

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA No.S-233-SB of 2003
Date of decision: 26.08.2015**

Ram Bilas

..... Appellant

Versus

State of Haryana

...Respondent

And

**CRR No.757 of 2003
Date of decision: 26.08.2015**

Manphool

..... Petitioner

Versus

Ram Bilas and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Bijender Dhankar, Advocate
for the appellant in CRA-S-233-SB of 2003 and
for respondent No.1 in CRR-757 of 2003.

Mr. Gaurav Jindal, Additional Advocate General
for the State of Haryana.

Mr. Deepinder Singh, Advocate
for petitioner in CRR-757 of 2003.

DARSHAN SINGH, J.

This judgment of mine shall dispose of the Criminal Appeal No.S-233-SB of 2003 and Criminal Revision No.757 of 2003, as both these have arisen out of the same judgment and order on the quantum of sentence dated 10.01.2003 and 13.01.2003, respectively.

2- Criminal Appeal No.S-233-SB of 2003 has been filed by accused-appellant Ram Bilas against the judgment of conviction dated 10.01.2003 vide which, he has been held guilty and convicted for the offence punishable under Section 307 of the Indian Penal Code, 1860 (here-in-after called the 'IPC') and the order on quantum of sentence dated 13.01.2003 vide which, he has been sentenced to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.1000/-, in default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of one month.

3- The brief facts giving rise to this prosecution are that Manphool, the husband of complainant Lakhpati had five brothers namely Het Ram, Net Ram, Surjit, accused-appellant Ram Bilas and Om. Her husband along with his brothers Het Ram had entered into an agreement to purchase the agricultural land measuring 4.5 acres from accused-appellant Ram Bilas and Surjit (co-accused since acquitted), who are the real brothers of her husband for a sum of Rs.5,00,000/-. At the time of the agreement, the entire sale consideration was paid by her husband to the accused. They promised to transfer the land in favour of her husband. But later on, they refused to do so. On 29.01.2001, at about

12 O'clock, in the noon a Panchayat of brotherhood was convened in connection with the said land dispute. Jai Lal, Shree Ram, Het Ram and Ami Lal were the members of the Panchayat. The Panchayat was convened at the house of accused-appellant Ram Bilas. The husband of the complainant was also summoned in the Panchayat of the brotherhood. During the proceedings of the Panchayat, the accused-appellant and his co-accused Surjit got furious. The complainant on hearing the noise, cautioned her husband Manphool to save himself from the accused. Accused-appellant Ram Bilas went on the roof of his house having two bricks in his hand. When the husband of the complainant tried to slip away from the Panchayat, he was caught hold by co-accused Surjit. Accused-appellant gave two bricks blows one after the other, hitting on the right side of the head of the husband of the complainant. Her husband became unconscious. The accused escaped from the spot. Injured Manphool was taken to Civil Hospital, Adampur. Thereafter, he was shifted to V.K. Neuro Care Hospital, Hisar by the complainant. As the injured was unfit to make the statement, the Investigating Officer recorded the statement of Smt. Lakhpatti, the wife of injured, Ex.P11. On the basis of which, formal FIR Ex.P13 was recorded and investigation was initiated.

4- During the investigation, the accused-appellant and his co-accused were arrested. The Investigating Officer inspected the spot and prepared the site plan of the spot. On the basis of his disclosure statement, accused-appellant got recovered two bricks kept concealed in

his fields, with which he had caused injuries to Manphool. The injuries suffered by Manphool were declared as dangerous to life. After completing the necessary formalities of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (here-in-after called the 'Cr.P.C.') was presented in the Court.

5- Accused-appellant Ram Bilas was charge-sheeted for the offence punishable under Section 307 IPC and his co-accused Surjit was charge sheeted for the offence punishable under Section 307 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

6- In order to substantiate its case, the prosecution examined as many as seven witnesses.

7- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. However, he did not led any evidence in his defence.

8- On appreciating the evidence on record and contentions raised by learned counsel for the parties, accused-appellant was held guilty and convicted for the offence punishable under Section 307 IPC and was awarded the sentence as mentioned in the upper part of the judgment. However, co-accused Surjit was acquitted of the charges.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence, Criminal Appeal No.S-233-SB of 2003 has been preferred by accused-appellant Ram Bilas.

10- Injured Manphool has filed Criminal Revision No.757 of 2003 agitating the acquittal of Surjit and inadequate sentence to appellant

Ram Bilas. In the revision petition, he has prayed for, for setting aside the acquittal of respondent No.2 Surjit and the sentence awarded to accused Ram Bilas should be enhanced considerably and the amount of fine may also considerably enhanced and the same may be paid to the petitioner by way of compensation.

11- I have heard Mr. Bijender Dhankar, Advocate, learned counsel for accused-appellant Ram Bilas (respondent No.1 in CRR No.757 of 2003), Mr. Deepinder Singh, Advocate, learned counsel for injured Manphool/revisionist in CRR No.757 of 2003, Mr. Gaurav Jindal, learned Additional Advocate General for the State of Haryana and have meticulously examined the record of the case.

12- Initiating the arguments, Mr. Bijender Dhankar, Advocate, learned counsel for the appellant contended that there was no motive for causing the injuries to Manphool by the accused-appellant. He contended that the relinquish deed was already executed by appellant Ram Bilas and Surjit in favour of Manphool and Het Ram on 25.10.2000 with respect to the land in question i.e. much prior to the present occurrence. So, there was no question of holding any Panchayat. Thus, he contended that the foundation of the prosecution case stands washed away.

13- He further contended that even as per the FIR, various other persons namely Jiya Lal, Shree Ram, Het Ram and Ami Lal were present at the spot but none of them has been examined by the prosecution. The entire case of the prosecution is based on the statements

of complainant Smt. Lakhpati and her husband injured Manphool. Their testimony should not be relied upon for want of independent corroboration.

14- He further contended that as per the prosecution version, co-accused Surjit has caught hold injured Manphool and then appellant gave the brick blow. This version has been disbelieved by the learned trial Court and it shows the falsity in the prosecution version, the benefit of which should also be given to the appellant.

15- He further contended that the offence punishable under Section 307 IPC is not made out against the appellant. Even though the injuries suffered by Manphool have been declared to be dangerous to life, if the injured would not have been treated properly within time but there is no evidence to show that the accused had any intention to cause death of Manphool. He contended that if the intention of the appellant would have been to kill Manphool, he would have used some other lethal weapon. It is alleged that he has thrown the brick from roof. He could also have missed the target. So, his intention to murder Manphool is not established and no offence under Section 307 IPC is made out. To support his contentions, he relied upon cases ***Bawa Singh and others Vs. State of Punjab, 2013(3) RCR (Criminal) 1027*** and ***Case State of Punjab Vs. Bant Singh 1996(2) RCR (Criminal) 135***.

16- On the other hand Mr. Gaurav Jindal, learned Additional Advocate General for the State of Haryana pleaded that the case of the prosecution is based on direct evidence. PW3 Lakhpati, the complainant

and PW4 Manphool the injured have given the consistent version about the occurrence. Accused-appellant Ram Bilas while standing on the roof of the house had given the brick blows on the head of Manphool. The injuries on the head of Manphool have also been found to be dangerous to life. So, Section 307 IPC is clearly attracted. He further contended that the motive for the occurrence was the land dispute. The accused appellant has not placed on file any relinquish deed having been executed prior to this occurrence. Thus, he pleaded that there is no infirmity in the conviction of the appellant as recorded by learned trial Court.

17- Mr. Deepinder Singh, Advocate learned counsel for the revisionist contended that PW3 Lakhpati and PW4 Manphool have categorically deposed that accused Surjit has caught hold injured Manphool when he was leaving the spot and he thereby facilitated accused-appellant Ram Bilas to cause injuries on the head of Manphool by giving the brick blows. It shows that Surjit also shared the common intention with accused Ram Bilas and has been wrongly acquitted by the learned trial Court.

18- He further contended that injured Manphool has suffered the severe head injuries. The punishment awarded to the appellant is inadequate. The punishment awarded to the appellant should be enhanced suitably. Injured Manphool has also not been granted any compensation by the trial Court. He is also entitled for the grant of compensation. He has also supported the contentions raised by learned State counsel and contended that there is no illegality in the conviction of the appellant

recorded by the learned trial Court.

19- I have given thoughtful consideration to the aforesaid contentions.

20- I do not find any substance in the plea raised by learned counsel for the appellant that the appellant had no motive for causing the injuries to PW4 Manphool because PW3 Lakhpati, the complainant and PW4 Manphool have consistently deposed that there was land dispute between the parties. Injured Manphool and his brother Het Ram had entered into an agreement to purchase the agricultural land measuring 4.5 acres from appellant Ram Bilas and his co-accused Surjit. They had also received the sale consideration. But the land was not being transferred in their favour. To resolve this very dispute, the Panchayat was being held at the time of the occurrence in front of the residential house of the appellant. It is not the case of the appellant either in the cross-examination of the witnesses or in the statement under Section 313 Cr.P.C. that any relinquish deed dated 25.10.2000 was already executed by the appellant and his co-accused Surjit in favour of injured Manphool and his brother Het Ram, rather in the cross-examination of PW4 injured Manphool as well as PW3 complainant Lakhpati, it has been suggested that no agreement was entered into for sale of the agricultural land. It was further suggested that they had not received a sum of Rs.5,00,000/-. Appellant also denied of holding any Panchayat on that day and alleged the false implication. So, the case of the appellant is of total denial with respect to the agreement for sale of the agricultural land and having

received the sale consideration. Moreover, no such relinquish deed was produced at any stage of the trial. So, there is no escape to the conclusion that the motive for this occurrence was the land dispute between PW4 Manphool and the accused.

21- Moreover, the case of the prosecution is based on the direct evidence, which is corroborated from the medical evidence. Where the case of the prosecution is based on the direct evidence, the proof of the motive loses its significance. To support this view, reference can be made to cases *Thaman Kumar Vs. State of Union Territory of Chandigarh, 2003(3) RCR (Criminal) 416* and *Bhadar Singh Vs. State of Punjab 2007 (2) RCR (Criminal) 946 (DB)*.

22- No doubt, in the FIR as well as the statement of the complainant, it is mentioned that some other persons were also present in the Panchayat convened to resolve the land dispute when this occurrence took place but they have not been examined by the prosecution. The non-examination of those persons namely Shree Ram, Jai Lal, Het Ram and Ami Lal as a witness by the prosecution is no ground to discredit the consistent, cogent and reliable testimonies of PW3 complainant Lakhpati and PW4 injured Manphool, which are fully corroborated from the medical evidence. To support this view, reference can be made to cases *Nagarjit Ahir Vs. State of Bihar 2005(2) RCR (Criminal) 26* and *Raj Narain Singh Vs. State of U.P. And others 2009(4) RCR (Criminal) 347*. The Court cannot lose sight of the fact that PW4 Manphool is an injured witness. In the absence of strong reasons, his testimony cannot be

discarded. As per Section 134 of the Indian Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact. Even the solitary statement of a witness, if found reliable, can be acted upon to base the conclusion. It is the quality of the evidence and not the quantity of the evidence, which matters. It is also the well settled principle by this time that the inter se relation of the witnesses or the relation of witness with victim is also no ground to discredit their testimonies. Mere this fact that PW4 injured Manphool and PW3 complainant Smt.Lakhpati happens to be husband and wife is no ground to discard their testimonies. Learned counsel for the appellant has not been able to point out any material contradiction or infirmity in their testimonies to render their statements unworthy of credence.

23- The acquittal of co-accused Surjit is also no ground to enlarge the similar benefit to the present appellant. The learned trial Court has disbelieved the prosecution version that co-accused Surjit had caught hold the injured at the relevant time because if that would had been so, he could also have suffered the injury and rightly so. As per the version of the prosecution, appellant Ram Bilas had thrown the brick while standing on the roof of his house. In that eventuality, the brick thrown by him could have also hit co-accused Surjit. So, it is not believable that co-accused Surjit would caught hold PW4 Manphool. But the evidence against the present appellant is consistent in the shape of testimonies of PW3 Lakhpati, the complainant and PW4 injured Manphool that the appellant has caused the brick blows on the head of

PW4 Manphool one after the other. Thus, mere acquittal of co-accused Surjit will not enlarge any benefit to the present appellant. Reliance can be placed on case *Yanab Sheikh @ Gaggi Vs. State of West Bengal 2013(3) RCR (Criminal) 989*.

24- Consequently, the contentions raised by Mr. Deepinder Singh, Advocate, learned counsel for the revisionist qua the acquittal of co-accused Surjit are also without substance. As discussed above, the allegations levelled against co-accused Surjit that he caught hold injured Manphool while appellant Ram Bilas was throwing the bricks, are not plausible at all. There is also no material on record to show that co-accused Surjit shared the common intention with the appellant for causing injuries to PW4 Manphool. Even as per the case of the prosecution, the Panchayat was going on when appellant Ram Bilas got up from the Panchayat. He went to his house and thereafter, on the roof top of the house and threw the bricks, which hit on the head of PW4 Manphool. There is no allegation and proof that before leaving the spot/Panchayat, appellant Ram Bilas had any conversation with co-accused Surjit. Thus, the act of appellant Ram Bilas to leave the Panchayat and then to go at the roof top of his house and to throw the bricks on PW4 Manphool, was the individual act/decision of the appellant. The prosecution version with respect to the role attributed to co-accused Surjit, as discussed above, is not believable. So, there is no legal infirmity or material irregularity in the acquittal of co-accused Surjit recorded by learned trial Court.

25- Now the question arises as to what offence is made out.

Section 307 IPC reads as under:-

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]”

26- In order to justify the conviction under Section 307 IPC, it should be established that accused did an act with such intention or knowledge and under such circumstances that if by that act, he caused the death, he would be guilty of murder. It is sufficient to attract Section 307 IPC if there is present an intent to kill, coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused. Such intention may also be deduced from other circumstances. This Section makes a distinction between the act of the accused and the result thereof, if any. The Court has to see whether the act irrespective of its result was done with intention or knowledge and under the circumstances mentioned in Section 307 IPC. To support this

view, reference can be made to cases *Lachman Singh Vs. State of Haryana AIR 2006 SC 2763*, *Prakash Chandra Yadav Vs. State of Bihar and Ors. 2007(4) RCR (Criminal) 860 (SC)* and *State of M.P. Vs. Kashiram and Ors. 2009(1) RCR (Criminal) 956*. In the instant case, from the material and circumstances available on record, it can be safely concluded that appellant had intent to kill PW4 Manphool. The appellant had a land dispute with PW4 Manphool, so he had a strong motive to eliminate PW4 Manphool. The Panchayat was being held in front of his house. PW4 Manphool stated that during proceedings of the Panchayat, appellant Ram Bilas and Surjit had some altercation with him. After that the present appellant went to his house. He went upstairs on the rooftop of his house. He lifted bricks and threw two bricks targeting the head of PW4 Manphool while standing on the roof top. Throwing of a brick from such a height is very dangerous and in that situation, it cannot be stated that brick was not a lethal weapon. As already mentioned, the nature of the injury actually caused may also give assistance in coming to a finding with respect to the intention of the accused. In the instant case, PW4 Manphool, as per the statement of PW1 Dr.AK Jain, had suffered the injury on right fronto parietal region. PW1 Dr. A.K. Jain has deposed that as per the report of the CT scan right frontal region had depressed fracture with extra dural haematoma with cerebral oedma. So, PW4 Manphool has suffered the depressed fracture of the right frontal region with extra dural haematoma with cerebral oedma, which is a serious head injury. PW4 Manphool underwent operation on 29.01.2001 itself and had

to remain admitted in hospital from 29.01.2001 to 10.02.2001 as per the bed-head ticket Ex.P9. The aforesaid medical evidence shows that the brick blow was given with sufficient force. PW3 Lakhpati and PW4 Manphool have also consistently deposed that accused-appellant had thrown two blows of bricks which also shows the determination and definite intention of the appellant to kill Manphool. PW1 Dr. A.K. Jain has also given a definite opinion that the injury was dangerous to life if the injured was not treated properly and timely. In view of the above authoritative pronouncements of Hon'ble Apex Court, the cases relied upon by learned counsel for the appellant are no help to him.

27- Consequently, from the facts and circumstances of the case it is established that accused appellant Ram Bilas had intention to kill PW4 Manphool and in execution thereof, he threw two bricks aiming at the head of PW4 Manphool. PW4 Manphool suffered the severe head injury, which was opined to be dangerous to life, if he was not treated properly and timely. So, Section 307 IPC is clearly attracted against the appellant.

28- Accused-appellant has been ordered to undergo rigorous imprisonment for a period of six years. Learned counsel for the appellant has pleaded that leniency in the matter of sentence on the grounds that both the parties are closely related as the present appellant and injured Manphool are real brothers. The appellant has no criminal record or background. He is facing the agony of this litigation for the last more than 14 ½ years and thereafter, no dispute has taken place between the

parties.

29- However, Mr. Deepinder Singh, learned counsel for the revisionist/injured contended that the sentence awarded by the learned trial Court is inadequate, which should be further enhanced.

30- These contentions have been duly considered.

31- Learned counsel for the revisionist has not been able to divulge the circumstances for enhancement of the sentence. Mere this fact that revisionist Manphool has suffered head injury, which was declared dangerous to life is itself not a ground for enhancement of the sentence. In order to determine the quantum of sentence various circumstances like the nature of offence, the circumstances in which the offence was committed, the mode/manner of the commission of the offence, the nature of the weapon used etc. etc. have to be taken into consideration. Rather, I find substance in the contentions raised by learned counsel for the appellant for some reduction in the substantive sentence awarded by the learned trial Court. This fact is not disputed that the cause for this occurrence was land dispute between the two brothers. Appellant Ram Bilas and injured Manphool are the real brothers. There is no material on record to show that appellant had any criminal background. The weapon of offence used in this occurrence is the brick, which was available on the roof of the house of the appellant. The manner/mode of the commission of the offence cannot be stated to be cruel. The appellant is also facing the agony of this trial for the last more than 14 ½ years. It is not the case of the revisionist that after the commission of this offence, any further

dispute was raised by the present appellant. Thus, in these circumstances, he deserves some reduction in the substantive sentence.

32- In the revision petition filed by the injured a prayer has also been made for enhancement of amount of fine considerably and for payment of compensation out of that fine. The evidence on record shows that PW4 has suffered a severe head injury. He underwent surgery and had remained hospitalized for a period of 12 days. So, he must have incurred the expenses on the treatment in addition to pain and sufferings on account of the injuries. So, certainly revisionist injured Manphool is entitled for compensation. To meet out this eventuality, the amount of fine can be enhanced and out of that the compensation can be paid to injured Manphool under Section 357(1) of Code of Criminal Procedure, 1973. Reliance can be placed on case ***Puttaswamy Vs. State of Karnataka 2009(1) RCR (Criminal) 501 (SC)***.

33- Thus, keeping in view my aforesaid discussion, the conviction of the appellant for the offence punishable under Section 307 IPC has been rightly recorded by the learned trial Court and the same is hereby maintained. However, the substantive sentence as awarded to the appellant is hereby reduced to rigorous imprisonment for five years instead of six years as awarded by the learned trial Court. However, the fine is enhanced to Rs.41,000/- out of which Rs.40,000/- shall be paid to injured Manphool Singh as compensation under Section 357(1) Cr.P.C. The enhanced amount of fine shall be deposited with the learned trial Court, failing which the appellant will further undergo rigorous

imprisonment for a period of four months.

34- Thus, with the aforesaid modification in the sentence, the appeal filed by appellant Ram Bilas stands dismissed and the revision filed by injured Manphool stands partly allowed. Accused-appellant Ram Bilas is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Hisar, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Hisar, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 26.08.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE