

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-2076-SB of 2004.
Date of Decision: 15.09.2016.**

DHAN RAM ALIAS LILU

....APPELLANT.

VERSUS

STATE OF HARYANA

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mrs. Anju Arora, Advocate for the appellant.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This appeal was preferred by appellant Dhan Ram alias Lilu, assailing the judgment of conviction dated 11.09.2004 and order of sentence dated 14.09.2004 recorded by learned Additional Sessions Judge, Fast Track Court, Sonapat, in Sessions Case No.20 of 2002/2004 based on First Information Report No.1 dated 09.01.2002 registered at Police Station Baroda, by virtue of which he (appellant) was held guilty, convicted and sentenced to undergo Rigorous Imprisonment for four years and to pay fine of Rs.10,000/- and in the event of non-payment of fine to further undergo rigorous imprisonment for one year, for commission of offence punishable under Section 307/34 of the Indian Penal Code (for short, "IPC").

Complainant Balbir Singh son of Pale Ram was admitted in PGIMS, Rohtak on 09.01.2002 in an injured condition. After seeking

Sub Inspector/SHO, Police Station Baroda wherein he stated that he is a retired military personnel. In the year 1987, Hari Chand son of Jug Lal of his village was murdered. The person, accused of the murder, was apprehended but the family of Hari Chand suspected his involvement as well in the murder and was having inimical feelings against him. On that day i.e. 09.01.2002 at about 8:30 a.m., he alongwith his nephew Subhash son of Raghbir was tethering cattle in the portion of his house meant for that purpose. When on their way back to the main house they reached near the deserted well, Inderjeet and Dhan Ram sons of Hari Chand happened to pass from there. Dhan Ram alias Lilu grappled with him and Inderjeet took out a pistol and placing the same on his neck fired a shot with an intention to kill him. The shot caused injury near left ear and he started bleeding. He and his nephew raised cries. His nephew tried to rescue him but Dhan Ram alias Lilu exhorted and asked his brother Inderjeet to fire another shot upon which his nephew Subhash got aside due to fear and Inderjeet fired another shot but the same did not hit anyone and went in air. Inderjeet and Dhan Ram then fled away from the spot. He was brought to PGIMS, Rohtak for treatment.

On the basis of statement (Ex.PB) of Balbir Singh, First Information Report (Ex.PB/1) was registered. Appellant Dhan Ram alias Lilu was arrested on 09.04.2002 whereas his co-accused Inderjeet, who actually fired the shot, could not be arrested and was declared proclaimed offender on 29.05.2002. On completion of investigation and other formalities, a final report as envisaged under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was filed before the Court.

The appellant was charge-sheeted and subjected to face trial for

commission of offence punishable under Section 307 read with Section 34 IPC.

To substantiate the charge, the prosecution examined as many as twelve witnesses namely PW1 Dr. Amit Mittal, PW2 ASI Ram Niwas, PW3 Constable Jagbir Singh, PW4 ASI Mohinder Singh, PW5 complainant Balbir Singh, PW6 Subhash, PW7 Dr. Rakesh Chanda, PW8 Ram Dhan, PW9 Dr. Luve Sharma, PW10 Dr. Naresh Kumar Kardwal, PW11 Dr. Rakesh Chand and PW12 SI Balwant Singh.

After closure of evidence of the prosecution, in his statement recorded under Section 313 Cr.P.C., the appellant denied the case of the prosecution and pleaded false implication. He further stated that he was not present at the spot nor he instigated his brother to fire upon Balbir Singh.

No evidence was led by the appellant in his defence.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant-accused, learned trial Court convicted and sentenced the appellant, as indicated above.

Feeling aggrieved by the impugned judgment of conviction dated 11.09.2004 and order of sentence dated 14.09.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mrs. Anju Arora, learned counsel for the appellant and Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana have been heard and record perused.

The deposition of PW5 complainant Balbir Singh and his nephew PW6 Subhash was that on the relevant day at about 8:30 a.m., they were returning home after tethering cattle and on the way near a deserted

well when appellant Dhan Ram and his brother Inderjeet were crossing them, Dhan Ram alias Lilu grappled with Balbir Singh and Inderjeet took out a pistol and fired a shot towards neck of Balbir Singh with an intention to kill him. They raised cries on which appellant Dhan Ram asked his brother to fire another shot. Inderjeet fired a second shot but the same did not hit anyone.

Learned counsel for the appellant argued that as per the above story of the prosecution the two injuries suffered by complainant Balbir Singh on his neck and left ear were fire arm injuries caused by a shot fired from a pistol by Inderjeet, brother of appellant Dhan Ram. However, the allegation does not find support from the medical evidence. In the medico legal report Ex.PJ prepared by PW10 Dr. Naresh Kumar, who had medico legally examined complainant Balbir Singh at PGIMS, Rohtak after the incident, the kind of weapon used for causing the injuries was mentioned as “suspected fire arm”. Although the history given by the complainant was of fire arm injuries but his version was not accepted by the doctor and a suspicion was raised with regard to the weapon used. He referred the complainant for surgeon opinion, but no such opinion of the surgeon stating that the weapon used for causing the injuries was a fire arm, was proved. During investigation, neither a pistol nor any other fire arm was recovered from the appellant. The failure on part of the prosecution to prove that the injuries had been caused with a fire arm falsified the very story presented by the complainant.

Moreso, learned counsel urged, the only allegation against the appellant was that he had grappled with the complainant. No injury suffered

place where it had taken place also could not be proved because admittedly no bloodstained earth was lifted during investigation. The motive alleged was also imaginary because neither the complainant was named in the First Information Report registered in respect of murder of Hari Chand, father of the appellant, nor he was subsequently arrested or challaned. In the said circumstances, commission of no offence was proved against the appellant.

A bare perusal of Section 307 IPC would reveal that in order to attract the said section, the intention or the requisite knowledge to cause death are the essential ingredients. In other words, an act though sufficient in the ordinary course of nature to cause death, would not constitute an offence under this Section, if the necessary intention or knowledge on part of the accused is lacking. For the purpose of this offence, what is material, is the intention or knowledge and not the consequence of the actual act done for the purpose of carrying out that intention. 'Intent' essentially implies purpose and 'attempt' is an actual effort made in execution of the purpose. Therefore, an attempt for purposes of Section 307 IPC should stem from a specific intention to commit murder.

Since the intention precedes the act, the intention can be gathered from the attending circumstances of each case which interalia include nature of weapon used; place where the injuries were inflicted; and nature of injury caused.

In the case in hand, PW10 Dr. Naresh Kumar Kardwal had medico legally examined complainant Balbir Singh on 09.01.2002 on his arrival at 11:15 a.m. in PGIMS, Rohtak. During his statement, he proved the medico legal report Ex.PJ and gave detail of the injuries found on the

1. *Punctured wound 10 cms behind left ear over postero-lateral aspect of neck radiating towards ear with inverted skin margin and 4 x 2 cms skin wound before the punctured wound. Fresh blood present. No black tattooing present.*
2. *3 x 4 cms lacerated wound in front of left ear pinna radiating curved upward to external auditory canal. Fresh blood was present.*

Importantly, PW10 Dr. Naresh Kumar stated that alongwith the ruqa Ex.PJ/1 he had sent the clothes of the injured also to the police. He mentioned in the medico legal report Ex.PJ that the history given to him was of use of 'fire arm' for causing the injuries. Giving the note of "suspected fire arm injury", he referred the complainant for surgeon opinion. PW11 Dr. Rakesh Chand, who treated the complainant, proved the case record No.243057 containing 123 pages (Ex.PL) and the X-ray films Ex.PL/1 to Ex.PL/7. PW1 Dr. Amit Mittal, Radiologist on examination of X-rays gave his report Ex.PA and in the said report he categorically mentioned the diagnosis as "fire arm injury".

The matter does not end here. The clothes of complainant Balbir Singh taken in possession by the police after converting them into a sealed parcel were sent to Forensic Science Laboratory (FSL), Madhuban for examination to detect the presence of fire arm discharge residues. The report of the FSL Ex.PG is to the effect that "lead was detected from the margins of holes in shirt and lohi". Based on the Stereo Microscope examination of the holes in the shirt and lohi, the result stated was as under:-

"1. Holes in shirt and lohi contained in parcel No.I have been

caused by bullet projectile.”

From the said expert medical and forensic examination of the injuries and the clothes the complainant was wearing at the time of incident, there remains no doubt that the injuries suffered by complainant Balbir Singh had been caused by a fire arm weapon.

Indeed, the fire arm weapon was not recovered from the appellant during investigation but that would not mean that he had no role in the incident during which the complainant was shot at from a close range by one Inderjeet. The statement Ex.PB, which formed the basis of First Information Report, was reiterated by the complainant when he appeared in the witness box as PW5. He testified that appellant Dhan Ram had grappled with him and his brother Inderjeet with an intention to kill him had fired a shot aiming on his neck from a close range. As he cried out, appellant Dhan Ram exhorted Inderjeet to fire another shot upon which Inderjeet fired once again from the pistol but somehow the shot went in air and did not hit anyone. His testimony was corroborated by his nephew PW6 Subhash who was accompanying him at the time of occurrence. Since the appellant exhorted to fire another shot after the first shot fired at the complainant had actually hit the complainant, would prove that the appellant shared a common intention with the other assailant to inflict such bodily injury to the complainant capable of causing death. Had the second bullet struck at some vital part of complainant Balbir Singh, he would have died but fortunate for him the assailant missed the second shot. As far as the appellant and the other assailant were concerned, they tried their best to murder the complainant.

As regards motive, the complainant stated that the appellant

and his brother suspected that he had a role to play in the murder of their father Hari Chand. For that reason, they nourished a grievance against him. The motive was mentioned by the complainant in his initial version itself. During his deposition, he stated that ever since 1987 till the date of occurrence the appellant and his brother under the influence of liquor used to abuse him. For the reason that he had not lodged any report with the police with regard to the conduct of the appellant and his brother would not falsify him. Normally, unless some violative act is committed, people avoid lodging complaint with the police.

The argument of learned counsel for the appellant that PW5 complainant Balbir Singh and the other witness examined by the prosecution for proving the occurrence PW6 Subhash were closely related and despite the fact that the occurrence had taken place in the morning hours no independent witness was examined, is of no force. The complainant and his nephew were together going home when on the way the occurrence took place, therefore, PW6 Subhash was a natural witness. It is well known that in such criminal matters co-villagers avoid becoming witness fearing hostility of the offender. Otherwise also, both PW5 complainant Balbir Singh and PW6 Subhash stated that no other person from the village came at the time of occurrence. Merely on the ground of close/ blood relationship of the victim with the eyewitness, the testimony of the eyewitnesses is not to be disbelieved.

In the above premise, it is held that the evidence led by the prosecution established beyond all shadows of reasonable doubt that the appellant had committed the offence punishable under Section 307 IPC read

learned Trial Court is upheld.

Coming to the sentence part, learned counsel for the appellant submitted that as on today the appellant is 40 years of age and is not a previous convict. Never after the present case, he has committed any offence. He is living like responsible and peace observing citizen. As such, the sentence awarded to him be reduced.

Considering the submissions made and the age, character and previous antecedents of the appellant, the sentence of Rigorous Imprisonment for four years awarded to the appellant under Section 307 IPC read with Section 34 IPC is reduced to Rigorous Imprisonment for three years. The fine imposed by learned trial Court shall remain the same. With the above modification in sentence, the appeal is dismissed.

The appellant is on bail in this case, his bail 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.

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.

(SNEH PRASHAR)
JUDGE

15.09.2016.
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