

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

1. **Crl. Appeal S-348-SB of 2004**
Date of Decision : March 31, 2016

Rajinder Kumar

.....Appellant

VERSUS

State of Punjab

.....Respondent

2. **Crl. Appeal S-692-SB of 2004**
Date of Decision : March 31, 2016

Gaurav

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

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

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

Mr. Malkeet Singh, Advocate
for the complainant.

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

The appellants, namely, Rajinder Kumar and Gaurav
were tried for committing the offences punishable under Sections
307/324 read with Section 34 IPC on the allegations that on

20.3.2001 at about 11.00 a.m., appellant-Gaurav caught hold of complainant-Sandeep Kumar @ Happy from his arms whereafter appellant-Rajinder Kumar gave knife blows on the right side of his chest, left elbow and left arm. Vide judgment and order dated 31.1.2004, learned Additional Sessions Judge, Amritsar convicted them for the offences under Sections 307/34 IPC and sentenced them to undergo rigorous imprisonment for four years each. They were also convicted under Sections 324/34 IPC and sentenced to undergo rigorous imprisonment for six months each. Both the sentences were ordered to run concurrently.

The case of the prosecution as has been noticed by the trial Court in the opening para of the impugned judgment is reproduced here below:-

“Briefly stated, prosecution version is that on 20.3.2001, complainant-Sandeep Kumar alias Happy recorded his statement to ASI Harjit Singh wherein he has stated that about 11.00 a.m., he alongwith his companion Raju was coming from Vijay Nagar towards his house. When they reached near Mandir Shivala Boharh Wala, then some one put his hand on his shoulder from behind. He looked towards his backside. Then Rinku son of Bhim Sen was seen holding a Shuri (Knife) in his hand and the second person was Gaurav son of Om Parkash resident of near Shivala Boharwala. Gaurav was empty handed at that time. At once, Gaurav caught hold him from his arms. Rajinder

Kumar alias Rinku gave Shuri (Knife) blow on the upper portion of right side of his chest. He tried to save himself but Rinku gave two Shuri (Knife) blows on his left elbow and left arm too. He and his companion Raj Kumar raised Raula 'Mar Ditta Mar Ditta'. Then Rinku and Gaurav fled away from the place of occurrence. Thereafter, residents of the Mohalla (Locality) got him admitted in G.N.D. Hospital, Amritsar. Injuries have been caused to him due to grudge that about three days earlier, there was some fight between the boys. He has intervened in the same. Due to this anger, accused persons have caused injuries upon him with their common intention.”

During the investigation of the case, the appellants were arrested. Knife used by Rajinder Kumar in the commission of the crime was recovered. Upon completion of investigation and presentation of challan, which was followed by the commitment of the case to the Court of Sessions, the appellants were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

After going through the evidence brought on record by the prosecution consisting of the testimonies of nine witnesses, examination of the appellants under Section 313 Cr.P.C. and the statement of one witness, who was examined by them in defence, the trial Court believed the prosecution case and, accordingly, convicted and sentenced them, as mentioned above.

After hearing learned counsel for the parties and going through the evidence brought on record, this Court finds that the prosecution has led sufficient evidence to link the appellants with the commission of the crime. Regarding the occurrence in which complainant-Sandeep Kumar @ Happy was caused injuries by appellant-Rajinder Kumar after having been held by appellant-Gaurav from his arms, the prosecution has relied upon his testimony as PW1 from which it is made out that appellant-Gaurav had caught hold of Sandeep Kumar @ Happy from his arm and, thereafter, it was appellant-Rajinder Kumar, who had given repeated knife blows on the right side of the chest, left elbow and left arm of the injured. The testimony of PW1 Sandeep Kumar @ Happy is duly corroborated by the medical evidence brought on record by the prosecution by examining PW2 Dr. Deepak Kohli and PW3 Dr. Gurmanjit Rai, Lecturer, Forensic Medicines, Medical College, Amritsar. During the investigation of the case, the knife used by appellant-Rajinder Kumar in the commission of the crime was recovered. There were blood stains noticed on the knife. The report of the Forensic Science Laboratory, further, lends independent corroboration to the prosecution case. Under these circumstances, this Court has no other option but to uphold the impugned judgment of conviction passed by the trial Court.

As regards the quantum of sentence, it may be noticed

that there was no serious enmity between the parties. According to the prosecution, about three days earlier to the date of the incident, complainant-Sandeep Kumar @ Happy had intervened in the fight which had erupted between the boys. Further, appellant-Gaurav was not armed with any weapon and he had held the injured from his arms. Appellant-Rajinder Kumar was carrying a knife with him which he had used in inflicting three injuries on the person of complainant-Sandeep Kumar @ Happy. Out of them, only injury No.1 was declared to be dangerous to life whereas the remaining two injuries were simple in nature. Both the appellants have been facing the agony of criminal prosecution for the last more than fifteen years. As per the custody certificate produced by the learned State counsel, appellant-Rajinder Kumar has already undergone an actual period of two years, eleven months and fifteen days whereas appellant-Gaurav, who was empty handed at the time of the occurrence and had only held the injured from his arms, has undergone an actual period of five months and four days.

Taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the appellants behind the bars so as to undergo their remaining sentences of imprisonment. Ends of justice would be amply met if their remaining sentences of

imprisonment are set-aside. At the same time, the appellants can be directed to deposit an amount of Rs. 10,000/- each so that the same may be disbursed to complainant-Sandeep Kumar @ Happy as compensation.

In view of the above, the conviction of the appellants, as recorded by the trial Court, is upheld. Their remaining sentences of imprisonment are set-aside. However, each of the appellants shall deposit an amount of Rs. 10,000/- each with the trial Court within a period of three months from today and in default thereof, they shall undergo simple imprisonment for six months. The amount of compensation, if deposited by the appellants, be disbursed to complainant-Sandeep Kumar @ Happy as compensation.

The appeals are, accordingly, disposed of.

March 31, 2016
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(T.P.S. MANN)
JUDGE