Annexures P-1 are quashed *qua* the petitioners in these writ petitions. C.W.P. No. 560 of 1980 is allowed only *qua* Rajbir Singh petition No. 3. The writ petition of the other two petitioners No. 1 and 2 are dismissed. In view of the peculiar circumstances of the case, there will be no order as to costs.

*Before D. S. Tewatia and R. N. Mittal, JJ.*

ATMA SINGH,—*Appellant.*

*versus*

STATE OF PUNJAB,—*Respondent.*

*Criminal Appeal No.* 1077 *of* 1976.

July 14, 1980.

*Indian Penal Code (XLV of 1860)—Sections 320 and 326—Injury described as 'dangerous to life'—Whether synonymous with the injury which 'endangers life'—Former injury—Whether can be treated as 'grievous hurt'—Duty of Court to find the nature of the injury—Stated.*

*Held,* that the doctors who conduct the medico legal examinations have been using the term 'dangerous to life' as synonymous with an injury which 'endangers life'. Even the court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code 1860. The expression 'dangerous' is an adjective and the expression 'endanger' is a verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320 of the Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described is that the injury was 'dangerous to life' meaning both the time the same thing. It cannot, therefore, be said that the expression 'dangerous to life' is somewhat milder and subdued as compared to the expression 'endangered life' used in clause Eighthly of section 320 of the Code. (Paras 8, 11 and 12).

*Held,* that 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 has to apply its own mind and form its own opinion in regard to the nature of injury having regard to the factors that should weigh with the court. Whenever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a 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 Code. (Para 17).

*Jagrup Singh* versus *The State of Punjab*, 1973 C.L.R. 25.

*Harbans Singh and others* vs. *State of Punjab* Crl. Appeal No. 1007 of 1975 *decided on February* 8, 1979.

*Surjit Singh @ Kala* vs. *State of Punjab Crl. Appeal No.* 355 *of* 1976 *decided on*

OVER RULED

*Appeal from the order of Shri Gian Inder Singh, Additional Sessions Judge, Amritsar, dated 2nd August, 1976, convicting & sentencing the appellant.*

*Charge*: *Under Section* 307 *of the Indian Penal Code.*

*Sentence*: *R. I. for three years and fine of Rs.* 300. *In default of payment of fine R. I. for four months.*

Harinder Singh and Raj Kumar Garg, Advocates, *for the appellant.*

D. S. Keer, Advocate, for A.G., Punjab, *for the respondent.*

JUDGMENT

*D. S. Tewatia, J.*

(1) Sohel Singh and his son Atma Singh were tried for an attempt on the life of Hans Raj (PW 7). While Sohel Singh was acquitted, Atma Singh was found guilty of the offence under section 307 of the Indian Penal Code and sentenced to 3 years' rigorous imprisonment with a fine of Rs. 300, in default of payment thereof to four months' further rigorous imprisonment.

(2) The prosecution case, briefly put, was that the injured witness was a tenant of the accused on the ground floor. On the night of occurrence at about 9.00 p.m. the accused called out the

injured PW outside the house and peremptorily asked him to vacate the house then and there. A negative response from the injured PW led to an assault on him by Atma Singh with a knife which he plunged into his chest when Sohel Singh held him.

(3) It has been contended on behalf of the appellant that evidence adduced by the prosecution does not disclose a motive from which an inference of the kind envisaged in clause firstly and secondly of section 300 of the Indian Penal Code can be inferred, nor the injury is of a type from which necessary inference of the kind envisaged in clause 3rdly be inferred. The learned counsel for the appellant argued that in view of the above, offence under section 307 of the Indian Penal Code is not established.

(4) There is no doubt that the motive actuating the accused was not one from which one can conclude that they intended to commit the murder of the injured PW. The motive at best was to overawe and threaten the injured PW to begin with. It must be the manner of refusal that must have brought upon him the assault in question. However, since the accused had armed himself with a knife, he must have done so with an intention to make use of it, if need arose. In the circumstances, moreso, when the accused must have known that nobody at that hour of the night could be prepared to vacate the house, it would be taken that they had come truly to pick up a quarrel with the injured PW in which use of knife had been intended. Accordingly, the accused is held to be harbouring an intent of at least causing grievous hurt.

(5) Before examining this aspect further, let us have a look at the medical evidence and the injury detected on the person of the injured P.W. Dr. Surinderpal Singh (P.W. 3), on examination, found solitary injury of the following description on the person of the injured PW :—

> An incised stab wound $\frac{3}{4}$ cms. $\times$ $\frac{3}{4}$ cms. on the left lateral side of the chest in the mid axillary line 10 cms. to the left side of nipple at its level. 7 cms. below the roof of the axilla. Wound almost longitudinally placed.

He was of the opinion that the injury was caused by sharp-edged pointed weapon. Without probing the depth of injury, he, however, advised X-ray and operation.

(6) Dr. P. S. Bedi (P.W. 2) performed operation on 29th October, 1975. He described the injury as dangerous to life and stated that the injured would have died had the operation not been performed upon him.

(7) Learned counsel for the appellant contended that the injury found on the person of the injured PW. was not grievous and, therefore, the offence falls within the purview of section 324 of the Indian Penal Code and not under section 326 of the Indian Penal Code. It has been canvassed on behalf of the appellant that before an injury can be considered grievous it must fit in under any of the eight clauses of section 320 of the Indian Penal Code. It is admitted on both ends that the injury does not answer to the description given in clause first to seventh of section 320 of the Indian Penal Code. Learned counsel for the respondents argued that the injury in question falls under first part of clause Eighthly. Clause Eighthly of section 320 is in the following words :

"320.

Eighthly :—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

(8) Mr Harinder Singh, learned counsel for the appellant, has contended primarily on the strength of a Single Bench decision of this Court reported as *Jagrup Singh* versus *The State of Punjab* (1) and few other Single Bench decisions, following the said decisions, which shall be mentioned presently, that the expression "dangerous to life" is somewhat milder and subdued as compared to the expression "endangered life" used in clause Eighthly of section 320 of the Indian Penal Code and, therefore, an injury which is described by the doctor as 'dangerous to life' cannot be held to be one which endangered life. S. C. Mittal, J. deciding *Jagrup Singh's* case expressed himself in the following words while interpreting clause Eighthly of section 320 of the Indian Penal Code :—

"Clause (8) refers to injuries which are not only dangerous but which endanger life — a much stronger expression. This term is designedly used to exclude cases of hurt,

(1) 1973 C.L.R. 253.

which, however, dangerous to life do not put life in a given case in danger. The question is one of degree and must be ascertained in each case to what extent the hurt bears proximate relation to the risk of life. Applying that test to the facts of the case in hand, it bears repetition that the doctor nowhere said that the abdomen injury endangered the life of Kehar Singh."

(9) With utmost respect we find it difficult to accept the view expressed by S. C. Mital, J.

(10) When the doctor is required to carry out medico-legal examination of the injury suffered in a criminal assault, he is required to examine the injury from two stand points (1) for the purpose of opining the kind of weapon used to inflict the injury in question and (2ndly) to form an opinion regarding the degree of seriousness of the injury in order to enable to see as to what offence has the accused committed by inflicting the injury in question. The Indian Penal Code recognises from standpoint of seriousness only four types of injuries (1) simple injuries; (2) grievous; (3) injuries of the kind inflicting with intent to commit murder described in clause Firstly and 2ndly of section 300 of the Indian Penal Code, (4) injury sufficient to cause death in the ordinary course of nature envisaged by clause Thirdly of Section 300 of the Indian Penal Code. There is no provision in the Indian Penal Code which envisages or refers to an injury described as 'dangerous to life'. The medico-legal examination of an injured person is intended to enable the Investigating Agency and the Court to find out the nature of the offence and, therefore, the doctor examining an injured person has to opine that the injury in question is one or the other of the type recognised in the Indian Penal Code for the purposes of a given offence. When a doctor describes an injury as 'dangerous to life' one has to see what had the doctor intended to convey thereby. Is one to hold that since injury has not been described by the doctor as one which 'endangered life', so the concerned injury cannot be held to be grievous on the specious ground that an injury described as 'dangerous to life' is not as serious an injury which 'endangers life.'

(11) It appears that the doctors who had been conducting the medico-legal examinations have been using the term 'dangerous to life as synonymous with an inquiry which endangers life'. Even the

Court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code. In this regard reference can be made to *Muhammad Rafi* v. *Emperor* (2). In that case the injury was on the right side of the neck about 2½" x ¾" in dimension inflicted with a sharp edged weapon. The doctor had, in fact, in that case deposed that there was every possibility of the deceased surviving but for the wound becoming septic apparently as a result of it being pressed with hands and bandaged with dirty cloth in the initial stages before the deceased was taken to the hospital. The Court held that though a finding that the appellant knew that his act was likely to cause death, was not justified but at the same time, a wound on the neck, must at least be considered to be 'dangerous to life' within the meaning of Cl. 8, section 320, Indian Penal Code, and therefore, 'grievous'.

(12) Palekar, J. too in *Jai Narain Mishra & others* vs. *State of Bihar* (3) held a penetrating wound 1½" × ½" chest wall deep on the right side of the chest caused with a *bhala* and described as 'dangerous to life', as grievous injury and in the later part of paragraph 11 called this injury as one endangering life.

(13) The expression 'dangerous' is an adjective and the expression 'endanger' is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of section 320, Indian Penal Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described it that the injury was 'dangerous to life', meaning both the time the same thing.

(14) *K. S. Tiwana, J. in Sukhdev Singh* versus *The State of Punjab* (4), was concerned with the statement of a doctor who had merely externally examined the injury and had opined it to be dangerous to life. The doctor who had performed the operation had not preferred any opinion. The injury was a penetrating wound with clean cut margins of the size of 1¼" × ½" on the left side of

(2) AIR 1930 Lahore 305.
(3) 1972 CAR 19 (S.C.).
(4) Crl. Appeal No. 1490 of 1974 decided on January 18, 1979.

chest, 5" below the nipple. The depth of the wound was not measured by the doctor who had given the opinion. In this case the learned Judge did not accept the opinion of the doctor that the injury was dangerous to life on the ground that he was not qualified to say so merely by looking at the injury and the one who had performed the operation and had seen the damage had not given any such opinion. The learned Judge did not go into the question that an injury described as dangerous to life in no case could be considered as a grievous injury.

(15) S. S. Dewan, J. in *Harbans Singh and others* versus *The State of Punjab* (5) observed as did S. C. Mital, J. in *Jagrup Singh's* case that the term 'dangerous to life' is milder than the expression 'endangers life'. He merely followed his earlier decision holding that an injury described as dangerous to life cannot be considered grievous.

(16) A. S. Bains, J. in *Surjit Singh alias Kala* versus. *The State of Punjab* (6), merely followed the decision in *Jagrup Singh's case* and held that injury described as 'dangerous to life' would not satisfy the requirement of clause 8 of section 320, Indian Penal Code and would not be a grievous injury. In all these decisions, with respect, there is no discussion in depth.

(17) We are of the view that the Court is not absolved of the resposibility 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 has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with the Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a 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.

(5) Crl. Appeal No. 1007 of 1975 decided on February 8, 1979.

(6) Crl. Appeal No. 355 of 1976 decided on 26th April, 1979.

(18) For the reasons aforementioned, we acquit the appellant of the offence under section 307 of the Indian Penal Code and convert his conviction into one for an offence under section 326 of the Indian Penal Code and maintain the sentence awarded to him. In the result, the appeal stands disposed of accordingly.

Rajendra Nath Mittal, J.—I agree.

*N.K.S.*

*Before G. C. Mital, J.*

LAL SINGH,—*Petitioner.*

*versus*

KISHAN GOPAL and others,—*Respondents.*

*Civil Revision No. 2205 of 1979.*

July 14, 1980.

*Limitation Act (XXXVI of 1963)—Section 5 and Articles 120 and 121—Code of Civil Procedure (V of 1908)—Order 22, Rules 3, 4 and 9—Application for bringing on record legal representatives not filed within ninety days of the death—Application filed for setting aside abatement within sixty days thereafter—Explanation for filing the later application on the ninety-first day or thereafter—Whether any duty is cast on the applicant to furnish such explanation—Duty of the applicant where application for setting aside abatement not filed—Stated.*

*Held*, that for filing an application for bringing on record the legal representatives of a deceased plaintiff or a deceased defendant, the limitation would be ninety days as required by Article 120 of the Limitation Act, 1963. In case such an application is not made within a period of ninety days, then Article 121 of the Act provides a period of sixty days to obtain an order for setting aside the abatement which automatically takes place on the expiry of ninety days from the date of death of the party when no application is filed within a period of ninety days. In order to succeed in such application, the applicant will have to show as to why he could not file the application by the ninetieth day no duty is cast on him to show why he did not file the application on ninety-first day or soon thereafter when Parliament has specifically provided a clear period of sixty days under Article 121 of the Act. Any other interpretation would