

RAMESH KUMAR @BABLA

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v.

STATE OF PUNJAB

(Criminal Appeal No.335 of 2016)

APRIL 22, 2016

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**[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]**

*Penal Code, 1860: ss. 307, 324 or 326 – Clash between two groups resulting in injuries on both parties – Allegation against the appellant that he gave a sword blow on the head of one person and also hit the complainant on his head – Other co-accused caused several injuries to the complainant – Trial court acquitted the remaining six accused persons but convicted only the appellant u/s.307 and sentenced to rigorous imprisonment for 3 years– High Court affirmed the same – On appeal, held: As per initial version of the occurrence, a sword blow near the eye of the complainant was allegedly caused by another co-accused whereas appellant is alleged to have given a sword blow on the head – It is not clear from the evidence as to which of the two incised injuries was caused by the appellant – Injury no.1 and 2 both are on the head and by sharp weapon – Only one of them, injury no.1 is opined to be grievous but it is accepted by the doctor that it may be possible by fall, as doctor did not find any depth in the said injury – In such a situation, the appellant is entitled to be treated as the author of only the injury no.2 on the head which is said to be a simple injury but caused by a sword which is a dangerous weapon – In view of that, conviction u/s.307 is converted to one u/s.324.*

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*Sentence/Sentencing: Appellant's conviction u/s.307 IPC converted to one u/s.324 IPC – Occurrence took place in 1997 – At the time of incident, appellant was aged 36 years – Parties were involved in civil as well as criminal litigation from before – Appellant, as per custody certificate was not involved in any other case – Appellant is 50 years of age and fully settled in life – To meet the ends of justice, benefit of Probation of Offenders Act granted to the appellant – Penal Code, 1860 – s.324.*

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**Partly allowing the appeal, the Court**

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A HELD: 1. In his evidence, PW-2, the doctor has declared  
injury no.1 and injury no.7 caused by a blunt weapon to be  
grievous by describing them as dangerous to life. But in cross-  
examination, he has opined that possibility of injury no.1 by fall  
cannot be ruled out. Injury no.1 and 2 both are on the head and  
by sharp weapon. Only one of them, injury no.1 is opined to be  
B grievous but it is accepted by the doctor that it may be possible  
by fall, obviously because doctor has not found any depth in the  
said injury. In such a situation, the appellant is entitled to be  
treated as the author of only injury no.2 on the head which is said  
to be a simple injury but caused by a sword which is a dangerous  
C weapon. In view of that, it will not be proper to hold the appellant  
guilty of causing grievous hurt to the complainant and hence for  
having voluntarily caused hurt by a dangerous weapon, he  
deserves to be convicted only for offence u/s.324 IPC which is  
punishable with imprisonment which may extend to three years  
and/or with fine. Since the other co-accused who allegedly caused  
D some other injuries have been acquitted and the appellant did  
not cause any other injury to the complainant, no case is made  
out u/s.307 IPC, especially when the genesis as well as motive  
for the alleged occurrence remain obscure and under haze. [Paras  
5, 6] [870-D-H; 871-A]

E 2. Appellant's conviction u/s.307 IPC is converted to one  
u/s.324 IPC. On the question of sentence, it is pertinent to note  
that the occurrence took place in 1997. In his statement u/s. 313  
of the Cr.P.C. the appellant gave his age in 2002 as 36 years. He  
claimed that he and others went to the place of occurrence on  
F getting information that his brother was assaulted by complainant.  
He brought his brother to Police Station and lodged a report. As  
noticed by trial court, parties are involved in civil as well as  
criminal litigation from before. High Court has noted that  
appellant, as per custody certificate, is not involved in any other  
G case. In such circumstances, it is not deemed necessary to send  
the appellant immediately to Jail custody after about 19 years of  
the occurrence when he is 50 years of age and fully settled in life.  
In view of that, the ends of justice would be met by granting  
benefit of Probation of Offenders Act to the appellant. [Paras 7  
and 8] [871-B-D]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 335 of 2016. A

From the Judgment and Order dated 19.10.2015 of the High Court of Punjab and Haryana at Chandigarh in CRA S 1003-SB of 2002 (O&M).

Neeraj Kumar Jain, Sr. Adv., Vivek Sharma, Yash Pal Dhingra, Advs., with him for the Appellant. B

Ashok Agarwal, AG, Saurabh A. Gupta, AAG, Kuldeep Singh, Adv., with them for the Respondent.

The Judgment of the Court was delivered by C

**SHIVA KIRTI SINGH, J.** 1. By the judgment and order under appeal dated 19.10.2015 the High Court of Punjab & Haryana at Chandigarh dismissed criminal appeal bearing No.CRA S 1003 - SB of 2002 and confirmed the conviction of appellant under Section 307 of the IPC by the Additional Sessions Judge, Adhoc, Patiala for which appellant has been ordered to undergo rigorous imprisonment for three years and also to pay a fine of Rs.2000/-. D

2. The limited issue strenuously canvassed before us in this appeal is to the effect that appellant should have been convicted under Section 324 or 326 and not under Section 307 of the IPC and ought to have been inflicted with a lesser punishment. E

3. Keeping in view the aforesaid issue and the submissions, a close analysis of the prosecution case reveals that the appellant along with other six named accused and 3-4 unknown persons allegedly first assaulted one Rakesh Kumar. The specific allegation against the appellant is that he was armed with a sword and he gave a blow which hit Rakesh Kumar on his head. The companions of Rakesh Kumar, namely complainant Ramesh Kumar and one Sanjay ran away on their scooter but they were stopped at some distance by parents of the appellant and there when they had fallen on the ground, another co-accused gave sword blow hitting near the eye of the complainant whereas the appellant gave a sword blow on the head of the complainant. Other co-accused also allegedly caused several injuries to the complainant. Thereafter the accused persons ran away and the injured were taken to hospital. F G

4. From the narration of the case it further appears that there was clash between two groups which resulted in injuries on both parties. All H

A the seven accused pleaded not guilty to the charge under Section 307  
read with Section 149 of the IPC. The prosecution examined six witnesses  
including a doctor PW-2 and the Investigating Officer PW-6. On  
considering the entire evidence the trial court acquitted the remaining  
six accused persons but convicted only the appellant, as noted already.  
B The trial court, thus appears to have accepted only a part of assault and  
injury confined to the complainant.

5. The submission on behalf of the appellant for converting the  
conviction to one under Section 326 IPC though adverted to, has not  
been properly dealt with by the High Court. Only two injuries out of  
seven on the person of the complainant were caused by sharp weapon  
and the rest were by blunt weapon. The two injuries by sharp weapon  
C are shown to be incised wounds with the following dimensions :

1. 2.5 cm x 0.25 cm on the left parietal region of the head.

2. 1.5 cm x 0.25 cm x 0.25 cm nearly perpendicular to injury no. 1.

D In his evidence PW-2, the doctor has declared injury no.1 and injury  
no.7 caused by a blunt weapon to be grievous by describing them as  
dangerous to life. But in cross-examination he has opined that possibility  
of injury no.1 by fall cannot be ruled out. As already noticed, as per  
initial version of the occurrence a sword blow near the eye of the  
complainant Ramesh Kumar was allegedly caused by another co-accused  
E Raj Kumar Chawla whereas appellant is alleged to have given a sword  
blow on the head. It is not clear from the evidence or the discussion as  
to which of the two incised injuries was caused by the appellant. Injury  
no.1 and 2 both are on the head and by sharp weapon. Only one of them,  
injury no.1 is opined to be grievous but it is accepted by the doctor that it  
F may be possible by fall, obviously because doctor has not found any  
depth in the said injury. In such a situation the appellant is entitled to be  
treated as the author of only the injury no.2 on the head which is said to  
be a simple injury but caused by a sword which is a dangerous weapon.

6. In view of aforesaid discussion, it will not be proper to hold the  
G appellant guilty of causing grievous hurt to the complainant and hence  
for having voluntarily caused hurt by a dangerous weapon, he deserves  
to be convicted only for offence under Section 324 IPC which is  
punishable with imprisonment which may extend to three years and/or  
with fine. Since the other co-accused who allegedly caused some other  
H injuries have been acquitted and the appellant did not cause any other

[SHIVA KIRTI SINGH, J.]

injury to the complainant, no case is made out under Section 307 IPC, especially when the genesis as well as motive for the alleged occurrence remain obscure and under haze.

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7. Accordingly the appeal is allowed in part by converting appellants conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the Code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

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8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1(one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour.

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9. With the aforesaid modification in conviction and sentence the appeal is allowed in part.

Devika Gujral

Appeal partly allowed.

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