Before A.N. Jindal, J.

SHAHBEG SINGH AND OTHERS,—*Appellants*

versus

STATE OF PUNJAB,—*Respondents*

CRIMINAL APPEAL NO. 743/SB OF 1995

14th March, 2007

Indian Penal Code, 1860—Ss. 307/326/323/34—Conviction of appellants for causing injuries—Prosecution failing to prove detailed operation note made by doctors either by examining any of doctor or in any other manner—Operation note transpires that doctors operating upon injured did not form any specific opinion that injuries were dangerous to life—No case made out under section 307/326—Accused guilty of offence under section 323/324/34—Accused suffering agony of trial since 1988—Sentence awarded to accused modified to period already undergone while imposing condition to pay compensation of Rs. 40,000 to all four injured persons.

Held, that admittedly Dr. Jaimal Singh and Dr. Arun Chawla operated upon injured Puran Singh and made a detailed operation note dated 6th September, 1988 but neither the said note has been proved by examining any of the doctors nor it was proved in any other manner. On perusal of the operation note placed on the file, it transpires that the doctors operating upon the injured, did not form any specific opinion that these injuries were dangerous to life. The injury was in the abdomen. The doctors opened the stomach but did not mention if there was any damage to the peritoneum cavity or any other sensitive part of the body, sufficient to hold the injuries dangerous to life.

(Para 5)

Further held, that injury No. 1 was kept under observation for X-ray and Surgeon's opinion but neither X-ray nor Surgeon's opinion has been brought on record. The prosecution had staked its claim to hold the accused guilty on the basis of injury No. 2 on the person of Swinder Singh in which the doctor mentioned that underlying bone was cut .2 cm deep. There is nothing on record as to how the

doctor measured this depth. Further, the doctor opined that the possibility of injury No. 1 on the person of Swinder Singh as a result of fall could not be ruled out. This injury was a cut and, therefore, it can be anticipated that this cut/injury may be superficial in nature. As such in the absence of any X-ray report, this nominal cut in the bone could not be declared as grievous. Even otherwise, this nominal cut of .2 cm cannot be treated as a serious bone cut so as to hold the accused guilty of the offence under Section 326 IPC. Resultantly, this Court deems it appropriate to interfere in the impugned judgment to the afore-mentioned terms and uphold the judgment to the extent that the accused persons were guilty of the offence under Sections 323/324 read with Section 34 IPC.

(Para 7)

T.N. Gupta, Advocate, *for the appellants.*

M.S. Joshi, DAG, Punjab, *for the respondent.*

JUDGMENT

A.N. JINDAL, J.

(1) Accused-appellants Shahbeg Singh, Gurmej Singh and Pargat Singh (hereinafter to be referred as 'the accused') faced trial under Sections 307/326/323/34 of Indian Penal Code for causing injuries to Swinder Singh PW2, Puran Singh PW3, Kewal Singh PW4 and Gurdip Kaur PW5 on 5th September, 1988.Consequently, they were convicted for the aforesaid offences and sentenced as under :

Shahbeg Singh Convict :

Under Section 307 IPC :	RI for 7 years and to pay fine of Rs. 1000 in default to undergo further RI for four months
Under Section 326 IPC :	RI for three years and to pay fine of Rs. 500 in default of payment of fine to undergo further RI for two months.

Under Section 323/34 IPC :	RI for one year.
Under Section 323/34 IPC :	RI for one year.
Gurmej Singh Convict :	
Under Section 307/34 IPC :	RI for 7 years and to pay fine of Rs. 1000 in default to undergo further RI for four months
Under Section 326/34 IPC :	RI for three years and to pay fine of Rs. 500 in default of payment of fine to undergo further RI for two months.
Under Section 323 IPC :	RI for one year.
Under Section 323/34 IPC :	RI for one year.
Pargat Singh Convict :	
Under Section 307/34 IPC :	RI for 7 years and to pay find of Rs. 1000 in default to undergo further RI for four months
Under Section 326/34 IPC :	RI for three years and to pay fine of Rs. 500 in default of payment of fine to undergo further RI for two months.
Under Section 323/34 IPC :	RI for one year.
Under Section 323 IPC :	RI for one year.

(2) The factual matrix of the case is that the farm house of the accused and the complainant adjoin each other and there is a passage which while passing by the side of the farm house of the complainant party approaches to the house of the accused party. A few days prior to the occurrence accused Shahbeg Singh had uprooted some pegs which the complainant had affixed in their land about which Puran Singh injured had lodged a protest with Makhan Singh, father of Shahbeg Singh and Gurmej Singh. On the next day i.e. 5th September, 1988 at 7 P.M. when the complainant party was present at their own tubewell Shahbeg Singh armed with a Spear, Gurmej Singh and Pargat Singh armed with Gandasis came there. While

exhorting to teach a lesson for affixing the pegs near the path way, Gurmej Singh accused inflicted a Gandasi blow on the right leg of Swinder Singh, Kewal Singh when came at the rescue Swinder Singh then Pargat Singh inflicted a Gandasi blow on his head. When Puran Singh rushed to rescue them, accused Shahbeg Singh inflicted 2-3 Spear blows in his abdomen. Gurdip Kaur, mother of Swinder Singh raised alarm, whereupon Gurmej Singh inflicted a Gandasi blow on her head. When accused Pargat Singh was about to give a blow to his mother Gurdip Kaur, Swinder Singh advanced to save her but the accused Pargat Singh again inflicted a Gandasi blow from its reverse side on her head. Thereafter, all the accused left the place of occurrence. Consequently, they were admitted in the hospital where they were medicolegally examined on 6th September, 1988. FIR Ex. PF/2 in this regard was registered on 11th September, 1988. Consequently, on completion of investigation, all the accused were challaned for the aforesaid offence. When charges under Sections 307/326/323/34 IPC were framed against the accused, they pleaded not guilty and claimed trial.

(3) During evidence, the prosecution examined Dr. R.K. Gorea (PW1), Swinder Singh, injured (PW2), Puran Singh injured (PW3), Kewal Singh, injured (PW4), Gurdip Kaur, injured (PW5), Dharam Pal ASI (PW6), ASI Balbir Singh, I.O. (PW7), Rishi Ram, Draftsman (PW8) and Dr. Gurjit Singh (PW9). On closure of the prosecution evidence when examined under Section 313 Cr. P.C. all the accused denied the imputations appearing against them and pleaded their false implication in the case. After tendering into evidence copy of the statement of Dr. Ashok Channa, they closed their defence. The trial ended in conviction, hence this appeal.

(4) At the very outset, Shri T.N. Gupta, learned counsel appearing for the appellants did not assail the findings of the trial Court that the occurrence had taken place at the farm house of Puran Singh. The complainant party was not the aggressor whereas accused party took the lead in commission of the crime and the right of private defence is not available to them. However, he has assailed the impugned judgment mainly on the ground that no effence under Sections 307/ 326 IPC is made out against the accused and if they could be held guilty them only offence under Sections 324/323/34 IPC was made out. He did not dispute the fact that Dr. R.K. Gorea PW1 in his

statement deposed that injuries on the person of Puran Singh were declared dangerous to life and injury No. 2 on the person of Swinder Singh was declared grievous but the opinion of Dr. R.K. Gorea is of no consequence in the absence of examination of the doctor, who had operated upon Puran Singh.

(5) Having given my thoughtful consideration to this contention raised by the learned counsel for the appellants, I find some merit in the same. Admittedly, Dr. Jaimal Singh and Dr. Arun Chawla operated upon injured Puran Singh and made a detailed operation note dated 6th September, 1988 but neither the said note has been proved by examining any of the doctors nor it was proved in any manner. On perusal of the operation note placed on the file, it transpires that the doctors operating upon the injured, did not form any specific opinion that these injuries were dangerous to life. The injury was in the abdomen. The doctors opened the stomach but did not mention if there was any damage to the peritonium cavity or any other sensitive part of the body, sufficient to hold the injuries dangerous to life. They did not mention if during the period of his admission in the hospital from 6th September, 1988 14th September, 1988 the condition of the injured ever deteriorated. It may further be mentioned that this report made by Dr. R.K. Gorea after one month and 24 days of the examination of the injured is of no consequence. It has not been explained by the prosecution as to what transpired after one month and 24 days to seek the opinion of the Dr. R.K. Gorea and why the opinion of Dr. Jaimal Singh and Dr. Arun Chawla was not obtained with regard to the nature of injuries. In any case in the absence of the examination of the doctor, who examined the injured, the report with regard to the nature of injuries is of no consequence. I find support to my view from the authority of the Delhi High Court **Nazar Mohd. @ Hanuman** *versus* **State of Delhi (Delhi) (1)** wherein it was observed as under :

> "The Doctor who declared the injuries to be grievous has not been examined and thus we do not have on record the material to indicate as to what were the reasons for the doctor coming to the conclusion that the injuries were grievous in nature. The MLC does not indicate that there was any fracture nor there is any such claim by Kanhiya

(1) 1995 (I) R.C.R. 529

Lal injured. In these circumstances. I am clearly of the view that the injuries have to be termed as simple caused by sharp object and in this way offence would fall under Section 324. In case **Ganga Ram** *versus* **State,** [(1968 Crl. L.J. (Vol. 74)] it has been held that even if the Doctor examined but the record of the operation, etc. is not produced and it is not clear from his statement as to how he came to the conclusion about the injury to be 'grievous' if should be deemed to be "simple" in nature. In case **Om Parkash Daulat Ram** *versus* **State,** [1969 Crl. LJ (Vol. 75) 250]. It has been held that if the reasons on which the injuries are declared as grievous are not given in court, the same are to be treated as 'simple'. In these circumstances the offence proved against the appellant would be under Section 324, IPC only."

(6) Now coming to the injury declared grievous by Dr. R.K. Gorea on the person of Swinder Singh, it may be observed that it will be appropriate to reproduce the injuries on the person of Swinder Singh, which are reproduced hereunder :—

"2. An incised wound 1.5×0.8 cm. on the front of right leg 7cm below tibial tuberosity. It was bone deep, underlying bone was cut which was 0.2 cm deep. It was bleeding and transversely placed."

(7) Injury No. 1 was kept under observation for X-ray and Surgeon's opinion but neither X-ray nor Surgeon's opinion has been brought on record. The prosecution had staked its claim to hold the accused guilty on the basis of injury No. 2 on the person of Swinder Singh in which the doctor mentioned that underlying bone was cut .2 cm. deep. There is nothing on record as to how the doctor measured this depth. Further, the doctor opined that the possibility of injury No. 1 on the person of Swinder Singh as a result of fall could not be ruled out. This injury was a cut and therefore, it can be anticipated that this cut/injury may be superficial in nature. As such in the absence of any X-ray report, this nominal cut in the bone could not be declared as grievous. Even otherwise, this nominal cut of .2 cm. cannot be treated as a serious bone cut so as to hold the accused guilty of the offence under Section 326 IPC. Resultantly, this Court deems it appropriate to interfere in the impugned judgment to

the afore-mentioned terms and uphold the judgment to the extent that the accused persons were guilty of the offence under Sections 323/324 read with Section 34 IPC.

(8) Now coming to the quantum of sentence. The accused have already suffered the agony of trial as well as the appeal which is of the year 1988, therefore, it will be expedient in the interest of justice to take a lenient view that sentence awarded to the accused deserves to be modified and the injured can be compensated for the injuries which they suffered at the hands of the accused.

(9) For the foregoing reasons, I partly accept the appeal and set aside the impugned judgment and convict the accused under Sections 323/324 read with Section 34 IPC and sentence them to the period already undergone by them. However, the sentence of fine shall remain intact. It is further made clear that all the three accused shall pay Rs. 40,000 as compensation in equal shares to all the four injured which will be shared by the injured equally and the same would be deposited before the trial Court within three months from today failing which the appeal shall be treated as dismissed.

R.N.R.

Before Mahesh Grover, J.

HARDEV SINGH AND ANOTHER,—*Petitioners*

versus

SATNAM KAUR,—*Respondent*

CRIMINAL MISC. NO. 28839/M OF 2006

12th January, 2007

Code of Criminal Procedure, 1973—S. 482—Quashing—Matrimonial dispute—Complaint u/s 406/34 IPC by wife against her husband, brother-in-law and sister-in-law—Brother-in-law and sister-in-law (petitioners) seeking quashing of FIR—No specific allegations against petitioners—Petitioners septuagenarians—Provisions of IPC and Evidence Act for protection of women open to misuse—Courts while proceeding against accused named in complaint should be very cautious—Petition allowed, complaint and subsequent proceedings qua petitioners quashed.