

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1904-SB of 2003
Date of Decision: January 14, 2015

Bodh Raj

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Navjot Singh, Advocate
Legal aid counsel for the appellant.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 15.09.2003, passed by learned Addl. Sessions Judge, Gurdaspur whereby the accused-appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 308 IPC. However, co-accused Vinod Kumar @ Galla was acquitted.

The brief facts of the prosecution case are that on 11.07.2001, Sanjiv Kumar complainant-injured got his statement recorded to ASI Suresh Kumar and stated that on 10.07.2001, he along with Suresh Kumar went to meet Rameshwar Singh and from

there, they went to attend a fare at Sunder Chak. At about 7.00 P.M., he along with Jatinder Kumar and Suresh Kumar was returning from the fare of Sunder Chak on scooter. Sanjiv Kumar complainant was driving the scooter and Jatinder Kumar was driving other scooter. At about 7.15 P.M., they reached near the turn of Chowk Gatora where 4-5 boys along with their scooters were standing. Two of them were armed with dangs and the others were holding polythene bags and they (accused) stopped them. On this, Galla @ Vinod Kumar gave a dang blow, which hit on the head of Sanjiv Kumar. Bodh Raj gave dang blow on the head of Jatinder Kumar @ Monu as a result of which, he became unconscious. Thereafter Goldi, Balwinder Kumar @ Pawan along with more boys started throwing stones on them and also gave kick blows. On raising alarm, accused persons ran away with their respective weapons. Both Sanjiv Kumar and Jatinder Kumar were admitted in Civil Hospital, Pathankot by Suresh Kumar. The condition of Jatinder Kumar was serious and he was referred to another hospital. The motive behind the occurrence was that Galla had gone to liquor shop to purchase a bottle of liquor but he was having less money, therefore, complainant refused to give him bottle of liquor and on this Galla had threatened complainant. After necessary investigation, challan was presented against appellant and co-accused.

On presentation of challan against appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the

appellant and co-accused were charge-sheeted under Sections 323, 325, 308 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Jatinder Kumar, PW-2 Sanjiv Kumar, complainant, PW-3 Suresh Kumar son of Kishan Chand, PW-4 Suresh Kumar son of Ram Parkash, PW-5 Dr.Bhupinder Singh Kanwar, PW-6 Dr.Navneet Dogra, PW-7 ASI Suresh Kumar and PW-8 ASI Triolchan Singh and prosecution closed the evidence.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the appellant and acquitted co-accused Vinod Kumar @ Galla, as stated above.

At the time of arguments, learned counsel for the appellant argued that only one injured witness Jatinder Kumar has supported the prosecution version. Other injured Sanjiv Kumar as well as eye witness have not supported the prosecution version. Learned counsel for the appellant further argued that statement of PW-1 Jatinder Kumar is also contradictory to the prosecution version given in the FIR. Therefore, he argued that a reasonable doubt exists in the prosecution version and benefit of doubt should have also be given to the present appellant.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved by statement of PW-1 Jatinder Kumar, which is supported by medical evidence as well as investigation of the case. Therefore, he argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record carefully and minutely.

From the evidence on record, I find that PW-2 Sanjiv Kumar complainant deposed as per prosecution version regarding going to the place of occurrence on two scooters. One is driven by him and one by Jatinder Kumar. One Suresh Kumar was sitting pillion on the scooter of the complainant and another Suresh Kumar was sitting pillion on the scooter of Jatinder Kumar. He further deposed that 3-4 boys were standing with muffled faces and two of them were armed with dangs and other two were having polythene bags. He cannot say whether the accused present in the Court caused him injuries or not. The police had told him that they caused injuries to him. This witness has not supported the prosecution version and he was declared hostile and nothing came out even from his cross-examination. PW-3 Suresh Kumar son of Kishan Chand also deposed in chief-examination as well as in the cross-examination that accused persons were standing with muffled faces and therefore, he could not identify them at that time and later on he was told by the police about the accused persons. PW-4 Suresh Kumar son of Ram

Parkash also deposed that 4-5 persons were standing armed with dangs, polythene bags and they attacked Sanjiv Kumar and Jatinder Kumar. He deposed that he does not identify the accused persons present in the Court. So, complainant injured Sanjiv Kumar and two eye witnesses to the occurrence have not deposed against present appellant that he was present at the spot or he has caused any injury. PW-1 Jatinder Kumar, in his examination-in-chief stated that on that day at about 7.15 P.M., he along with Sanjiv Kumar was returning from the Mela of Sunder Chak. They were on the scooter but he did not know its number. The scooter was driven by Sanjiv Kumar and he was pillion rider. When they reached on the turn of Gadaura, there Vinod Kumar, Goldy, Pawan Kumar and one another person, whose name he did not remember, were standing there. They were armed with dangs and were holding stones in their hand. Pawan Kumar and Bodh Raj signalled them to stop and they were thrown on the ground. Goldy and Bodh Raj started beating them with dang and started throwing stone on them and he (Jatinder Kumar) became unconscious. He further deposed that Sanjiv Kumar took him to the hospital and the accused persons fled away. Sanjiv Kumar was also given injuries by Bodh Raj. Bodh Raj gave injuries to Sanjiv Kumar with stones. He also deposed that motive behind this occurrence was that Bodh Raj went to liquor shop to buy liquor from Sanjiv Kumar but he did not oblige them and because of this, the present occurrence took place. Sanjiv Kumar is a salesman at a liquor vend situated at Sarna Adda. Except this evidence of PW-1 Jatinder Kumar, there is no

other eye witness to support the prosecution version. Statement of PW-1 Jatinder Kumar is totally contradictory with the FIR as well as the statement of other eye witnesses. As per the FIR, four persons were returning on two scooters. One Suresh Kumar was sitting pillion with Sanjiv Kumar complainant and another Suresh Kumar was sitting pillion with Jatinder Kumar injured but Jatinder Kumar has stated that there was only one scooter and he was pillion rider on scooter of Sanjiv Kumar. As per the FIR, both the injured were got admitted in the hospital by Suresh Kumar but Jatinder Kumar stated that Sanjiv Kumar got admitted him in the hospital. The other contradiction is that as per FIR, Jatinder Kumar was driving the scooter and Suresh Kumar was sitting as pillion but Jatinder Kumar has stated he was sitting as pillion rider with Sanjiv Kumar. Again, as per the FIR, Galla @ Vinod Kumar gave dang blow which hit on the head of Sanjiv Kumar but Jatinder Kumar stated that Bodh Raj injured Sanjiv Kumar with stones. Again, as per FIR, Vinod Kumar @ Galla and Bodh Raj were armed with dangs whereas Jatinder Kumar has stated that Goldy and Bodh Raj started beating them with dangs. As per the FIR, Galla @ Vinod Kumar came to purchase the bottle of liquor but Jatinder Kumar stated that Bodh Raj came to the liquor shop.

Keeping in view the totally contradictory statements made by PW-1 Jatinder Kumar, a reasonable doubt exists in the prosecution version, especially when, other injured and eye witnesses stated that accused were standing with muffled faces and they could not identify the accused.

Keeping in view the contradictory version given by Jatinder Kumar on material facts to the prosecution version as recorded in the FIR, I find that a reasonable doubt exists in the prosecution version and the benefit of doubt is to go to the accused. Hence, giving benefit of doubt, appellant Bodh Raj is acquitted of the charges framed against him.

Therefore, finding merit in the appeal, the same is allowed. Since, appellant Bodh Raj is on bail, his bail bonds stand discharged.

January 14, 2015
Vgulati

(INDERJIT SINGH)
JUDGE