

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1038-SB of 2004

Date of Decision: 20.09.2016

Jagdish

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Anil Ghanghas, Advocate
for the appellant.

Mr. Munish Dev Sharma, Assistant Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

1. The appellant has preferred present appeal against the judgment of conviction dated 25.3.2004, whereby he was held guilty for commission of offence punishable under Section 307 IPC and order of sentence dated 27.3.2004, whereby he was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 1,000/-, in default whereof to further undergo rigorous imprisonment for a period of three months.

2. Facts relevant for the decision of instant appeal that on 26.2.2002, Rohtash, 17 years old student of 9th class, was brought to the CHC, Mangali in a serious condition. He was attended by PW.4 Dr. Munshi Ram at CHC, Mangali, who gave him first aid. Thereafter, the injured was referred to Civil Hospital, Hisar where he was medicolegally examined.

Complainant-Ramesh, brother of Rohtash (injured), got recorded his

statement (Ex.PM) with the police that his brother Rohtash was a student of 9th class. On 26.2.2002 at about 2.00 P.M., he had gone to the school to meet his brother. When he reached the school, he heard noise of quarrel from the classroom and as he entered the room, he found Jagdish (present appellant) was inflicting injuries with knife to his brother Rohtash. He had given two/three blows of knife in the abdomen of Rohtash. With the help of Subhash (teacher) and students present in the class, complainant saved his brother, otherwise the appellant would have killed him on the spot. Thereafter, Jagdish fled away from the spot along with his knife. The Complainant got admitted his brother in a Government Hospital, Mangali. As per complainant, appellant had inflicted injuries to his brother as there was an altercation between Rohtash and Jagdish on earlier one or two occasions as well. Appellant Jagdish had inflicted injuries to Rohtash with knife with the intention to kill him.

3. On this, police started the investigation. The accused was arrested. The knife was recovered and after completion of investigation, challan was presented in the Court.

4. The learned trial Judge completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, held the appellant guilty and convicted him for commission of offence punishable under Section 307 IPC vide judgment dated 25.3.2004 and sentenced him vide order dated 27.3.2004, as mentioned in para No.1 above. Thereafter, aggrieved of passing of judgment of conviction and order of sentence, the

appellant is before this Court by way of present appeal.

5. Learned counsel for the appellant, while arguing on the innocence of the appellant, submitted that the prosecution case has not been proved at all on record. The prosecution case is mainly based on the statement of Ramesh (complainant), who is an interested witness being a brother of injured Rohtash and infact he planted the case upon the appellant. His presence on the spot is highly doubtful. Learned counsel for the appellant mainly submitted that appellant has been convicted and sentenced for the offence punishable under Section 307 IPC but there is no medical opinion on the file to establish that the injuries were dangerous to life and even on that account, appellant is entitled to acquittal. More so, the statements of prosecution witnesses including the version as set up by the complainant as well as the injured, on material points, is self-contradictory and as such not believable. But the learned Court below completely ignored these facts while recording the judgment of conviction and order of sentence and prayed that appeal be accepted.

6. While arguing on these points, learned counsel for the respondent-State submitted that the offence against the accused has been duly proved on the file. Infact, appellant had attacked Rohtash with a motive as there was exchange of words on earlier two occasions as well. The incident had occurred in the classroom itself and the same was witnessed by complainant Ramesh. The defence version is mere a plea of denial which does not find any support or corroboration. The medical evidence is in complete agreement with ocular version. The medical opinion is available on the file by way of statement of PW.3 Dr. S.S.Grewal, who had given his

opinion that injury No.5 was dangerous to life. Thus, the appeal is without any merit and the same be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts stood established on the file. As per statement of PW.1 Smt. Pushpa Setia, Principal of Government Senior Secondary School of Boys, Mangali, Rohtash (injured) and Jagdish (present appellant) were students of 9th class on 26.2.2002. PW.7 Ramesh (complainant) as well as PW.8 Rohtash (injured) and PW.9 Jaibir have proved on the file that injuries were caused to Rohtash by appellant Jagdish with his knife. Thereafter, the knife was recovered from the possession of appellant. The ocular testimony was well supported and corroborated by testimony of PW.3 Dr. S.S.Grewal, who had medicolegally examined Rohtash and found following injuries on his person:

- “1. Slightly curved incised wound about 3 cm. on the upper forehead just left to mid line. Fresh bleeding was present.*
- 2. Another linear 4 cm. Ex. ½ cm. wound just posterior to hairline in middle of scalp. It was an incised wound and fresh bleeding was present.*
- 3. Incised wound of 3 cm. at left corner of mouth involving whole thickness of cheek. Fresh bleeding was present.*
- 4. Broken front incisor teeth. Fresh bleeding was present on lacerated gums.*
- 5. Incised wounds about 3½ cm x ½ cm in left upper*

abdomen in the middle of sub costal region. Omentum was coming out of the wound.”

However, injury No.5 was declared to be dangerous to life, whereas injuries No.1 to 3 were stated to be caused with sharp edged weapon. The remaining official witnesses proved that the investigation of the case was carried out as per law. PW.4 Dr. Munshi Ram had given first aid to the injured. PW.10 Vinod Kumar, Assistant Sub Inspector (Investigating Officer) had completed the investigation.

8. Against the above discussed prosecution version, the defence version is just a plea of denial which does not find any support or corroboration. Rather, the same stood falsified on the basis of cogent evidence led by the prosecution that infact the appellant had caused repeated knife blows in the abdomen of Rohtash. The learned Court below has rightly held the appellant guilty and convicted him for the commission of offence punishable under Section 307 IPC. There is cogent medical evidence by way of statement of PW.3 Dr. S.S.Grewal, who opined that injury No.5 on the body of Rohtash was dangerous to life. Hence, the instant appeal is absolutely without any merit and the same stands dismissed against the judgment of conviction.

9. As regards to appeal against order of sentence, taking into consideration the age and antecedents of the appellant, the appellant has already been ordered to undergo rigorous imprisonment for a period of five years along with payment of fine of ₹ 1,000/-, in default whereof to further undergo rigorous imprisonment for a period of three months. However, keeping in view the age and antecedents of the appellant and the fact that the

sentence of appellant-Jagdish is reduced from five years rigorous imprisonment to that of three years rigorous imprisonment for the commission of offence punishable under Section 307 IPC. However, the sentence of fine and default clause shall remain intact.

10. In view of above discussion, present appeal against the judgment of conviction stands dismissed. However, the order of sentence stands modified in above terms.

11. The appellant is on bail in this case, his bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

12. The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(Shekher Dhawan)
Judge

September 20, 2016

“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No

