

just decision of the suit. Parties arrayed as defendants in a suit, having taken contradictory stands on a relevant and material issue, shall be adversary to each other and entitled to exercise their right of cross-examination against each other. Sadhu Singh, defendant-petitioner, therefore, had a right to cross-examine his co-defendant Inder Singh and it was wrongly disallowed by the trial Court.

(11) In the result, the present revision is accepted and the impugned order set aside. The parties are left to bear their own costs.

N. K. S.

Before A. S Bains J.

BALWANT SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 302 of 1978.

May 15, 1978.

Indian Penal Code (45 of 1860)—Sections 320 and 326—Partial cut of a bone—Extent and depth of such cut not indicated—Offence of grievous hurt—Whether made out.

Held, that from a reading of section 320 of the Indian Penal Code 1860, it is plain that a hurt can be designated as grievous only if there is fracture or dislocation of bone or tooth. If the extent of the cut, fracture or dislocation of bone is not designated or clarified and it is not shown as to whether the cut is deep or a mere scratch on the surface, it would not be proper to infer that the injury is grievous. As such the offence would not fall within the mischief of section 326.

(Para 4).

Petition under section 401 of the Cr. P.C. for the revision of the order of Shri N. S. Bhalla, Sessions Judge Kapurthala, dated 13th March, 1978, affirming that of Shri H. C. Modi, C.J.M. Kapurthala, dated 25th April, 1977, convicting the petitioners.

Charges and Sentences:—

Dharam Singh:—U/s 326 IPC and Balwant Singh and Gurcharan Singh u/s 326/34 IPC, each to undergo R.I. for two years and

Balwant Singh and others v. State of Punjab (A. S. Bains, J.)

to pay a fine of Rs. 200 each or in default to further undergo R.I. for 6 months each.

Gurcharan Singh:—U/s 324 IPC, and Dharam Singh and Balwant Singh u/s 324/34 IPC, each to undergo R.I. for one year

Balwant Singh:—U/s 324 IPC and Dharam Singh and Gurcharan Singh u/s 324/34 IPC, each to undergo R.I. for one year. Each of the three accused to undergo R.I. for six months u/s 323 I.P.C.

All the sentences shall run concurrently.

Y. P. Gandhi, Advocate, for the Petitioners.

N. S. Bhatia, Advocate, for the State.

JUDGMENT

A. S. Bains J.—(Oral). (1) The only point urged in this petition is that the petitioners cannot be convicted and sentenced under section 326, Indian Penal Code, as recorded by the Courts below. According to the doctor the following injuries were caused to the complainants:—

1. *Incised wound 4 cm × 1½ cm × bone deep on the front of left leg 14 cms below the knee. Advised X-ray.*
2. *Incised wound 2 cm × ¼ cm × skin deep on the back of left leg. 12 cms below the knee.*
3. *Incised wound 2 cm × ¼ cm × ¾ cm on the front of left middle finger first phalynx. Advised X-ray.*
4. *Incised wound 2 cm × ¼ cm × ¼ cm on the front of left ring finger first phalynx.*
5. *Contusion 5 cm × ¼ cm on thenar eminence, of righthand.*
6. *Abrasion 1½ cm × ¼ cm on the back right shoulder 9 cm below the top of shoulder.*
7. *Contusion 27 cm × 2 cm on both sides of back of chest 9 cm below the level of neck.*

8. Contusion 8 cm×3 cm on back of the left shoulder, 4 cm below the top of the shoulder.
9. Contusion and abrasion 12 cm×1 cm on the back of the left shoulder, 4 cm below injury No. 8.
10. Contusion and abrasion in area 11 cm×10 cm on the back of the left chest, 3 cm below injury No. 9. Advised X-ray.
11. Abrasion 12 cm× $\frac{1}{2}$ cm on both sides or back of chest lower part.
12. Abrasion 6 cm× $\frac{1}{2}$ cm on the back of right side of chest lower part.
13. Contusion 7 cm×1 cm on the back of the left fore-arm, 8 cm below the elbow.
14. Abrasion 3 cm× $\frac{1}{2}$ cm, on the left side of head 18 cm above the neck and 5 cm away from the mid line.

(2) The doctor further stated that all abrasions were red in colour and incised wounds bled on touch. Injury No. 1, 3 and 10 were kept under observation while others were declared simple. They were caused within 12 hours. Injuries No. 1, 2, 3 and 4 were caused by sharp edged weapon. X-Ray examination showed a partial cut of left tibia bone underneath injury No. 1 was declared as grievous. No fracture was detected under inquiry No. 3 and 10 and these were declared as simple.

(3) Thus it is clear that the doctor has not said in his statement or in his cross-examination that there is a fracture in bone. He only says that there is a partial cut of left tibia bone. Section 320 Indian Penal Code defined grievous hurt in the following terms:—

320. The following kinds of hurt only are designated as "grievous."

Seventhly:—Fracture or dislocation of a bone or tooth." From the reading of the above provisions, it is plain that a hurt can be designated as grievous only if there is fracture or dislocation of a

Balwant Singh and others v. State of Punjab (A. S. Bains, J.)

bone or tooth. In *Mutukdhari Singh and others v. Emperor* (1) it was observed as under:—

“Where the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut whether deep or a mere scratch upon the surface it is impossible to infer from that evidence alone that grievous hurt has been caused within the meaning of the definition in S. 320.”

In *Maung Poyi v. Ma E Tin and another* (2) it was observed as under:—

“In my view there is nothing this which even remotely suggests a fracture. The primary meaning of the word “fracture” is “breaking” though it is conceded that it is not necessary in the case of a fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack; but the point is that if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface. I am, therefore, of the opinion that the accused were guilty of offences under Section 324, I.P.C., and S. 324 read with Section 109 IPC.”

(4) As observed earlier, there is only partial cut of left tibia bone underneath injury No. 1, and there is nothing in the medico-legal report indicating the extent of the cut, whether deep or mere scratch on the surface. In the absence of the extent of the cut, fracture or dislocation of the bone, it is not safe to designate injury No. 1 as grievous. All other injuries were simple. Hence the offence does not come within the mischief of section 326, Indian Penal Code. Accordingly the conviction and sentence of the petitioners under sections 326 and 326 read with 34 Indian Penal Code are set aside. They are guilty of offences punishable under sections 324 and 323 read with section 34 Indian Penal Code only.

(5) Mr. Gandhi has prayed that they are first offenders and the dispute is between the nephews and the uncle and that they may

(1) A.I.R. 1942 Patna 376.

(2) A.I.R. 1937 Rangoon 253.

be released on probation. Mr Bhatia, the learned counsel for the state does not oppose this prayer to release the petitioners on probation. Accordingly, in view of the circumstances of this case, as the near relations are involved, I direct that the petitioners be released on probation of good conduct. The petitioners are directed to furnish bonds in the sum of Rs. 1,000 each with one surety in the same amount to the satisfaction of the trial Court. They are further directed to appear and receive the sentences whenever called for during this period and they are directed to keep peace and be of good behaviour in the meantime. With this modification the petition is disposed of.

N.K.S.

Before A. S. Bains J.

UTTAM CHAND AND OTHERS—*Petitioners*

versus

INCOME TAX OFFICER—*Respondent.*

Criminal Revision No. 15-M of 1976.

May 22, 1978.

Income Tax Act (II of 1922)—Section 277—Indian Penal Code (45 of 1860)—Sections 193, 196, 467 and 471—Criminal Procedure Code (2 of 1974)—Section 482—Income-Tax Officer cancelling registration of a firm holding it to be not genuine—Such order set aside in appeal by Income Tax Appellate Tribunal—Findings of the Tribunal—Whether a bar to the proceedings under Section 277—Such Proceedings—Whether an abuse of the process of the Court—Tests for the applicability of Section 482—Stated.

Held, that the proceedings before the Criminal Courts are entirely independent of the findings of the Income Tax Appellate Tribunal and that these findings are not binding on the Criminal Courts. The Criminal Court is to independently go into the matter and if on evidence adduced by the Revenue it comes to the conclusion that any offence is made out against an assessee then it will convict him and if it comes to a conclusion that no offence is made out then it will acquit him. The assessee can even produce in his defence the judgment of the Tribunal before the Magistrate subject to its admissibility under the Evidence Act. Thus, the fact that the