may require to be seen if from the evidence, that has been brought on record, the offence u/s 307 IPC would be made out or not. There is some substance in the plea raised by Mr. Bali that the doctor, who examined Snehlata and Rajender Prashad radiologically was not examined to prove the X-ray report and in the absence of this evidence. X-ray cannot be taken into consideration. Thus, the evidence that the injury suffered by Snehlata could be dangerous to life, is not properly established. The trial court had accepted the part of statement made in this behalf when it found that offence u/s 326 IPC would not be made out because the MLR and the X-ray report of Rajender Prashad PW were not proved. The court found that in the absence thereof, opinion of the doctor that the injury on the person was grievous in nature is meaningless. However, while rejecting the contention that the offence u/s 307 IPC would also not stand as Dr. Lalit Mohan Sharma, who had examined Snehlata, also had not appeared being dead, the trial court appears to have mis-informed itself that the documents and the MLR were proved by Dr. R.A. Gupta. The manner in which the MLR of Snehlata had been proved through PWI5 Dr. R.A. Gupta, is not a legally permissible mode under law. Even the presence of Dr. Arvind Makkar could not be procured as he had left the country and settled in U.S.A. The treatment given by Dr. Arvind Makkar was proved through Dr. J.S. Bhargava, which again would be a hear-say evidence. The reliance by the trial court to admit these pieces of evidence by invoking Section 32 of the Indian Evidence Act is not proper as such statement would not relate to matters referred to in the Section. The opinion of late Dr. Lalit Mohan Sharma and Dr. Arvind Makkar, no doubt, would be relevant piece of evidence and so too the details of their examination and observations, but these could have been admitted on record only by a competent witness, that is if they themselves had been available for giving evidence in this regard. Production of the MLR and the opinion of these doctors through another person, acquainted with their handwriting and signatures, would lead to bring on record a written hear-say and this evidence has come on record without these persons giving this opinion being subjected to cross-examination by the appellants. Still further, the opinion on the basis of which the offence u/s 307 IPC is made out, is that injury was dangerous to life. That in my view, again would not be in itself sufficient to bring home the offence u/s 307 IPC. The courts are not bound by such opinion, even if it was otherwise acceptable, having been properly proved. It is required to be seen from the facts and circumstances of each case whether such intention to cause death would be made out or, not. Upon that would depend if the offence u/s 307 IPC is attracted. Reference can be made to the case of Atma Singh v. The State of Punjab, 1982 (2) C.L.R. 496 to say that term "dangerous to life" is synonymous with "endangering life" within the meaning of Clause 8 of Section 320 IPC. It was accordingly viewed that the courts are not absolved of responsibility

while deciding the criminal case to form its own conclusion regarding the nature of injury, Expert''s opinion notwithstanding. It was further held that the court has to see the nature and dimension of injury, its location and the damage that it has caused and the opinion of doctor in itself is not enough to return a finding for convicting a person for an offence. Reference can also be made to the case of Pashora Singh and another Vs. State of Punjab, This was also a case where accused was alleged to have given a Gandasa blow on knee, hand and head etc. Still, it was held that the High Court was not right in holding that the accused had intention to cause death of the victim or the knowledge of possible death. In this case also, injury on the head was described as dangerous to life. The Hon''ble Supreme Court has also observed that accused persons had no intention of causing death of any person and nor any injuries were found so, which could be stated to be sufficient in the ordinary course of nature to cause death. There is no opinion forthcoming in this case also if the injuries caused by the appellants were sufficient to cause death in the ordinary course of nature. It can, thus, be said that in order to arrive at a proper conclusion, the court has to see the nature and dimension of the injury, its location and damage that it has caused. The court has to apply its own mind and form its own opinion in this regard, even though the Expert may have opined that the injury is dangerous to life. In this case, even the injuries being dangerous to life have not been sufficiently established. It is not proved on record that the injuries were sufficient in the ordinary course of nature to cause death etc.

7. This seems to be a case of sudden fight. There was no preplanning in this regard. The appellants were busy in their daily routine in storing manure of their manure pits, whereas victim Snehlata was busy in her daily chores while making dung cakes. The fight apparently has taken place over a trivial, when the appellants objected to the injured, Snehlata, from making dung cakes in their area. The weapons with which the injuries were caused, were available with the appellants not for purpose of being used, but for the purpose of their work in storing the manure. Of course, some of the injuries caused are on vital pans of the bodies of the injured, though could not sufficiently be established by valid evidence to be grievous in nature.

8. Taking the cumulative effect of all these aspects, especially so when the opinion of the doctor in regard to the injuries being dangerous to life could not be properly proved by the prosecution, it cannot be said that the appellants had intention of causing death or a knowledge of causing death of the victim, so as to attract the attempt on their part to be an offence u/s 307 IPC. The appellants more appropriately can be held liable for an offence u/s 308 IPC as they can certainly be attributed with knowledge that their act was likely to lead to an offence of culpable homicide not amounting to murder.

9. Accordingly, the conviction of the appellants recorded u/s 307 IPC is set-aside and they are held liable for an offence u/s 308 IPC. The appellants would accordingly be guilty of an offence u/s 308 instead of Section 3.07 IPC. However, their conviction for

other offences is maintained.

10. The sentence awarded to the appellants, keeping in view their conviction u/s 307 IPC which is now being not upheld, cannot also stand. The appellants have committed this offence in the year 1996. They were convicted on 26.11,2001. They have been sentenced to suffer various terms of rigorous imprisonment as already noticed. Their appeal is pending since 2001. The appellants have, thus, suffered the agony of protracted prosecution and the trial for almost eleven years. It is further pointed out that appellant Fateh Singh has undergone about two years and six months, whereas appellants Shish Ram, Kishori and Rawat have undergone about 3-1/2 months of the sentence awarded to them. In view of these facts, the Learned Counsel appearing for the appellants pleads that the appellants have suffered enough and have also undergone the substantial period of sentences awarded to them. Plea accordingly is that the sentence upon their conviction u/s 308 IPC be remitted to the period already undergone.

11. Having considered the submission made by the counsel for the appellants and the period undergone, I am of the view that the ends of justice would be met by remitting the sentence awarded to the appellants to the period they have already undergone. It is ordered accordingly. The sentence of fine as imposed, however, is retained and in case it is not deposited, the appellants would, in default of the payment of the same, undergo rigorous imprisonment for a period of three months more.

12. The appeal is disposed of accordingly. The revision filed shall, however, stand dismissed.