

(2008) 03 P&H CK 0219

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 1023-SB of 1997

Dalip Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 10, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 300, 307, 320, 324, 325

Citation: (2008) 3 RCR(Criminal) 311**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench**Advocate:** Raj Mohan Singh, for the Appellant; Navneet Singh, Assistant Advocate General Haryana, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Criminal appeal No. 1023-SB of 1997 has been preferred by Dalip Singh son of Phoola Ram; his son-in-law Surat Bhan @ Surja and his son Sant Kumar aggrieved against the judgment dated 09.12.1997 and order dated 12.12.1997 passed by the Court of Additional Sessions Judge, Kurukshetra, whereby they have been acquitted for the offences u/s 307 IPC but have been convicted for offences u/s 326 read with 34 IPC to five years RI.

2. Prosecution case can be noticed from FIR (Ex.PC/2). FIR was lodged at the instance of Charanjit Kaur PW-2, who stated that her husband is in a service in Engineering College and they are residing in Kurukshetra in the house of Om Parkash. In the same house, one Subhash was also tenant. He was also employed in Engineering College. The three accused were residing adjacent to the house, where complainant was residing. Suraj Bhan, Sant Kumar and his father-in-law Dalip Singh were engaged in the business of selling and repairing coolers. It is stated that husband of the complainant got a cooler repaired from appellant Suraj Bhan and Sant Kumar.

Sant Kumar is said to have come to the house of complainant to repair the cooler, when complaint was made by the complainant Charanjit Kaur PW-2 that the cooler, most of the time remains out of order. As per FIR, complainant Charanjit Kaur was replied back by the accused that since cooler is daily in need of repair, on getting it repaired one time complainant party has not purchased them (accused party). Charanjit Kaur further stated that when her husband returned in the evening, she narrated the offensive language used by the accused and some exchange of hot words ensued between husband of complainant and accused. Next day, panchayat was held, where Baldev Singh PW-6 had alone gone to attend the panchayat meeting. It is stated that Charanjit Kaur stayed at the roof of her house along with uncle Pirthi and Joginder, cousin of Baldev Singh. It is further stated that in panchayat meeting, there were exchange of hot words, whereupon Surja caught hold of Baldev Singh. Dalip was having a lathi with a balam and he gave a blow on the head of Baldev Singh, due to which Baldev Singh fell down. Sant Kumar gave a blow with screw driver, which was in his hand, on the chest. Surja gave a knife blow and Sant Kumar gave another blow with his screw driver in the chest. Charanjit Kaur along with uncle Pirthi and Joginder reached the spot and the accused decamped from the spot along with weapons. Injured was taken firstly to LNGP Hospital, Kurukshetra, where he was medico-legally examined. Four injuries were found on his person.

3. After the FIR was investigated, report u/s 173 Cr.P.C. was submitted and charge was framed against the appellants for offences u/s 307 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

4. Dr. J.P. Bharal, PW-1 examined Baldev Singh PW-6 on 11th June, 1993 at 10.30 p.m. He noticed following injuries on his person:

1. Deep lacerated wound on the left side of scalp. 5 cm x 1 cm in size.
2. 1 cm x 1 cm clean lacerated wound (cruciate slaped) 7.5 cm infero lateral/right side of umbilicus.
3. 0.5 cm x 0.5 cm punctured wound. Medial to the left nipple.
4. 0.5 cm x 0.5 cm punctured wound 7.5 cm in inferolateral to the right nipple.
5. PW-3 Dr. G.R. Verma is an Associate Professor of Department of Surgery. He was summoned to prove PGI record as Dr. Vishal Narang is said to have died, who has given the treatment. PW-9 Dr. Avinash Kumar was a part of the team, which performed operation of the abdomen of Baldev Singh. As per him, had the operation not been performed in time, the injury could have been proved fatal.
6. PW-9 Dr. Avinash Kumar has categorically stated that there was a perforation of the small intestine. PW-2 Charanjit Kaur reiterated the version given by her in the FIR. Injured Baldev Singh appeared as PW-6. He is the injured. He gave origin and genesis of the occurrence and also narrated sequence in which injuries were given

to him. PW-4 Sohan Singh was posted as Inspector. He had submitted a report u/s 173 Cr.P.C. and had partly investigated the case. PW-5 Mukesh Kumar, Draftsman prepared scaled site plan of the place of occurrence. PW-7 Amar Singh is a Head Constable, who sought opinion of the Doctor regarding the nature of injuries. PW-8 Inder Singh is the investigating officer. Thereafter, prosecution evidence was closed. Statement of the accused u/s 313 Cr.P.C. was recorded. The accused have denied having caused any injury. No defence evidence was led by the appellant.

7. Mr. Raj Mohan Singh appearing for the appellants has made primarily three submissions. His first submission is that Dr. Vikas Narang, Senior Resident who had examined the injured Baldev Singh PW-6, had not been examined. His opinion has not been brought on the record, as nobody has been able to prove his signatures, rather he states that no signatures of Dr. Vikas Narang were on the opinion. Therefore, he says that the injuries were dangerous to life, this opinion cannot be construed against the appellants to hold that they have caused grievous injuries. In the same manner, Mr. Raj Mohan Singh has stated that rightly appellants have been acquitted for the offences u/s 307 IPC, as no danger to life of injured could be proved. He has further stated that since there is no opinion regarding the injury being grievous, the conviction u/s 326 IPC cannot be sustained. I am unable to accept this argument of Mr. Raj Mohan Singh. Clause eighthly of Section 320 reads as under:

"320. 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. A simple perusal of clause eighthly of Section 320 reveals that any injury, which endangers life is grievous. No express opinion is required. It has been held by a Division Bench of this Court in Atma Singh v. State of Haryana, 1982 CLR II 496, that the expression `dangerous to life' will fall under Clause eighthly as endangering life and therefore same is liable to conviction u/s 326 Indian Penal Code if the weapon used is incised.

9. The following observation's of Atma Singh's case supra are necessary to be reproduced here:-

"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.

.....

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 the Court, already mentioned.

10. There is no dispute that injury No. 2 is a clean lacerated wound. Furthermore, it has come in evidence that there was a perforation of small intestine. Furthermore, defence was conscious of this fact therefore, PW-9 Dr. Avinash Kumar was specifically asked to which he replied in affirmative that the "dangerous" means "endangering life". Therefore, rightly the learned trial Court held that injury was grievous in nature.

11. Second argument raised by Mr. Raj Mohan Singh is that in the present case there was no previous enmity between the parties. On a petty matter of repair of the cooler an altercation had taken place, a day before occurrence. Mr. Raj Mohan Singh has further stated that on the day of occurrence also, it was the accused who requested Baldev Singh PW-6 to attend the meeting of panchayat. It has been stated by PW-2 Charanjit Kaur and also by PW-6 Baldev Singh that in the panchayat there was exchange of hot words.

12. Therefore, I find that there is no doubt that occurrence in the present case, has taken place on spur of the moment without any premeditation, spontaneously. I agree with this submission of Mr. Raj Mohan Singh that since the accused have invited injured Baldev Singh PW-6 in panchayat meeting, there was exchange of hot words, the accused never wanted to cause injury but something happened at the spot, due to which the present occurrence has taken place. It cannot be ruled out that some provocation was caused by the injured himself which resulted into injury. Section 335 IPC reads as under:

"335. Voluntarily causing grievous hurt on provocation - Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punishable with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation - The last two sections are subject to the same provisos as Exception 1, Section 300."

13. Since I have already held that there was no enmity between the parties, however on a petty issue of repair of the cooler, there was exchange of hot words in a panchayat and probability of injured being responsible for grave and sudden provocation cannot be ruled up."I convert offence from Section 326 IPC to Section

14. Third submission made by Mr. Raj Mohan Singh is that once occurrence has taken place suddenly on the heat of moment without any premeditation, Section 34 IPC will not be attracted as each accused will be responsible for his own act and the common intention cannot be gathered in such circumstances. In the present case, apparently parties met to resolve their altercation in a panchayat meeting. There was exchange of hot words. The intention of all accused was not to cause grievous injuries. Therefore, each accused will be responsible for his own act.

15. To conclude, I hold that Suraj Ram author of injury No. 2 is liable for offence u/s 335 IPC, whereas other accused are liable for the offence u/s 324 IPC. Once I have converted offence and held that Section 34 is not attracted this Court has to discharge onus to determine the sentence. The courts, while awarding sentence have to harmonize mitigating and aggravating circumstances. The injured was working in an Engineering College. He suffered injuries on 11th June, 1993. He was operated upon on 12th June, 1993. There was a perforation of small intestine. He remained admitted in PGI upto 19th June, 1993. He was to be rushed from Kurukshetra in an Ambulance to PGI as the injury was a life threatening. Maximum sentence prescribed u/s 335 is four years. At the same time, since the occurrence has taken place in 1993 accused have already suffered a protracted trial of more than 14 years. As per Mr. Raj Mohan Singh, accused have also undergone actual sentence i.e. few days more than one month.

Taking into account all the circumstances Surja is awarded two years rigorous imprisonment and a fine of Rs. 2000/- u/s 335 IPC. Non- payment of fine will make him liable to undergo three months rigorous imprisonment. Since I have held Dalip Singh and Suraj Bhan liable u/s 324 IPC, they are awarded one year rigorous imprisonment u/s 324 and a fine of Rs. 1000/-, non-payment of same shall make them liable to undergo rigorous imprisonment for two months. With these modifications, present appeal is disposed off.