

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2083-SB of 2003
Date of Decision: January 07, 2015

Satbir Singh and others

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Nagpal, Advocate
for the appellants.

Mr.Surender Singh Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against the judgment of conviction dated 08.10.2003 and order of sentence dated 10.10.2003, passed by learned Addl. Sessions Judge, Rohtak whereby the accused-appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years each and to pay fine of ₹10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each under Section 120-B IPC. Accused-appellants Ashok, Satbir, Anand, Bijender and Suraj Bhan were also convicted and sentenced to undergo rigorous imprisonment for a period of one year each and to pay fine of ₹2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a

period of one month each under Section 148 IPC and to further undergo rigorous imprisonment for a period of five years each and to pay fine of ₹10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each under Section 307 read with Section 149 IPC. All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that FIR in this case has been registered on the statement of Lachman complainant Ex.PN on 28.03.2002, in which he stated that on 25.03.2001, Pawan Kumar grandson of his cousin brother Hardwari Lal was murdered by Sher Singh @ Shera, Rambir, Rajiv etc. and a case was registered about that murder at police station Sampla. Complainant is an eye witness in that case. Sher Singh @ Shera had come out of the jail on bail and whenever he used to cross, he used to ask complainant to think before deposition in that case. During the intervening night of 17/18.03.2002, when complainant along with Subhash was crossing the house of accused Satbir, he was informed that Sher Singh @ Shera, Satbir, Anand and Ashok were conspiring therein and accused Sher Singh @ Shera was saying that complainant be finished and also stated that he would get himself admitted in some hospital on 21.03.2002, so that the evidence could not be recorded in that case. Due to fear, complainant and Sanjiv went to their relatives. Due to 'Holi' festival, he came back to his village. On 26.03.2002, at about 9.30 P.M., when the complainant was going to his house from the baithak of Sanjiv along with Subhash and his brother-in-law Mukesh,

then near the house of Ram Gopal @ Pale, accused Ashok, Satbir, Suraj Bhan, Anand, Bijender and Om Pal came from the side of the house of Satbir. Accused Ashok, Om Pal and Suraj Bhan were armed with guns. Accused Anand, Bijender and Satbir were armed with lathis. Accused Ashok raised *lalkara* and thereafter fired a shot to kill the complainant and the pellet hit on his forehead. Thereafter accused Suraj Bhan fired a shot towards complainant but he ducked down and the pellet hit the face of Mukesh. Anand, Satbir and Bijender gave lathi blows to Mukesh when he was intervening. On raising noise, accused ran away from the spot along with their weapons. Accused were arrested. Gun was recovered as per disclosure statement of accused Ashok along with one empty and five live cartridges. Rough site plan was prepared. Statements of witnesses were recorded. After necessary investigation, challan was presented against accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Sections 120-B, 307, 148 and 307 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Kuldeep Kumar, Clerk in the office of Deputy Commissioner, Rohtak, PW-2 Dr.Rajiv Narwal, Medical Officer, PW-3 Constable Samit Kumar, PW-4 Head Constable Ram Bhagat, PW-5 Constable Rajesh Kumar,

PW-6 Head Constable Virender Singh, PW-7 Lachman complainant, PW-8 Dr.Luv Sharma, PW-9 ASI Jai Chand, PW-10 ASI Umed Singh, PW-11 Mukesh, PW-12 Subhash, PW-13 ASI Vijay Singh, PW-14 Raj Mal recovery witness and PW-15 ASI Ram Kishan.

As per statement of PW-2 Dr.Rajiv Narwal, Medical Officer, he medico-legally examined injured Mukesh and found following four injuries on his person:-

“1. Railroad contusion of 6 cm x 2.5 cm was present on right arm which is on the lateral surface of right arm tender to touch no crepitus felt.

2. A railroad contusion of 10 cm x 2.5 cm on the back which is about 7 cm inferior to the lower end of acapula tender to touch and noreapitus felt.

3. A rail road contusion of 7 cm x 2.5 cm on the lateral surface of left arm tender to touch and no crapitus felt.

4. A circular abrasion of 2 mm x 2 mm on the lateral angle of mouth on the right side. Advised Forensic expert opinion.”

The duration of injuries in his opinion was 12 hours. On the same day, he also medico-legally examined injured Lachman and found following two injuries:-

“1. A circular abraded contusion of 1 mm x 1 mm which was present on forehead which was about 6 cm superior to the root of nose. Diffuse swelling was present on the forehead. X-ray skull was advised for forensic expert opinion.

2. A circular abraded contusion of 1 mm x 1 mm on the lateral surface of right arm which was 10 mm inferior to tip of the shoulder. X-ray and forensic expert opinion was advised.

The probable duration of the injury was opined as 12 hours

and he also opined that injuries on the person of Lachman were caused with fire arm.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

In defence, accused-appellants examined DW-1 Dr.B.Kanhar, Orthopaedics Surgeon.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants, as stated above.

During the pendency of the appeal, appellants Sher Singh @ Shera, Satbir Singh and Bijender have died. Copies of their death certificates were placed on the record. Therefore, appeal qua appellants Sher Singh @ Shera, Satbir and Baljinder Singh stands abated.

At the time of arguments, learned counsel for the appellants argued that accused-appellants have been falsely implicated in the present case due to previous enmity between the parties. He further argued that there is delay in recording the FIR as the complainant came to know regarding the conspiracy on the intervening night of 17/18.03.2002 and there was no explanation as to why the FIR was not got registered at that time. Learned counsel for the appellants, therefore, argued that there being merit in the appeal, it should be allowed.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PW-7 Lachman

complainant/injured and other injured eye witness PW-11 Mukesh. He further argued that oral statements of the PWs are duly supported and corroborated by medical evidence and investigation of the case and recovery of the gun along with empty and other live cartridges as per the disclosure statement of accused Ashok. He next argued that there are no material contradictions or improvements in the statements of the witnesses. The motive is duly proved. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the record, I find that PW-1 Kuldeep Kumar, Clerk mainly deposed regarding the arm licence of double barrel gun in the name of Ashok Kumar. PW-2 Dr.Rajiv Narwal mainly deposed regarding medico-legal examination of injured Mukesh as well as Lachman on 28.03.2002 and opined that probable duration of injuries was 12 hours. He also stated that injuries No.1 to 3 on the person of Mukesh were simple in nature and caused by blunt weapon. He further deposed that two injuries on the person of Lachman have been caused by fire arm weapon. PW-3 Constable Samit Kumar deposed regarding preparing of site plan Ex.PD. PW-4 Constable Ram Bhagat and PW-5 Constable Rajesh Kumar are formal witnesses, who tendered into evidence their affidavits Ex.PE and Ex.PF respectively. PW-6 Head Constable Virender Singh deposed regarding recovery of

lathis on the basis of disclosure statements of accused Satbir, Anand, Bijender and also deposed regarding recovery of gun on the basis of disclosure statement of Ashok. PW-7 Lachhman is the injured complainant, who depose as per prosecution version. He also deposed regarding occurrence which took place on 17.03.2002 at about 9.00-9.30 P.M. He deposed consistently as per prosecution version. No material contradictions or material improvements have been pointed out in his statement at the time of arguments. PW-8 Dr.Luv Sharma deposed regarding examining of Lachman on 02.04.2002 and deposed regarding nature of the injuries. He also stated that kind of weapon for both the injuries on the person of Lachman Singh was fire arm. PW-9 ASI Jai Chand mainly deposed regarding recording of FIR. PW-10 ASI Umed Singh deposed regarding recording of statement of some witnesses. PW-11 Mukesh is another injured and eye witness to the occurrence. He also consistently deposed regarding prosecution version. No material discrepancies or material improvements have been pointed out from his statement. PW-12 Subhash is also the eye witness to the occurrence. He also deposed consistently regarding prosecution version. PW-13 ASI Vijay Singh mainly deposed regarding presentation of challan. PW-14 Raj Mal mainly deposed regarding disclosure statement of accused Ashok. PW-15 ASI Ram Kishan is the Investigating Officer, who mainly deposed regarding investigation conducted by him in the present case.

DW-1 Dr.B.Kanhar deposed regarding treatment of Sher

Singh @ Shera.

The perusal of the evidence on record shows that prosecution has produced complainant/injured Lachman, Mukesh injured/eye witness and Subhash eye witness to prove the occurrence. They have consistently deposed regarding the prosecution version. No material contradictions or material improvements have been pointed out in their statements. There is nothing in their cross-examination, which may make their statements unreliable. Their oral statements are duly supported and corroborated by medical evidence as well as investigation of the case. The recovery of gun and lathis further supports and corroborates the prosecution version. The motive is also proved for causing the injuries. There is nothing in the evidence on record to show that accused-appellants have been falsely implicated in this case. Rather, the argument of learned counsel for the appellants that there is previous enmity between the parties, can be held as motive for causing injuries also. The injuries cannot be held as self-suffered. Injured Lachman and Mukesh have suffered injuries including fire arm injuries. The occurrence took place on the night of 27.03.2002 and the FIR was registered on 28.03.2002 without any unnecessary delay. There was no reason or ground to get registered the FIR, only on coming to know regarding conspiracy hatched by the accused to cause injuries to Lachman and this fact will not create any reasonable doubt in the prosecution version.

From the evidence on the record, I find that the judgment

of conviction passed by learned Addl. Sessions Judge, Rohtak is correct and as per law. The reasoning have been given as per law. Therefore, the judgment of conviction qua appellants Ashok Kumar, Anand and Suraj Bhan is upheld. As there are allegations that Ashok Kumar and Suraj Bhan have fired from the fire arm weapon, therefore, no ground is made out for reducing their sentence as prayed by learned counsel for the appellants and order of sentence qua them is upheld.

As regarding appellant Anand, he is stated to be armed with lathi and caused injuries with lathi, therefore, keeping in view the facts and circumstances of the present case, sentence imposed upon appellant Anand is reduced. He is directed to undergo rigorous imprisonment for a period of four years instead of five years under Section 307 IPC read with Section 149 IPC. The remaining sentences and sentence of fine shall remain the same.

With the above-said modification of sentence of appellant Anand, finding no merit in the present appeal, the same is dismissed.

Since appellants Ashok Kumar, Suraj Bhan and Anand are on bail, their bail bonds stand annulled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

January 07, 2015
Vgulati

(INDERJIT SINGH)
JUDGE