

CRA-745-SB-2004
with
CRR-2201 of 2004

- : 1 :-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

CRA-745-SB of 2004.

DATE OF DECISION: February 20, 2015.

DEEPAK AND ANOTHERAPPELLANTS.

VERSUS

THE STATE OF HARYANARESPONDENT.

WITH

CRR-2201 of 2004.

DINESHPETITIONER.

VERSUS

STATE OF HARYANA AND OTHERSRESPONDENTS.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Rahul Vats, Advocate
for the appellants in CRA-745-SB of 2004 and
for respondents no.2 and 3 in CRR 2201 of 2004.

Mr. Sushil Jain, Advocate,
for the petitioner in CRR 2201 of 2004.

Mr. Vivek Saini, Assistant Advocate General, Haryana.

SNEH PRASHAR, J.

1. This appeal was preferred by Deepak son of Jagat Singh and
Suresh Kumar son of Jagat Singh, residents of Jind Road, near Jagdish

Ram Park, Rohtak, convicts-appellants, assailing the judgment and order of sentence dated 10.03.2004 recorded by learned Additional Sessions Judge, Rohtak, convicting and sentencing the said appellants in the criminal case bearing F.I.R. No.399 dated 23.07.2003 under Sections 307/323/34 of the Indian Penal Code (for short "I.P.C.") registered at Police Station City, Rohtak.

2. Precisely, the story of the prosecution was that on 22.07.2003 at about 11:30 AM at the instance of Hari Chand, resident of Sector-8, Faridabad, Daily Diary Report No.13 was recorded at Police Station Civil Lines, Rohtak. The complaint lodged by Hari Chand was that on 08.07.2003, his son Dinesh had come to attend a marriage at Surya Banquet Hall, near Jagdish Rai Park, Jind Road, Rohtak, where he was assaulted and having suffered injuries was got admitted in P.G.I.M.S., Rohtak. From the said hospital, he was shifted to Apollo Hospital, Delhi.

The Investigating Officer went to Apollo Hospital, Delhi, but as injured Dinesh was declared unfit to make statement, the statement of Pardeep son of Rattan Singh, resident of Sihi, Sector-8, Faridabad was recorded, who stated that on 08.07.2003 he (Pardeep) alongwith Dinesh son of Hari Chand, Shanker son of Babu Lal Sharma and Mahender son of Giri Raj had come to Rohtak from Faridabad to attend a marriage party which was to assemble at Gappumal Stadium, Jind Road, Rohtak. Shanker was playing deck in a loud voice in his vehicle parked on a side of the road. At about 10 PM, Jagat Singh came and raised objection which led to

an altercation between them. In the meantime, Deepak and Suresh sons of Jagat Singh, armed with Lathis, reached the spot. They gave one Lathi blow each on the head of Shanker as a result of which he fell on the road. When Dinesh came running and tried to rescue Shanker, he too was assaulted by Deepak and Suresh who gave him one Lathi blow each on his head and Dinesh also fell on the road. He (Pardeep) and Mahender, who witnessed the occurrence, tried to catch hold of Deepak and Suresh, but they managed to run away towards Rohtak City with their Lathis. The injured were brought to P.G.I.M.S., Rohtak. He informed Hari Chand, father of Dinesh, who in the morning arrived and took Dinesh to Apollo Hospital, Delhi.

3. On the statement of Pardeep, a formal First Information Report was recorded and a case for commission of offence punishable under Sections 307/323/34 of I.P.C. was registered. Investigation commenced. Both the appellants-accused Suresh Kumar and Deepak were arrested on 29.07.2003. In pursuance of their disclosure statements, Lathis used during the commission of crime were recovered.

4. The appellants were charge-sheeted under Sections 307 and 323 read with Section 34 of I.P.C. to which they pleaded not guilty and claimed trial.

5. To prove the charges, the prosecution examined PW1 Deputy Manager C.S. Singh; PW2 Dr. H.P. Rai; PW3 Dr. Deepak Vats; PW4 Dr. Nevil Mallet; PW5 Constable Sumit Kumar; PW6 Constable Rajpal; PW7

Head Constable Ram Kumar; PW8 Head Constable Rajinder Kumar; PW9 Inspector/SHO Yaad Ram; PW10 Assistant Sub Inspector Daya Nand; PW11 Pardeep son of Rattan Singh; PW12 Sub Inspector Mahender Singh; PW13 Dinesh; PW14 Shanker; and PW15 Head Constable Kulbir Singh.

6. After closure of evidence of the prosecution, statement of appellants under Section 313 of the Code of Criminal Procedure (for short “Cr.P.C.”) was recorded. The incriminating circumstances appearing in the evidence were put to them, which they denied and pleaded innocence. They added that their father Jagat Singh alongwith other neighbours had stopped Pardeep and his friends from making noise but they misbehaved with him under the influence of liquor. Dinesh left the place on a scooter to bring more liquor and sustained injuries accidentally by striking against the bar of railway crossing which at that time was closed due to arrival of Ekta Express.

Despite opportunity availed, no evidence in defence was led by either of the appellants.

7. Scrutinizing the evidence adduced by the prosecution and considering the submissions made on behalf of the appellants, learned trial Court finding that the prosecution had succeeded in proving its charges against the appellants beyond all shadows of reasonable doubt held them guilty and convicted them under Sections 307 and 323 read with Section 34 of I.P.C. and further sentenced them as under:-

“Both the accused persons are hereby sentenced for rigorous imprisonment for 10 years and a fine of Rs.10,000/- each, in case of default of payment of fine, further rigorous imprisonment for a period of two years, for offence punishable under Section 307/34 of I.P.C. They are further sentenced for rigorous imprisonment for 6 months and for a fine of Rs.500/- each, in case of default of payment of fine, further rigorous imprisonment for a period of one month, for offence punishable under Section 323/34 of I.P.C. However, both the sentences shall run concurrently.

It is also ordered that in case of realization of amount of fine, 95% thereof, shall be given to injured Dinesh, after the decision of the appeal or after the expiry of the period of limitation thereof, as the case may be.

In view of provisions of Section 357(3) of Cr.P.C. and also in view of pronouncement of the Apex Court in 'Hari Kishan and State of Haryana Versus Sukhbir Singh', AIR 1988 SC 2127 and by our High Court in 'Kharak Singh and others Versus State of Punjab', 2004(1) RCR (Criminal) 766, both the convicts are also hereby required to pay compensation of Rs.25,000/- each to injured Dinesh.”

8. Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 10.03.2004 passed by learned trial court, the appellants preferred the instant appeal.

Injured Dinesh also filed Criminal Revision No.2201 of 2004 praying for enhancement of the compensation amount.

9. The submissions made by Mr. Rahul Vats, learned counsel representing the appellants, Mr. Vivek Saini, Assistant Advocate General

for the State of Haryana and Mr. Sushil Jain, Advocate for the petitioner in CRR No.2201 of 2004 have been heard and record has been perused.

10. At the very outset, learned counsel for the appellant argued that as per prosecution story the occurrence took place on 08.07.2003 whereas the First Information Report Ex.PO based on the statement Ex.PL of PW11 Pardeep was registered on 23.07.2003. There was apparently a delay of about 15 days in reporting the incident to the police. The delay remained unexplained and in such circumstances possibility of false implication of the appellants could not be ruled out. To support his arguments, learned counsel relied upon **Raghunath vs. State of Haryana and another, 2003 Supreme Court Cases (Criminal) 326.**

11. It was further argued by learned counsel that as stated by PW11 Pardeep an altercation had taken place between Shanker and Jagat Singh, father of the appellants. It was not his version that at that time the appellants were present at the spot. When and how the appellants arrived that too armed with Lathis was not stated by Pardeep in the First Information Report. Admittedly, there was no enmity between the parties prior to the said incident. As such, there was no occasion for the appellants to come armed with Lathis and inflict one Lathi blow each on Shanker and one Lathi blow each on Dinesh. It was also not clear which Lathi blow given by either of the accused on the head of Dinesh resulted in an injury opined to be dangerous to life by the doctor. There was also no intention on part of the appellants to cause any serious injury when the

matter on which quarrel had taken place was quite trivial.

12. Elaborating further, learned counsel submitted that the truth as disclosed by the appellants in their statement under Section 313 Cr.P.C. was that after a quarrel had taken place between PW14 Shanker and Jagat Singh, father of the appellants, that too because Shanker and Dinesh were under the influence of liquor, Dinesh had left the place on a Scooter to bring more liquor, but on the way he accidentally hit against the Bar at railway crossing which was closed and fell down. As a fall on the road, he suffered the head injury. Referring to the statement of PW4 Dr. Nevil Mallet, Senior Resident, P.G.I.M.S., Rohtak, who proved medico legal reports Ex.PE and Ex.PF of injured Dinesh and Shanker respectively, learned counsel pointed out that in his cross-examination the doctor admitted that injuries on the person of Dinesh as well as Shanker by hit against the Bar of railway level crossing while driving a scooter in an intoxicated condition, were possible.

Last but not the least, learned counsel asserted that the occurrence had taken place on a public road yet no independent witness was joined during investigation. The evidence of the prosecution consisted of only interested witnesses who in absence of independent corroboration cannot be relied upon.

13. None of the arguments raised by learned counsel for the appellants was convincing or meritorious. Indeed, occurrence had taken place on 08.07.2003 whereas the statement Ex.PL of Pardeep PW11, an

eyewitness of the occurrence, was recorded on 23.07.2003 on the basis of which First Information Report Ex.PO was recorded by PW10 Assistant Sub Inspector Daya Nand. There was a delay of 15 days in lodging of the First Information Report but in the given facts and circumstances the delay could not be held fatal to the prosecution. In fact, the story presented in defence by the appellants proved that the occurrence was admitted by them also. In their statements recorded under Section 313 Cr.P.C., both the appellants consistently admitted that an altercation had taken place between injured Shanker and their father Jagat Singh when the latter alongwith neighbours stopped complainant and his friends from making noise and misbehaving under the influence of liquor. In that manner, the appellants almost admitted the motive attributed to them by the prosecution for inflicting injuries on injured Shanker and Dinesh.

According to the appellants after the altercation between Shanker and their father, Shanker alongwith complainant left the place on scooter to bring more liquor and being under the influence of liquor, they sustained injuries by accidentally hitting their heads against a bar of railway level crossing on Rohtak-Delhi road which was closed at the relevant time. No evidence worth in its name could be produced by the appellants to prove the alleged accident. If at all there was any truth in their version, the gate man on duty at the railway crossing could have been the best person to be examined for proving the accident. He being an official on duty would have certainly witnessed the accident. What to say

of examining the gate man, the appellants could not even produce any other public witness who could support their version of an accident at the railway crossing.

14. The story set up in defence by the appellants by itself was inconsistent. They alleged that their father Jagat Singh alongwith neighbour had stopped complainant and his friends from making noise and from misbehaving under the influence of liquor. They also stated that the complainant and Shanker had left the place on a scooter. The complainant in the instant case was Pardeep on whose statement the First Information Report was registered and admittedly Pardeep had not suffered any injury. In case the appellants were referring to injured Dinesh by calling him complainant, it was not their version that Dinesh was on a scooter or a motorcycle on which he had left the place for bringing more liquor. Most importantly, there is nothing to prove how and when the appellants came to know about the alleged accident of the injured at the railway crossing when there was no eyewitness of that occurrence whom they could name or examine.

Apparently, the story presented by the appellants to explain the injuries on the person of Shanker and Dinesh was nothing but a concoction on their part. As already observed above, motive of the occurrence assigned was admitted by them. When their further explanation regarding the injuries was proved to be false, that was sufficient to establish the occurrence during which the appellants caused

injuries to injured Shanker and Dinesh with Lathis.

15. Be that as it may, delay in reporting the matter to the police was not intentional. The occurrence took place at around 10 PM and injured Dinesh and Shanker reached P.G.I.M.S., Rohtak at 10:50 PM. They were medico legally examined by PW4 Dr. Nevil Mallet. The doctor sent information to the police vide Ex.PG and Ex.PH the same night at 11:45 PM. PW11 Pardeep stated that he informed father of Dinesh who arrived and took his son to Apollo Hospital. By the time the police reached the hospital, Dinesh had been taken to Apollo Hospital and Shanker had left the hospital after first aid. Since the doctor had sent information to the police, injured Shanker or the eyewitness Pardeep did not go to the police on their own. The police came to know about injured Dinesh from his father Hari Chand on which Daily Diary Report no.13 Ex.PR was recorded. The police reached Apollo Hospital but as Dinesh was declared unfit by the doctor, the police recorded the statement of eyewitness Pardeep. In that manner, there was no unnecessary loss of time on part of the complainant party which could be taken as delay on their part.

Since the condition of Dinesh was serious, it was more important for his family members to look after him than run after the police to get their complaint registered with regard to the occurrence. If injured Shanker and Pardeep did not go to the police on their own that would be no ground to suspect the testimony of Dinesh especially when

the date, time and place of occurrence was not only proved from medical evidence but was also admitted by the appellants as noticed above.

16. The delay did not prejudice the case of the appellants in any manner. If at all the complainant/injured had to implicate the accused falsely, they would have done so by naming their father and neighbours etc. with whom admittedly Shanker had an altercation. Otherwise also, the injured would have been the last person to let the real culprits go scotfree in order to implicate the appellants. When there was no enmity between the parties, there was no reason for the injured to implicate them falsely for the injuries suffered by them.

17. Both the injured PW13 Dinesh and PW14 Shanker gave a consistent and crystal clear version of the occurrence. They unequivocally stated that the appellants gave one blow each on the head of Shanker and when Dinesh tried to rescue him, they inflicted one Lathi blow each on his head also as a result of which he fell down and became unconscious. Both the injured were subjected to lengthy cross-examination by the appellants, but nothing such could be derived which could reflect on their credibility and render their statements doubtful.

18. Another argument of learned counsel for the appellants was that the identification of the accused by the injured witnesses for the first time in the Court was meaningless, when prior to the occurrence the parties were not known to each other and no test identification parade was held by the police after the arrest of the appellants. To fortify his

arguments, learned counsel relied upon **Rajesh Govind Jagesha versus State of Maharashtra, 1999(4) RCR (Criminal) 754.**

The argument is completely devoid of merit. Firstly, it was not the case where the injured could not see the culprits and for that reason their identity was not known. Rather, in the First Information Report all the necessary particulars i.e. name, parentage etc. of the appellants were stated by the complainant. Therefore, there was no necessity for arranging test identification parade. Secondly, the appellants themselves suggested to PW13 Dinesh and PW14 Shanker that they had been falsely implicated on account of altercation between Shanker and their father Jagat Singh. As already observed above, the appellants during cross-examination of the witnesses and in their statements recorded under Section 313 of Cr.P.C. admitted the motive stated by the complainant which led to the occurrence. That not only pointed towards reliability and trustworthiness of the statement of the witnesses but also left no doubt about the identity of the appellants.

19. Lastly, learned counsel for the appellants asserted that there is contradiction between the testimony of the injured and eyewitnesses and the medical evidence. He pointed out that as per medical evidence both Dinesh and Suresh were having only one lacerated wound each on their heads, but as per the ocular evidence produced by the prosecution both the injured were given one Lathi blow each by each of the appellants. If that was true the injured should have suffered two injuries each on their

heads but the medical evidence did not say so. Relying on **Jasbir and others versus State of Haryana, 2003 Supreme Court Cases (Cr1.) 1443** and **State of Punjab versus Ramesh Chand and others, 1992(3) Recent Criminal Reports 430**, learned counsel asserted that if medical evidence is found to be inconsistent with ocular evidence the Court should reject the ocular evidence.

20. There is no discrepancy between the medical and ocular evidence in the real sense. Merely for the reason that the injured suffered one injury each on their heads whereas they stated that both the accused gave one Lathi blow each on their heads, they were not to be disbelieved. It would not be judicious to reject the statement of the injured on that count. It is possible that the second blow did not cause any significant injury or the two blows landed at the same place. There being no reason for the witnesses to be hostile against the appellants, there was no occasion for them to implicate them falsely.

21. PW4 Dr. Nevil Mallet proved the medico legal report Ex.PE and Ex.PF of injured Shanker and Dinesh respectively. As mentioned in the medico legal report Ex.PE Shanker had a lacerated wound 2x1cm over the right frontal parietal region with fresh bleeding caused by blunt weapon. According to Ex.PF Dinesh had a lacerated wound 4x1cm on left frontal region with fresh bleeding caused by blunt weapon.

From P.G.I.M.S., Rohtak, Dinesh was shifted to Apollo Hospital, Delhi and as proved by PW2 Dr. H.P. Rai, he was found to be

suffering from diffuse cerebral swelling with multiple heamorrhagic contusions in left fronto-parietal region and blood within the superficial sulci in right fronto-parietal region, with marked midline shift to right, with comminuted fracture of the left frontal bone with linear fracture of right frontoparietal, bilateral temporal bones. He was having right side hemiplegia and was operated upon the same day by Dr. S.K. Sugani with associate Surgeon Dr. H.P. Rai, PW2.

On 05.09.2003, an application Ex.PB was given by the police to Dr. H.P. Rai, PW2, who gave his opinion Ex.PB/1 with regard to the nature of injury suffered by Dinesh. He opined that the injury was dangerous to life. It was caused by blunt weapon and but for the timely medical aid the injury could have caused his death.

22. Thus, the evidence of the prosecution being consistent, cogent and truth inspiring, learned trial Court rightly relying upon the same held the appellants guilty for commission of offences punishable under Sections 307 and 323 read with Section 34 of I.P.C. Accordingly, the judgment of conviction is upheld.

23. Coming to the matter of sentence, learned counsel for the appellants submitted that the appellants had been sentence to Rigorous Imprisonment for 10 years and to pay a fine of Rs.10,000/- each and in case of default in payment of fine to further undergo Rigorous Imprisonment for a period of two years for offence punishable under Section 307/34 of I.P.C. The appellants were brothers and young boys

having old parents. They were not previous convicts. The occurrence had taken place in a spur of moment and was not premeditated, as such the sentence be reduced.

24. Considering the age, character and previous antecedents of the appellants and the fact that they are real brothers, the sentence awarded to them is reduced to Rigorous Imprisonment for seven years and a fine of Rs.10,000/- each and in case of default in payment of fine to undergo further Rigorous Imprisonment for a period of one and a half years for commission of offence under Section 307 read with Section 34 of I.P.C. The sentence of Rigorous Imprisonment for six months and a fine of Rs.500/- each and in case of default in payment of fine to further undergo Rigorous Imprisonment for a period of one month for offence under Section 323 read with Section 34 of I.P.C. shall remain the same. However, both the sentences shall run concurrently.

It may be mentioned here that on realization of fine amount, the entire shall be paid as compensation to injured Dinesh after the decision of the appeal or after expiry of the period of limitation as the case may be. With the above modification in sentence, the appeal is dismissed.

CRR-2201 of 2004

The order of learned trial Court directing the convicts to pay compensation of Rs.25,000/- each to injured Dinesh appears to be adequate and hence requires no intervention.

CRA-745-SB-2004
with
CRR-2201 of 2004

- : 16 : -

Hence, the revision petition shall stand dismissed.

(SNEH PRASHAR)
JUDGE

February 20, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.