

Before Gurmit Ram, J.

SUKHDEV SINGH & OTHERS — *Appellants*

versus

STATE OF PUNJAB — *Respondent*

CRA-S No.290-SB-2003

September 16, 2015

Indian Penal Code, 1860 — Ss. 323, 324, 325, 326 and 307 read with S.34. — Criminal case filed by witness as injured was declared unfit for recording statement — Injured hospitalized in PGI Chandigarh for treatment for 23 days, doctor opined the injuries grievous — Investigating Officer presented challan to SDJM, Amloh, who committed the case to Additional Sessions Judge, Fatehgarh Sahib for trial — Charges framed — Trial Court convicted three accused u/s 326 IPC and sentenced them to RI for 4 years — Other accused convicted u/s 326/34 IPC and sentenced to 3 years RI along with fine of Rs.2000/- — High Court held that complainant party and accused were present on the spot at the time of alleged occurrence — Accused also produced MLR of their injuries received — High Court observed that two decades have passed since the date of occurrence and reduced sentence to RI for 1½ years each and partly accepted the appeal.

Held, that from the above discussed evidence of prosecution, it is quite clear that both the parties i.e. complainant party as well as appellants-accused were present at the spot at the time of alleged occurrence. Then it is also established on the file that both the parties had participated in this occurrence actively and caused injuries to each other. From the complainant side, injured Baldev Singh after the alleged occurrence was medico legally examined by PW1 Dr. Avinash Kaur in Civil Hospital, Fatehgarh Sahib and his MLR with regard to the injuries had come on the record as Ex.PA.

(Para 28)

Further held, that then in this case the alleged occurrence took place on 21.9.1995. Now a period of about two decades has been passed since the date of the said occurrence.

(Para 31)

Further held, that in the light of the above discussion, the conviction of appellant Sukhdev Singh under Section 326, IPC and the

conviction of the remaining two appellants under Sections 326/34, IPC stands upheld and the appeal to this extent stands dismissed. However, in view of the above discussed circumstances as well as in the interest of justice, the substantive sentence of imprisonment imposed upon the appellants by the learned trial Court is reduced to rigorous imprisonment for 1 ½ years each. The sentence of fine is anyhow ordered to be maintained. So, the impugned order of sentence to the above-said extent is ordered to be modified accordingly and this appeal to this extent stands partly accepted and disposed in accordance thereof. Copy of this judgment be sent to learned trial Court as well as Chief Judicial Magistrate, Fatehgarh Sahib for the strict compliance and to commit the appellants to jail for undergoing the remaining sentence of imprisonment, if any, as per law and record after procuring their presence, if they do not surrender at their own within 15 days from today.

(Para 33)

H.S. Rakhra, Advocate *for the appellants*.

Svaneel Jaswal, D.A.G., Punjab.

GURMIT RAM, J.

(1) This appeal has been preferred by the above-said appellants Sukhdev Singh and others against the impugned judgment and order of sentence dated 28.1.2003 passed by the Court of learned Additional Sessions Judge, Fatehgarh Sahib in criminal case bearing FIR No.34 dated 22.9.1995, under Sections 323, 324, 325, 326, 307 read with Section 34 of IPC vide which the appellant Sukhdev Singh was convicted for the offence punishable under Section 326, IPC, whereas remaining two appellants were convicted for the offence punishable under Sections 326/34, IPC and sentenced there under.

(2) The story of the prosecution in brief before the learned trial Court was that on 21.9.1995, a wireless message was received by SHO, Police Station Amloh whereupon ASI Piara Singh, PS Amloh along with other police officials went to Civil Hospital, Fatehgarh Sahib for recording statement of injured Baldev Singh son of Bhagwant Singh. He sought opinion of the doctor for recording the statement of said injured, upon which, the doctor disclosed in writing that injured Baldev Singh has been referred to PGI, Chandigarh. Then said ASI Piara Singh along with other police officials reached at PGI, Chandigarh. After receiving ruqqa from Police Post, PGI, Chandigarh, he sought opinion

of the doctor qua injured Baldev Singh and the doctor declared him unfit to make the statement. One Major Singh son of Achhra Singh, resident of village Mararu eye-witness to alleged occurrence met him in the hospital, who made his statement before him with regard to the occurrence in question which is detailed as under:-

“That they are two brothers; his younger brother Harjinder Singh is married and they both are residing together; that they had purchased 8 bighas and 11 biswas land from one Baljit Singh, Sarpanch of his village vide a sale deed, mutation of which has been sanctioned in favour of both the brothers; that one Sukhdev Singh son of Sadhu Singh of his village had got stay qua the land purchased by them, which was vacated by the Court of SDJM, Amloh; that on 21.9.1995 at about quarter to 6:00 p.m., he along with his younger brother Harjinder Singh and his sister's husband Baldev Singh was tilling their said land with tractor and his mother's sister's son Darshan Singh was also sitting on the said tractor; that he and his sister's husband Baldev Singh was standing on the boundary of the field; that at that time accused Sukhdev Singh armed with gandasa, Teja Singh armed with a *daang* and Kala servant of Sukhdev Singh armed with a *daang* came at the spot; they raised *lalkara* that they are going to teach them a lesson for tilling the land; that on this his sister's husband Baldev Singh asked them that they are tilling the land purchased by them, as to why they are preventing them from doing so; that then at once accused Sukhdev Singh gave a *gandasa* blow to said Baldev Singh which hit him in his head above the left ear; that on receiving this injury he fell down and thereafter accused Teja Singh and Kala servant also gave him blows with *sotis*; that complainant raised an alarm '*na maro – na maro*'; that in the meantime his brother Harjinder Singh and his mother's sister's son Darshan Singh also reached there; that injuries were also caused to Sukhdev Singh and Teja Singh accused above-said by the complainant party in their self-defence; that all the above-said three accused ran away from the spot along with their respective weapons and that injured Baldev Singh became unconscious and was brought to Civil Hospital, Amloh from where the doctor referred him to Rajindera Hospital, Patiala after providing him first treatment. The cause behind this occurrence was that the

complainant party had purchased above-said land from Baljit Singh, the brother of accused Sukhdev Singh upon which Sukhdev Singh etc. were intending to encroach.”

(3) The contents of the above-said statement of complainant Major Singh were read over to him after recording the same by ASI Piara Singh, which he signed the same after admitting it to be correct. Upon this, ASI Piara Singh made his endorsement and on the basis of which, the instant case was registered. Injured Baldev Singh remained hospitalized in PGI, Chandigarh for treatment w.e.f. 21.9.1995 to 12.10.1995 i.e. for 23 days. Offence under Section 326, IPC, was added in this case on 18.11.1995 since the doctor gave his opinion that injuries on the person of Baldev Singh were grievous. Accused were arrested. As per the x-ray films and report, fracture was found in the head of the injured. The Investigating Officer visited the spot of occurrence and prepared the site-plan after its inspection. Statements of witnesses were recorded. On completion of investigation, challan in this case was presented in the Court of learned Sub-Divisional Judicial Magistrate, Almoh who further committed this case to the Court of learned Additional Sessions Judge, Fatehgarh Sahib for trial after making compliance of the provisions of Section 207 of Cr.P.C.

(4) After hearing the learned counsel for both the parties and going through the record annexed with the challan, the learned trial Court came to the conclusion that a prima-facie case under Sections 307/323 read with Section 34, IPC had made out against the accused and as such they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

(5) The prosecution in order to prove its case examined thirteen witnesses before the learned trial Court.

(6) Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against them was put to them, which was denied by them entirely. Further accused Sukhdev Singh took the plea that he is innocent and involved in this case falsely at the instance of complainant party in order to save their skin in the cross case. He further pleaded that his brother Baljit Singh had agreed to sell 8 *bighas* and 11 *biswas* of land to him about a month prior to the alleged occurrence. Thereafter, he sold this land to the complainant party. Since he was in possession of this land on the basis of agreement to sell dated 18.5.1995, he got a stay order from Civil Court against complainant Major Singh which was vacated on 21.5.1995 and on the same day at about 5/6:00 p.m.,

complainant Major Singh along with Harjinder Singh, Darshan Singh and Sukhdev Singh came to the said land and attempted to get its possession forcibly. He requested them not to do so by showing his intention to approach the Higher Court against the order vacating the stay to which they did not agree. Major Singh gave him a *soti* blow on the head, Harjinder Singh gave a *soti* blow on his wrist joint and Sukhdev Singh also gave him two *soti* blows on his right elbow and right flank. Further Darshan Singh also caused injury to Teja Singh by *gandasi* as well as *soti*. They were taken to the Civil Hospital, where they were medically examined and his statement was recorded by the police. Similar plea was also taken by the remaining two accused Teja Singh and Gurmail Singh in their defence. They all opted to lead defence evidence, however, the same was not led by them.

(7) The trial Court after hearing the learned Addl. Public Prosecutor for the State assisted by learned counsel for the complainant, learned defence counsel and going through the record held accused Sukhdev Singh guilty for the offence punishable under Section 326, IPC and also held the remaining two accused guilty for the offence punishable under Sections 326/34, IPC and convicted them vide the impugned judgment and order of sentence dated 28.1.2003 as under:-

- (i) Accused Sukhdev Singh RI for four years along with A FINE OF Rs.2000 under section 326 IPC and in default of payment of fine to further undergo RI for two months.
- (ii) Accused Teja RI for three years alongwith fine of Rs.2000/-under section 326/34IPC and in default of payment of fine to further undergo ri for two months.
- (iii) Accused General RI for three years along with fine of Rs.2000/-under section 326/34 IPC and in default of payment of fine to further undergo RI for two months.

(8) Appellants/accused feeling aggrieved against this judgment and order of sentence have come up in the instant appeal, notice of which was given to the respondent - State. Record of the learned trial Court was also requisitioned.

(9) The learned counsel for both the parties heard. Record was also scanned with their able assistance.

(10) Learned counsel for the appellants has contended that the impugned judgment and order of sentence are not tenable in the eyes of law being contrary to the law on the point and facts on the file. It is further his contention that the land which was purchased by the complainant party vide sale deed Ex.MO/4 dated 16.6.1995 was in physical possession of the accused persons and only symbolic possession was delivered to the complainant party vide said sale-deed. It is further his contention that the complainant party was the aggressor party since they tried to get possession of the above-said land purchased by them vide said sale deed from accused persons forcibly who were in physical possession of this land at that time. Even the appellants had also filed a suit for injunction in which a temporary injunction was granted in their favour which was any how vacated later on. Even the *khasra girdawari* of this land was also in favour of appellant Sukhdev Singh. Further the complainant party caused several injuries to the appellants while getting possession of the said land from the appellants forcibly. The learned trial Court had failed to take judicial notice of above-said all the facts while recording the impugned judgment and order of sentence and as such the same are liable to be set aside. Further, he prayed for the acceptance of this appeal and acquittal of the appellants.

(11) But on the other hand, learned State counsel has strongly denied the above-said contentions of the learned counsel for the appellants and has contended that the impugned judgment and order of sentence are perfectly valid and correct being in accordance with the ocular and medical evidence brought by the prosecution on record during the trial of the case. It is further her contention that injured Baldev Singh suffered grievous injury in the alleged occurrence at the hands of the appellants by means of a sharp edged weapon i.e. *gandasa* which caused a fracture of his skull, who remained hospitalized in PGI, Chandigarh for a sufficient long time for his treatment.

(12) Now the Court deems it necessary to discuss the evidence of prosecution in some brief and the other circumstances available on the record in order to appreciate the above rival contentions of both the parties.

(13) PW7 Major Singh – complainant as well as eye-witness to the alleged occurrence, precisely stated that on 21.9.1995 at about 5:45 p.m., he, Harjinder Singh, his sister's husband Baldev Singh and his mother's sister's son Darshan Singh were cultivating the land with a tractor driven by his brother Harjinder Singh. He and Darshan Singh

were standing on the boundary of the field where Sukhdev Singh armed with a *gandasa*, Teja Singh armed with *soti* and their servant Kala Singh armed with a *daang* came. Accused Sukhdev Singh gave a *gandasa* blow on the head of Baldev Singh from its sharp edged side which landed above his left ear. Accused Teja Singh and Kala Singh also gave him *soti* blows while he was lying on the ground. He raised hue and cry. In the occurrence, accused also suffered injuries at their hands in self-defence. Injured Baldev Singh was brought to Civil Hospital, Amloh from where he was referred to Rajindera Hospital, Patiala but due to his deteriorating condition, he was admitted in Civil Hospital, Fatehgarh Sahib from where he was referred to PGI, Chandigarh, where he remained hospitalized for 23 days. The police met him in PGI on 22.9.1995 and he got recorded his statement Ex.PL. Then it is further in his statement that on 6.10.1995 Sukhdev Singh got recovered a *gandasa* as per his disclosure statement Ex.PN, sketch of which Ex.PO was prepared and the same was taken into police possession vide memo Ex.PK after converting it into a parcel. Then further he produced some documents qua the land in dispute i.e. Ex.MO-1, Ex.MO-2, Ex.MO-3, sale deed (Ex.MO-4) and agreement of partition (Ex.MO-5) which were taken into police possession vide memo Ex.PJ.

(14) PW8 Baldev Singh was the injured as well as the eye-witness to the alleged occurrence. It was in his statement that accused Sukhdev Singh gave a *gandasa* blow which hit above his left ear on the head. Thereafter, he became unconscious. The remaining two accused also gave him *soti* blows on chest, feet as well as face. He was taken to PGI for his treatment, where he remained admitted for 22 days.

(15) PW1 Dr. Avinash Kaur was posted as Medical Officer at Civil Hospital, Fatehgarh Sahib on 21.9.1995. She medico-legally examined injured Baldev Singh on the said date at about 8:40 p.m. and found following injury on his person:-

(i) Incised wound present on the left temporal region which was 4 c.m. X 2 c.m. and bone deep. Bleeding was present.

It was 4 cm above the left pinna.

He was unconscious. The weapon used for this injury was sharp edged and probable duration between the causing of injury and medical examination was within six hours. Then further she proved the carbon copy of the MLR of this injured Ex.PA and the pictorial diagram Ex.PA/1 showing

the seat of injury. Then she also proved the application Ex.PB containing her initial at Point – A. The patient was referred to PGI, Chandigarh on the same very date at 11:00 p.m.

(16) PW2 Dr. Swaran Singh was posted as Medical Officer at Amlon on 21.9.1995. He sent report Ex.PD to the Police Station Amlon regarding patient Baldev Singh. He referred this patient to Rajindra Hospital, Patiala after giving first aid since the patient was having multiple injuries including suspected head injury.

(17) Then in his cross-examination, he stated that on the same day, he also medico-legally examined accused Sukhdev Singh son of Sadhu Singh, resident of village Marardu and found seven injuries on his person, all caused by blunt weapon as detailed in the carbon copy of his MLR Ex.DA. In this regard he also proved the pictorial diagram Ex.DA/1 showing the seats of injuries. Then it was also in his statement that on receipt of x-ray report Ex.DB of injured, injuries No.1, 2, 3 and 4 were declared as grievous in nature vide his report Ex.DC made on police request Ex.DC/1. Further he gave his opinion on police request Ex.DF on 22.9.1995 regarding fitness of injured Sukhdev Singh to make his statement vide his report Ex.DF/1.

(18) Then it is further in his cross-examination that on the same day, he also medico legally examined Teja Singh son of Hari Singh and found three injuries on his person out of which injuries No.1 and 2 were caused by sharp edged weapon while injury No.3 was caused by blunt weapon. Then he also proved the carbon copy of his MLR Ex.DG and pictorial diagram Ex.DG/1 showing the seats of injuries. On police request Ex.DH, he declared injury No.3 as grievous in nature vide his report Ex.DH/1.

(19) Statement of PW3 Vineet Kumar, PSO was to the effect that he collected x-ray films, case summary and x-ray reports. He got the clarification regarding injury of Baldev Singh vide his request application Ex.PE which was declared as grievous injury by the doctor.

(20) PW4 Dr. V.K. Khosla had produced the record of patient Baldev Singh son of Bhagwant Singh vide CR No.220285, the photocopy of which is Ex.PG. X-ray report of the patient and CT Scan showed the evidence of fracture of his skull. This patient was brought to PGI, Chandigarh on 21.9.1995 and was discharged on 12.10.1995 with further advise to attend the regular OPD. He was again admitted in

the said hospital on 3.2.1996 and discharged on 10.2.1996 vide discharge certificate, the photocopy of which is Ex.PG/1.

(21) PW10 SI Varinderjit Singh was posted as Incharge, Police Post Jalalpur, P.S. Amloh on 23.2.1996. Vide application Ex.PS, he sought the opinion of the doctor regarding injuries of Baldev Singh and the doctor opined the injuries dangerous to life vide Mark-A. He added the offence under Section 307, IPC, in this case.

(22) PW11 Dr. Mohinder Kaushal proved his opinion Ex.PA/1 vide which he declared injured Baldev Singh unfit to make his statement, on police application Ex.PA on 21.9.1995. Further he also proved an endorsement Ex.PW11/A vide which above-said injured was again declared unfit on the police application dated 23.9.1995. Further he also proved an endorsement EX.PW11/A vide which above-said injured was again declared unfit on the police application dated 23.9.1995.

(23) PW13 Dr. Ajay Aggarwal proved the x-ray films Ex.P1 to Ex.P4 issued by their department and his report Ex.PP based on these x-ray films.

(24) PW12 ASI Piara Singh was the Investigating Officer of this case. It was in his statement that on receipt of message regarding admission of injured Baldev Singh in Civil Hospital, Fatehgarh Sahib, he went to that hospital and moved an application Ex.PC upon which the doctor made endorsement Ex.PC/1 that the patient had been referred to PGI, Chandigarh. Thereupon, he came to PGI, Chandigarh and moved application Ex.PA to get the opinion of the doctor with regard to said injured who was again declared unfit to make his statement. One Major Singh relative of this injured met him in the hospital who got recorded his statement Ex.PL with regard to alleged occurrence, upon which he made his endorsement Ex.PL/1 on the basis of which FIR Ex.PL/2 was recorded.

(25) When he came back from PGI, Chandigarh then he received MLRs of Teja Singh and Sukhdev Singh of the other party upon which he reached at Civil Hospital, Amloh and recorded the statement of Teja Singh after getting opinion of the doctor. No separate FIR was registered as it was the case of the same occurrence. Thereafter, he visited the spot of occurrence and prepared the rough site-plan Ex.PW12/A. On 23.9.1995, he again visited PGI and sought opinion of the doctor with regard to fitness of injured Baldev Singh who was declared unfit by doctor vide endorsement Ex.PF. Then he

again visited this hospital on 25.9.1995, 27.9.1995, 28.9.1995, 29.9.1995 and 2.10.1995 for the above-said purpose and on all these dates injured Baldev Singh was declared unfit by the doctor vide his endorsements PW12/C, PW12/D, PW12/E, PW12/F and PW12/G, respectively. He arrested the accused on 6.10.1995 and during interrogation, accused Sukhdev Singh suffered disclosure statement Ex.PN regarding concealment of a *gandasa* who later on got recovered the same as per his disclosure statement from the disclosed place, rough sketch Ex.PO of which was prepared and the same thereafter was taken into police possession vide memo Ex.PK. Site-plan Ex.PW12/J with regard to place of recovery of this *gandasa* (Ex.MO1) was prepared. Then further he proved memo Ex.PW12/H vide which blood stained clothes of injured Baldev Singh were taken into police possession by converting them into a parcel. PW12/K is the report of Chemical Examiner.

(26) PW5 Jaspal Singh, copiest produced the record with regard to one civil suit No.353-A dated 17.7.1995 titled as Sukhdev Singh Versus Gurjit Singh and proved the copy of an order dated 20.9.1995 passed by the Court of Additional Senior Sub-Judge, Amloh Ex.PJ.

(27) PW9 C.Balkar Singh and PW11 HC Rakesh Kumar were the formal witnesses in this case and they tendered in their statements their duly sworn affidavits Ex.PR and Ex.PT, respectively.

(28) From the above discussed evidence of prosecution, it is quite clear that both the parties i.e. complainant party as well as appellants-accused were present at the spot at the time of alleged occurrence. Then it is also established on the file that both the parties had participated in this occurrence actively and caused injuries to each other. From the complainant side, injured Baldev Singh after the alleged occurrence was medico legally examined by PW1 Dr. Avinash Kaur in Civil Hospital, Fatehgarh Sahib and his MLR with regard to the injuries had come on the record as Ex.PA.

(29) In the cross-examination of PW2 Dr. Swaran Singh, it had also come that he medico-legally examined accused Sukhdev Singh son of Sadhu Singh on 21.9.1995 and proved his MLR Ex.DA showing seven injuries on his person out of which four injuries were declared as grievous vide his report Ex.DC made on the basis of x-ray report Ex.DB. Then on the same day, PW2 had also medico-legally examined accused Teja Singh son of Hari Singh and found three injuries on his

person as detailed in his MLR Ex.DG out of which injury No.3 was declared as grievous in nature vide his report Ex.DH/1.

(30) Then it was also the plea of the appellants-accused that the land on which the alleged occurrence took place was earlier in their cultivating possession which was allegedly purchased by the complainant vide sale deed Ex.MO/4. The accused party requested the complainant party not to take possession of this land forcibly since the accused party wanted to file an appeal against the order vide which stay was vacated by the Court to which the complainant party did not accede to which ensued the alleged occurrence. Then injured accused Sukhdev Singh was declared fit to make his statement by PW2 Dr. Swaran Singh vide his report Ex.DF/1 and injured accused Teja Singh was declared to be fit to make his statement vide his report Ex.DI/1. Then it has also come in their statements recorded under Section 313, Cr.P.C. that their statements were recorded by the police. Then it is also a fact that injured Sukhdev Singh and Teja Singh-accused did not take any step further after recording of their said statements in order to substantiate their plea of cross version case. But the above discussed medical evidence establishes on the record that it was a case of cross fight in which both the parties participated and sustained injuries. Then it is the case of prosecution itself that the complainant party had also caused some injuries to the accused persons in their self-defence.

(31) Then in this case the alleged occurrence took place on 21.9.1995. Now a period of about two decades has been passed since the date of the said occurrence.

(32) As above discussed, both the parties had suffered simple, as well as grievous injuries in this occurrence. Now by this time appellants-accused Sukhdev Singh and Teja Singh might be around 65 years of age. As per the record, appellant-accused Gurmail Singh was stated to be labourer and his age by this time might be around 41 years. Then it was the case of appellants that appellant-Sukhdev Singh was in possession of the land in question at the relevant time and the complainant party attempted to take its possession from the appellants forcibly, which resulted into the alleged occurrence.

(33) In the light of the above discussion, the conviction of appellant Sukhdev Singh under Section 326, IPC and the conviction of the remaining two appellants under Sections 326/34, IPC stands upheld and the appeal to this extent stands dismissed. However, in view of the above discussed circumstances as well as in the interest of justice, the substantive sentence of imprisonment imposed upon the appellants by

the learned trial Court is reduced to rigorous imprisonment for 1 ½ years each. The sentence of fine is anyhow ordered to be maintained. So, the impugned order of sentence to the above-said extent is ordered to be modified accordingly and this appeal to this extent stands partly accepted and disposed in accordance thereof.

(34) Copy of this judgment be sent to learned trial Court as well as Chief Judicial Magistrate, Fatehgarh Sahib for the strict compliance and to commit the appellants to jail for undergoing the remaining sentence of imprisonment, if any, as per law and record after procuring their presence, if they do not surrender at their own within 15 days from today.

Arihant Jain

Before S.J. Vazifdar, ACJ & Tejinder Singh Dhindsa, J.

KAMAL KUMAR — *Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.17065 of 2014

September 24, 2015

Constitution of India, 1950 — Art. 226 — Haryana Urban Development Authority Act, 1977—S.17 — Petitioner, a successful auction purchaser of a booth site deposited 10% of the price on the spot on 05.03.1980 — In terms of the allotment letter, 15% of the price deposited within 30 days — Thereafter, the petitioner defaulted in the payment of half yearly installments after paying three installments, because no development had been carried out in the area — However, the petitioner deposited a sum of Rs. One Lakh between Sept. 1996 and Sept. 1997 — Against the purchase price of Rs.38,600/- a sum of Rs.1,25,000/- was deposited before the order of resumption was passed — Court held that resumption is an ultimate civil sanction and has to be used as weapon of last resort—Order of resumption set aside — Writ petition allowed.

Held that Section 17 of the Haryana Urban Development Authority Act, 1977 confers a confiscatory power that empowers the respondents to resume a plot and forfeit part of the consideration amount. Under Clause 8 of the allotment letter dated 28.7.1980,