

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

304

CRA-S-922-SB-2002 (O&M)

DATE OF DECISION: January 08, 2015.

Kuldeep and another

....Appellants.

VERSUS

State of Haryana

....Respondent.

CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr. P.S. Ahluwalia, Advocate
for the appellants.

Mr. Dhruv Dayal, DAG, Haryana.

M.JEYAPPAUL, J.(Oral)

1. Accused Kuldeep and Azad Singh have challenged the judgment of conviction and order of sentence passed by trial Court under Sections 332, 333, 353 and 186 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that accused Kuldeep gave a lathi blow on the finger of the left hand of PW2 Sanjay Sangwan. The other accused Azad Singh along with unknown accused attacked PW2 Sanjay Sangwan on his head with a lathi and caused injuries to him.

3. PW2 Sanjay Sangwan was the Assistant Security Officer attached with PGIMS Rohtak. Having deterred him who was the public servant from discharging his official duty, the accused attacked him, he has deposed.

4. PW1, Dr. R.P. Verma medico legally examined PW2 Sanjay Sangwan and found a lacerated wound measuring 3 cm x 3 cm on the middle of the scalp. He also noticed a fracture on the left hand proximal phalanx. The second injury was certified by him as grievous in nature.

5. Though PW3 Ram Kishan who was associated as an eye witness backed out from the prosecution version during the course of trial, PW2 Sanjay Sangwan who was the injured corroborated his version in the First Information Report.

6. The trial Court having thoroughly analyzed the evidence on record, arrived at a conclusion that the prosecution established beyond reasonable doubt that the accused/appellants committed the offence punishable under Sections 332, 333, 353 and 186 read with section 34 of the Indian Penal Code.

7. Learned counsel appearing for the appellants would submit that the name of the accused Azad Singh was not found mentioned in the First Information Report. PW2 Sanjay Sangwan had not specifically deposed that he sustained an injury on the left hand proximal phalanx. The trial Court had not followed the mandatory provisions of Section 6 of the Probation of Offenders Act 1958. It is his further submission that if the Court comes to the conclusion that the trial Court has rightly passed the judgment of conviction, then the sentence imposed on the accused/appellant may be substantially reduced considering the nature of injuries sustained by PW2 Sanjay Sangwan, the age of the appellants and the time elapsed between the date of occurrence and the date of the disposal of this appeal. It is further submitted that the appellants are also prepared to pay some reasonable amount of compensation in case the sentence is substantially reduced.

8. Learned DAG appearing for the State would submit that the appellants had attacked PW2 Sanjay Sangwan who was serving as a public servant. He had also sustained grievous injury in the left finger phalanx. In as much as the appellant Kuldeep was aged 21 years at the time of occurrence, there was no obligation on the part of the learned Additional Sessions Judge to consider the provision of Section 6 of Probation of Offenders Act 1958 while determining the quantum of sentence. Therefore, it is submitted that the trial Court has rightly evaluated the materials on record and convicted the accused and passed an appropriate sentence.

9. Accused-appellant Kuldeep moved as application during the pendency of this appeal to declare him as a juvenile. This Court directed the learned Additional Sessions Judge, Rohtak to determine the age of accused/appellant Kuldeep. The appellant Kuldeep produced a school leaving certificate issued by the Headmaster, Government Primary School, Dhaur Distirct Jhajjar and the copy of the extract of admission cum withdrawal register. The learned Additional Sessions Judge, Rohtak, who was deputed to conduct an enquiry to determine the age of the appellant Kuldeep chose to reject those certificates on the ground that the father's name of the appellant Kuldeep did not tally.

10. Of course, learned counsel appearing for the appellant would submit that the learned Additional Sessions Judge, Rohtak should have adopted the other modes contemplated in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The occurrence had taken place on 27.07.1999. Of course, the appellant is entitled to move an application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act 2000 at any stage of the proceedings. But as the present

application has been moved by the appellant after a lapse of 11 long years, it would be futile to refer the appellant before a medical Board to assess his age at the time when he committed the offence. The prosecution has established that there was no birth entry of the appellant Kuldeep in the record of civil surgeon from 1979 to 1982. In the absence of any other document, in my view, learned Additional Sessions Judge, Rohtak has rightly rejected the plea of juvenility as claimed by the appellant Kuldeep. Therefore, accepting the report submitted by the learned Additional Sessions Judge, Rohtak, the appellant Kuldeep is declared not as a juvenile at the time when the offence was committed.

11. Coming to the merits of the case, it is true that PW3 Ram Kishan who was also an eye witness to the occurrence, failed to support the case of the prosecution. After all, PW2 Sanjay Sangwan was an injured witness. He had set the law in motion without any loss of time. He has categorically deposed that the accused/appellants attacked him and caused injuries not only on his head but also on his left hand. The medical evidence would establish that the injury found on the left hand was grievous in nature as there was a fracture of proximal phalanx of the left index finger. In my view, the evidence of an injured witness does not require any corroboration. Further, there was no reason for the injured witness to falsely implicate a person who was not at all involved in the occurrence.

12. In view of the above, I find that the trial Court has rightly come to the conclusion based on the materials available on record that the accused/appellants committed the offence punishable under Sections 332, 333, 353 and 186 read with section 34 of the Indian Penal Code.

13. Coming to the quantum of sentence I find that the trial Court

has awarded sentence on the higher side. Of course, the accused/appellants who chose to attack a public servant, having deterred him from discharging his public duty, cannot be shown mercy but the sentence should match the offence committed by the accused/appellants.

14. On the date, when the quantum of sentence was determined by the trial Court, both the appellants had crossed the age of 21 years and therefore, the question of mandatory compliance of Section 6 of the Probation of Offenders Act 1958 does not arise. But the young age of the appellants needs consideration while determining the quantum of sentence. Further, it is found that 15 years have elapsed from the date when the occurrence took place. The appellants are also prepared to pay some compensation to PW2 Sanjay Sangwan for the injuries he suffered.

15. In view of the above facts and circumstances, the judgment of conviction passed by the trial Court as against these accused/appellants stands confirmed, however the sentence imposed for the offence under Sections 332 and 333 of Indian Penal Code is reduced to one year rigorous imprisonment but the amount of fine imposed on each of the appellants by the trial Court stands enhanced to Rs. 1,00,000/- (Rs.1,00,000 X 2 = Rs.2,00,000/-) which shall be payable by the accused-appellants within six months failing which they shall undergo a further period of six months rigorous imprisonment. The fine imposed, on realization, shall be paid as compensation to the PW2 Sanjay Sangwan. Further, the sentence imposed on the appellants under Sections 353 and Section 186 of Indian Penal Code, stands confirmed.

16. With the above modification in the matter of sentence, the appeal stands disposed of. Both accused-appellants who are on bail shall

surrender before the Chief Judicial Magistrate, Rohtak, who shall send them to jail to undergo the remaining period of sentence. If they fail to surrender, the learned Chief Judicial Magistrate shall take coercive steps to secure their presence and send them to jail to undergo the remaining period of sentence.

(M. JEYAPPAUL)
JUDGE

January 08, 2015.

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