

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 11.05.2015

CRA No.352-DB of 2015

Sham Sunder

...Appellant

Versus

State of Punjab & others

...Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.P.S.Sidhu, Advocate, for the appellant.

HEMANT GUPTA, J.

Sham Sunder – injured preferred the instant appeal against the judgment of conviction and order of sentence dated 07.01.2009 rendered by the Additional Sessions Judge, Fazilka in case FIR No.34 dated 25.04.2014 registered under Section 307/34 IPC, P.S.Khuian Sarwar, whereby the accused – respondent Nos.2 to 4 were convicted for the offence punishable under Section 325/450 IPC and sentenced to undergo for varying terms as mentioned in the order of sentence.

The prosecution case was set in motion on the statement of Bal Krishan son of Sham Sunder made to ASI Jalandhar Singh on 25.04.2014. In his statement, Bal Krishan stated that he alongwith his father had gone to the house of Raj Kumar son of Bhagwan Dass at Village Diwan Khera to attend a party on 19.04.2014. Sandeep Kumar @ Lakhi and Jasvir Singh @ Kali both sons of Buta Ram, residents of Diwan Khera, with whom they

have ideological differences, have also attended the said party. He further submitted that while dancing in the party, Jasvir Singh slapped him without any fault. Thereafter, he came to his house weeping followed by his father. At about 10.00 PM, when he alongwith his father; uncle namely Ram Chand and his son Surinder Kumar were talking while sitting in their house, Sandeep Kumar @ Lakhi, Jasvir @ Kali and their father Buta Ram each armed with wooden bala forcible entered in the courtyard of their house. He further stated that when his father tried to restrain them, Sandeep Kumar @ Lakhi gave a wooden bala blow on the head of his father, as a result of which, his father became unconscious and fell on the ground. On raising hue and cry, all the accused fled away from the place of occurrence alongwith their respective weapons. His father was admitted to Amba Hospital, Sri Ganganagar, where he was medico legally examined. The motive behind the occurrence was that Buta Ram etc. were under suspicion that the father of the complaint had thrown Taveet in their house and because of that whole of their family members remain sick. The family members of complainant tried to convince the accused, but to no effect and the accused nourished a grudge in their mind and due to this reason all the accused caused injuries to his father. On the basis of such statement, FIR was recorded against the accused – respondent Nos.2 to 4. On completion of necessary formalities, the accused were made to stand trial for the offence punishable under Section 307/34 IPC.

To prove the guilt against the accused, the prosecution examined PW-1 Bal Krishan – complainant and PW-2 Sham Sunder – injured, who supported the prosecution case in its entirety; PW-5 ASI Jalandhar Singh – the Investigating Officer, who deposed with regard to the investigation carried out by him; PW-6 Dr. Ajay Mishra, Neuro Surgeon,

Amba Hospital, Sri Ganganagar and PW-7 Dr. Gurpreet Singh, Radiologist, Malwa Scan Centre, Shri Muktsar Sahib.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded under Section 313 Cr.P.C. All the accused denied the prosecution allegations and pleaded false implication. In their defence, they also examined Hans Raj @ Raju as DW-1.

After considering the entire evidence on record, the learned trial Court found from the testimonies of PW-1 Bal Krishan – complainant and PW-2 Sham Sunder – injured that only one wooden bala blow was given by Sandeep Kumar on the person of the injured and that there is no exaggeration of facts. It also found that since both the parties were known to each other, the identification of the accused is not an issue. The learned trial Court noticed that though no independent witness has been examined, but there is nothing on the file that any of the police officials was inimical towards the accused. The trial Court found that there is plausible explanation regarding admission of the injured in Amba Hospital, Sri Ganganagar on 20.04.2014 though the incident has taken place on 19.04.2014, as the possibility cannot be ruled out that complainant might have tried to give first aid in his village itself. The Court found that though there is delay in lodging of FIR, but such delay is not on the part of the complainant or the injured. The Court noticed that as per the statement of the Investigating Officer, telephonic information was received in the Police Station Khuian Sarwar on 20.04.2014 i.e. the next day and that the patient was declared to be unfit for giving his statement twice vide endorsement Ex.P3 and P5. It was, thereafter on 25.04.2014, the police recorded the statement of eye-witness namely Bal Krishan for lodging of the FIR. The

trial Court found that though one wooden bala blow was given by the accused Sandeep Kumar, but there is no evidence of intention and knowledge to kill the injured so as to bring the act of the accused within the ambit of Section 307 IPC. None of the accused had repeated the injury despite the fact that they were armed with wooden balas. The Court found that no surgery was performed on the person of Sham Sunder as deposed by PW-6 Dr. Ajay Mishra. The Court noticed that in the absence of any corroborative evidence, the injury in question though opined to be dangerous to life is equivalent to endangering life and such acts are squarely covered within the ambit of clause Eighthly of Section 320 IPC, which is punishable under Section 325 IPC. Consequently, the learned trial Court convicted all the three accused for offence punishable under Section 325/450 IPC and sentenced them as mentioned above.

We have heard learned counsel for the appellant – injured. We do not find any merit in the present appeal. The prosecution is required to prove the act of causing injury was with such intention or knowledge, and under such circumstances that, if by that act the accused would cause death, he would be guilty of murder. Such accused is alone said to have committed an offence punishable under Section 307 IPC. Therefore, the intention or knowledge that act of the accused will cause death is a necessary ingredient. Such intention or knowledge is not made out from the statements of the prosecution witnesses.

Thus, we do not find any error in the findings recorded by the learned trial Court so as to warrant interference at the hands of the appellant – injured to modify the judgment of conviction for an offence punishable under Section 307 IPC. Needless to say that any finding recorded herein is

without prejudice to the rights of the accused in an appeal arising out of their conviction for an offence under Section 325/450 IPC.

(HEMANT GUPTA)
JUDGE

11.05.2015
Vimal

(LISA GILL)
JUDGE