

(2011) 07 P&amp;H CK 0216

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 144 SB of 2003

Balbir

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** July 12, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 313, 357
- Penal Code, 1860 (IPC) - Section 304, 323, 325

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

The present appeal has been preferred by Balbir son of Hari Ram, who was nominated as an accused in case FIR No. 52 dated 7.4.2000, registered at Police Station Barwala, u/s 304 IPC. The Appellant was convicted for the offence u/s 304 Part-II IPC by the Court of Additional Sessions Judge, Hisar, vide its judgment dated 23.11.2002 and vide a separate order dated 25.11.2002 he was sentenced to undergo rigorous imprisonment for a period of four years.

2. In the present case, the occurrence had taken place on 4.4.2000 at about 9.30 P.M. As per the prosecution case, the Appellant has given a push to deceased Dal Singh due to which he fell upon the bricks and suffered a fracture of femur. Having suffered the injury Dal Singh remained present in the house for the whole night and in the morning on 7.4.2000 at about 10.15 A.M. he was medico legally examined at Civil Hospital, Barwala. The Medical Officer had sent a ruqa Ex.PB to the Station House Officer, Police Station, Barwala upon which PW.8 Kanshi Ram, Head Constable, had recorded the statement of deceased Dal Singh, which now has been treated as a Dying Declaration. The statement of Dal Singh Ex.PH/2 was recorded in Daily Diary Register vide report No. 29. The statement made by deceased Dal Singh when translated into English reads as under:

Statement of Dal Singh s/o Akhay Ram, Caste Harijan Chamar, R/o Ward No. 2, Barwala, aged 80 years.

Stated that I am the resident of the aforesaid address and an old man. I usually reside in my house. Yesterday at about 9.30 P.M. I was lying in my house that I heard a noise in front of Ravi Dass Mandir near my house. I got up and came out in the street and saw that Balbir s/o Hariram and Mukhtiar s/o Jai Singh, caste Chamar, residents of Ward No. 2 of village Barwala were quarrelling with each other. I tried to intervene between them whereupon Balbir got furious and said that why you came in between us. On saying this, Balbir pushed me. On which I fell down on the bricks lying in the pucca street and sustained injury on my right hip. I raised an alarm of "MAR DIYA MAR DIYA" on which my brother Phullu and my son Jeet came there while running. On seeing them coming Balbir ran away towards his house. Balbir has caused injuries to me by giving push. Due to pain in the night I was got admitted in the hospital. Legal action may be taken against Balbir. I have got my statement recorded, heard it and it is correct.

LTI of Dal Singh

Attested

Kanshi Ram,  
HC, P.S. Barwala

3. PW.4 Dr. R.S. Khandelwal stated that on 5.4.2000 deceased Dal Singh was admitted and was discharged from the hospital, on 7.4.2000 itself at about 10.30 A.M., formal FIR Ex.PJ was registered for the offence u/s 325 IPC. On the same day, in the evening Dal Singh expired at his house. PW.6 Jeet Singh son of deceased Dal Singh informed the police on 7.4.2000 at about 6.30 P.M. regarding death of Dal Singh. On the receipt of this information, the Special Report was sent to the higher authorities. The above said FIR was investigated. A report u/s 173 Code of Criminal Procedure was submitted and the case was committed to the Court of Sessions and the same was entrusted to the Court of Additional Sessions Judge, Hisar, for trial, who on 22.1.2001, charged the Appellant for the offence u/s 304 IPC.

4. As per the medical examination which was conducted on 5.4.2000 at about 10.15 A.M. by PW.1 Dr. Paramjit, the patient Dal Singh had complained the pain on his right hip joint and he was not able to move his leg. The doctor had found defused swelling present around the hip joint and had advised x-ray of pelvis and opinion of Orthopedic Surgeon. Furthermore, this witness has referred the patient to General Hospital, Hisar, for further treatment.

5. PW.4 Dr. R.S. Khandelwal was running a private hospital. According to him, deceased Dal Singh was admitted in his hospital on 5.4.2000 due to Intertrochanteric fracture of right femur. In cross-examination, this witness stated that on 7.4.2000, deceased Dal Singh was discharged against the medical advise.

6. PW.5 Dr. Bhupender Singh had conducted autopsy on the dead body of deceased Dal Singh and had found the following injuries:

Contusion brownish in color, in the region of right hip joint, on dissection, underline muscles were injured. Clotted blood was present, the right femur was fractured at the Intertrochanteric Thorax examination. Walls, ribs and cartilage were normal. Pleura was adherent to underlying lungs. Larynx and trachea were normal. Both lungs were necrosed. Both pleura are adherent to underlying lungs tissue. Lungs were sent for histopathological examination. Pericardium and heart were also sent for histopathological examination. Abdominal organs were healthy....

7. On 22.8.2000 after receiving the Histopathology Report from P.G.I.M.S. Rohtak, this witness opined that the cause of death was due to lung disease which was aggravated by the injury (Intertrochanteric fracture of right femur).

8. PW.6. Jeet Singh, son of deceased Dal Singh, stated that on 4.4.2000, he was present in his house when he heard a noise that Balbir and Mukhtiar were quarreling in the street. His father came out of the house and asked both of them not to quarrel. Then he saw that Balbir caught hold of his father and threw him on the metalled road due to which his father had suffered a fracture of hip joint. On 5.4.2000, he took his father to the Civil Hospital, Barwala, for treatment. Thereafter, he got admitted his father in the Janta Hospital, Barwala. On 7.4.2000, the doctor told him that the condition of his father is serious. Therefore, he brought his father to the house. On the same day, in the evening, his father had expired. PW.7 Phullu also supported and corroborated the testimony of PW.6 Jeet Singh.

9. PW.2 Raju, Draftsman, had prepared the scaled site plan Ex.PC. PW.3 Shiv Ram, Sub Inspector, stated that at the relevant time, he was posted as a Station House Officer, Barwala and had prepared a report u/s 173 Code of Criminal Procedure PW.8 Kanshi Ram, Head Constable, stated that he had received a ruqa Ex.PB from the doctor along with the Medicolegal Report of deceased Dal Singh, whereupon he reached at the hospital and was informed that Dal Singh was referred to the General Hospital, Hisar. However, he came to know that Dal Singh was admitted in Janta Hospital, Barwala and he reached there. He moved an application Ex. PH to the doctor regarding the fitness of Dal Singh. Upon the opinion of the doctor Ex.PH/1 that Dal Singh was fit to make a statement, he had recorded his statement in the Daily Diary Register vide report No. 29. On 7.4.2000, a report was received that Dal Singh had suffered a fracture of hip joint upon which a formal FIR Ex.PJ was registered for the offence u/s 325 IPC. PW.9 Khajan Singh, Assistant Sub Inspector, proved various facets of the investigation. He had recorded the statement of witnesses u/s 161 Code of Criminal Procedure

10. PW.10 Dr. Sanjay Verma, Orthopedic Surgeon, stated that on 5.4.2000 Dal Singh was admitted in Janta Hospital, Barwala. As per the x-ray report, Dal Singh had suffered a fracture of right femur. In cross-examination, this witness stated that it is

correct that due to old age, one suffers from osteoporosis and in such cases the possibility of fracture by fall cannot be ruled out.

11. After the prosecution closed its evidence, the statement of accused, u/s 313 Code of Criminal Procedure, was recorded. All the incriminating circumstances were put to him. He denied the same and pleaded false implication. No witness was examined in defence.

12. I have heard learned Counsel for the parties and perused the record.

13. Mr. Jitender Dhanda, Advocate, appearing for the Appellant, has submitted that as per the statement made by deceased Dal Singh, on the basis of which, FIR was registered, the Appellant had given push to him when he made an attempt to intervene in the quarrel between the Appellant and one Mukhtiar. He has further submitted that the possibility cannot be ruled out that hot words were being exchanged between the Appellant and Mukhtiar and at the heat of moment without any pre-mediation, the Appellant without intending to cause any harm had given a push to the deceased. Learned Counsel has further submitted that the conviction of the Appellant for the offence u/s 304 IPC cannot be sustained in the eyes of law and even if it is presumed that due to push given by the Appellant, deceased Dal Singh suffered a fracture, the offence, if any, will fall u/s 325 IPC. In support of this contention, a reliance has been placed upon [Parusuraman alieas Velladurai and others Vs. State of Tamil Nadu](#), . Learned Counsel has further submitted that the Appellant has already undergone one year 10 months and 15 days. Therefore, relying upon Parsuraman alias Velladurai's case (supra), this Court should reduce the sentence to the period already undergone. Further reliance has been placed upon Jani Gulab Shaikh v. The State of Maharashtra 1970 SCC (Cri) 532 to contend that the accused has no intention to cause fracture and he should be convicted for the offence u/s 323 IPC. Relying upon Jani Gulab Shaikh's case (supra), it has been submitted that in that case a period of about 4 1/2 months was considered sufficient and this Court should convert the offence to that of u/s 323 IPC and should reduce the sentence to the period already undergone.

14. Learned Counsel for the Respondent has submitted that the trial Court has rightly convicted the Appellant for the offence u/s 304 Part-II IPC.

15. After hearing learned Counsel for the parties, this Court cannot ignore the fact that the Appellant was empty handed. All of a sudden, the deceased had emerged to intervene in the quarrel going on between the Appellant and Mukhtiar. The Appellant had acted on the spur of moment and had given a push to deceased Dal Singh due to which he fell on the bricks and suffered a fracture of femur. As per PW.5 Dr. Bhupender Singh, who had conducted autopsy, the cause of death was lung disease which was aggravated due to fracture of right femur suffered by deceased Dal Singh. In cross-examination, PW.5 Dr. Bhupender Singh stated that the main cause of death was lung disease as it was aggravated by the injury

suffered by the deceased. The report of Histopathologist has not been proved on the record. No material is coming forward as to what was the lung disease from which the deceased was suffering. In these circumstances, this Court is of the view that conviction of the Appellant cannot be sustained for the offence u/s 304 Part-II IPC but the same will fall u/s 325 IPC. The necessary knowledge cannot be attributed to the Appellant that by giving a push, the injury is likely to cause death. Having held that the Appellant is guilty of offence u/s 325 IPC, this Court has to determine the quantum of sentence.

16. Occurrence, in the present case, had taken place in the year 2000 and the Appellant is already in the corridors of the Court from the last 11 years. He has suffered mental pain and agony of protracted trial. As stated earlier, the Appellant was empty handed and had acted on the spur of moment. As per the affidavit of Jaidev Bishnoi, Superintendent, Central Jail, Hisar, the Appellant has already undergone actual sentence of 1 year, 7 months and 26 days and has further earned remissions of 2 months and 19 days. Thus, in all, as on 2.5.2011, the Appellant has already undergone actual sentence of 1 year 10 months and 15 days. It has been submitted by PW.4 Dr. R.S. Khandelwal that against the medical advice, deceased Dal Singh was got discharged from the hospital. PW.6 Jeet Singh, instead of taking deceased Dal Singh for further medical treatment, to General Hospital, Hisar, for which advise had been given by PW.1 Dr. Paramjit, had taken Dal Singh to the house where he expired. Thus, negligence can also be attributed to the complainant party also.

17. After taking totality of the circumstances into consideration, this Court is of the view that ends of justice will be fully met in case the sentence of four years rigorous imprisonment, awarded to the Appellant, is reduced to that of already undergone. However, the complainant party is entitled to be paid compensation as provided u/s 357 Code of Criminal Procedure In these circumstances, sentence of fine of `50,000 is imposed upon the Appellant. In default whereof, the Appellant shall undergo rigorous imprisonment for a period of nine months. The amount of fine, if deposited, shall be paid as a compensation to the legal heirs of deceased Dal Singh.

18. With the conversion of sentence and modification in the conviction and sentence made above, the present appeal is disposed of.