

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

Crl. Appeal No.S-1105-SB of 2004 (O&M)

Date of Decision: July 28, 2015.

Atul

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. H.S. Gill, Senior Advocate with
Mr. Vivek Goyal, Advocate
for the appellant (s).

Mr. Baljinder Singh Virk, D.A.G. Haryana.

SURINDER GUPTA, J.

Appellant Atul son of Om Parkash faced trial for the offence punishable under Sections 307 and 506 read with Section 34 of Indian Penal Code (for short 'IPC') along with his brother Chirag and was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹2,000/- for offence punishable under Section 307 IPC, in default of payment of fine, he was directed to further undergo rigorous imprisonment for a period of three months. For offence punishable under Section 506 IPC, he was sentenced to undergo rigorous imprisonment for a period of six months. Brother of appellant namely Chirag was, however, acquitted.

As per the case of the prosecution, the occurrence took place on

13.06.2001 at about 02.00 pm in the area of Model Town, Rewari. In his statement recorded on 16.06.2001, complainant-injured Sanjay had stated that on the day of occurrence, he had gone to connect the disc wire to Model Town, Rewari. When he reached near the house of Captain Ajay, the appellant and his brother met him. Appellant caught him from his neck from the back side while his brother caught hold of him. Appellant inflicted knife blows on his neck, back, left armpit and abdomen. The complainant raised '*raula*' which attracted Subhash son of Kishan Singh and Deepak son of Satish, who got him relieved from the assailants. While leaving the spot, the assailants threatened to kill the complainant. Ramesh Chander, father of complainant got him admitted in the hospital.

The medical examination of complainant was conducted at All India Institute of Medical Sciences (AIIMS), New Delhi and the doctor found injuries on the neck, chest and abdomen of the complainant. Dr. Raj Kumar, Junior Resident, AIIMS, who conducted the medical examination of the complainant, could not be examined as he had left the Institute and his whereabouts could not be traced. The medico-legal report was proved by the prosecution by examining Dr. Viplav Mishra of AIIMS, New Delhi.

On 15.06.2001, telephonic intimation was received at Police Station Model Town, Rewari that complainant had been admitted with the injuries at AIIMS, New Delhi at which Head Constable Munshi Ram reached there and recorded the statement of complainant dated 16.06.2001(Ex.PA) and sent the same vide his endorsement Ex.PA/1 to the police station, whereupon formal FIR Ex.PA/2 was recorded. He then visited the place of occurrence and prepared rough site plan of the place of occurrence Ex.PA/4.

The appellant was arrested on 18.06.2001. A knife produced by the appellant

at the time of his arrest, was taken into possession vide recovery memo Ex.PC. On receipt of opinion by Dr. Vipulav Mishra (PW3), declaring injury on the person of complainant Sanjay as 'dangerous', offence under Section 307 IPC was added and further investigation was conducted by Inspector Sabha Chand.

After completion of investigation, challan against the appellant was presented in the Court. As the final report submitted by the police disclosed an offence punishable under Section 307 IPC, the case was committed by the Chief Judicial Magistrate, Rewari for trial to the Court of Sessions.

Additional Sessions Judge, Rewari vide order dated 05.09.2001 charge-sheeted the appellant for the offence punishable under Sections 307 and 506 IPC. After recording the statement of one PW, brother of appellant namely Chirag alias Amit was ordered to be summoned as additional accused vide order dated 13.05.2002. On his appearance, amended charge-sheet for the offence punishable under Sections 307 and 506 read with Section 34 IPC was framed against the appellant and his brother Chirag to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Sanjay, complainant and injured as PW5; Subhash eyewitness of the occurrence as PW6; PW3 Dr. Viplav Mishra of AIIMS, New Delhi, who gave opinion regarding the injury on the person of Sanjay (Ex.PB) and declared the same as dangerous; PW9 Dr. Shashi Bhushan who proved x-ray report Ex.PD prepared by Dr. Sandeep, who had left AIIMS, New Delhi and his whereabouts were not known; PW7 Head Constable Munshi Ram who had investigated this case till the offence under Section 307 IPC was added on

19.06.2001; PW1 Inspector Subha Chand, who investigated the case after addition of offence punishable under Section 307 IPC in this case; Formal witnesses PW8 R.S. Khera, Record-keeper, AIIMS New Delhi; PW4 Constable Ashok Kumar and PW2 Dharampal, Draftsman, who prepared the scaled site plan Ex.PA, were also examined.

On completion of prosecution evidence, statements of appellant and his co-accused under Section 313 Cr.P.C. were recorded, wherein they denied the allegations leveled against them. Appellant Atul pleaded in his defence as follows:-

“I am innocent. I have committed no offence. In fact on 13.6.2001 at around 2.00 p.m. Sanjay alongwith 3-4 other persons had come to (sic me) at my shop situated at Model Town Rewari. They all were under the influence of liquor. They started lotting the case (sic cash) from my safe and also snatched my golden chain. I resisted. Sanjay try (sic tried) to hit me with a scissor, but suffered injuries by scissor during scuffle.”

After recording the statements of appellant and his co-accused, an application was moved under Section 311 Cr.P.C. by the accused for recalling of the complainant, which was allowed vide order dated 13.01.2004. Thereafter, complainant Sanjay was re-called to confront him with a recorded version on a cassette which was played, wherein he admitted that the cassette contained his voice and that of Naveen and Ranvir. He further admitted that typed version (Ex.DX) is correct version of the conversation recorded in the cassette (Ex.DX/1). PW Subhash had reached the spot later and had not seen the occurrence. He further submitted that he got his statement recorded on 20.03.2003 under police pressure but denied that he had resiled from his earlier version under compromise with the accused.

No defence evidence was produced by the appellant or his co-accused. Learned trial Court vide judgment dated 11.05.2004 acquitted Chirag @ Amit and convicted and sentenced the appellant for offence punishable under Sections 307 and 506 IPC.

I have heard learned counsel for the appellant, learned State counsel and have gone through the record of the trial Court with their assistance.

Learned counsel for the appellant has argued that admittedly, complainant had no enmity with the appellant. They were not even known to each other. Complainant while appearing as PW5 had categorically stated that prior to the occurrence, he knew the appellant by face and not by name. He came to know about the name of the appellant after 10-12 days of the occurrence when he came to meet him in the hospital along with Chairman of the Municipal Committee. This proves that appellant had no intention or motive to cause any injury to the complainant. It was, in fact, a case of sudden quarrel and even if the entire version of the prosecution be believed, the offence proved in this case is under Section 324 IPC. There is no evidence on the file that any injury on the person of appellant was dangerous to life. Dr. Raj Kumar, who had conducted the medico-legal examination of the complainant, was not examined. Dr. Viprav Mishra PW3 who declared the injury on the person of complainant as dangerous was not having any reason except that in case the complainant had not been provided timely medical aid, he would have died. The prosecution has failed to prove on file the nature of injury to make out that these injuries were in any manner dangerous or were caused with intention and knowledge that the appellant by his act would have caused the death of complainant. The weapon of offence

used in the occurrence was also a kitchen knife and there is no evidence that the appellant has any criminal background or had come prepared to cause injuries.

Learned counsel for the appellant has further argued that the complainant has admitted that alleged eye witness Subhash was not present at the spot and even otherwise, the matter was compromised vide compromise deed (Annexures A-1 and A-2) placed on record as the complainant as well as the appellant are neighbours and are living in an amicable and harmonious manner after the occurrence, for the last about 15 years. As such, a lenient view may be taken regarding quantum of sentence.

Learned State counsel has argued that injured Sanjay had received injuries on the neck, chest and abdomen caused by a knife. Dr. Viprav Mishra PW3 had declared the injuries as dangerous to life. It was only due to timely medical aid provided to the injured that he could be saved. Offence punishable under Section 307 IPC is made out and the trial Court has committed no error of law while reaching the conclusion to this effect. Even otherwise, it is the intention and not the injury which is to be seen to make out as to whether the offence punishable under Section 307 IPC is made out. The testimony of complainant and eyewitness Subhash is credible. The other eyewitness Deepak could not be examined as he had died. The ocular evidence supported by medical evidence duly prove the offence punishable under Section 307 and 506 IPC against the appellant.

First point for consideration that arises in this case is whether in the facts, circumstances and evidence on record, offence under Section 307 IPC is proved against the appellant. Section 307 IPC reads as follows:-

“Whoever does any act with such intention or knowledge,

and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

A reading of Section 307 IPC attracts following ingredients to make out offence punishable under Section 307 IPC:-

- (i) That the accused did an act;
- (ii) That the act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury was in the ordinary course of nature was sufficient to cause death, or that the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death; and
- (iii) That the accused had no excuse for incurring the risk of causing such death or injury.

In the light of facts and circumstances brought on record by the prosecution, it is to be seen as to whether the injuries on the person of complainant Sanjay were caused with such intention or knowledge and under such circumstances that if the accused had caused death of Sanjay, he would have been guilty of murder.

Firstly, I take the testimony of complainant Sanjay himself, who appeared in this case as PW5. As per the complainant, he had no enmity with the appellant. He knew the appellant only by face and not by name. The appellant came to him in the hospital after 10-12 days of the occurrence with Chairman of the Municipal Committee and it was at that juncture, he came to know about name of the appellant.

The above statement of complainant reflects that appellant

neither had any animus nor any intention to cause death of complainant. Now, the question which arises for consideration is as to what prompted the occurrence. The complainant has stated that the appellant asked him to provide disc connection but he declined as there was no available line to provide connection. This prompted the occurrence in which complainant received injuries from the hands of appellant. The knife used in the occurrence was an ordinary kitchen knife.

The above facts and circumstances reflect that occurrence had taken place without any pre-meditation or preparation, rather, it was at the spur of the moment, thereby, ruling out that the appellant had intention to cause death of the complainant.

The medical evidence produced in this case is also not sufficient to prove that the injury caused on the person of complainant were of such a nature that these would have caused death of the complainant. Firstly, there was no bony injury received by the complainant. This fact is proved by Dr. Shashi Bhushan PW9, who produced x-ray report (Ex.PD) of the injured-complainant. Dr. Raj Kumar, who conducted the medico-legal examination of the injured-complainant, could not be examined in this case, as he had left AIIMS, New Delhi. He had not declared any of the injury received by the complainant as 'dangerous to life'. Dr. Viplav Mishra, who was a Senior Resident posted in AIIMS, New Delhi, while appearing as PW3 has proved the opinion (Ex.PB) given by him on the copy of MLR declaring the injuries of Sanjay as 'dangerous' but at the same time, he has stated that while declaring the injury as 'dangerous' he has not given any reason for his opinion. While trying to elaborate his opinion, he stated that if timely medical aid would not have been given to Sanjay, he would have died.

This statement of PW3 Dr. Viplav Mishra is not sufficient to draw an inference about the injury on the person of complainant as dangerous to his life. Neither in the MLR nor in the statement of Dr. Viplav Mishra, the size and depth of injuries have been mentioned.

If an injury inflicted on the victim is not sufficient in the ordinary course of nature to cause death, the provisions of Section 307 IPC are not attracted in that case. In the instant case, the injuries with kitchen knife were caused on the neck, chest and abdomen. Statement of Dr. Viplav Mishra that injuries were dangerous and if timely medical aid had not been given to patient Sanjay, he would have died, is not sufficient to draw the inference that the injury was dangerous to life. In similar circumstance, in case of ***Piara Singh Vs. State of Punjab 1996(2) RCR (Criminal) 371***, it was observed as follows:-

“PW8 Dr. J.K. Sachdeva, after describing two injuries noticed by him on the person of Mukhtiar Singh clearly stated in his examination-in-chief itself that injury No.2, which admittedly was the only injury which was serious in nature could be dangerous to life and could cause death of the injured in the ordinary course of nature if treatment was not given to him. Injury No.2 has been attributed to Piara Singh and the other injury which is simple in nature, has been attributed to Gulzar Singh appellant. In ***Tej Ram Vs. State of Punjab, 1978 CLR P&H 76*** it was held that, “the injury in question had ruptured the lung of the victim and was described by the examining doctor as ‘dangerous to life’ and if not treated, i.e., to say that but for timely and medical aid the injured was likely to die. This is certainly not the type of the injury as would attract the provisions of Section 307 of the Code which envisages an injury sufficient in the ordinary course of nature to cause death. The injury described by the doctor was a lesser injury which would

fall within clause Eightly of Section 300 of the Indian Penal Code and be punishable under Section 326 thereof.” The same very view has been taken by this court in two other decisions in *Gurjant Singh Vs. State of Punjab, 1983 (1) RCR 319* and *Narmail Singh Vs. Nihal Singh, 1979 PLR 151*. Following the dictum of law laid down in the decisions, referred to above, I hold that none of the appellants can be convicted under Section 307 Indian Penal Code.”

An offence under Section 307 IPC is a serious offence and requires same very factors to be proved as for offence under Section 302 IPC except that in this case, the act falls short of the death of injured. In this context, the question what injuries are dangerous to life is apposite. Modi on Medical Jurisprudence and Toxicology 24th Edition page 559 has described the injury dangerous to life as follows:-

“Danger to life should be imminent before the injuries are extensive and implicate important structure or organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a large ‘artery’ or **rupture of some internal organ**, such as the spleen, should be considered dangerous to life. But the injuries which prove fatal remotely by intercurrent diseases, such as tetanus, erysipelas etc. should not be considered as dangerous.”

Learned trial Court, while reaching the conclusion that the offence under Section 307 IPC is made out, observed that the appellant had intention to kill the complainant. As already discussed, the parties were not known to each other. The occurrence took place at the spur of the moment. The dispute was only over the providing disc connection. From all these facts, it can be safely inferred that the conclusion of trial Court that the

appellant had intention to kill the complainant, is misfounded. This fact was also taken note that there was free air under diaphragmatic dome. The trial Court has observed that if the air comes under the diaphragmatic dome, it is dangerous to life. No such opinion was sought from Dr. Viplav Mishra or other medical expert who appeared in this case. While appearing as PW3, Dr. Viplav Mishra has categorically stated that he had given no reason to reach the conclusion as to why injuries on the person of complainant were dangerous.

There could be various reasons for free air under the diaphragmatic dome. In this case, it appears that due to stab injury, a rupture/puncture was caused to some abdominal organ. Modi on Medical Jurisprudence and Toxicology discussed that if a rupture is very small, the mucous membrane becomes everted and closes the little opening and thus, prevent the escape of intestinal contents. In this case, the extent of injury to the abdominal organ were not inquired from the medical experts who appeared to depose in this case.

In view of the facts and circumstances discussed above, the offence under Section 307 IPC is not proved against the appellant. In view of the observations in case of *Piara Singh Vs. State of Punjab (supra)*, the offence proved is under Section 326 IPC.

The conviction of the appellant for the offence punishable under Section 506 IPC was not challenged during the course of arguments. As such, the same is maintained.

On the quantum of sentence, learned counsel for the appellant submits that the matter was compromised with the complainant/victim, who has placed on record an affidavit (Annexure P-2) that now he has amicable

relations with the appellant and has no objection in case he be given benefit of acquittal from the charges framed against him. The appellant and the victim are the neighbours and now are on visiting terms and taking a lenient view regarding quantum of sentence will not only be in the interest of both of them but also for their families and society.

The custody certificate produced on file shows that appellant had undergone one month and seven days of imprisonment. The occurrence had taken place about 15 years back. The appellant as well as the victim are residents of nearby places in Rewari. In his affidavit, the victim has stated that now he has visiting terms with the appellant and has harmonious relations with him.

Keeping in view the above facts, I am of the opinion that interest of justice would be fully met if a lenient view is taken. The sentence awarded to the appellant is modified and he is sentenced to undergo rigorous imprisonment for the period already undergone by him, for the offences punishable under Sections 326 and 506 IPC. However, the appellant is directed to pay compensation of ₹25,000/- to the complainant for the injuries caused to him.

The appeal stands disposed of with the above modifications.
Copy of the judgment be sent to the trial Court.

July 28, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE