

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA S 2895 – SB of 2012 (O&M)
Date of decision : 14.10.2015

...

Shishpal and another

.....Appellants

vs.

State of Haryana

.....Respondent

2) CRR No. 545 of 2013 (O&M)

...

Bhagat Singh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Ashok Giri, Advocate for the appellants
(for respondents No.2 to 4 in CRA S 2895 of 2012).

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Mr. Pawan Kumar Hooda, Advocate for the complainant
(for the petitioner in CRR No.545 of 2013).

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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?*

P.B. Bajanthri, J.

1) By this judgment, I am disposing of CRA S 2895 SB of 2012 and CRR No. 545 of 2013 as these have arisen out of the same incident, FIR and judgment of the lower court.

2) In the abovesaid appeal, two appellants, namely Shishpal and Balbir @ Ballu, have challenged the veracity of judgment dated 28.8.2012 and order dated 29.8.2012 passed by of the Sessions Judge, Jhajjar, convicting the appellants under Section 323, 307/34 IPC and Section 25 of the Arms Act and sentencing them as under:-

<i>Sr.No.</i>	<i>Offence U/s</i>	<i>Sentence</i>
	307/34 IPC	Rigorous imprisonment for seven years and fine of Rs.5,000/- each. In default of payment of finem to further undergo rigorous imprisonment for two months.
	323/34 IPC	Rigorous imprisonment for six months each
	25 of Arms Act	Rigorous imprisonment for two years and fine of Rs.2,000/- each. In default of payment of fine, the convicts shall undergo rigorous imprisonment for one month.

All these sentences were ordered to run concurrently. The period for which the appellants had already remained in custody during the investigation or trial of the case, was ordered to be set off against the period of substantive sentence of imprisonment awarded to them.

3) In CRR No. 545 of 2013, the complainant- Bhagat Singh sought for enhancement of punishment imposed on the appellants in Sessions case No. 41 of 2009, vide judgment and order dated 28/29.8.2012 passed by the Sessions Judge, Jhajjar.

4) Briefly stated, the case of the prosecution is that on 16.9.2009, Assistant Sub Inspector Attar Singh alongwith Constable Manoj Kumar, Constable Manjeet were present at bus stand Badli in Government vehicle bearing registration No. HR-63-A/2335 being driven by EHC Rajesh Kumar. In the meantime, a telephonic message

was received that Bhagat Singh and his father Dharambir s/o Kanwal Singh, residents of village Majri were admitted in Jaipur Golden Hospital, Delhi with history of gun shot injuries. Thereupon, the police party went to the said hospital and collected MLRs of injured Bhagat Singh and Dharambir. On having been declared fit to make statement by the Medical Officer, ASI Attar Singh recorded statement of injured Bhagat Singh – complainant, wherein he alleged that during the intervening night of 15/16.4.2009, at about 8.30 p.m. he alongwith his father got the wheat loaded in two tractor trolleys from their fields situated towards village Ishapur and bringing the same to their house. The complainant was driving one of the tractors and another tractor was being driven by Narender son of Mange Ram of his village. His father was accompanying Narender. As soon as the tractor being driven by the complainant reached on Bakargarh-Majri road, in the meantime three persons from one side and two persons from another side rushed towards him. Out of them, one was his brother Shishpal and another was Balbir @ Ballu resident of Jakhoda, brother-in-law of Shishpal. His brother Shishpal fired shots from his pistol on the chest and Ballu fired shots at the right leg of the complainant. Thereafter, indiscriminately firing was made on the complainant from both sides of the tractor. The complainant sustained fire arm injuries on his right thigh, in right and left sides of his chest and in his left forearm. He raised noise, alighted from the tractor and ran away. His father - Dharambir rushed for his rescue but the assailants fired at him also. His father fell down. The complainant

took shelter in the house of his friend Jasbir @ Jaswant, resident of village Ishapur, from where he was shifted to the hospital. The villagers shifted his father to the hospital.

5) The complainant Bhagat Singh - PW-1 and accused Shishpal are brothers and their father is Dharambir – PW-2, accused No. 2 Balbir @ Ballu is brother-in-law of accused No.1 Shishpal. The other two accused are Bhupender @ Kala (since died) and Ram Chander. PW-2 Dharambir was not helping his son Shishpal - accused No.1 in any manner like financial or entrusting property, for the reasons that he was an addict. He was working as a Conductor in Delhi Transport Corporation. On account of criminal proceedings against him, his services were terminated. Thereafter, he was living in the Majri Village, so also PW-1 and PW-2, brother and father, respectively. Father of Shishpal did not entrust any land to him. On the other hand complainant Bhagat Singh PW-1 and Dharambir PW-2, were jointly looking after the agricultural land. Consequently, there was a dispute among PW-1 Bhagat Singh, PW-2 Dharambir and accused Shishpal. In this background, Shishpal hatched a plan alongwith Balbir @ Ballu and two others, Bhupender @ Kala and Ram Chander, to eliminate PW-1 Bhagat Singh and PW-2 Dharambir.

6) Pursuant to the firing incident on PW-1 and PW-2, FIR No. 129 was filed on 16.4.2009 under Sections 148, 149, 323, 307, 120-B IPC and Section 25 of the Arms Act, Police Station Sadar, Bahadurgarh. Offence under Section 307 IPC was taken into consideration and the matter was committed to the Sessions Judge,

Jhajjar, for trial on 26.8.2009. Thereafter, charge sheet was filed on 24.10.2009 before the Sessions Judge, Jhajjar.

7) On behalf of the prosecution, as many as 19 witnesses were examined and 56 Exhibits were marked to support the case.

8) The trial Court, mainly with reference to the evidence adduced by PW-1 Bhagat Singh (complainant), PW-2 Dharambir, PW-7 Dr. Ashwani Kumar, PW-8 Dr. Parmod Parshad, Surgeon and taking into consideration statement recorded under Section 313 Cr.P.C., the appellants are convicted and acquitted Ram Chander for want of evidence. In so far as, Bhupender @ Kala (since died), is concerned, it was abated.

9) The appellants aggrieved by the conviction, presented this appeal.

10) Learned counsel for the appellants contended that PW-7 Dr. Ashwani Kumar, with reference to MLR, has taken a decision not to refer the injured persons for X-Ray, namely PW-1 and PW-2 and so also did not refer the matter to the ballistic expert. Learned counsel for the appellants further contended that the doctor has opined that “the injuries were simple in nature but the patient could die if any complications had arisen”. The said opinion is given by PW-8 Dr. Parmod Parshad, Surgeon and the said statement was given on 15.4.2009. Further counsel for the appellants relied on the statements recorded under Section 313 Cr.P.C. of the accused.

11) In view of the aforesaid contentions, it was contended that imprisonment for a period of seven years is too harsh and the

alleged incident relates back to 2009 and the appellants would be completing 5 years of sentence shortly. Therefore, it was pleaded that the punishment be reduced to the period already undergone by the appellants.

12) On the other hand, learned counsel for the State submitted that the weapons were recovered from the accused-appellants, which were not licensed one, namely, two revolvers. One revolver was loaded with three cartridges, whereas another was loaded with four live cartridges and recoveries were marked as W/3 and W/4 by the expert of FSL. The report of FSL – Exhibit P-39 mentions that .315" fired cartridges case marked C/3, .315" fired bullet marked BC/1, which was removed from the elbow of injured Bhagat Singh, which was fired from countrymade pistol .315" (W/1) and not from any other pistol of the same bore. The said pistol was got recovered from accused Balbir @ Ballu. Likewise, another empty C/2 which was recovered from the place of occurrence i.e. .32" fired cartridge case, has been fired from countrymade revolver marked as W/4, which was recovered from the accused Shishpal. Thus the report Exhibit P-39 fully corroborates the version of PW-1 – Bhagat Singh and their remains no room for doubt that the accused Shishpal and Balbir @ Ballu had caused fire arm injuries to Bhagat Singh (PW-1) and Dharambir (PW-2), in a bid to commit their murder. She has also relied on the judgment of the trial Court and submitted that the oral as well as documentary evidence adduced, were duly considered by the Court below and in the facts of the case, no interference is

required with the findings of guilt recorded against the appellants. It was further contended that Court below has analyzed the ocular evidence in detail. Thus, it was contended that the conviction of the appellants requires no interference.

13) Learned counsel for the complainant vehemently contended that having regard to the opinion expressed by PW-8 Dr. Parmod Parshad, Surgeon, that “the injuries were simple in nature but the patient could die if any complications had arisen”, also relying upon Exhibit P-39 – FSL report and seat of injury on the chest, which clearly indicates that accused persons' intention was to murder PW-1 and PW-2. The Court below appreciated both oral and documentary evidence and punished the appellants. Having regard to the evidence relating to attempt to murder PW-1 and PW-2 was made out, the accused-appellants should have been sentenced higher than the punishment awarded by the trial Court.

14) Heard counsel for the parties.

15) The appellants' counsel in support of the appeal relied on the evidence of PW-7 Dr. Ashwani Kumar and the evidence of the doctor that no X-Ray is required for the injuries and further in not referring the matter to ballistic expert, indicates that it is not a serious or grievous injury. So also, opinion of PW-8 Dr. Parmod Parshad, Surgeon, that injuries were simple in nature, read with statement recorded under Section 313 Cr.P.C, sentencing the appellants for seven years, is too harsh and not commensurate with offence for the reasons that injuries were simple.

16) It is true that the doctor has not advised injured persons to go for X-Ray and in not referring matter to ballistic expert, does not mean that there were no serious injuries on the injured persons. In fact, it was noticed that one of the injury is on the chest of PW-1 and the doctor has expressed that the injuries were simple in nature but the patient could die if any complications had arisen. In view of the said opinion, there may not be grievous injuries, but at the same time when the doctor has opined that the patient could die if any complications had arisen, shows that it was an attempt to murder on the injured persons. Therefore, the intention of the appellants was to commit murder. In other words motive is to commit murder. Hence the contention of the appellants' counsel that it was a simple injury and punishment is too harsh, is not tenable.

17) In the present case, the evidence of PW-1 and PW-2 is very much relevant, for the reasons that the appellants are related to the injured persons. Statements of PW-1 and PW-2 are not corroborated by any circumstantial evidence but cast iron evidence in the form of eye witnesses is sufficient. Conduct of the 1st appellant that he was working in Delhi Transport Corporation as a Conductor and he was removed with reference to a criminal proceedings and it was learnt that he was an addict, as stated by his own father Dharambir PW-2. The other appellant being brother-in-law of 1st appellant and one of the revolver was recovered from him. The offence has been committed by them. These evidence are very relevant and the same have been taken into consideration by the trial

court, while convicting the appellants.

18) In view of the factual aspects of the matter and the evidence adduced in the case, the Court below has rightly convicted the appellants. I uphold the conviction of the appellants.

19) For the aforesaid reasons, I am of the opinion that the appeal is bereft of any merit and the same is accordingly, dismissed.

20) In so far as, the revision petition filed by the complainant is concerned, it is not a case for enhancement of punishment, since the complainant counsel has not made out a case, so as to enhance the punishment imposed on the appellants.

21) Accordingly, the revision petition also stands dismissed.

October 14th, 2015.
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(P.B. Bajanthri)
Judge