

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-975-SB of 2012

DATE OF DECISION: NOVEMBER 30, 2015

JAGDISH AND ANOTHER

...APPELLANTS

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. AKSHAY BHAN, SR.ADVOCATE
AND MR. GURINDER SINGH, ADVOCATE
FOR THE APPELLANTS.

MR. GAURAV JINDAL, ADDL.A.G., HARYANA.

MR. M.S.SHEKHAWAT, ADVOCATE
FOR THE COMPLAINANT.

M. JEYAPPAUL, J.

1. Accused-appellant Jagdish son of Ganpat and accused-appellant Ramchander son of Jagdish have challenged the judgement passed by the trial Court whereby they were convicted under Section 325/34 IPC and sentenced to undergo R.I. for 3 years and to pay a fine of ₹3000/- each and in default, to undergo further R.I. for 9 months and were also convicted under Section 307/34 IPC and sentenced to undergo R.I. for 10 years and to pay a fine of ₹5000/- each and in default, to undergo further R.I. for 2½ years.

2. PW1 Rakesh Kumar is the son of PW3 Lali Devi. PW1 has set the law in motion by lodging the first information report. He has deposed before the trial Court during the course of evidence that accused Jagdish had

illegally encroached upon a pathway and instructed PW1's family not to use the said pathway. On 10.11.2010 at about 10.00 a.m. accused Jagdish came to his house and instructed him not to use that pathway as it was not a public one. The father of PW1 insisted that the rasta is public one and he could not stop them to use that path and also informed him that he would make a complaint to the Sarpanch in that regard. On 12.11.2010 at about 4.30 p.m., PW1 Rakesh Kumar and his mother PW2 Lali Devi were standing in front of their house. Accused Jagdish and accused Ramchander alongwith others came over there in a tractor. Accused Ramchander was driving the tractor. Accused Jagdish having an iron rod exhorted others to finish the complainant party. Thereupon, accused Ramchander hit PW3 with the tractor. She fell down. Accused Ramchander passed the tractor over PW3. Thereafter, he reversed the tractor and again hit PW3. PW3 sustained injuries on her neck and head. Accused Sumit gave kulhari blow on PW1 Rakesh's head. PW5 Jagat Singh and one Manoj Kumar reached there on hearing the noise. Thereafter, the accused left the scene of crime.

3. PW3 Lali Devi, the injured witness has completely corroborated the evidence of PW1.

4. PW5 Jagat Singh is one of the eye witnesses to the occurrence. He also completely supported the version of PW1 and PW3.

5. PW11 Dr.Amit Sriwastava who treated PW3 Lali Devi has spoken about the injuries sustained by her and the treatment given to her. PW3 was admitted in Paras Hospital, Gurgaon with dislocation of C5/C6 with weakness of lower limbs. The CT-Scan revealed fracture of anterior wall of right maxillary and C2 vertebra with scalp haemotoma. Her CT

Spine-Cervical showed fracture of base of C2 vertebra and left side of C2. There was grade 3 anterior dislocation of C5 over C6 vertebrae with dislocation of C1-5 column over C6 vertebra with dislocation of facet joint at C5-6 level. On account of dislocation of cervical spine, PW3 was put on cervical traction to improve the alignment of cervical spine. She developed respiratory distress. Therefore, she was put on ventilator assisted respiration. She had bladder and bowel involvement with no control and no sensation of passing urine or stool (Incontinence). She was operated upon on 12.11.2010 and discharged on 14.12.2010. As there was no movement in both the lower limbs with respiratory distress, he has opined that the injuries sustained by Lali Devi were dangerous to her life.

6. PW8 Mohan Singh, S.I. Investigated the case and laid final report.

7. In the statement under Section 313 Cr.P.C., it was contended that PW3 Lali Devi who was seated on the tractor fell down from the cultivator due to its sudden acceleration and sustained injuries.

8. PW3 Lali Devi had received grievous injuries as per the evidence of PW11 Dr.Amit Sriwastava. She has categorically deposed that it was only accused Ramchander who drove the tractor, dashed it against her and as a result of which she received injuries. Accused Ramchander also reversed the vehicle and again hit PW3 Lali Devi and caused injuries. PW1 Rakesh Kumar, the son of PW3 and independent eye witness, PW5 Jagat Singh have completely supported the evidence of injured witness. The medical evidence also completely corroborates the evidence of the injured witness and ocular witnesses.

9. The evidence of an injured witness will have to be placed on a higher pedestal. Her evidence cannot be doubted. She would not have any tendency to implicate the accused falsely, if at all she had sustained injuries on account of fall from the tractor. Further, the evidence of PW1 and PW5 rules out the defence set up by the accused that due to fall PW3 Lali Devi had sustained injuries. The evidence of PW11 would categorically disclose that PW3 had sustained injuries which were dangerous to her life. It appears that PW3 had become completely immobile on account of the injuries she sustained. She had also undergone respiratory problem. No wonder, there is medical evidence to show that she sustained injuries that were dangerous to her life. Even otherwise, the very fact that accused Ramchander had reversed the tractor to hit PW3 again speaks volumes of his intention to do away with the life of PW3 Lali Devi.

10. Learned senior counsel appearing for the appellant vehemently submitted that PW5 Jagat Singh was not an eye witness, even as per own showing of PW1 Rakesh Kumar, who has stated that PW5 reached the spot only on hearing the noise.

11. It may be a case where PW5 Jagat Singh who was very much around the scene of crime reached the exact place of occurrence after the attack was launched in order to save PW3. PW1 has witnessed PW5 reaching the spot after PW3 shouted. Even otherwise, the entire case does not hinge on the sole evidence of PW5. The testimony of PW5 just lends corroboration to the evidence of PW1 and PW3. Therefore, I do not find any reason to reject the corroborative version of PW5.

12. It is true that PW1 and PW3 have stated that PW3 was run over

by the tractor driven by accused Ramchander. It may be an exaggeration emanated from the mouth of the eye witnesses. The Doctor who examined her has stated that the tractor would not have run over PW3. The prosecution has established that PW3 Lali Devi sustained injury at the instance of accused Ramchander who intended to cause her death by driving the vehicle over her. PW3 had sustained injuries as accused Ramchander had dashed PW3 with the tractor he drove. Therefore, the exaggeration found in the evidence of PW1 and PW3 does not falsify their testimony.

13. It was pointed out by learned senior counsel appearing for the accused-appellants that PW4 EASI Surender Singh has stated that the special report was handed over to him at 5.30 p.m. on 12.11.2010, whereas PW6 Dharam Singh ASI deposed that the special report was handed over to PW4 at 9.35 p.m.. Therefore, it is his submission that there is a contradiction in the evidence of PW4 and PW6.

14. On a perusal of the original first information report which was despatched to the learned Judicial Magistrate, I find that learned Judicial Magistrate received the first information report at 00.30 hours on 13.11.2010. It appears that PW4 has given the wrong time of receipt of special report on account of long gap between the date of occurrence and the date when he deposed before the Court.

15. Further, it is a well settled proposition of law that every delay in despatching the special report does not throw doubt on the case of the prosecution. It is found that PW6 has come out with the sequence that रुग्गा was received only at 9.15 p.m. and the first information report was registered thereupon at 9.30 p.m. and the special report was despatched only

at 9.35 p.m. The evidence of PW3 is found to be cogent and reliable. Even otherwise, the case of the prosecution cannot be thrown overboard on account of some delay in despatching the special report, more especially when there is credible evidence of injured witness and ocular witness to prove the case of the prosecution.

16. Learned senior counsel appearing for the appellants submitted that the injury sustained by accused Ramchander was not explained by the prosecution. Learned counsel appearing for the complainant and the learned State counsel submitted that accused Ramchander has sustained a fracture injury only in his finger. The other injuries were very insignificant, they submitted.

17. As rightly pointed out by learned counsel appearing for the complainant and learned State counsel, it appears that a fracture was found on the finger of accused Ramchander and he also sustained other superficial injuries. It is a well settled proposition of law that the grievance injury sustained by the accused will have to be explained. But in a case where the injured witness and the ocular witness have thoroughly supported the case of the prosecution, non-explanation as regards the grievous injury sustained by the accused cannot be a ground to reject the case of the prosecution.

18. I find that there is no evidence to show that accused Jagdish caused any injury to PW1 or PW3. PW5, of course, has deposed beyond his original version that accused Jagdish also hit PW3 Lali Devi with an iron rod and caused injury. Such a version is not believable as it was not supported by even PW3 Lali Devi who sustained injuries.

19. Except the role attributed to accused Jagdish that he raised

lalkara, no other role was attributed to him. Further, accused Ramchander had dashed his tractor against PW3 Lali Devi and caused injuries dangerous to her life. Therefore, in my view, no offence under Section 325 read with Section 34 IPC was made out as against these accused-appellants and therefore, they are entitled to acquittal of those offences.

20. Considering the tractor which was used by accused Ramchander to cause injury to PW3 Lali Devi, repeated attempts made by him to cause her death, the nature of injuries sustained by Lali Devi who had become a totally crippled lady, I am of the view that the trial Court has rightly convicted accused Ramchander under Section 307 read with Section 34 IPC and sentenced him to undergo 10 years R.I. But as far as accused Jagdish is concerned, I find that the trial Court without considering the role attributed to him has given a maximum punishment of 10 years R.I. for the said offence. Taking into account the age of accused Jagdish who was 62 years as on today and the role attributed to him, the sentence of 10 years R.I. imposed on him is reduced to 4 years R.I. for the offence under Section 307 read with Section 34 IPC.

21. In view of the above, the judgement of conviction and sentence passed by the trial Court is modified and accused Jagdish and Ramchander are convicted only under Section 307 read with Section 34 IPC and accused Ramchander is sentenced to undergo R.I. for 10 years and to pay a fine of ₹5000/- and in default, to undergo further R.I. for 3 months while accused Jagdish is sentenced to undergo 4 years R.I. and to pay fine of ₹1000/- and in default, to undergo further R.I. for 1 month. Both the accused are acquitted of the charge under Section 325 read with Section 34 IPC.

22. The appeal is dismissed in the aforesaid terms.

23. Accused-appellant No.1 Jagdish is on bail. His bail bond stands cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Narnaul who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Narnaul shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

November 30, 2015
Gulati

(M. JEYAPPAUL)
JUDGE