

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-4-SB of 2004 (O&M)

Date of decision : May 15, 2015

Babar Ali @ Munna and anotherAppellants

Versus

The State of PunjabRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gulzar Mohd., Advocate
for the appellants.

Mr. Ajaib Singh, Addl. AG, Punjab

LISA GILL, J.

Instant appeal has been preferred by appellants - Babar Ali alias Munna and Sikander Ali alias Saifi impugning judgment and order dated 13.10.2003 passed by the learned Additional Sessions Judge, Sangrur.

Vide impugned judgment and order, the appellants have been convicted and sentenced to undergo rigorous imprisonment for seven years besides pay a fine of ₹5,000/- each and further imprisonment of six months in default for the offence punishable under Section 307 read with Section 34 IPC and also sentenced to undergo rigorous imprisonment for one year for the offence punishable under Section 324 read with Section 34 IPC.

Briefly stated, the facts are that medico legal report of the complainant Mohd. Mutaki, PW6, was received in Police Station city

Malerkotla from Civil Hospital on 17.09.2001. On receiving the above said report, ASI Sewa Singh proceeded to the Civil Hospital, Malerkotla where injured was declared unfit to make a statement. ASI Sewa Singh again went to Civil Hospital, Malerkotla on 18.09.2001 and on the doctor declaring the injured fit to make a statement, statement of Mohd. Mutaki was recorded. Complainant Mohd. Mutaki stated that he was a resident of Mohalla Chhatta, Malerkotla pursuing Law at Ganga Nagar. For the last four or five months he had been staying at his house. He was returning from the shop of Mohd. Iqbal on 17.09.2011 at about 10.00 a.m. after eating 'Poori Chhole'. He halted near a cigarette shop to purchase cigarette. In the meanwhile, accused Sikander Ali alias Saifi son of Babar Ali alias Munna and Babar Ali alias Munna arrived from the side of Bansa Wala Bajar and proclaimed that complainant should be taught a lesson as he was teasing their boys. On this, Babar Ali alias Munna inflicted a knife blow on his navel. Another knife blow was inflicted by Babar Ali alias Munna on his left flank. When he fell on the ground accused Babar Ali alias Munna inflicted injury on his right flank with his knife. He had fallen on the ground when Sikander Ali alias Saifi inflicted two blows with his knife on the left arm and elbow of the complainant. Sikander Ali alias Saifi attacked him again and as the complainant tried to ward off the blow with his left hand he sustained injury on the thumb of his left hand. When he raised alarm, the accused fled towards Ghah Mandi alongwith their weapons. While reiterating, they threatened that they would kill him. Said occurrence was witnessed by Mohd. Iqbal, PW5. Complainant was taken to the

Civil Hospital, Malerkotla by Rajesh Tandon. Motive for inflicting injuries was that the accused persons suspected him of teasing the boys of the locality.

On this statement Ex. PW6/A, formal FIR Ex. PW7/C was registered under Section 324 read with Section 34 IPC. Rough site plan of the area was prepared by ASI Sewa Singh. Statements of the witnesses were recorded. On injury No. 1 being declared as dangerous to life on 18.09.2001, offence punishable under Section 307 IPC was added.

Accused were arrested on 20.09.2001 by ASI Janak Singh. On disclosure statement, Ex. PW7/E, being suffered by Babar Ali alias Munna, knife used in commission of the offence was recovered in the area of Karbla (religious place). Knife was taken in possession vide memo (Ex. PW7/G). No recovery was effected from the accused Sikander Ali alias Saifi.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented. Charge was framed against the accused for the offences punishable under Sections 307, 324 read with Section 34 IPC on 27.11.2001, to which they pleaded innocence and claimed trial.

Prosecution examined nine witnesses to prove its case. Accused while denying incriminating circumstances put to them pleaded innocence and false implication. Four witnesses were examined in defence.

Learned trial Court on considering the evidence on record, entire facts and circumstances of the case concluded that the

prosecution had proved its case beyond reasonable doubt qua the appellants and convicted them for the offences as charged and sentenced them as mentioned above. Aggrieved therefrom, the instant appeal has been preferred by the appellants.

Learned counsel for the appellants at the very outset argues that the learned trial Court has proceeded on the basis of conjectures and surmises without adverting to the evidence on record and has wrongly convicted and sentenced the accused. It is urged that Mohd. Iqbal, PW5, the alleged eyewitness has not supported the prosecution version. Genesis of the crime has been suppressed and the place of occurrence has not been fixed. Furthermore, only one knife has allegedly been recovered from Babar Ali alias Munna. This knife was not blood stained and no weapon has been recovered from the other accused Sikander Ali alias Saifi. It is vehemently argued that material improvements have been made by the complainant in his statement before the Court thereby raising suspicion on the prosecution version. It is contended that the complainant was a shady character, habitual of intoxication and basically quarrelsome. Therefore, his testimony cannot be relied upon. It is submitted that the occurrence is alleged to have been taken place on 17.09.2001 at 10.00 a.m. whereas the FIR was registered after about 26 hours on 18.09.2001 at noon. Therefore, possibility of embellishment and concoction cannot be ruled out.

Learned counsel for the appellants also contends that ingredients of Section 307IPC are not made out in the present case.

It is submitted that the operation note does not mention the injury

being dangerous to life, therefore, conviction under Section 307 IPC cannot be maintained.

Learned counsel for the State while refuting the above said arguments has supported the impugned judgment and order. He submits that sufficient and cogent evidence is on record, which proves complicity of the accused in the commission of offence beyond reasonable doubt. He prays for upholding the impugned judgment and order.

I have heard learned counsel for the parties and minutely gone through the record with their able assistance. Injured complainant in this case i.e. Mohd. Mutaki, PW6, has given a graphic account of the incident as it unfolded. He has given a consistent version before the trial Court in consonance with his initial statement (Ex. PW6/A). It is proved on record that he had been declared unfit to make a statement on 17.09.2001 by the doctor at Civil Hospital, Malerkotla. His statement was recorded on the next day i.e. 18.09.2001 when the doctor declared him fit to make a statement. There is, thus, no delay as suggested in the lodging of the FIR. Circumstances have been duly explained for the FIR being registered on 18.09.2001.

PW3, Dr. Sheetal Jain, has clarified that the patient was declared unfit to make a statement due to sedation. Therefore, no benefit can be derived by the accused from the observation in the cross examination of Dr. Sheetal Jain to the effect that patient was conscious when brought to the hospital or that the general condition of the patient was okay. Furthermore, the observation that at the time

of preparing medico legal report, the patient was fit to make a statement cannot improve the case of the accused. It is borne out from the record that when the police reached the Civil Hospital on receipt of this medical report, the complainant was under sedation and, therefore, declared unfit to make a statement.

Ocular version given by the complainant is duly corroborated by the medical evidence on record. Complainant received as many as six injuries as detailed in the medico legal report, which are as under:-

- 1) *Stab incised injury 3-5 cm x 0.75 cm going inwards fresh blood was oozing out. Injury was 2.5 cm away from the umbilicus. Advised x-ray abdomen standing position.*
- 2) *Stab incised injury 3 cm x 0.75 cm going inwards left side abdomen 20 cm away from the umbilicus. Fresh blood was oozing out. Advised x-ray.*
- 3) *Incised injury 3.5 cm x 0.75 cm on frontal aspect infra axillary region right side chest 15 cm away from the umbilicus. Advised x-ray chest.*
- 4) *Incised injury 1.25 cm x 0.5 x 0.5 post lateral aspect left elbow joint. Fresh blood was oozing out.*
- 5) *Incised injury 1 cm x 0.5 cm x 0.5 cm post lateral aspect left elbow joint just below injury No. 4. Fresh blood was oozing out.*
- 6) *Incised injury 3.5 cm x 1 cm x 0.75 cm left hand at the base of the left thumb and the web in between left thumb and left index finger, fresh blood was oozing out. X-ray was advised.*

On 17.09.2001 itself, the complainant was operated upon at 5.30 p.m. by Dr. N.C. Garg, PW1. In respect to the injury No. 1,

Dr. Garg opined as under:-

“1. Injury No. 1 was explored. The wound was going 2 cm below the umbilicus and direction was upwards and laterally to the right side. It was muscle deep, near the mid-line, cutting the skin, rectus sheath and rectus muscle. The lateral part of the wound was deep and it was cutting the skin, muscle, sheath and 1.5 cm cut was there in the peritoneum.

Peritoneal cavity was full of blood. There was a cut in the omentum and blood was oozing out. There was a cut of $\frac{3}{4}$ cm in the longitudinal direction of small intestine.

Small intestine was repaired, omentum and peritoneum was stitched and peritoneum at the site of cut was also stitched. After mopping blood from the peritoneum cavity.

There was no other injury to the peritoneum.

Peritoneal cavity was washed with normal saline and wound was stitched in layers after securing haemostasis. Injuries No. 2 & 3 were also explored. Both were muscle deep and were also stitched after security haemostasis.”

Dr. N.C. Garg, PW1, has clearly stated that he operated upon the injured on 17.09.2001. It is on the basis of operation note (Ex.PC) that injury No. 1 was declared to be dangerous to life on the basis of which offence punishable under Section 307 IPC was added.

While referring to operation note (Ex.PC), learned counsel for the appellants submits that it has not been mentioned that the injury in question was dangerous to life. This contention is

clearly fallacious. Apart from the fact that operation note is not meant to contain an opinion on the nature of the injury, a bare perusal of the same is reflective of the nature of injury. It is on the basis of operation note that an opinion (Ex. PF) was given in respect to the nature of injury.

There is nothing on record to suggest that injury No. 1 was not dangerous to life.

Much stress has been laid on PW5, Mohd. Iqbal not supporting the prosecution version. It is submitted that once the alleged eyewitness has not supported the version, conviction of the accused is illegal. Examination of the record reveals that Mohd. Iqbal on 08.04.2002 had narrated the incident as it occurred on 17.09.2001 in consonance with the version given by the complainant at the initial stage vide statement (Ex. PW6/A). His examination and part of the cross examination was conducted on 08.04.2002. In the examination-in-chief, he stated as under:-

“ On 17.09.2001 I was selling Chhole Bhature in Mohalla Chhata, Malerkotla. At about 10 A.M. on that day, Goshi was passing in front of my shop to purchase cigarette from the shop of my neighbourer Madhu. After purchasing the cigarette Goshi was coming back and when we was just short of my shop Munna and Shaffi also came there. Munna and Shaffi started arguing with Goshi. Then they started fighting. Immediately Munna and Shaffi gave knife blows on the person of Goshi. However, I could not observe the part of body on which the knife hit. At that time, I was standing in my shop. Goshi raised alarm Bachao Bachao. After one or two minutes Goshi ran away from the spot to save himself.

Rajesh Tandon got Goshi admitted in hospital. I do not know the reason behind this occurrence. Both Munna and Shaffi are present today in Court. I had witnesses the entire occurrence and had also pointed the place of occurrence to the police. My statement was recorded by police.”

When he was recalled for further cross examination on 29.05.2003 he resiled from his earlier stand and stated that the statement given on 08.04.2002 before the trial Court had been rendered under threat and pressure of Mohd. Mutaki, the complainant. He denied that the accused person in Court on that day ever caused injuries on the person of the complainant in his presence on 17.09.2001. He sought to explain his volte face by saying that after recording of his statement in Court on 08.04.2002,, his conscience pricked him and thereafter he wrote letters Exs. DX and DY addressed to the trial Court. He absolved the accused of having committed the offence. He, however, admits that he had never complained to the police officials or any higher officials about the pressure being exerted upon him. Letter Ex. DX is dated 23.11.2002 and Ex. DY is dated 03.12.2002. There is no reason forthcoming as to what circumstance was instrumental in pricking his conscience after seven and a half (7½) months of deposing before the trial Court. It is relevant to note at this stage that Mohd. Iqbal appended his signatures on his statement made on 08.04.2002 and subsequently on 29.05.2003 in Urdu and not in Punjabi. Letters Exs. DX and DY are written and signed in Punjabi. However, Mohd. Iqbal has accepted the said letters to have been written by him.

Keeping in view the peculiar circumstances as narrated above, there is nothing to prevent this Court from relying upon the statement made by Mohd. Iqbal on 08.04.2002. Said part of his evidence is definitely acceptable regarding the time, place and manner of incident as well as identity of the accused. Simply because Mohd. Iqbal chose to backtrack for the reasons best known to him from his earlier statement, is not a ground for ignoring his entire evidence. It is a settled position that the entire evidence of a hostile witness need not be discarded. Reliance can be placed on a part thereof which inspires confidence as corroborated by evidence on record.

Effort on the part of the defence to suggest that complainant Mohd. Mutaki is a person of shady character cannot be of any avail to them. Even if the said averments are accepted to be true, it does not divest the prosecution version of its veracity. Perusal of the testimony of all the four defence witnesses reveal that they have in a monotone stated that the complainant is an addict who remains under the influence of intoxication and quarrels with various persons under influence of intoxication. He is bad character of the city. They know Babar Ali alias Munna accused, who is a Gentleman, a respectable person bringing up his family by doing labour and they had never heard anything bad of him. However, in their cross examination, all of them with one voice admit that they have never seen the complainant take any intoxicant. They have not ever informed the higher authorities about consumption of intoxicant by Mohd. Mutaki. DW2, DW3 and DW4, Municipal Councillors, have

admitted that the accused Babar Ali alias Munna is not a citizen of their Ward. No reliance can be placed on such parrot like recitals by these witnesses for the benefit of the accused persons.

Further contention on behalf of the appellants is that no weapon of offence was recovered from Sikander Ali alias Saifi and the knife recovered from Babar Ali alias Munna was not blood stained neither blood stained clothes were recovered and taken into possession, therefore, the prosecution case is riddled with doubt. This contention is rejected. Medical evidence reveals injuries on the person to have been caused by sharp edged weapon. A knife was recovered pursuant to a disclosure statement by Babar Ali alias Munna. Fact that it was not blood stained does not detract from the veracity and credibility of the prosecution version. Injured complainant has given a graphic and detailed account of the manner in which the injuries were caused to him by the accused. This account is duly corroborated by the medical evidence. Recovery of knife from accused Babar Ali alias Munna is not suspect. It has been duly proved by ASI Sewa Singh, PW7, who had no axe to grind against the accused persons. He bore no ill will qua the accused which may have prompted him to falsely implicate the said accused. Similarly, non-recovery of knife from the accused Sikander Ali alias Saifi cannot be a ground for acquitting him in the face of overwhelming and cogent evidence on record to prove its complicity.

It is evident that accused persons in common concert caused injuries to the complainant Mohd. Mutaki and committed offence punishable under Sections 307, 324, 34 IPC.

In view of the facts and circumstances of the case, the appellants have been rightly convicted for the offences punishable under Sections 307, 324, 34 IPC.

At this stage, learned counsel for the appellants submits that the quantum of sentence imposed upon the appellants be reduced and sentence of rigorous imprisonment of seven years under Section 307 IPC is not commensurate with the offence in question.

Keeping in view the gravity of the offence and nature of injuries, no ground whatsoever is made out for any variation in the sentence imposed upon the appellants. No other point has been urged.

Consequently, this appeal is dismissed.

(Lisa Gill)
Judge

May 15, 2015
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