

**(2014) 07 P&H CK 0317**

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

**Case No:** CRA-S-1991-SB-2002 (O&M)

Jagdeep

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** July 31, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 307, 320, 323, 324, 452

**Hon'ble Judges:** Anita Chaudhary, J

**Bench:** Single Bench

**Advocate:** H.S. Jalal, Advocate (Amicus Curiae), Advocate for the Appellant; G.S. Sandhu, Addl. A.G, Advocate for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Anita Chaudhary, J.

The appellant was convicted and sentenced to undergo five years rigorous imprisonment along with fine of Rs. 1000/- u/s 307 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for two years along with fine of Rs. 1000/- u/s 452 IPC. In default of payment of fine, he was to further undergo imprisonment for six months for each default.

2. The brief facts of the case reflected in Para No. 2 of the judgment of the Sessions Judge, Ambala are reproduced as below:-

The facts leading to the case are that Jagdeep Singh accused, who is the nephew of Jai Kumar-injured (here-in-after referred to as the complainant), started living along with his family members (after shifting from Punjab) in the neighbourhood of the complainant. But after some days he started quarrelling with the neighbours as a result of which he was sent back to his parental village. About three-four months prior to the occurrence, the accused came to the house of the complainant which was objected to by his (complainant's) brother Ram Kumar and nephew Jarnail Singh. However, that dispute was settled with the intervention of Bhag Singh

Sarpanch but the accused took it to his heart and kept a grouse with the complainant and his brother etc. On the night intervening 3/4.1.2000 the complainant along with his children was sleeping in his house. At about 2:00 AM, his wife Saroj Bala woke him up saying that she was feeling feverish. He put his own quilt on his wife and he collected some wood in a "Tasla" and burnt fire in order to get heat. He kept the door opened for ventilation of smoke. At that very time the accused trespassed into his house and attacked the complainant with a knife at the back of his neck. The accused also gave a fist blow on the chest of the complainant. The complainant raised alarm. His wife at once got up from the bed. On hearing the alarm raised by the complainant, his brother Ram Kumar reached at the spot but immediately on his arrival, the accused ran away from the spot. Ram Kumar called the Sarpanch of the village at the spot. The complainant was taken to Civil Hospital, Ambala Cantt, by his brother Ram Kumar and the Sarpanch of the village. He was given first aid and then referred to PGI Chandigarh but he was taken by his brother to Monga Hospital, Ambala Cantt, and got admitted there. The statement of the complainant Ex. PN was recorded by the police in Monga Hospital at 8:10 AM on 4.1.2001 leading to the registration of this case under Sections 323/452/324 IPC. On 15.1.2001, the doctor opined that the injury of Jai Kumar at the back of his neck could be dangerous to life. Then the offence u/s 307 IPC was added.

3. The prosecution in order to prove its case examined the complainant Jai Kumar PW-8, his wife Saroj Bala PW-9, besides the Medical Officer and police officials. PW-11 Dr. Tarsem Monga proved Ex. PU/1, vide which he had given an opinion that the injury inflicted on the back of the neck was dangerous to life.

4. The accused abjured the trial and pleaded false implication. His defence was that a false case had been registered as the complainant and his brother had encroached over their ancestral land and they were insisting on retaining possession and an unknown assailant had attacked the complainant. He denied that any recovery was effected from him. The trial Court examined the evidence and accepted the statement of witnesses and convicted the appellant u/s 307 and 452 IPC and sentenced him for a term as noticed above.

5. Aggrieved with the judgment of conviction and order of sentence dated 6.11.2002, the appellant had filed this appeal which was admitted on 16.12.2002.

6. The learned counsel for the appellant had submitted that it was a false case and the incident had occurred at night and the injury was on the back side, therefore, the injured could not have seen the assailant and there was no mark of injury on the chest and the ocular version is different to the medical evidence. It was urged that the trial Court had relied upon the statement of Dr. Tarsem Monga who had given his opinion on the basis of document, which had not been proved, therefore, no conviction could have been recorded u/s 307 IPC. It was urged that the report referred to by Dr. Tarsem Monga is signed by Dr. Tejinder Kaur, who was not examined. It was also urged that there was discrepancy in the statement of Jai

Kumar, as in the examination in chief he had stated that he had fallen unconscious and when he gained consciousness, he found himself in Monga Hospital, whereas it is not so recorded in Ex. PN. It was urged that in order to prove the charge u/s 307 IPC, there has to be an intention to kill and there was only one injury which was not on the vital part of the body and at the most, it could have been a case u/s 324 IPC. It was urged that the appellant has remained in custody for almost six months and sentence be reduced to already undergone.

7. The State counsel submitted that there could not be any dispute regarding the identity of the person who had caused injuries as the complainant and his wife were awake as the wife was not well and the complainant had switched on the light to provide extra covering as she was feeling cold and the complainant had collected wooden logs to ward off the cold. It was urged that the motive is mentioned in the complaint and it get support from the statement of the accused that the relations between the two were not good, though a different version was given but it is clear that they were not on visiting terms.

8. The incident took place on 4.1.2001 at about 2:00 AM. The complainant and his wife were at home when the complainant was attacked. Jai Kumar was shifted to the hospital at 3:45 AM on 4.1.2001. He was accompanied by Bhag Singh Sarpanch. Jai Kumar was referred to Sector-32/PGI for further management but instead he was taken to Dr. Monga's hospital. The incident took place in a village which falls in District Ambala. Dr. Shashi Tripathi, Medical Officer, Civil Hospital, Ambala Cantt PW-5 had noted down the following injuries:-

1-An incised wound 1" x.5 cm x.5 cm on the middle of spine at the back. The loss of sensation was on account of the injury to the spine. There was swelling also at the nape of the neck beneath the wound. X-ray was advised for cervical region and thoracic region.

2-The patient also complained of pain in the chest but he had no difficulty in breathing. X-ray of chest was also advised.

9. The injuries were kept under observation. The probable duration of the injuries was within 12 hours. Injury No. 1 was caused by sharp edged weapon, while injury No. 2 was caused by blunt weapon.

10. Dr. Tarsem Monga of Monga Hospital PW-11 gave his opinion on the application Ex. P2. He had brought the original MRI report with him and had given opinion Ex. PU/1 that the injury was dangerous to life. The MLR shows that incised wound measured 1" x 5 cm x.5 cm on the middle of the spine at the back. The treating doctor had given his opinion on the basis of which Section 307 IPC was added. The doctor had given his opinion that the injury was dangerous to life.

11. In Atma Singh Vs. The State of Punjab, it has been held as under:-

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 to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the facts that should weigh with the Court, already mentioned. We are also firmly of the view that what wherever a doctor describes an injury as "dangerous to life" and the nature of the injuries are such which could merit such conclusion then such an injury has to be treated as "grievous hurt" of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code.

12. Looking at the medical report and the opinion given by the Medical Officer and analyzing the dimensions, depth and location of the injury, it is clear that the injury was on a vital part i.e. the spine.

13. So far as the discrepancies are concerned, there is hardly any material discrepancy which goes to the root of the case, which make these statements unreliable or doubtful. Whether the injured had fallen unconscious or not, is hardly a discrepancy which goes to the root of the matter and is inconsequential. The statement made by the injured-eyewitness clearly depicts the manner in which the incident had occurred. The ocular version gets support from medical evidence. The complainant had stated that when they raised cries for help, it had attracted the neighbours and the Sarpanch was called, who took him to the hospital. The MLR records the name of the Sarpanch who took Jai Singh to the hospital.

14. Police had recovered the weapon which was sent for examination to the Forensic Science Laboratory. Blood was detected on the Kirpan/knife, through the material was found disintegrated on serological analysis of the blood.

15. The testimony of the injured eye witness gets support from the statement of his wife and also the medical evidence. The recovery of the Kirpan/knife at the instance of the accused also goes against him. The complainant and his wife have corroborated each others statement which are consistent and reliable. The complainant had spoken about the motive. The relations between the two families were not good. The accused has been sent back to the village as he was picking a fight in the neighbourhood. The accused was a resident of another village. He did not take the plea of alibi.

16. In Surender Kumar Vs. State of Haryana, Criminal Appeal No. 1262 of 2005 decided on 22.11.2006, Hon'ble Apex Court has held as under:-

The testimony of an injured witness has its on relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own yes.

17. Since the testimony of the injured witness is corroborated by the testimony of Saroj Bala and also by medical evidence, there is no reason to discard it. There was an intention to kill and the appellant had come prepared armed with a small Kirpan and had entered the house of the complainant at night. The intention can be gathered from a host of circumstance that is the seat of injury, the nature of weapon, the size and dimensions and the force applied by him. The appellant had the intention to cause injury and the intention to cause death, there is no reason to take a different view from that of the learned Sessions Judge.

18. It is not a case of sudden fight. The incident was pre-planned. There is no mitigating circumstances, therefore, conviction as well as sentence is upheld. The appellant is presently on bail and he is directed to surrender in the Court of C.J.M., Ambala Cantt within 15 days, failing which the Court would issue warrants to secure his arrest and send him to jail to undergo the remaining part of the sentence.

19. Appeal dismissed.