

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-524-MA-2015 (O&M)

Date of decision: 24.08.2015.

Darshani Devi

..... Appellant

Vs.

Gian Chand and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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?

Argued by: Mr. Malkiat Singh, Advocate &
Mr. Sanjeev Duggal, Advocate
for the appellant.

RAJ RAHUL GARG.J.

Darshani Devi-complainant has filed this appeal against the impugned judgment dated 10.02.2015 rendered by the learned Additional Sessions Judge, SAS Nagar, Mohali, whereby all the 6 accused were convicted under Sections 323/452 and 149 of Indian Penal Code (for short 'IPC') whereas they were acquitted of the charges under Sections 307 and 148 IPC. She wanted that the accused be convicted for attempt to commit murder as they were having an intention to kill her and her mother and only with that intention, they entered into the house of her mother.

It is the allegation of complainant that on 10.08.2012, she had gone to her parental house to see her mother and for paying obeisance at Gugga Marhi. Her mother's house was under construction. Gravel (bajri) etc. was lying at a common place adjoining the house of her mother and that of accused. On 11.08.2012 at about 9 am the accused started hurling abuses on complainant and her mother asking them to remove the gravel from the common place as they wanted to place toka machine there. Accused are the relatives of complainant. They are inimical towards the family of complainant as well. The complainant and her mother requested them to place the toka machine at some other spot but they gave a threat to them of dire consequences and had gone away.

On the same day at about 12:15 pm, the accused knocked at the door of the house of complainant's mother. The complainant opened the door. Accused forcibly entered into the house of complainant's mother. Accused Gian Chand raised *lalkara* “ *Tuhanu bajri suttne da swad dwande haan*”. Thereafter, accused Hardial Sharma raised *lalkara* “*Maar deo salyian nu*”. Accused Shri Krishan forcibly caught hold of the complainant and Gian Chand gave a blow with an iron rod on her head. Hardial Sharma accused also gave a blow with a *danda* on her head. Her mother and sister Rimpay came to save the complainant. Rimpay ran away to call her brother Rajesh Kumar, who was sitting in a hair cutting salon of Baljinder near their house. Rajesh Kumar and Baljinder Singh came to the spot to rescue complainant and her mother.

They saw accused Ram Ishar holding complainant's mother; and Gian Chand accused gave an iron rod blow whereas Hardial Sharma accused gave a *danda* blow to the complainant's mother. Accused Kamlesh and Sudesh also gave kick and fist blows to the complainant and her mother. On hearing the hue and cry raised by complainant and members of her family, one Baldev who was passing by their house, came to save the complainant and her family. The accused while leaving their house snatched a gold chain worn by the complainant and silver chain of Rajesh Kumar and threatened to kill the complainant and members of her family. Rajesh Kumar arranged a vehicle and took the complainant and her mother to Civil Hospital, Lalru. After giving first aid and stitching the wound received by the complainant and her mother, they were referred to Civil Hospital, Dera Bassi, from where they were referred to GMCH, Sector 32 Chandigarh. Police was informed about this incident but since no action was taken, therefore, the appellant-complainant had instituted a private complainant.

Complainant in support of her case herself appeared as CW1 and examined her mother Saroj Bala as CW2, Dr. Kumar Abhishek as CW3, Baljinder appeared as CW4, Rimpay as CW5 and Dr. Sangeeta Jain was examined as CW6.

On the basis of aforesaid evidence on the file, respondent-accused were summoned to face trial for offences punishable under Sections 307/323/452/148/149 and 506 IPC.

After supplying the copies of the complaint, as offence

under Section 307 IPC was exclusively triable by the Court of Session, therefore, the complaint case was committed to the Sessions Court. Accused were charge-sheeted under Sections 307/323/452/148 and 149 IPC to which they did not plead guilty but claimed trial.

Thereafter, in order to prove the allegations contained in the complaint, complainant herself appeared as PW2, her mother Saroj Bala appeared as PW3, Sukhwinder Kaur @ Rimpay (sister), appeared as PW4 whereas Dr. Dilbagh Singh, was examined as PW1, Dr. Kumar Abhishek as PW5 and Dr. Sangeeta Jain as PW6.

Statement of accused under section 313 Cr.P.C. were recorded wherein all the incriminating circumstances appearing against them were denied and they pleaded their innocence. It is the defence taken by the accused that no such occurrence had taken place. Complainant-Darshani Devi and her mother had suffered injuries by falling from the moving motorcycle. It is also pleaded by way of defence that they have been falsely implicated in this case.

Before this Court, accused did not assail the impugned judgment dated 10.02.2015 and the order of sentence of even date.

We have heard learned counsel for the appellant besides appraising the entire material coming on record.

The only argument advanced by learned counsel for the appellant is regarding offence under Section 307 IPC. It was contended that the respondent-accused had an intention to kill complainant party.

Accused Gian Chand gave an iron rod blow on the head of the

complainant as well her mother. Accused Hardial Sharma, gave a *danda* blow on the head of complainant as well her mother. Head is a vital part of the body. Accused Hardial also raised *lalkara* by shouting “*Maar deo salyian nu*”. For offence under Section 307 IPC sufferance of injury is not necessary. It is the intention with which injury was caused is to be seen.

Learned counsel for the appellant also drew our attention to the order of sentence referring that in this order, the learned trial Court has made a mention about the intention of the accused to cause injuries on the persons of complainant and her mother. The learned trial Court has made a mention in the order of sentence that “ *the accused in the instant case being related to the complainant's family intentionally attacked them inside their house*”. As such, the offence under Section 307 IPC is established against the accused and they be convicted for the aforesaid offence as well.

It is the appeal against acquittal for offence punishable under Sections 307 and 148 IPC. As such, the matter would have to be examined in the light of the observations of the Hon'ble Apex Court in **Ashok Kumar Vs. State of Rajasthan, 1991 (1) SCC, 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on misreading of the evidence and merely because the Appellate Court was inclined to take a different view, could not be a reason calling for interference.

The learned trial Court after taking into consideration each

and every aspect of the case, recorded its findings in detail in the impugned judgment. After going through the oral as well medical evidence of the file, we do not find that the learned trial Court has misread the evidence or its judgment is perverse in any way.

Of course, Gian Chand and Hardial Sharma accused gave an iron rod blow and *danda* blow respectively on the head of complainant and her mother yet PW6 Dr. Sangeeta Jain, categorically deposed about the injuries suffered by them by proving MLR of Saroj Bala as Ex.PW6/A and that of Darshani Devi as Ex.PW6/D. She also deposed that as per the opinion of Radiologist, all the injuries on the person of Saroj Bala were declared simple in nature. As per record of GMCH, Sector-32 and endorsement Ex.PW6/F, CT head on the person of Darshani Devi was reported as within normal limits and thus she opined all the injuries on the person of Darshani Devi were declared simple.

From this medical evidence, it is proved that the present case is not a case of grievous injury. In this case, injuries were suffered by the complainant and her mother and the same was reported as simple injuries. There is no opinion of the doctor regarding nature of injuries as dangerous to life. From the *lalkara* alone, it cannot be concluded that accused inflicted injuries with an intention to kill complainant and her mother.

In fact, earlier injuries were inflicted on the person of complainant but when her mother came to her rescue, she also suffered

injuries. As such, it cannot be said that accused were having an intention to kill complainant as well her mother. The mere observations of the learned trial Court in the order of sentence that “ *the accused in the instant case being related to the complainant's family intentionally attacked them inside their house*”, does not prove that the accused had an intention to kill complainant and her mother. The intention of the accused to cause injury to the complainant party cannot be said to be an intention to kill them.

As such, the above contention of learned counsel for the appellant is without any merit.

No other point was urged before us.

For the reasons recorded above that the impugned judgment of the learned trial Court is neither perverse nor based on misreading of evidence. This appeal is without any merit and as such, no interference is called for.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

24.08.2015
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