

442-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: April 22, 2016
CRA-S-666-SB of 2008

Bittu alias Tejbir and others
Versus
State of Haryana
.....Appellants
....Respondent

CRA-S-628-SB of 2008

Mahender Singh and another
Versus
State of Haryana
.....Appellants
.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate
for the appellants (in CRA-S-666-SB of 2008).

Mr. Bipan Ghai, Senior Advocate with
Mr. Mandeep Kaushik, Advocate and
Mr. Shiv Charan Bhola, Advocate
for the appellants (in CRA-S-628-SB of 2008).

Mr. Vijesh Sharma, DAG Haryana.

1. Whether Reporters of Local papers may be allowed to see the judgment? **yes**
2. To be referred to the Reporters or not? **no**
3. Whether the judgment should be reported in the Digest? **no**

A.B. CHAUDHARI, J (Oral)

This order shall decide the criminal appeals bearing
CRA-S-666-SB of 2008 and CRA-S-628-SB of 2008 as both the
appeals have arisen out of the same occurrence.

Being aggrieved by the judgment and order dated
18/19.03.2008 passed in SC No.06RT of 1997/2007, by which the
Additional Sessions Judge, Rewari convicted and sentenced the
appellants, awarding the rigorous imprisonment of one year

under Section 148 of the Indian Penal Code, 1860 ('IPC' for short), five years and a fine of ₹2,000/- under Section 307 read with Section 149 IPC, five years and a fine of ₹2,000/- under Section 326 read with Section 149 IPC and rigorous imprisonment for one year under Section 324 read with Section 149 IPC upon each accused and in default of payment of fine, rigorous imprisonment for two months in addition, the instant appeal was filed by the convicted persons.

The prosecution case was that in the night of 11.06.1997, PW6 Mahender Singh-the informant along with his wife and daughter Kumari Sheela-PW4 was present in the house. His daughter informed that somebody was throwing torch light on the roof of their house. He, thereafter, went up stairs and noticed that accused persons were doing mischief by throwing torch light and when he asked them as to why they were doing so, they got annoyed and started abusing. Not only this, Raghbir and Ran Singh armed with *lathis* inflicted injuries on his head. Accused Maha Singh, Bittu and Randhir also reached the spot and lifted him to the house of Ran Singh and attributed injuries on his person. Accused Ran Singh attributed a brick blow on his left elbow joint, accused Randhir inflicted a brick blow on his right hand, whereas, accused Maha Singh and Karan Singh attributed injuries with a burning *bidi*. Accused Raghbir stood on his chest and gave seven blows in his chest with feet, with the result he became unconscious. The informant PW6 Mahender Singh lodged FIR with the police station and thereafter, they were sent for medical examination. The doctors examined the injured

persons and found lacerated wounds and abrasions. The learned trial Judge convicted the appellants as stated above and sentenced them.

Mr. Vijesh Sharma, DAG, Haryana appears for the State of Haryana. With his assistance, I have gone through the impugned judgment and order. I have carefully perused the reasons recorded by the trial Judge ordering the conviction of the accused. I have also carefully perused the medical evidence.

At this stage, it would be appropriate to refer to the judgment and order passed by the trial Judge in CRA-S-628-SB of 2008. That was the criminal complaint case lodged by Satbir Singh in the Court of learned Sub Divisional Judicial Magistrate, Kosli, who had committed it to the Sessions Court to try the same. Upon holding trial, the learned Judge held Mahender Singh, complainant herein in CRA-S-666-SB of 2008 and Naresh Kumar son of Ram Chander guilty of offences under Sections 323, 325, 506 read with Section 34 IPC and also imposed sentence on them.

There is a categorical finding of fact recorded on evidence by the learned trial Judge in that case, that the incident occurred on 11.06.1997 and 12.06.1997 was a clear result of free fight between the two parties. That finding is recorded in Para 24 of the said judgment in case SC No.31RT of 2005/07, decided on 18/19.03.2008. As a matter of fact, both these cases are decided by the same learned Judge simultaneously and both the parties were convicted by him. As per finding in Para 24 as aforesaid, there was a free fight between the two parties, from which these

offences arose. I am afraid the trial judge could really be justified in coming to the conclusion about offence of attempt to commit murder on either of the parties and thus, could convict these appellants for offences under Sections 307, 326 IPC etc. Looking to the nature of injuries and the free fight, which is evident from the record and the fact that both the sides received almost similar injuries and looking to the further fact that the accused party and complainant party in both these cases used bricks, *lathis* for inflicting injuries and looking to the further fact that the injuries caused to both the sides were not suggestive of any grievous nature nor any attempt to commit murder, I think the reasons recorded by the learned trial Judge for convicting the appellants in CRA-S-666-SB of 2008 must be held to be erroneous. I therefore, hold that the conviction recorded by the trial Judge for offence under Section 307 IPC is illegal and is hereby set aside.

It is then, seen that the appellants in these appeals were also held guilty of the offences under Sections 326 and 324 IPC. Looking into the medical evidence in this case, undoubtedly the fracture is found on the nose and abrasions on the left shoulder etc. Mere fracture on the nose would not amount to disfiguration unless it is shown by medical evidence that there was indeed disfiguration of nose. There was no evidence of disfiguration, but evidence was only of fracture on nose. This medical evidence would obviously constitute the offence under Section 325 IPC and not under Section 326 IPC. I am therefore, inclined to set side the conviction under Section 326 IPC and

thus, alter the one under Section 325 IPC.

Having thus, recorded a finding that the conviction under Section 307 and 326 cannot be upheld, I however, hold that certainly the conviction under Sections 324 and 325 IPC read with Section 148 and 149 IPC will have to be upheld on the evidence that was tendered before the trial Judge.

In so far CRA-S-628-SB of 2008 is concerned, I find that the appellants were convicted for the offences punishable under Section 323, 325, 506 IPC read with Section 34 IPC. I have perused the reasons recorded by the learned trial Judge in the judgment and order in SC No.31RT of 2005/07. A perusal of this judgment and medical evidence shows that there were lacerated wounds over the person of the complainant. Undoubtedly, injury in the nature of fracture is also found near the occipital region deep bone. The controversy raised by the defence that the x-ray plates were not found, however, was well taken care of by the learned trial Judge by holding that there was sufficient evidence on record to show that there was fracture on the person in this case. To sum up looked from the background of the free fight as held by the learned trial Judge in Para 24 and that both the sides received the injuries in the free fight and looking into the nature of fracture as found in the medical evidence, I think the conviction of the appellants for the offences under Sections 323, 325, 506 read with Section 34 is well justified. There is no reason for me to interfere with the said finding recorded by the trial Judge convicting the appellants in this appeal for the offences under Section 323, 325, 506 read with Section 34 IPC as there is

in fact, oral as well as documentary evidence, namely, x-ray report and x-ray plates etc.

The next question in both these appeals is about the sentence that was awarded by the learned trial Judge. I find on the perusal of the record that the incident had taken place between 11.06.1997 and 12.06.1997 and as already held there was free fight between the two parties. The appellants in CRA-S-666-SB of 2008 have undergone sentence of one year, three months and 15 days as is evident from the record and in CRA-S-628-SB of 2008, the appellants have undergone sentence of about six and a half months. In my opinion, looking into the fact that incident took place in the village and further fact that incident relates back to the year 1997 and the further fact that the appellants in both the cases have undergone sufficient sentence, I think it will subserve the interest of justice in both these cases to sentence all of them to the sentence which they have already undergone. However, the appellants in both the cases will have to pay the fine to the Government, if not already paid.

In the result, I make following order:-

ORDER

CRA-S-666-SB of 2008 and CRA-S-628-SB of 2008 are partly allowed.

The judgment and order of conviction of the appellants in SC No.31RT of 2005/07, decided on 18/19.03.2008 for offences under Section 323, 325, 506 read with Section 34 IPC is confirmed. However, the sentence awarded by the learned trial

Judge for the aforesaid offences is modified by awarding the sentence to the appellants, which they have already undergone. However, the sentence of fine is maintained and fine shall be paid, if not already paid within two months, failing which, the appellants will have to undergo sentence of one month.

The judgment and order of conviction of the appellants in SC No.06RT of 1997/2007, decided on 18/19.03.2008 for offences under Sections 307 and 326 read with Section 149 IPC is set aside. Instead, the appellants are convicted for offences under Sections 324 and 325 IPC read with Section 148 and 149 IPC and are sentenced to undergo rigorous imprisonment for the period which they have already undergone. The sentences on all counts in both these cases shall run concurrently. However, in both the cases, sentence of fine is maintained and fine shall be paid, if not already paid within two months, failing which, the appellants will have to undergo sentence of one month.

**(A.B. CHAUDHARI)
JUDGE**

April 22, 2016
mahavir