

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-84-SB of 2004
Date of Decision: December 10, 2015

Krishan Lal and others

...Appellants

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Sharma, Advocate
for appellants No.1 to 3.

Mr.Subhash Godara, Legal Aid counsel
for the appellants.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

Mr.Sunil Saini, Advocate
for the complainant.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against the judgment of conviction dated 05.12.2003 and order of sentence dated 09.12.2003 passed by learned Addl. Sessions Judge (Fast Tract Court), Ambala, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under each Section 325/34 and Section 308/34 IPC.

They were further directed to pay fine of ₹500/- and in default of

payment of fine, to undergo rigorous imprisonment for a period of fifteen days under Section 323/34 IPC. All the sentences were ordered to run concurrently. However, co-accused Seema was acquitted of the charges framed against her.

The brief facts of the prosecution case are that it is a cross version of case title 'State vs. Rakesh and others'. On 25.02.2000, a medical ruqa was received at Police Station regarding sending Shibu Lal and other injured to PGI, Chandigarh. After obtaining fitness certificate from the concerned doctor, statement of Shibu Lal Ex.P13 was recorded by Head Constable Sham Lal, in which Shibu Lal stated that on 25.02.2000 at about 4.00 P.M., Billa Pehalwan collected his sons, brother-in-law and other relatives and started constructing a wall on their wall. When he and his family members objected to it and tried to stop him from constructing the wall, then, Billa, his friends and relatives started giving abuses to them. Complainant and his family members stated Billa and others not to construct the wall. Thereupon, Billa inflicted a sword blow on the right ear of the complainant Shibu Lal. Manoj Kumar @ Mannu inflicted a *saria* blow on the left side of the head of wife of the complainant. When Mamraj, brother-in-law of the complainant, tried to rescue complainant and his wife, then Manoj Kumar gave *saria* blow on the head of Mamraj. Gagan son of Billa came there with a galndasi and gave 2-3 blows on the head of complainant's brother Rakesh. Pappu brother-in-law of Billa inflicted *kookri* blow on the head of father of the complainant. Neetu d/o Billa inflicted *saria* blow on Sona Devi mother of the complainant. Seema

wife of Billa threw a brick on Geeta, wife of brother of the complainant. The complainant further stated that accused persons and their other sikh companions kept giving fist, slap and kick blows and abused him and his family members. The complainant and others raised alarm, which attracted Ramesh, Kaka and Rajesh, who rescued them from the hands of accused persons with great difficulty. After recording the statement, it was sent to the police station for registration of the case. Since a FIR had already been registered on the complaint of Manoj Kumar, so the present case was made as a cross case. Accused were arrested. Statements of witnesses were recorded. After necessary investigation, challan was presented against the appellants and co-accused.

On presentation of challan against accused-appellants and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Sections 323, 325, 308 and 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Inspector Ashok Kumar, who mainly deposed regarding preparing of report under Section 173 Cr.P.C. PW-2 Constable Ram Saran mainly deposed regarding preparing of scaled site plan Ex.P1. PW-3 Constable-1 Ram Kumar brought the DDR register and proved the copy of DDR Ex.P2. PW-4 Dr.Shashi Tripathi, Medical Officer deposed that on 25.02.2000, he medico-legally examined Rakesh and found following injuries:-

1. *Lacerated wound 4 x 0.5 x 0.5 cm on the parietal region. Fresh bleeding was present. Width clotted blood. Stitches were given.*
2. *Lacerated wound 5 x 0.5 cm x 0.5 cm on the right parietal region. Fresh bleeding was present.*
3. *Lacerated wound 5 cm x 05 cm x 0.5 cm on the occipital region. Clotted blood was present. X-ray was advised.*
4. *Complaint of pain in the left arm multiple abrasions were present.*

He opined that injuries No.1 to 4 were caused by blunt weapon. Injuries No.1 to 3 were kept under observation and injury No.4 was simple. He further deposed that on the same day, he medico-legally examined Shibu Lal and found following injuries:-

1. *Patient was unconscious. Swelling was present on the right Jaw and right side of face. Swelling present on the right eye. Right eye was closed. Head injury was made and X-ray was advised.*
2. *Lacerated wound on the right pinna. Fresh bleeding was present. Stitches were given. Fresh bleeding was present from the right ear.*

Injuries No.1 and 2 were caused by blunt weapon. On the same day, PW-4 Dr.Shashi Tripathi medico legally examined Sadhu Ram and found following injuries:-

1. *Lacerated wound 4 x 0.5 x 0.5 cm. Scalp deep was present in the right parietal region. Fresh bleeding was present and stitches were given.*
2. *Lacerated wound 5 x 0.5 cm on the left eye brow and lacerated margin. Clotted blood was present and stitches were given.*
3. *Swelling was present on the left arm.*

The doctor opined that the injuries were caused by blunt weapon. On the same day, he also medico legally examined Sona Devi and found following injuries:-

1. *Lacerated wound 2.5 x 0.5 cm was present on the scalp in the left parietal region. Fresh bleeding was present and stitches were given.*

The doctor opined that injury is simple caused by blunt weapon. He further deposed that on 26.02.2000, there was complaint of pain and swelling on the right ankle of Sona Devi. Tenderness was present. Bluish bruise was present on the whole of left thigh. He also medico-legally examined Saroj on 25.02.2000 and found following injuries:-

1. *Lacerated wound 5 cm x 0.5 cm. Scalp deep was present in the left parietal region. Fresh bleeding was present.*
2. *Complaint of pain on the left knee. Abrasion was present.*

The doctor opined that injuries No.1 and 2 were simple and caused by blunt weapon. On the same day, Dr.Shashi Tripathi medico legally examined Mam Raj and found following injury:-

1. *Lacerated wound 3 x 0.5 cm. was present in the left occipital region. Fresh bleeding was present and stitches were given.*

He declared injury No.1 as simple and caused by blunt weapon. He next deposed that, on 18.03.2001, he declared the injury which was kept under observation as grievous as per X-ray report

showing fracture left parietal bone of Rakesh Kumar. On 02.03.2000, he gave opinion regarding the injury on the person of Sona Devi as grievous as X-ray showed fracture of lower fibula. He further stated that on 05.01.2001, he gave opinion Ex.P12 on application Ex.P12/1 as the injury of scale of Rakesh Kumar which was declared as grievous on 18.03.2000, is not dangerous to life. PW-4 further deposed that on 18.03.2002, he gave opinion regarding nature of injuries after going through the report Ex.P22, which bears the signatures of Dr.S.S.Punia, Radiologist. On 01.03.2000, he gave his opinion Ex.P26 on the basis of X-ray film Ex.P27. PW-5 Saroj, PW-6 Geeta, PW-7 Shimbhu Lal and PW-8 Rakesh Kumar, all injured persons, deposed as per prosecution version. PW-9 ASI Sham Lal, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-10 SI Rajnish deposed regarding partial investigation. He also deposed regarding opinion of the doctor taken regarding the injured. PW-11 Dr.Puneet Mittal, ESI Hospital deposed that on 26.02.2000, he examined Shibhu Lal and found following injuries:-

1. *There was right ear laceration (wound stitched and dressed).*
2. *Multiple fracture of facial bones:-*
 - I) *Fracture of Zygoma.*
 - II) *Fracture of right anterior wall Maxilla.*
 - III) *Fracture of right lateral wall of orbit.*
 - IV) *Fracture of right ethmoid.*
3. *Query of head injury (require neuro surgery clearance and observation period).*

The doctor declared Injuries No.1 and 2 as grievous and injury No.3 was reserved for opinion of neuro surgeon. He also opined that injuries No.1 to 3 were caused with blunt weapon and declared injury No.3 is simple in nature.

At the close of prosecution evidence, the accused-appellants and co-accused were examined under Section 313 Cr.P.C. and when they were confronted with the evidence of the prosecution, they denied the correctness of the evidence and pleaded themselves as innocent. They further pleaded that on 25.02.2000, Manoj Kumar was present on the roof. In the meanwhile, Rakesh, Mamraj, Shambhu Lal and Suresh came over there and started demolishing the wall raised by Krishan Lal. When Manoj raised objection, he was attacked by above-said persons and Seema Devi and Seema were also attacked upon. Sadhu Ram abused Manoj, Rakesh gave iron patti blow upon Manoj on his head and when Manoj put his hand to save himself, his thumb was cut. Shambu gave brick blow on the head of Manoj. Mamraj gave fist blow on Manoj and when Seema Devi intervened, she was also given beatings. They also pleaded that a cross case regarding the attack upon them was registered against the complainant party as they have given injuries to them.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above and acquitted co-accused Seema.

At the time of arguments learned counsel for the

appellants argued that as per prosecution version, Krishan Lal @ Billa, Gagan and Bhupinder Singh were shown armed with sharp edged weapon and injuries were stated to be caused with these weapons but there is no injury on any of the injured with sharp edged weapon and on this ground reasonable doubt exists in the prosecution version. He next argued that only Manoj Kumar was stated to be armed with *saria* i.e. blunt weapon. He further argued that no injury has been declared as dangerous to life in the present case. As per Ex.P22, the injury has been stated to be grievous. Learned counsel for the appellants next contended that it is a case of version and cross version. The complainant side has not explained the injuries on the person of accused side, which also creates reasonable doubt. He further contended that PW-4 Dr.Shashi Tripathi, in cross-examination has stated as per opinion dated 05.01.2001 that injury on the person of Rakesh Kumar was grievous but not dangerous to life. The doctor has further stated that injury No.2 on the person of Sadhu Ram can be self sustained or self inflicted and can also be caused with friendly hand. Similar is his opinion regarding injuries on the person of Sona Devi and Mam Raj and regarding injury No.2 on the person of Saroj. Learned counsel for the appellants further argued that no offence under Section 308 IPC is made out. No independent witness has been examined in the present case. He next argued that the occurrence took place on 25.02.2000 and cross-version was recorded on 26.02.2000 and the delay is also fatal in the present case. Learned counsel for the appellants, therefore, argued that there being

merit in the appeal, it should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel as well as learned counsel for the complainant argued that case of the prosecution has been duly proved beyond reasonable doubt. Four injured namely Saroj, Geeta, Shibu Lal and Rakesh Kumar have appeared in the present case and supported and corroborated the prosecution version. They further argued that there are no material contradictions or improvements in the statements of the PWs. The injured persons have supported the prosecution version and deposed against the accused. There was no necessity to examine any other independent witness in the present case. They next argued that the delay has already been explained. There is no unnecessary delay, which can be treated as fatal. Learned State counsel as well as learned counsel for the complainant further contended that there is no evidence in this regard regarding version of the accused. The accused have not produced any defence evidence nor from the evidence on record, it can be held that which of the accused person received injury and of which nature. They next contended that offence under Section 308 IPC is made out as the injuries are on head and fractures have been found on vital part of the body, which shows intention to kill. They also argued that when the occurrence took place, having 6-7 persons from one side and 6-7 persons on the other side, then the PWs can only depose regarding the weapons which are seen in the hands of the accused and when so many injures have

been caused upon so many injured, then the detailed description cannot be given as to whether the injury was caused by the weapon from the sharp side or reverse side. Therefore, they argued that the Court is to believe the statements of the witnesses and there is nothing on the record to disbelieve their statement. Learned State counsel as well as learned counsel for the complainant argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, first of all, I find that delay in itself cannot be held as fatal to the prosecution version. The injured in the present case have been medico legally examined without any unnecessary delay i.e. on 25.02.2000 on the date of occurrence. As per statement of PW-4 Dr.Shashi Tripathi, four injuries were received by Rakesh Kumar and injuries No.1 to 3 were kept under observation. Shibu Lal also received two injuries and the injuries were kept under observation. Similarly, Sadhu Ram, Sona Devi, Saroj and Mam Raj were also medico legally examined. The injury on the head of Rakesh Kumar was showing fracture of left parietal bone. Similarly, as per PW-11 Dr.Puneet Mittal, multiple fractures of facial bones were found on the person of Shibu Lal as under:-

2. Multiple fracture of facial bones:-

I) Fracture of Zygoma.

II) Fracture of right anterior wall Maxilla.

III) Fracture of right lateral wall of orbit.

IV) Fracture of right ethmoid.

Injuries have been caused on the head with dangerous

weapons and the injuries given to so many persons, show that there was intention to kill. So, in no way, it can be held that no offence under Section 308 IPC is made out. Keeping in view the nature and dimensions of the injuries including fractures and the fact that injuries were also caused on vital part of the body, these injuries in no way, can be held as self suffered or suffered with friendly hand. When four injured have been examined by the prosecution namely PW-5 Saroj, PW-6 Geeta, PW-7 Shimbu Lal and PW-8 Rakesh Kumar and they have consistently deposed regarding the prosecution version and the injuries caused to them and attributed to the accused, there is no necessity to examine any independent witness. Otherwise also, the fight took place regarding construction over the wall and it is stated to be case of version and cross version. There is nothing in the statements of these injured persons from which it can be held that their statements are unreliable. No material contradictions or improvements have been pointed out at the time of arguments in the statements of the witnesses.

As regarding the main FIR, though it is clear that FIR was registered by the accused party but no evidence has been led to show the present complainant party as aggressor. No evidence has been led to prove that occurrence took place as per the accused version. Also, no defence evidence has been produced by the accused to show any injury on their person. Therefore, in no way, it can be held that the injuries on the person of the accused have not been explained as no such injuries have been proved by leading cogent

evidence by the accused.

As regard nature of injuries, learned trial Court has correctly held that when there are so many persons and so many accused are causing injuries, then PWs are not supposed to give the description of each and every injury. In the present case, the injured PWs have given the descriptions of the injuries but they have deposed regarding the weapons, which they saw in the hands of the accused. Whether the injury was given with the sharp side or with blunt side, it is difficult for the injured to tell. As there are six injured persons and so many injuries have been suffered, these cannot be given by one person. Furthermore, the presence of the accused is even clear from the statements recorded under Section 313 Cr.P.C. All the accused have deposed regarding the occurrence by stating that complainant party attacked on them and they (accused) have not taken the plea that they were not present at the spot. As per the statements recorded under Section 313 Cr.P.C., it is stated that the FIR was registered under Sections 323, 324 and 34 IPC regarding causing injuries to the accused whereas the cross version is under Sections 308, 325 IPC etc. It is admitted that motive of the occurrence is regarding construction over the disputed wall.

The injury on the head can be given with reverse side of the weapon i.e. *gandasi*. Similarly, the injury with sword is given on the ear and it has been shown as lacerated wound. This injury is possible with *kirpan* also.

Further, from the evidence on the record, I find that there

is nothing on the record to show that accused-appellants are innocent. There is nothing on the record to show that accused were not present at the time of occurrence. The motive has already been proved. The injuries have been duly proved by medical evidence as well as statement of the complainant and injured witness. The injuries have been corroborated as per oral statement except the only fact that the weapons have not been stated to be used from the sharp side. Manoj Kumar was also armed with *saria* i.e. iron rod, which is a blunt weapon.

So, from the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Accused-appellants have been rightly convicted and sentenced by learned Addl. Sessions Judge, Ambala. The judgment of conviction dated 05.12.2003 and order of sentence dated 09.12.2003 passed by learned Addl. Sessions Judge, Ambala, are correct, as per law and do not require any interference from this Court.

Accused-appellant Navneet Kaur is stated to have died during the pendency of the appeal and the documents regarding the same have been produced on file and further, this fact is not contested by learned State counsel as well as learned counsel for the complainant. Therefore, the present appeal stands abated qua appellant Navneet Kaur.

Resultantly, the present appeal qua appellants Krishan Lal, Manoj Kumar, Gagan and Bhupinder Singh stands dismissed whereas

it stands abated qua appellant Navneet Kaur.

As appellants Krishan Lal, Manoj Kumar, Gagan and Bhupinder Singh are on bail, their bail bonds stand cancelled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

December 10, 2015
Vgulati

(INDERJIT SINGH)
JUDGE