

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRA-S-2009-SB-2003
Date of decision : 30 January, 2015

Chillu @ Suleman

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA

Present : Mr. Dilpreet Singh, Advocate for
Mr. G.C. Shahpuri, Advocate
for the appellant.
Ms. Kirti Singh, DAG, Haryana.

ASHUTOSH MOHUNTA, J.

The present appeal has been filed by Chillu @ Suleman against the judgment of conviction dated 02.09.2003 passed against him by learned Additional Sessions Judge, Faridabad, whereby he has been ordered to undergo rigorous imprisonment under Section 332 IPC for a period of 2 years and to pay fine of ₹ 1000/- and in default further to undergo rigorous imprisonment for a period of 2 months. He has also been sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹ 300/- for the offence punishable under section 353 IPC and in default thereof, further to undergo rigorous imprisonment for one month. He has also been sentenced to undergo rigorous imprisonment for 7 years under section 307 IPC and to pay a fine of ₹ 5000/- and in default, undergo

rigorous imprisonment for one year. He has also been sentenced to undergo rigorous imprisonment for 2 months under section 186 IPC and pay a fine of ₹ 300/- and in default thereof, further to undergo rigorous imprisonment for one month.

2. Brief upshot of the present case is that on 28.11.2000 at about 11:30 PM, Nathu Singh Rathi, Investigating Officer of this case, was present at Pali Chowk alongwith other employees, whereupon one four wheeler bearing No. HR-38-A-0163 loaded with cows coming from the side of Ballabgarh was signalled to stop but the same was not stopped. Immediately a wireless message was sent to Police Post Dhauj to stop the said four-wheeler coming from Faridabad side and going towards Sohna loaded with cows for the purpose of slaughtering. On receipt of the wireless message, barricading was done in front of the Police Post by the police officials. In the meanwhile the said four-wheeler was spotted coming at high-speed and was signalled to stop by Atma Ram-ASI but the driver of the four-wheeler instead of stopping, turned the same towards Atma Ram with the intention to kill him. In order to save himself, Atma Ram took a step backwards and in the process fell down on the road but the side of the four-wheeler hit him as a result of which he received injuries. The four-wheeler was being driven by the appellant while Suleman @ Kunji and Aseen were sitting behind.

3. Thereafter Investigating Officer immediately reached the spot and all formalities with regard to registration of the present case

against the appellant and others were carried out. The statement of injured-Atma Ram (Ex.PA) was recorded on the basis of which FIR (Ex.PA/2) was registered. Rough site plan (Ex.PE) was prepared and injured was got medico-legally examined vide MLR (Ex.PB). The accused was interrogated by Nathu Singh Rathi on 07.01.2001 and 08.01.2001 who suffered closure statement (Ex.PD & PF). The four-wheeler was taken into possession by the police from Ajronda Chowk, Faridabad vide memo (Ex.PG) on 18.03.2001 and its registration certificate was taken into possession vide memo (Ex.PC). After completion of the investigation, the accused were sent up to face trial.

4. The prosecution examined as many as 8 witnesses namely, PW1- Katter Singh ASI, PW2-Rajinder Singh ASI, PW3-Dr. S.C. Bhagat, PW4-Mahender Singh, PW5-Sanjeet Kumar, Constable, PW6-Nathu Singh Rathi, Inspector, PW7-Atma Ram ASI-Complainant and PW8-Jagadish Kumar Constable.

5. In defence, the statement of the accused were recorded under section 313 Cr.P.C., however, no evidence was led in defence by them.

6. The trial Court after appreciation and appraisal of the evidence on record, convicted the appellant for the offences mentioned above vide judgment dated 02.09.2003 but having found no role having been played or attributed to Suleman @ Kunji and Assen in the present occurrence, acquitted them in the present case.

The learned trial Court found no offence under Section 3/8 of the Cow Slaughter Act having been committed in the present case by the accused and thus no connection was recorded by it under the same.

7. Learned counsel for the appellant has argued that there are material discrepancies, improbabilities and inconsistencies in the statement of the prosecution witnesses as to the mode and manner in which the alleged occurrence has taken place which thus shows that the said incident never took place. He further argued that the disclosure statements made by the accused in police custody are not admissible in evidence as the recovery have not been made in pursuance thereto and, therefore, the appellant deserves to be given the benefit of doubt in the present case. He has further argued that the identity of the appellant is under a cloud in-as-much as being a short statured person, it was not possible to see him in darkness. Referring to the MLR, it has further been argued by the learned counsel for the appellant that had the injured fallen on the roadside by the impact of the four-wheeler, he would have received injuries on his body on both the sides whereas his MLR depicts injuries only on one side of the body. Besides the same, except injury No.1 which is a red bruise on the left wrist joint, all other injuries are pain injuries which thus shows that no such occurrence in the mode and manner as projected by the prosecution ever took place and, hence, it cannot be said that there was any intention to kill. He has further argued that the police personnel present nearly barricading were armed with

rifles. Had the appellant tried to run away from the spot on being stopped by them, the police would have fired at him but in the present case no such fire was opened, which shows that the prosecution version is highly improbable. It has been argued by the learned counsel for the appellant that there is no independent corroboration to the effect that VT message was sent to Police Post, Dhauj. Even the person present on the petrol pump where the occurrence took place, was not joined and, thus, the appellant deserves to be given the benefit of doubt in the present case.

8. Per contra, it has been argued by the learned counsel for the State that the prosecution has fully been able to establish and bring home the guilt against the appellant who in an attempt to escape, tried to overrun his four-wheeler loaded with cows over a police personnel on duty and in the process caused injuries on his person. It has further been argued by the learned State counsel that the ocular version is fully supported and corroborated by the medical evidence of the injured available on record in the present case and, thus, the appellant has rightly been convicted for the offences committed by him. It has further been argued that the appellant with the intent to prevent and deter a public servant from discharging his duty, had tried to overrun him with his four-wheeler with such intention and knowledge that under such circumstances by his conduct, would cause death of Atma Ram (police personnel).

9. I have heard the learned counsel for the parties and have gone through the record of the case.

10. The facts of the case are culled out herein above and thus needs no repetition for the sake of brevity.

11. It has been argued by learned counsel for the appellant that there are material discrepancies and contradictions in the statement of the witnesses with regard to the mode and manner in which the occurrence took place. From the record, I find no force in the said argument raised by the learned counsel for the appellant in-as-much as the appellant was signalled to stop his four-wheeler on two occasions by the police party but he did not stop, rather in an attempt to escape from their clutches, the appellant tried to run his four-wheeler over Atma Ram and in the process caused injuries on his person. The medical evidence supports the said ocular version and thus minor discrepancies here and there which do tend to occur on account of fading memory and efflux of time does not in any manner affect the case of the prosecution viz. the mode and manner in which the said incident took place.

12. Further as far as the identity of the appellant is concerned, the same is also not in dispute as Atma Ram-ASI (injured) has specifically deposed that driver of the four-wheeler was Chillu (appellant), accused present in the Court. It has come on record that there was light on the petrol pump as well as on the Police Post and that Atma Ram had identified the appellant and his

brother under the same. Even PW8-Jagdish Kumar, Constable in his deposition before the Court had stated that the name of the driver was Chillu, accused present in the Court and his brother Kunji was present besides him. In view of the said testimony, there is no doubt that it was the appellant who was the driver of the four-wheeler and had tried to overrun the same on Atma Ram ASI (injured-complainant).

13. As regard to the plea raised by the learned counsel for the appellant that no fire was shot from the rifles possessed by the police at the spot in order to make the four-wheeler immobile is concerned, I find no force in the said argument being a wishful one as the sequel of events unfolded in quick succession. The injured could have never expected that the appellant would turn the four-wheeler towards him in order to kill him. The things as they stand, the four-wheeler was turned towards the ASI by the appellant and in the process caused injuries on the injured. Being darkness, there was hardly any time for the police to react and open fire upon the four-wheeler and, thus, finding no force and substance in the said argument, I reject the same.

14. As regard the argument raised by the learned counsel for the appellant that there is no independent corroboration in the present case, it has come on record that the occurrence took place at about 11:30 PM and the four-wheeler loaded with cows was on the run being driven by the appellant. During such hours, there are hardly

any persons available for the police to join as independent witnesses. As regard, joining of person available at petrol pump is concerned, I am of the view that it was important for the police to apprehend the appellant at the first instance, who was on a run having attempted and succeeded to escape their clutches at Pali chowk and thereafter nearly succeeded to escape the Naka organised by them at police post, Dhauj. If the exercise to join the independent witnesses would have been undertaken by the police, then there was a possibility in view of the aforesaid circumstances that the appellant would have escaped the 2nd Naka also alongwith his four-wheeler loaded with cows and thus in my opinion non-joining of independent witnesses under the backdrop of the present case is not fatal for the prosecution especially when it is not the case of the accused that the police personnel were having any enmity with him.

15. As per the MLR of the injured-Atma Ram-ASI, the following injuries have been found:-

- “1. 2 cm spherical red bruise over the flexure aspect of left wrist joint, tenderness present. Painful movement. X-ray wrist advised.*
- 2. Pain on the left shoulder joint with diffused swelling. Tenderness present. Pain on movement. X-ray shoulder advised.*
- 3. Pain on left gluteal region. Pain on movement.*
- 4. Pain all over the body. No mark of injury as such seen.*

Opinion regarding injuries No. 1 and 2 was subjected to X-ray report. Injury No.3 was kept under

observation and injury No. 4 was declared simple and it was further opined that all the injuries were fresh in nature and the weapon used was blunt. He proved the MLR of Atma Ram as Ex. PB.”

16. It has also come on record that the appellant was the driver of a four-wheeler bearing No. HR-38-A-0163 loaded with cows and on 28.11.2000 at about 11:30 PM was signalled to stop at Pali Chowk by Nathu Singh Rathi (I.O.) but was not stopped. Thereafter, even on barricading being done in front of police post, Dhauj, the said four-wheeler was not stopped by the appellant but rather in an attempt to escape the plot knitted by the police personnels to apprehend him, he tried to run his four-wheeler over Atma Ram-ASI on duty and in the process caused injuries upon him (complainant). The medical evidence of the injured fully corroborates the ocular version and the mode and manner in which the incident took place. The appellant has attempted to kill a police personnel on duty by running his four-wheeler over him. The said act of the appellant in my opinion is unpardonable particularly in the backdrop that the four-wheeler loaded with cows was probably being taken for slaughtering purposes. The appellant has prevented a public servant from discharging his duty with the intention and knowledge that by performance of his act, the same might lead to his death. In view of the overwhelming oral evidence coupled with the medical evidence on record, I find no reason and justification to take a different view as has been taken by the learned Trial Court in convicting the appellant

in the present case. Accordingly I uphold the judgment of conviction recorded against the appellant by learned Additional Sessions Judge, Faridabad dated 02.09.2003 and dismiss the present appeal.

17. At this stage, it has been argued by the learned counsel for the appellant that the injured Atma Ram suffered simple injuries only. It has also been argued that the appellant has been facing trial in the present case since the year 2000. He is neither a previous convict and is a poor labourer having 6 children. It has further been argued that the appellant is a 1st offender and prior to being admitted on bail by this Court vide order dated 09.04.2004, he had undergone 2 years 6 months and 18 days of total incarceration out of 7 years imposed upon him and, thus, the learned counsel has prayed that the sentence of imprisonment imposed upon the appellant be reduced to the period already undergone by him under the facts and circumstances of the present case.

18. I find the prayer made by the learned counsel for the appellant fair and reasonable. The appellant is neither a previous convict nor a habitual offender and the sword of the domical has been hanging over him since the year 2000 in the present case and prior to his release on bail, the appellant had already undergone 2 years 6 months and 18 days of imprisonment out of 7 years imposed upon him by the learned Trial Court. Apart from the above, the injured Atma Ram, who is the complainant, had suffered only simple injuries.

In this backdrop, particularly considering the fact that the appellant is

a 1st offender and has 6 children to support and further that the injured suffered simple injuries only, therefore, at this stage it would not be proper to send him behind the bars again. Accordingly, I reduce the sentence of imprisonment imposed upon the appellant to that already undergone by him. However the sentence of fine imposed upon the appellant by the learned Trial Court shall remain intact and is maintained. With the said modification in the quantum of sentence of imprisonment qua the appellant, the present appeal is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

30.01.2015
'SP'