

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

CRA-S-1387-SB of 2003

DATE OF DECISION :- December 16, 2016

Banwari Lal and others

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Rahul Rathore, Advocate for the appellant.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Mukesh Yadav, Advocate for the complainant.

M.JEYAPPAUL, J.

1. The appellants Banwari Lal, Shyam Sunder, Babu Lal, Tinku alias Satish, Bhateri and Santra have filed the present appeal aggrieved by the conviction and sentence passed by the trial Court as under :-

Offence	Sentence of imprisonment	Fine	Sentence in default of fine
307/149	7 years each	500/- each	3 months
148	1 year each		
323/149	6 months		
325/149	3 years each	200/- each	2 months
427/149	1 year		
452/149	3 years	200/- each	2 months
506/149	1 year		

2. It is the case of the prosecution that on 22.11.2000 at about 8.A.M. PW4 Dholi @ Praveen her mother PW11 Savitri and her younger

brother PW17 Mohan were present at their residence. The accused appellants along with accused Meera, who was acquitted by the trial Court reached the house of PW4 in pursuance of their common object of causing injuries to them. Accused Shyam Sunder was armed with Kulhari and other accused were armed with Lathis. Accused Santra and Bhateri were hurling abuses. They proclaimed to teach a lesson to the complainant party. PW4, PW11 and PW17 rushed inside their house. But accused broke open the door of PW4 with the help of Lathis and entered into the room. Accused Tinku gave a Lathi blow on the forehead of Savitri. Accused Santra gave Lathi blow on the forehead of Savitri. Accused Shyam Sunder delivered Kulhari blow by its reverse side on the head of Savitri. Accused Tinku gave a Lathi blow on the right side head of Dholi. Accused Bhateri gave Lathi blow on her right hand. Accused Santra gave a Lathi blow on right thigh. Accused Tinku again gave a Lathi blow on the back side left hand of PW17 Mohan. PW4, PW11 and PW17 raised hue and cry. All the accused continued their beatings. On hearing the noise, Harpal, Rajender and Siya Ram reached the spot and saved them from the clutches of the accused. They also threatened them with dire consequences.

3. PW1 Dr. Alok Jain has medico legally examined PW11 Savitri and found lacerated wound 3 cm x 8 cm x scalp deep over the left forehead, a contused abrasion in the centre of forehead and a lacerated wound with contusion 7 cm x 1.5 cm x scalp deep over left parietal region. There was also a contusion found over the left lower chest which was certified as simple in nature. All these three injuries were certified as grievous in nature by Dr. Alok Jain in the certificate Ex. PH/1.

4. PW1 Dr. Alok Jain also medico legally examined PW4 Dholi and found a lacerated wound 1.5 cm x 3 cm x 3 cm on the right occipital region, a contusion over right forearm and a contusion over right thigh. All those injuries found on PW4 Dholi were certified by him as simple in nature. He also medico legally examined PW17 Mohan and found a contusion over the left hand ulna and contusion over occiput. Those two injuries also were found to be simple in nature.

5. The trial Court having adverted to the evidence on record convicted the accused appellants as stated supra. However, accused Meera was found not guilty of any of the charges and as a consequence she was acquitted.

6. Learned counsel appearing for the appellants submitted that the accused party also sustained injuries in the occurrence. The same will go to demonstrate that the accused party resisted the attack launched by the complainant party to save themselves. The injuries allegedly sustained by the complainant party were simple in nature. It is his last submission that if the Court comes to the conclusion that the accused appellants have committed the offence considering the ordeal of trial undergone by the accused for such a long time, the sentence imposed on these accused may be reduced to the period already undergone by them.

7. Learned counsel appearing for the complainant as well as learned State counsel vehemently submitted that the medical evidence establishes that Savitri sustained three grievous injuries at the hands of accused Shyam Sunder, accused Tinku and accused Santra. Those injuries have been certified as grievous in nature by PW1. The injured witnesses

have categorically deposed that they were attacked by the accused party. That apart, the independent witness PW18 Harpal also corroborated the evidence of PW4, PW11 and PW 17 who sustained injury in the occurrence. The medical evidence also supports the case of the prosecution. Therefore, it is submitted that there is no merit in the appeal preferred by the appellants.

8. True it is that accused Santra has set up a plea that she sustained injury in the occurrence. But the counter case launched by accused Santra had ended in acquittal. Therefore, accused Santra cannot take advantage of the defence plea set up in this case that she sustained injury in the occurrence and the same was not explained by the prosecution.

9. The evidence of injured witnesses will have to be placed on a higher pedestal, inasmuch as their presence at the scene of occurrence can never be doubted and they also might not have the propensity to involve a stranger to the occurrence, giving a clean chit to the real perpetrators of the crime. PW4 Dholi, PW11 Savitri and PW17 Mohan are closely related to each other. In other words, PW11 Savitri is the mother of PW4 Dholi and PW17 Mohan. Their presence at their house at the time of occurrence cannot at all be doubted. They have categorically deposed that accused appellant Shyam Sunder, who was armed with an axe and the other accused who were armed with Lathis broke open the door of the house of PW4 and attacked them indiscriminately and caused grievous injuries to PW4 Dholi and simple injuries to PW11 Savitri and PW17 Mohan. They have also given details of the individual attacks launched by the accused appellants. Accused Banwari Lal, who was armed with a Lathi attacked on the chest of

Savitri and caused simple injury. Accused Shyam Sunder who was armed with an axe delivered a blow by its reverse side on the head of Savitri. Babu Lal who was armed with Lathi attacked Mohan on his head and caused simple injury. Accused Tinku, who was armed with Lathi launched attack on the head of Dholi and caused simple injury. He also attacked on the forehead of Savitri and caused grievous injury. He also attacked Mohan on his left hand and caused simple injury. Accused, Bhateri who was armed with Lathi delivered a blow on the right hand of Dholi. Accused Santra, who was armed with Lathi delivered blow on the right thigh of Dholi. She also attacked on the forehead of Savitri and caused grievous injury.

10. The above injuries graphically given by the injured witnesses were completely supported by the medical evidence adduced by the prosecution. PW18 Harpal, an independent witness to the occurrence has also lent corroboration to the case of the prosecution. The seat of injuries found on PW4, PW11 and PW17 would go to demonstrate that they had acted in concert and made an attempt to cause their death.

11. In the above facts and circumstances, I am of the considered view that the trial Court has rightly evaluated the evidence on record and come to the conclusion that these accused have committed the offences punishable under Sections 148, 307, 323, 325, 427, 452 and 506 read with Section 149 IPC.

12. Accused Shyam Sunder, who was armed with an axe is found to be the principal offender. He had delivered a heavy blow on the left side head of Savitri which was certified as grievous in nature. Of course, he has undergone the ordeal of trial right from the date of occurrence till today,

therefore, he is sentenced to undergo 5 years rigorous imprisonment and to pay a fine of ₹500/- and in default to undergo a further period of 3 months rigorous imprisonment for the offence under Section 307 read with Section 149 IPC. The substantive sentence and default sentence imposed on him for the offence under Sections 323 read with Section 149, 325 read with Section 149, 427 read with Section 149, 452 read with Section 149 and 506 read with Section 149 imposed by the trial Court stand confirmed.

13. Accused Tinku had used a Lathi to cause an injury on the forehead of Savitri which was certified as grievous in nature by PW 1 Dr. Alok Jain. He has also undergone the ordeal of trial till today. Therefore, he is sentenced to undergo 4 years rigorous imprisonment and to pay a fine of ₹500/- and in default to further undergo a period of 3 months for the offence under Section 307 read with Section 149 IPC. Further, the substantive sentence and default sentence imposed on him for the offences under Sections 323 read with Section 149, 325 read with Section 149, 427 read with Section 149, 452 read with Section 149 and 506 read with Section 149 IPC imposed by the trial Court stand confirmed.

14. Accused Santra, who was armed with a Lathi had also caused injury on the forehead of Savitri which was certified as grievous in nature by PW 1 Dr. Alok Jain. She also has undergone the ordeal of trial till today. Therefore, she is sentenced to undergo 3 years rigorous imprisonment and to pay a fine of ₹500/- and in default to undergo a further period of 3 months for the offence under Section 307 read with 149 IPC. The other substantive sentence and default sentence imposed on her for the offences under Sections 323 read with Section 149, 325 read with Section 149, 427 read

with Section 149, 452 read with Section 149 and 506 read with Section 149 imposed by the trial Court stand confirmed.

15. Accused appellant Banwari Lal, Babu Lal and Bhateri were armed with Lathis and caused only simple injuries. Accused Banwari Lal has already undergone 1 year 10 months and 23 days. Accused Babu Lal has already undergone 11 months and 28 days and accused Bhateri has undergone 1 month and 27 days. Considering the nature of weapons used and the injuries caused by them, the sentences imposed on them by the trial Court for the offences under Sections 323 read with Section 149, 325 read with Section 149, 427 read with Section 149, 452 read with Section 149 and 506 read with Section 149 are reduced to the period already undergone by them but the fine amount and the default sentence imposed by the trial Court on these accused appellants stand confirmed.

16. With the above modification in the matter of sentence imposed by the trial Court, the appeal stands disposed of. Accused appellants Shyam Sunder, Tinku and Santra shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Narnaul, who shall send them to prison to undergo the unexpired portion of the sentence imposed by this Court.

(M. JEYAPPAUL)
JUDGE

December 16, 2016

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No