

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 1685-DB of 2014 (O&M)

Date of decision : July 07, 2015

Surinder Kaur

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Deepender Singh, Advocate
for the appellant.

LISA GILL, J.

Surinder Kaur – complainant has preferred the present appeal impugning judgment and order dated 20.08.2014 passed by the learned Additional Sessions Judge, Ludhiana whereby respondents No. 2 to 5 have been convicted for the offences punishable under Sections 452, 323, 324 read with Section 34 IPC and the benefit of probation has been extended to the said respondents on their furnishing bonds to the tune of ₹50,000/- with one surety of the like amount for two years with an undertaking to appear and receive the sentence whenever called upon and in the meantime, to keep peace and maintain good behaviour.

Appellant/complainant is aggrieved of the impugned judgment inasmuch as the above respondents have not been convicted for the offence punishable under Section 307 IPC as well as extension of benefit of probation to the said respondents. Learned

trial Court in the facts and circumstances of the case released the accused on probation for a period of two years especially on the ground that the complainant and the accused are neighbours and the accused are first offenders.

FIR No. 211 dated 13.09.2008 under Sections 452, 323, 307/34 IPC was registered on the basis of the statement made by Surinder Kaur on 13.09.2008 before ASI Joginder Singh that respondents Jagdish Singh, Jagtar Singh, Rinku and Mewa Singh came to their house on 12.09.2008 at about 8.00 p.m. Jagdish was armed with a sword. There was scuffle with her husband while she stood in between the door. Mewa Singh inflicted an iron rod blow on the left foot of her husband. Jagdish Singh inflicted a sword blow on the left side of the complainant. Other accused did not cause any injury either to her or her husband. Her father-in-law was present at the place of occurrence. Thereafter all the accused ran away from the spot alongwith their respective weapons. Motive behind the occurrence was that sewage was blocked and water from their house was flowing towards house of the accused. Site plan of the occurrence was prepared. On receipt of medical report, offence under Section 307 IPC was added. Supplementary statement of Surinder Kaur was recorded on 14.09.2008. Report under Section 173 Cr.P.C. was presented on completion of investigation. Charge was framed against the accused for the offences punishable under Sections 452, 307, 323 read with 34 IPC. Accused claimed trial.

Prosecution examined six witnesses to prove its case.

While denying incriminating evidence put to them, accused in their

statements under Section 313 Cr.P.C. pleaded innocence and false implication. It was specifically pleaded that complainant side inflicted injuries upon Jagdish Singh on 12.09.2008 with help of other accomplices. No occurrence took place in the house of the complainant. Medical report, Ex. DX of Jagdish Singh was tendered into evidence.

Learned trial Court on appreciation of the evidence on record concluded that the prosecution has successfully proved its case against the accused respondents for the offences punishable under Sections 452, 323, 324 read with Section 34 IPC thereby convicting them thereunder. However, benefit of probation was extended to the accused respondents as detailed above. Aggrieved therefrom the complainant has preferred the present appeal.

Learned counsel for the appellant submits that the offence punishable under Section 307 IPC is reflected from the medical evidence especially PW5 Dr. Viju Abraham to CMC Hospital. Reliance by the trial Court on the medico legal report rendered by the Civil Hospital is not justified. All the said accused should have been convicted for the offence punishable under Section 307 IPC as well. It is further argued that there are no such circumstances which justifies the extension of benefit of probation to the accused persons. They should have been sentenced to rigorous imprisonment as envisaged by the provisions of law.

We have heard learned counsel for the appellant and gone through the file. It is undisputed that the complainant - Surinder Kaur was first medico legally examined at the Civil Hospital,

Ludhiana by Dr. Balwinder Singh, PW3. PW3 Dr. Balwinder Singh has proved medico legal report of Surinder Kaur Ex. PW3/A. He conducted her medical examination on 12.09.2008 at 8.20 p.m. being Incharge Emergency Medical Officer at Civil Hospital, Ludhiana. Following injuries were found on her person:-

1. I/W 1-1/2 inch x ½ inch x muscle deep on right side of limber region just 2 inches below right iliac crest, bleeding present.
2. I/W 1 inch x ½ inch muscle deep just 3 inch above its medial to injury No. 1 on lateral wall of abdomen bleeding present.

Both the injuries were found to be simple in nature caused within four hours with sharp edged weapons. He has also proved the medico legal report of Kamaljit Singh Ex. PW3/B. It is specifically opined by PW2 that Surinder Kaur was fully conscious at the time of examination and there was no other mark of injury on her person at the time of examination. She was not admitted as her admission was not required.

PW5 Dr. Viju Abraham, CMC Hospital, proved the subsequent medico legal report, Ex. PW5/A, of Surinder Kaur. Following injuries were noted therein :-

1. Medial wound 2 cm above the iliac crest 3 cm x .5 cm.
2. Lateral wound 5 cm below and lateral to the first wound 5 x 0.5 cm.
3. Two parallel abrasions approximately 5 cm long extending medial to the first wound.

Nature of injury No. 1 and 2 was declared dangerous and injury No. 3 was opined to be simple. Kind of weapon used for injury

No. 1 and 2 was sharp and for injury No. 3 blunt. It is further admitted that on complaint of one of the accused Jagtar Singh, Medical Board consisting of Dr. R.K. Sharma, Dr. Sudesh Kumar and Dr. Hitinder Kaur was constituted by Senior Medical Officer Civil Hospital, Ludhiana for verifying the medico legal report No. 62/BK/MLR/8 dated 12.09.2008. In the report submitted by the Doctor, Ex. DX, it is mentioned that Surinder Kaur failed to appear before the Medical Board despite being summoned on three occasions by the Senior Medical Officer, Civil Hospital, Ludhiana.

PW 5, Dr. Viju Abraham was also summoned by the Board from CMC Hospital alongwith bed head ticket of Surinder Kaur. On going through the entire record, it was opined by the Board that medico legal examination of Surinder Kaur was conducted on 12.09.2008 at 8.20 p.m. in which two injuries were mentioned which were declared simple by the Emergency Medical Officer. She did not require admission to the hospital. Surinder Kaur reported at CMC Ludhiana on 12.09.2008 at 9.50 p.m. She submitted an undertaking that all legal formalities have already been concluded at the Civil Hospital and she did not want any further medico legal action. In the subsequent medico legal report from CMC hospital three injuries found mention which correlated with i.e. injuries 1 and 2 mentioned in the previous medico legal report conducted by Civil Hospital, Ludhiana. Sutured wounds were opened and explored by the doctors at CMC. X-ray chest, ultra sound as well as CT scan of the abdomen was found to be normal. It was specifically observed by the doctors of the Board that medico legal report rendered by CMC

hospital was legally incorrect and there is nothing to suggest that injuries No. 1 and 2 were dangerous as even the investigations conducted at CMC were normal. Medical Board, thus, agreed with the observations made in the medico legal report conducted at Civil Hospital, Ludhiana at the first instance.

Role of the investigating officer SI Joginder Singh, PW4 in this case has been rightly deprecated by the trial Court. Learned counsel for the appellant is unable to point out the presence of any of ingredients reflecting the commission of offence punishable under Section 307 IPC. Thus, we find no ground to interfere in the impugned judgment on this count.

Contention that the benefit of probation has been wrongly extended to the accused respondents is equally untenable. It has come on to the record that the present is a case of version and cross version. Two persons of the complainant party (i.e. Surinder Kaur's party) namely Kamaljit Singh and Durga Singh have also been convicted for the offence punishable under Sections 323, 324 read with Section 34 IPC. Benefit of probation has also been extended to them by the learned trial Court vide separate judgment of even date. Said judgment is subject matter of challenge in CRA S-No. 4514-SB of 2014, which also stands dismissed vide our separate order. It is not disputed that the complainant and the accused are neighbours. They are first offenders. There is no subsequent dispute which has arisen between the parties after the incident in question. Therefore, in the given factual matrix, extension of benefit of probation is justified.

Learned counsel for the appellant is unable to point out any circumstance which would persuade this Court to interfere in the grant of probation.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

July 07, 2015
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