IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal S-1062-SB of 2004
Date of Decision : December 06, 2016

Rajender and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Ms. Aditi Girdhar, Advocate
as Legal Aid Counsel for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S. MANN, J. (Oral)

The appellants, namely, Rajender and Anand alongwith Surender, were tried for committing the offences punishable under Sections 307/332/353/224/225 read with Section 34 IPC. Vide judgment and order dated 20/24.4.2004, learned Sessions Judge, Sonipat convicted and sentenced them, as mentioned below:-

i) Rigorous imprisonment for two years each under Section 324 read with Section 34 IPC;

ii) Rigorous imprisonment for two years each under Section 332 read with Section 34 IPC;

iii) Rigorous imprisonment for one year each under Section 353 read with Section 34 IPC;

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iv) Rigorous imprisonment for one year each under Section 224 read with Section 34 IPC and;

v) Rajender and Anand appellants to undergo rigorous imprisonment for two years each under Section 225 read with Section 34 IPC.

All the sentences were ordered to run concurrently. The period of detention, if any, already undergone by them was ordered to be set off according to law.

The case of the prosecution, in nutshell, is that on 28.3.2002 ASI Ram Parkash of Police Lines, Sonipat took Surender-accused alongwith a number of inmates from the District Jail, Sonipat for production in the Court. Said Surender was to be produced in case FIR No. 267 dated 5.8.1999 under Sections 323/452/302 IPC and Section 25 of the Arms Act, Police Station Rai. After his production in the Court, he was being taken to judicial lock-up. His brother Rajender and one Anand had come to see him but they were not allowed as they were not having any permission. When Surender-accused was being taken by the police then all of a sudden he gave a push to Constable Sukhbir Singh and after taking chillie powder from his brother Rajender, threw the same in the eyes of Constable Sukhbir Singh whereas Anand-accused handed over knife like object to accused-Surender, who used the same in assaulting

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Constable Sukhbir Singh with an intent to kill him. Thereafter, Surender-accused managed to escape from custody. He was given a chase and, accordingly, apprehended at a distance of 40/50 yards. However, Rajender and Anand-accused managed to escape from the spot.

After completion of the investigation, the challan was presented only against Surender and Rajender-accused. Later on, Anand-accused was summoned as additional accused pursuant to an application having been moved by the learned Public Prosecutor under Section 319 Cr.P.C.

In support of its case, the prosecution examined PW1 Dr.A.S.Ahlawat, who had medico-legally examined Constable Sukhbir Sigh and found the following injuries on his person:-

> "1. Eye lids of both eyes were swollen and were red in colour. Conjuctiva of both eyes were congested. Cornea, iris, pupils were normal. Eye surgeon's opinion was advised.
>
> 2. There was a contusion 2 cm x 0.25 cm over right lateral surface of neck. It was red in colour.
>
> 3. A linear abrasion 2 cms in length was present over right lateral surface of neck just below injury No.2."

PW2 SI Ram Kumar proved the formal FIR Ex. PB/1. He also deposed that the final report under Section 173 Cr.P.C. was prepared by Inspector Satbir Singh.

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PW3 Constable Jagbir Singh proved site-plan Ex. PC.

PW4 Constable Sukhbir Singh mentioned in detail the manner in which the occurrence had taken place.

PW5 UGC Phool Kumar corroborated the testimony of Constable Sukhbir Singh as he was also present alongwith him at the time of the occurrence.

PW6 ASI Ram Parkash and PW7 SI Ram Kishan deposed about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C., all the accused denied the prosecution allegations and pleaded their innocence.

In their defence, none of the accused produced any evidence.

After hearing learned counsel for the parties and going through the evidence on the record, the trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellants as well as their co-accused Surender, as mentioned above.

Primary argument raised by the learned counsel for the appellants is that none of the appellants could be hauled up for the substantive offences with the aid of Section 34 IPC as there was no pre planning or prior meeting of minds on their part

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with Surender.

It is the prosecution case that the appellants had been insisting upon the police party to allow them to interact with their co-accused Surender and when they did not allow them to do so, accused Surender first gave a push to Constable Sukhbir Singh which was followed by Rajender-appellant handing over chillie powder to Surender which he used in throwing in the eyes of Constable Sukhbir Singh. Similarly, Anand-appellant was carrying a knife like object which he handed over to Surender-accused, who again used the same in inflicting the injuries on the person of Constable Sukhbir Singh. Therefore, it cannot be said that the appellants did not share the common intention with their co-accused Surender.

The ocular account by way of the testimonies of PW4 Constable Sukhbir Singh and PW5 UGC Phool Kumar stands duly corroborated by the testimony of PW1 Dr. A.S.Ahlawat, who had medico-legally examined Constable Sukhbir Singh immediately after the occurrence. The doctor had opined that injury No.2 was blunt, injury No.3 was sharp and pointed whereas injury No.1 was on account of chillie powder. He, however, deposed that injury No.3 could be caused by a steel blade like Ex.P1. Merely because in his cross-examination, the said doctor testified that injury No.1 on the person of Constable Sukhbir Singh being caused on account of any disease like eye flu and

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injuries No.2 and 3 being self inflicted is no ground to hold that the appellants had not participated in the occurrence. Further, the occurrence in question had taken place on 28.3.2002 at about 1.00 p.m. and within three hours of the occurrence, Constable Sukhbir Singh had been taken to General Hospital, Sonipat where he was medico-legally examined by PW1 Dr.A.S.Ahlawat at 4.45 p.m.

Certain contradictions and discrepancies in the prosecution evidence have been pointed out by learned counsel for the appellants. But on going through them, this Court finds that they do not go to the root of the case, rather, such like discrepancies and contradictions can occur in the testimonies of the truthful witnesses. Neither PW4 Constable Sukhbir Singh nor PW5 UGC Phool Kumar was shown to have any reason to falsely implicate the appellants in the case. Therefore, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the learned trial Court.

As regards the quantum of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than fourteen years. As per the custody certificates already brought on record by the learned State counsel, Rajender-appellant has undergone an actual sentence of six months and seven days whereas Anand-appellant has undergone seven days. None of them is shown to be either

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involved or convicted in any other case. At the same time, there are allegations against them of having made an attempt to get their relative/friend escape from police custody.

Taking into consideration the totality of the circumstances, this Court is of the view that the sentences of imprisonment of two years awarded to the appellants are on the higher side. Ends of justice shall be suitably met if the said sentences of imprisonment are reduced to one year.

Resultantly, the conviction of the appellants for the various offences, as recorded by the trial Court, is upheld. Their substantive sentences of imprisonment for two years for the offences under Section 324 read with Section 34 IPC, Section 332 read with Section 34 IPC and Section 225 read with Section 34 IPC are reduced to rigorous imprisonment for one year each. The sentences of rigorous imprisonment for one year for the offences under Section 353 read with Section 34 IPC and Section 224 read with Section 34 IPC each are maintained. All the sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

December 06, 2016 **(T.P.S. MANN)**
ajay-1 **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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