

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-238-SB of 2004

Date of Decision: 21.4.2015

Surender

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mrs. Baljit K. Mann, Advocate
for the petitioner(s).

Mr. Rajiv Doon, Assistant Advocate
General, Haryana for the respondent.

Darshan Singh, J.

1. The present appeal has been preferred by the appellant/accused Surender against the judgment of conviction dated 23.1.2004, vide which he was held guilty and convicted for the offences punishable under Sections 364 & 323 of the Indian Penal Code (hereinafter referred to as "IPC") and the order on the quantum of sentence dated 24.1.2004, vide which he was sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹ 3,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of two years for the offence punishable under Section 364 IPC. He was further sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 323 IPC.

2. The brief facts of the prosecution case are that on 26.7.1993,

on receipt of a written information from the doctor, PW.1 Assistant Sub Inspector Killa Singh reached at Civil Hospital, Kharkhoda and after obtaining the opinion of the doctor, he recorded the statement of PW.5 Dharambir. In his statement Ex.PF, complainant-Dharambir stated that on 25.7.1993, he along with his brother PW.6 Rajender and Hawa Singh son of Devi Singh had gone to village Gamri on their tractor trolley. At about 8/9.00 P.M., when they reached near village Ridhau turning, a matador was seen parked on the road. Three boys, who belong to village Ridhau, were standing there. The complainant took the tractor trolley from the kachha berm but one of those boys caught hold the hand of Rajender, who was driving the tractor. The complainant and Hawa Singh alighted from the tractor. They were given slap blows by those persons. Thereafter, the complainant along with his companions started for their village and when they reached near village Silana, Ram Kumar son of Abhey Ram met them. They narrated the incident to him. He told them that as village Ridhau is in their neighbourhood, so let us go and ask those boys as to why they had given beatings. The complainant along with his companions started for village Ridhau. When they reached near brick kiln, located in the area of village Ridhau, one canter bearing registration No. HR-10-0203 came and stopped in front of their tractor. Four persons armed with lathies alighted from the said canter and they started beating the complainant, Hawa Singh, Rajender and Ram Kumar with lathies. Thereafter, they put Ram Kumar in the trolley of their tractor and took it away along with their canter. The whereabouts of Ram Kumar were not known to them. The complainant

further alleged that during the quarrel, his chain and ₹ 450/- were lost. It is further alleged that the complainant along with Rajender and Hawa Singh went to village Ridhau and came to know the names of the culprits as Ram Kumar son of Kirpa, Azad Singh, appellant Surender and Chattar Singh of village Ridhau. On the statement of the complainant, FIR Ex.PH was registered and the investigation was started. The Investigating Officer inspected the spot. On 28.7.1993, all the four accused were arrested.

3. Accused Ram Singh (since acquitted) produced the Canter No. HR-10-0203. The tractor along with the trolley was also taken into possession vide memo Ex.PG.

4. On completion of all the formalities of the investigation, report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") was presented in the Court.

5. The appellant along with his co-accused was charge-sheeted for the offences punishable under Section 364 & 323 IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial. Co-accused Azad Singh has died during the pendency of the case.

6. In order to substantiate its case, the prosecution examined as many as seven witnesses.

7. When examined under Section 313 Cr.P.C., appellant-Surender pleaded that he is innocent and has been falsely implicated in the case. However, no evidence was led by him in his defence.

8. Appreciating the evidence on the record and the contentions raised by learned counsel for the parties, appellant-Surender was held

guilty and convicted for the offences punishable under Sections 364 & 323 IPC, whereas his co-accused Ram Singh and Chattar Singh were given the benefit of doubt and were acquitted of the charges. The appellant was awarded the sentence as mentioned in the earlier part of the judgment.

9. Aggrieved against the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mrs. Baljit K. Mann, learned counsel for the appellant, Mr. Rajiv Doon, learned Assistant Advocate General, Haryana for the respondent-State and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that it is a clear case of the false implication of the appellant. In the FIR, it has been alleged that a matador was lying parked on the road but in the evidence, it is stated that the said vehicle was canter. She further contended that the prosecution witnesses have admitted that it was pitch dark. So there was no source of light to identify the accused. No specific injury has been attributed to the appellant by any of the injured witness. Even the interpolation has been made in the recovery memo Ex. PG by showing the recovery of the tractor trolley, which is evident from the copy of memo Ex.DA.

12. She further contended that the story regarding kidnapping of Ram Kumar is also totally false. There was absolutely no motive or purpose of his kidnapping. The appellant was not having any enmity with him. No injury has been caused to him. The prosecution version is

contradictory as to in which vehicle, he was taken away. He alleged that he was kept detained for 20 days, whereas all the four accused were arrested on 28.7.1993 i.e. just after three days of the alleged occurrence. He has not been recovered from the custody of any of the accused. There is also no evidence on record to establish that he was kidnapped with intention to kill. Thus, she pleaded that the conviction of the appellant is not legally sustainable particularly when his co-accused have already been acquitted.

13. On the other hand, learned State counsel pleaded that the case of the prosecution is fully supported by complainant-Dharambir PW.5, injured Rajender and abducted person PW.7 Ram Kumar. The ocular evidence has also been corroborated by the medical evidence. The injuries have been found on the persons of Dharambir, Rajender and Hawa Singh. The appellant was identified by the prosecution witnesses. They had kidnapped PW.7 Ram Kumar and had also taken away the tractor trolley of the complainant, which was also recovered from their possession. Thus, he pleaded that the conviction of appellant-Surender is well founded.

14. The aforesaid contentions raised by learned counsel for the parties have been duly considered.

15. The occurrence had taken place in two phases. In the first phase, it is alleged that the accused had given the slap blows to the complainant etc. after getting their tractor trolley stopped. In the second phase, when the complainant along with Rajender, Hawa Singh and PW.7 Ram Kumar was going to village Ridhau, was waylaid. The

accused came in the canter armed with the lathies. They gave beatings to the complainant, Rajender, Hawa Singh and Ram Kumar. Ram Kumar was also kidnapped. The tractor trolley of the complainant was also taken away by the accused.

16. Firstly, I take up the version of the prosecution with respect to the kidnapping of PW.7 Ram Kumar and taking away of the tractor trolley of the complainant by the accused, which is part of the second phase of the occurrence. On appreciation of the evidence on record, the story of the prosecution regarding kidnapping of PW.7 Ram Kumar and taking away of the tractor trolley of the complainant by the accused is highly doubtful and unreliable.

17. The recovery of the tractor trolley has been shown on 28.7.1993 and has been taken into possession vide memo Ex.PG. There is clear interpolation in the memo Ex.PG with respect to the recovery of the tractor trolley, which is visible to the naked eye. Ex.DA is the copy of the memo Ex.PG, which was supplied to the accused. In the said memo, only the recovery of the canter from the possession of accused Ram Singh has been shown. There is absolutely no reference to the recovery of the tractor trolley. The portion regarding recovery of the tractor trolley has been inserted in the memo Ex.PG in different ink which is visible to the naked eye. Even the tenor of the recovery memo Ex.PG shows that the same was closed after taking into custody the canter. The recovery memo Ex.PG reads that in the presence of the witnesses, accused Ram Singh produced a canter bearing registration No. HR-10-0203 and the registration certificate thereof, which was taken

into police possession vide memo. The memo was attested by the witnesses. The memo was reduced into writing and thereafter the written portion about the recovery of the tractor trolley has been inserted in different ink. There is absolutely no evidence as to from where the said tractor trolley was recovered nor it is mentioned who was found in possession of the said tractor trolley. So, there is no evidence that the tractor trolley was recovered from the possession of the appellant.

18. PW.7 Ram Kumar has categorically stated that he was personally known to appellant Surender, who owns a petrol pump in village Farmana. PW.6 Rajender has stated that Ram Kumar was not known to them. It is not believable that the complainant etc. will disclose about their beating by the accused to PW.7 Ram Kumar, a person who was not known to them and was just standing on the bus stand of village Silana. It is also not believable that he would immediately come forward to intervene to resolve the dispute.

19. It was alleged that the accused gave beating to complaint Dharambir, Rajender, Hawa Singh and Ram Kumar. But there is no medical evidence to show any injury on the person of PW.7 Ram Kumar. In the FIR,. so recorded on the statement of PW.5 Dharambir, it is mentioned that PW.7 Ram Kumar was put in the tractor trolley and was taken away. But PW.7 Ram Kumar stated that he was forced to board the canter. It is a material discrepancy which goes to the root of the case.

20. PW.7 Ram Kumar has stated that he remained in their illegal detention for about 20 days. After 20 days, he succeeded in getting

himself freed from their custody. Thereafter, he immediately went to Haridwar in a vehicle and from there, he made a telephonic call to his parents and returned to his house. He, thereafter, went to the police station along with his father and made the statement. This version of PW.7 Ram Kumar is totally unbelievable. The record of the case shows that all the four accused were arrested by the police on 28.7.1993 i.e. just after three days of the occurrence. Then how they can detain PW.7 Ram Kumar for a period of 20 days. PW.7 Ram Kumar has not disclosed as to who had kept him detained after 28.7.1993 i.e. after the arrest of the appellant and his co-accused. He deposed that initially he was tied with a pole situated in the house of appellant-Surender and thereafter he was taken to an unidentified destination. PW.7 Ram Kumar was a matured person of 35 years of age. He had served with the Haryana Police. He had not disclosed at what place he was subsequently detained. PW.7 Ram Kumar has further mentioned that after about 20 days, he succeeded in getting himself freed from their custody. As already mentioned, the appellant and his co-accused were arrested on 28.7.1993 i.e. just after three days of the occurrence. It is not disclosed at all as to who had kept him detained for 20 days and in which manner he got himself freed from the detention. It is also not believable that after getting himself freed from the custody, he preferred to go to Haridwar then to return his village or contacting the police. All these circumstances, totally shatters the prosecution version about the abduction of PW.7 Ram Kumar.

21. Moreover, the dispute of the appellant and his co-accused was

with complainant Dharambir etc. So, if the accused wanted to kidnap anyone, they would have kidnapped the complainant or his companions. There was absolutely no reason for kidnapping PW.7 Ram Kumar who was personally known to the appellant. PW.7 Ram Kumar has also stated that he had no enmity with appellant-Surender. Thus, there could have been no reason for his abduction by the appellant and his companions. There is no evidence on record to show that as to what was the purpose, reason and motive for his kidnapping by the accused. There was no previous dispute or enmity between the appellant and PW.7 Ram Kumar. He was personally known to the appellant. Neither any injury has been caused to PW.7 Ram Kumar nor there is any evidence of any demand from him. PW.7 Ram Kumar has also not been recovered from the custody of the appellant and his co-accused. The appellant and his co-accused were arrested on 28.7.1993. There is no evidence that they were interrogated to reveal the whereabouts of PW.7 Ram Kumar. Thus, all the circumstances discussed above rendered the story of the prosecution, regarding kidnapping of PW.7 Ram Kumar by the appellant and his co-accused, highly doubtful and unreliable. Thus, the conviction of the appellant recorded by the learned trial Court for the offence punishable under Section 364 IPC is not sustainable.

22. However, there is sufficient evidence on record to establish the assault by the appellant to the complainant, Rajender and Hawa Singh. PW.5 Dharambir has categorically stated that at about 9.00 P.M., when they reached near village Ridhau, a canter was seen standing on the road. Four boys were standing near the canter. They gave them beatings.

Out of them, one is present in the Court, whose name is Surrender. He further deposed about the second phase of the occurrence that 5/6 persons alighted from the canter and started giving beatings to them. All the three accused persons are present in the Court, who alighted from the canter and gave beatings to them with their respective weapons. One of them is not present in the Court. He further disclosed that when they went to the village of the accused, they came to know their names. The version of PW.5 Dharambir is also corroborated by PW.6 Rajender, another injured witness.

23. There is no dispute about the identity of the appellant as PW.5 Dharambir, complainant, has been suggested that the accused have been falsely implicated in the case because he failed to make the payment of the outstanding bill, which was raised by them for the supply of diesel and mobile oil purchased by him. In the cross-examination of PW.6 Rajender also, it has been suggested that the accused have been falsely implicated in order to settle the old long drawn enmity. These suggestions indicate that the appellant was earlier well known to the injured witnesses. So, there can be no doubt about the identity of the appellant being a known person to the prosecution witnesses.

24. The aforesaid ocular version on the point of causing injuries to complainant-Dharambir, Rajender and Hawa Singh is also corroborated from the medical evidence.

25. PW.3 Dr. S.C. Nawal has medico-legally examined complainant-Dharambir Singh, Rajender Singh and Hawa Singh. He found five injuries on the person of the complainant and proved the copy

of his Medicolegal Report as Ex.PA. Two injuries were found on the person of PW.6 Rajender and the copy of his Medicolegal Report is Ex.PB. Two injuries were also found on the person of Hawa Singh and the copy of his Medicolegal Report is Ex.PC. PW.3 Dr. S.C.Nawal has further deposed that the injuries on the person of Dharambir, Hawa Singh and Rajender were caused by lathi or any blunt weapon. Thus, the aforesaid medical evidence corroborates the version of the prosecution witnesses with respect to their beatings by the appellant and his companions, whose identity could not be established during trial. Thus, there is no legal infirmity in the conviction of the appellant for the offence punishable under Section 323 IPC.

26. Thus, keeping in view my aforesaid discussion, the appeal is hereby partly allowed. The conviction as well as sentence of the appellant for the offence punishable under Section 364 IPC is hereby set aside. However, the conviction and sentence of the appellant, as recorded by the learned trial Court for the offence punishable under Section 323 IPC, is hereby maintained and affirmed. As per the custody certificate dated 14.3.2005, available on record and the order dated 21.2.2006, passed by this Court for suspension of sentence of the appellant, he has already undergone more than the sentence awarded to him for the offence punishable under Section 323 IPC by the learned trial Court.

(Darshan Singh)
Judge

April 21, 2015
"DK"