

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Crl. Appeal No. S-2218-SB of 2003 (O&M)
Date of decision: 07.01.2015**

Jamshed and others

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Gaur, Advocate,
for the appellants.

Mr. Anmol Malik, AAG, Haryana.

Ritu Bahri, J.

This appeal has been filed against the judgment of conviction dated 31.10.2003 and order of sentence dated 04.11.2003 passed by the Additional Sessions Judge (Adhoc), Faridabad, whereby accused-appellants namely Jamshed, Ramjan and Jaimal @ Jamaluddin have been convicted under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/- each. In default of payment of fine, they were further sentenced to undergo rigorous imprisonment for a period of one year. Out of the amount of fine, Rs.5000/- were ordered to be paid as compensation to PW Kayyum and Rs.10,000/- were to be paid to PW Azam.

Brief facts of the case are that on 08.08.1998, Subhan Khan-complainant, an agriculturist of village Dhauj, had returned to his house after getting his sister-in-law treated, as she had been beaten up by accused-

appellant Ramjaan and suffered grievous injury. At about 6.00 P.M., Subhan

Khan was sitting in his house. His nephew Ajam was going through the lane, whereas Jaimal and Jamshed were standing on their roof. They threw water on Ajam from the roof and thereafter, came down from the roof while threatening him to teach a lesson. Jaimal, who was armed with a gun, fired a shot at Ajam. The pellets from the gun shot hit him near the right eye, left ear and on the left shoulder. On hearing the noise of the gun shot, Kayyum came there. Accused Jamshed snatched the gun from his co-accused Jaimal and fired a shot at Kayyum hitting him on the left cheek (below the eye). Subhan Khan-complainant came forward to rescue his nephew-Ajam and Kayyum. Thereafter, the third accused Ramjan came there, armed with a gun and fired a shot at Subhan Khan-complainant, which hit on his right hand. Hue and cry was raised. Kamruddin and Zakir reached there. Thereafter, the accused-appellants ran away along with their respective weapons. The injured were taken to Escorts Hospital, Faridabad, where they were examined. Information regarding the occurrence was given to police and thereafter, Subhan Khan Made statement Ex.PF to Preetpal Singh ASI, on the basis of which, the FIR was registered.

During investigation, on 11.08.1998, Subhan Khan met Preet Pal Singh ASI and Subey Singh HC at the bus stand of village Dhauj. At that time, accused Ramjan was in the custody of the said police officer. After interrogation, he made a disclosure statement that he had kept concealed the gun in his room and in pursuance of his statement, he got the gun recovered, which was taken into possession. On 12.08.1998 the said police officers again met the complainant at the bus-stand. This time, Jamshed accused was in his custody, who made a disclosure and got recovered a gun, which was kept concealed in room of his house in village Dhauj. The gun was

were also prepared before the seizure. Statements of other witnesses were recorded. Site plans were prepared, scaled site plan was also got prepared and after completion of necessary investigation, challan was prepared and presented in the Court.

On presentation of the challan, charges under Sections 307, 326 read with Section 34 IPC were framed against the accused-appellants, to which, they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined Dr. S. Raina (PW-1), Bhan Singh, Constable (PW-2), Ravinder Kumar, HC (PW-3), Latif (PW-4), Jagat Singh, ASI (PW-5), Subhan Khan (PW-6), Ashok Kumar, draftsman (PW-7), Subash Chand (PW-8), Vishnu Dutt, SI (PW-9), Subey Singh, ASI (PW-9), Dr. Abha Parashar (PW-10), Azam Khan (PW-11), Kayyum (PW-12) and Preetpal, SI (PW-13).

After conclusion of prosecution evidence, statements of accused-appellants under Section 313 Cr.P.C. were recorded, wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication.

The trial Court, after going through the entire evidence led by the parties, convicted and sentenced the accused-appellants in the aforesaid terms.

As per the deposition of Dr. S. Raina, Chief Medical Officer, Escorts Hospital, Faridabad (PW-1), he had conducted the medico-legal examination of injured Ajam on 08.08.1998 and found following injuries on his person:-

1. Multiple small punctured wounds over and around left ear.

Ooze of blood was present.

2. Multiple punctured wound over left shoulder. Blood was

oozing out.

3. Punctured wound right eye. Bleeding profusely. Patient was not able to see with right eye.

On the same day, he also examined Kayyum (PW-12) and found one cut wound measuring 1" x 1/8" below the right eye over right cheek. There was profuse bleeding and x-ray of the skull was advised. As per his opinion, Ex.PB, the said injury was caused by a sharp edged weapon.

Subhan Khan-complainant was also medico-legally examined on the same day by Dr. S. Raina (PW-1). Multiple lacerated injuries on his right hand and forearm were found. X-ray examination was advised and the injured was referred to the Surgeon for further management and treatment. Medico legal report qua Subhan Khan was proved as Ex.PC.

As per the deposition of Dr. Abha Prashar, Radiologist, Escorts Hospital (PW-10), on 08.08.1998, she had conducted radiological examination of Azam and the x-ray of the skull showed few small radio opaque shadows of metallic density. Similarly, x-ray examination of the shoulder of Azam Khan also showed presence of pellets of a gun shot. She proved her report as Ex.PM. She also conducted radiological examination of Kayyum. As per her report, Ex.PM/1, no abnormality was found therein.

As per the allegation in the FIR, the injury on the person of Kayyum was attributed to Jamshed, who had shot fire from his gun, which hit on his left cheek below the eye. However, as per the MLR of Kayyum, proved on record as Ex.PB, this injury was opined to have been caused by a sharp edged weapon. Hence, the injury attributed to Jamshed does not corroborate with the medical evidence on record. Accordingly, accused-appellant Jamshed is acquitted of the charges framed against him. As far as

corroborate with the medical reports, Ex.PA and Ex.PC. Therefore, their conviction is upheld and the appeal qua them is dismissed. However, a lenient view can be taken on the quantum of sentence.

The incident in the present case took place on 08.08.1998. The appellants have been facing the agony of protracted criminal trial for the last more than 16 years. The complainant was known to the appellants and there was enmity between the two families. The sentence of the appellants was suspended vide order dated 04.12.2003 and thereafter, they have not misused the concession of bail. Keeping in view the above facts, the sentence of imprisonment awarded to the appellants Ramjan and Jaimal @ Jamaluddin is reduced to the period already undergone. However, amount of fine imposed upon them is being enhanced to Rs.20,000/- each, which shall be paid to injured Ajam and Kayyum in equal shares.

With the above modification/direction, the present appeal stands disposed of.

07.01.2015
ajp

(RITU BAHRI)
JUDGE