

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1651-SB-2013

Date of decision: 08.07.2015

Naveen

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. JS Ghumman, Advocate for the appellant.

Mr. SS Pannu, DAG, Haryana.

Mr. Manish Soni, Advocate for the complainant.

R.P. NAGRATH, J.

The appellant was tried of the charges under Sections 307/324/506 (2) of the Indian Penal Code (IPC) in FIR No. 119 dated 28.08.2011, Police Station Udyog Vihar, Gurgaon and convicted under Sections 307 and 506 (2) IPC. He was awarded sentence to undergo rigorous imprisonment for a period of ten years under Section 307 IPC and to pay a fine of ₹ 10,000/-, in default of payment of fine to further undergo rigorous imprisonment for two years. The appellant was further

sentenced to undergo rigorous imprisonment for a period of two years under Section 506 (2) IPC and to pay a fine of ₹ 5000/-, in default of payment of fine to further undergo rigorous imprisonment for three months. The substantive sentences were to run concurrently.

2. As per custody certificate dated 07.07.2015 handed over by learned State counsel, the appellant has already undergone more than 3 years and 10 months of actual imprisonment and more than 5 years and 5 months of total sentence including remissions.

3. The facts of the case, briefly, stated are that on 26.08.2011, Ram Niwas-complainant along with Dinesh Kumar S/o Dharambir, Dharmender S/o Raju and the appellant were watching television (TV) in the house of Dharmender aforesaid. While they were watching TV, the appellant started abusing the complainant who objected to it and the appellant started fighting with the complainant. The complainant was saved by Dharmender and Dinesh. The appellant then went away while these three persons remained in the room and kept on watching TV.

4. After sometime, the appellant came armed with one side of scissor and inflicted 3-4 blows on the back of complainant and another blow on the right side below the neck. The appellant was over-powered to save the complainant for being further harmed. The complainant was brought to Max Hospital, Gurgaon by Dharmender and Dinesh. An information through VT was received at police station from the control room about admission of complainant in Max Hospital, Gurgaon on 27.08.2011. Application was filed before the doctor seeking opinion about the fitness of patient for making statement but he was found unfit

to make statement. Again on 28.08.2011, opinion of the doctor was sought about fitness of the patient and he was found fit to make statement. Statement of the complainant Ex. PB was recorded and FIR Ex. PB/2 on its basis was registered. Rough sketch Ex. PR of the place of occurrence was also prepared.

5. The appellant was arrested on 01.09.2011. While in custody, the appellant suffered a disclosure statement Ex. PD in pursuance whereof, he got recovered the weapon of offence i.e. one portion scissor from the disclosed place, which was taken into possession vide memo Ex. PE. The length of blade of the scissor was 12 cm. for which sketch Ex. PF was prepared. The injuries on the person of victim were found dangerous to life.

6. On commitment of the case, charges were framed against the appellant to which he pleaded not guilty and claimed trial. The prosecution examined 13 witnesses in support of its case.

7. During examination of appellant under Section 313 Cr.P.C., he denied all the incriminating circumstances appearing against him in the prosecution evidence. He pleaded that complainant was suspecting that his wife was having illicit affair with the appellant. On the day of occurrence, the complainant was informed by one Anchal that wife of complainant, namely; Rajni was present in the premises in question in the company of appellant. The complainant, however, found his wife alone and when he was going to beat her that he suddenly lost balance as he was drunk and fell at debris resulting into injuries on his person.

8. The prosecution had given up the other eye-witnesses,

namely; Dharmender and Dinesh being won over by the accused on the application of complainant. The appellant examined DW-1 Dharmender aforesaid in whose house the occurrence took place.

9. On appreciation of evidence, the learned trial Court held the charges for two offences under Section 307 and 506 (2) IPC to be proved against the appellant and awarded him the sentence as aforesaid.

10. The prosecution version was testified by the complainant-injured as PW-1. He was subjected to extensive cross-examination and he withstood the test of scrutiny. There is no substance in the defence plea that wife of the complainant had liking for the appellant and due to that the complainant felt assaulted. The complainant rather stated in the chief examination that quarrel took place between them while watching TV as the appellant was cutting jokes in reference to the wife of complainant to which he had objected. PW-1 in cross-examination stated that the appellant was not his friend and he was only a co-villager and became acquainted with him through Dharmender, only three months before the occurrence. PW-1 rather categorically stated that there was no such issue between them at that point of time. He even denied the suggestion that he was suspecting fidelity of his wife. According to him, there was no enmity between him and the appellant.

11. The testimony of PW-1 is fully corroborated with the recovery of weapon of offence from the appellant. The incident took place on 26.08.2011 and FIR was registered on 28.08.2011, after the doctor gave medical opinion about the fitness of injured to make statement. It was only thereafter that the appellant was arrested on

01.09.2011. So, the story of use of portion of scissor as stated in the FIR cannot be possibly attacked as concocted.

12. PW-6 ASI Madan Lal, arrested the appellant on 01.09.2011. He stated that the appellant was interrogated in the presence of HC Brij Mohan on 02.09.2011. The appellant suffered a disclosure statement Ex. PD that he kept concealed the scissor in the house of Dharmender S/o Raju, aforesaid. As per statement Ex. PD, the scissor was concealed under the heap of stones in the house of Dharmender. PW-6 further stated that in pursuance of disclosure statement, the appellant got recovered weapon of offence from the disclosed place rough sketch of which is Ex. PF and the same was taken into possession vide memo Ex. PE. Sealed parcel of the scissor was prepared at the spot as mentioned in the *Panchnama* Ex. PE. Ex. PG is the rough site plan of place of recovery. This evidence of recovery is supported by PW-8 HC Brij Mohan, a member of the police party. The parcel of the sealed scissor was produced during the examination of PW-6. This was opened in the Court and it contained the scissor Ex. P-1. Nothing was brought in cross-examination of PW-6 to bring any contradiction with regard to dimensions of scissor as mentioned in the sketch.

13. PW-13 ASI Dal Chand, initially conducted investigation in the case and he took photographs Ex. P-2 to Ex. P-7 of the place of occurrence which would show the stains of blood on the floor and the place where TV was installed in the room. He took into possession the blood stained earth and piece of mat stained with blood from the place of occurrence. The stains of blood lifted from spot with cotton was put in a

plastic container and thereafter the mat and container were prepared into sealed parcel bearing seal impression MC and taken into possession vide memo Ex. PS.

14. The evidence of recovery of scissor is further corroborated from the report of Forensic Science Laboratory (FSL), Haryana, Madhuban (Karnal). PW-4 HC Sudhir Kumar was posted as *Mohrar* of police station and he brought register No. 19 pertaining to entry of case property in this FIR. On 28.08.2011, ASI Madan Lal had deposited with him one sealed parcel containing trousers of Ram Niwas, another sealed parcel containing stains of blood and clothes stained with blood along with sample seals. He further stated that on 02.09.2011, ASI Madan Lal deposited with him another sealed parcel containing scissor along with sample seal. These parcels were entrusted to PW-3 Constable Balbir Singh on 12.09.2011 for being deposited in the office of FSL, Madhuban.

15. PW-3 Constable Balbir Singh, supported the version of PW-4 HC Sudhir Kumar. Ex. PA is the report of FSL and according to this blood was detected on the scissor and blood was also found on the contents of parcels containing stains of blood lifted from the spot and the clothes of victim and mat recovered from the spot. As per serological report the origin was human blood except that blood on scissor was disintegrated.

16. There is the medical evidence produced by prosecution to further corroborate the oral evidence in proof of incident. PW-12 Dr. Misbah was posted as Emergency Medical Officer at Max Hospital, Gurgaon and he stated that the complainant was admitted in Max

Hospital in the emergency at 9.15 p.m. on 26.08.2011 itself. The doctor found following injuries on the person of complainant:-

- “(i) CIW over submandibular region measuring 8cm x 2cm x 1.5cm.
- (ii) Stab wound injury over upper spinal (back-midline).”

The kind of weapon used was sharp edged. The complainant was admitted under Orthopedician (Spinal Surgeon) for further management.

17. PW-9 Dr. Sameer Anand, was the consultant of Department of Orthopedics in Max Hospital, Gurgaon. He stated that history of patient admitted in the hospital was alleged stab wound by a single scissor blade road at around 8.30 p.m. On examination of the patient, the doctor found that there was a stab wound on the middle of the upper back medial to the medial border of scapula. Neck wound had already been attended to by the casualty doctors and dressed. The patient was admitted in ICU under Dr. HN Bajaj, Head, Ortho-Spine Surgery.

18. PW-9 Dr. Sameer Anand, further stated that on the application Ex. PJ filed by police, he gave his opinion Ex. PJ/1 that the injuries found on the person of complainant were dangerous to life in ordinary course of nature. He also gave opinion Ex. PH/1 on 09.09.2011 that these injuries could be caused by a portion of scissor. The scissor which was recovered in this case was shown to Dr. Sameer Anand, when he appeared in the witness-box and he stated that such kind of scissor can cause injuries in question.

19. PW-11 Dr. HN Bajaj, Head of Ortho-Spine Surgery tendered

his affidavit Ex. PW-11/A. He stated that the patient was complaining of instant loss of power and sensation in the lower limbs after being stabbed on the back and the neck. PW-11 further stated that the patient was operated upon 27.08.2011. When the wound was opened, it was found that his spinal cord had been cut due to which he had lost control over legs, bowel and bladder. According to PW-11, the patient was discharged on 02.09.2011 and his discharge summary is Ex. PM. As per this document, the complainant was admitted in Max Hospital, Gurgaon, after one hour of the incident where the history of stab wound by scissor was given. If that be so, there is no possibility of accepting the defence that the complainant would have suffered the injuries by a fall on debris while attempting to beat his wife. It is absolutely not possible without any convincing circumstance that the complainant had an altercation with his wife resulting into his fall on debris and then the complainant concocted the story like this while he was in undergoing acute pain and agony due to serious injuries resulting into loss of sensation of lower limbs.

20. The CT scan and MRI of the patient was done by PW-10 Dr. Ellora Borthakur Kaushik, Consultant Radiologist of Max Hospital, Gurgaon. It was found that there is complete transection of the cord at D5-D6 intervertebral level. Fracture seen involving D6 vertebral body. The posterior cortex is involved. Fracture involving right articular process and spinous process of D6 vertebra seen. Soft tissue injury seen in the muscle and subcutaneous tissue of the back.

21. Rest of the evidence led by prosecution in the case was of

formal nature. PW-2 ASI Mool Chand, recorded the FIR Ex. PB/2 on receipt of statement of the victim.

22. PW-5 Girish Kumar, Draftsman, office of the Commissioner of Police, Gurgaon, visited the spot on 13.10.2011 and prepared scaled site plan Ex. PC of the place of occurrence on demarcation of ASI Madan Lal.

23. PW-7 SI Prem Chand was the SHO of Police Station Udyog Vihar, Gurgaon and he presented the challan under Section 173 Cr.P.C., on completion of investigation.

24. Dharmender in whose house, the alleged incident took place appeared in the witness-box as DW-1 for supporting the defence plea. According to him, the complainant and DW-1 were present at Dundahera border where one Anchal came and informed the complainant that his wife was present with the accused in a dilapidated house. The complainant was under the influence of liquor at that time. In cross-examination, Dharmender stated that appellant was known to him for about 7-8 years.

25. DW-1 further stated that he came to know about the FIR against appellant after 4-5 days of his arrest. Despite this he did not give any application or complaint to any authority with regard to false implication of the appellant. He had not gone to the police station in this regard. It seems that DW-1 had concocted a story taking advantage of the fact that complainant as PW-1 stated that he was shifted to Park Hospital for treatment by Anchal and Bholu. DW-1 further stated that he never disclosed to any senior member of the village or any member of

Panchayat regarding false implication of appellant. DW-1 is not a summoned witness of defence. There is no truth in the version of DW-1 in view of convincing evidence of the complainant and so many factors including medical evidence. If such a version was in fact true, there was no reason to cite Dharmender as a prosecution witness.

26. An attempt was also made to suggest that the complainant was under the influence of liquor at that time and this was also stated by DW-1. The above defence is untenable because the factum of being victim under the influence of liquor was not recorded in the hospital record where the injured was immediately admitted. Even no such suggestion was put to the doctors examined by the prosecution.

27. Reference was also made to the cross-examination of PW-13 ASI Dal Chand. In cross-examination, PW-13 stated that the house in question was in a dilapidated condition and no one is living there. He also stated that there was no electricity connection installed in the house. It is submitted that if there was no electricity connection in the said house, there was no question of the occupants watching TV. Rather no suggestion was given to PW-1 that there was no electricity connection in the room where they were watching TV. Moreover, the incident having taken place in the house in question cannot be doubted at all as there were stains of blood at the spot and also on the mat recovered from there.

28. In view of the aforesaid facts, the delay in lodging the FIR is quite significant to bring suspicion to the story because in the history of patient mentioned in the record of Max Hospital, Gurgaon, it is clearly mentioned that complainant was attacked just about 1 hour ago i.e. about

8.30 p.m. before his admission in the hospital i.e. at 9.15 p.m. on 26.08.2011, when he was stabbed from behind on his back and neck.

29. The learned trial Court has rightly appreciated the evidence and held the charges against the appellant to be proved by exceptional evidence. Since the threat was actually executed, there was no question of passing separate conviction under Section 506 (2) IPC.

30. Coming to the quantum of sentence, I find that though the appellant deserves harsher punishment in view of the nature of injuries caused to the complainant but I find that all the circumstances need to be looked into for that purpose. It is made out from the record that appellant was just about 23 years old at the time of occurrence. The complainant as PW-1 stated that there was no prior enmity between him and the appellant. He knew the appellant only being a co-villager and through Dharmender DW-1. Looking into the aforesaid circumstances, I find that it would be sufficient if the period of sentence is reduced from 10 years rigorous imprisonment to 08 years rigorous imprisonment but fine imposed upon the appellant deserves to be increased. The appellant belongs to labour class and, therefore, it may not be possible for him to adequately compensate the complainant for suffering injuries on his person.

31. In view of the above discussion, the appellant would stand acquitted of the charge under Section 506 (2) IPC but his conviction under Section 307 IPC is maintained. The appeal is dismissed on merits with modification on the quantum of sentence by reducing the sentence from 10 years rigorous imprisonment to 08 years rigorous imprisonment

but the fine imposed upon petitioner for this offence is increased to ₹ 50,000/- and in default of payment of fine, he has to further undergo rigorous imprisonment for 8 months. The amount of fine so recovered shall be paid to the injured complainant.

July 08, 2015
rishu

(R.P. NAGRATH)
JUDGE