

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-447-SB-2004

DATE OF DECISION: May 25, 2016

Phuman Singh

...Appellant

versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Sh. Amit Mehta, Advocate for the appellant.
Mr.A.S.Klar, Assistant Advocate General, Punjab.

RAMENDRA JAIN, J.

The appellant is aggrieved by the judgment dated 30.1.2004 passed by the Additional Sessions Judge, Fast Track Court, Ferozepur convicting him under Section 307 IPC and sentencing to suffer rigorous imprisonment for seven years with fine of Rs.700/-, in default to suffer six months rigorous imprisonment.

The brief facts of the case are as under:

Around 8.00 p.m., on 3.11.2002, Joginder Singh son of Nathu Ram, Sarpanch along with his cousin Joginder Singh son of Khushi Ram went to answer the call of nature. On reaching near Rame Wala School, the appellant armed with a kirch emerged there raising lalkara that both the aforesaid

Joginder should be brave enough. Thereafter, the appellant gave a kirch blow to Joginder Singh son of Nathu Ram to cause injury. However, he receded back about 4/5 steps and fell down skipping unhurt. The second blow was given to Joginder Singh son of Khushi Ram causing injury on the lower left side of his chest. Resultantly, he fell down. The appellant sped away from the spot. Injured was lifted on motor-cycle by Joginder Singh son of Nathu Ram along with Sonu son of Satpal for treatment in Civil Hospital, Ferozepur. The cause of dispute between injured and the appellant was that 6/7 months earlier, the appellant had passed unchaste remarks on his niece Saroj, which eventually was compromised. That being the position, the matter was not reported to the police. The appellant pressurized for the marriage of Saroj with him. However, the injured refused for the same.

On the very same day, ASI Tarsem Pal of Police Station Sadar, Ferozepur received an intimation along with MLR regarding admission of Joginder Singh son of Khushi Ram in the Civil Hospital, Ferozepur. The application was moved as to whether the injured was fit to make the statement, whereupon, the doctor opined unfitness of the injured. On 4.11.2002, again the application was moved, but the injured was declared unfit to make the statement. Thereafter, Joginder Singh son of Nathu Ram got recorded his statement narrating the incident. A formal FIR was registered under Section 324 IPC. Investigation

was commenced. On 6.11.2002, the injury on the person of the injured was declared dangerous to life. Offence under Section 307 IPC was added. On completion of investigation, final report under Section 173 CrPC was presented under Section 307 IPC for prosecuting the appellant before the Area Magistrate.

Accordingly, the appellant was charge sheeted under Section 307 IPC.

On appraisal of evidence and hearing both the sides, the trial Court convinced with the prosecution case and thus, convicted and sentenced the appellant vide impugned judgment dated 30.1.2004.

Learned counsel for the appellant submits that the conviction of the appellant is not based on appreciation of evidence. There was an unexplained and inordinate delay of 23 hours in lodging the FIR which itself shows that the appellant was fitted in a false and concocted story by the prosecution. The material contradictions and laxities in the investigation hollow the foundation of the prosecution story. On the evidence on the record, it was not safe to convict the appellant of the offence with which he is charged.

Learned counsel appearing for the State submits that the prosecution case is duly proved. The ocular version in its entirety was consistent with medical evidence. The motive for

causing the injury was also duly proved. Thus, the appellant was rightly convicted and sentenced by the trial Court.

After giving my thoughtful consideration to the submissions of learned counsel for the parties, I find the present appeal completely merit-less.

The first argument that there was an inordinate and unexplained delay of 23 hours in lodging the FIR does not hold water, inasmuch as, the prosecution has well explained the reasons as to why and under what circumstances, the FIR was lodged after such a delay. The incident occurred around 8.00 p.m. on 3.11.2004. On receipt of the intimation, the Investigating Officer visited the Civil Hospital, Ferozepur. The application moved for seeking opinion for the fitness of the injured was returned around 10.45 p.m. declaring him unfit to make the statement. On the consecutive day, around 6.30 p.m., the second application met with the same fate declaring the injured unfit to make the statement. Around 7.30 p.m., complainant Joginder Singh son of Nathu Ram met to the investigating officer in the hospital and got recorded his statement leading to the registration of FIR. Thus, it is evident that the efforts made by the Investigating Officer from time to time for the registration of FIR do not show any laxity or casual approach on his part.

Learned counsel for the appellant has also come forward with the plea that the complainant, being Sarpanch of

the village, who usually visit the Police Station, was supposed to approach the police promptly narrating the alleged incident. However, there is no merit in it, because two consecutive efforts were made to record the statement of injured, namely, Joginder Singh son of Khushi Ram. The opinion of the doctor did not permit the Investigating Officer to record the statement of injured. Normally, in injury cases, the police make every possible effort to record the statement of injured, so as to avoid any go-by version diminishing the prosecution story. However, in case, when the police do not get success in recording the statement of the injured, then the best witness, who knows about the occurrence is made author of the FIR. Moreover, it is to be decided by the Investigating Agency, as to whose statement is the best evidence. The moment the complainant met in the Civil Hospital, his statement was reduced in writing which led to the registration of FIR. In this manner, it cannot be said that mere non-recording of the FIR by the complainant promptly, being the Sarpanch of the village, was fatal to the prosecution, or that the delay in recording the FIR had resulted into introduction of coloured version to falsely implicate the appellant.

The other argument of learned counsel for the appellant is that there is no corroboration of independent witness. The injured Joginder Singh son of Khushi Ram was the cousin of complainant and he being the interested witness, had

falsely deposed against the appellant. This argument is also substance-less, because the ocular version is corroborated by the medical evidence. The medical evidence suggests that the injury was incised punctured wound 2.5 x 0.5 cm in size on the front left side of chest which was 1 cm below and inner to the left nipple with fresh bleeding. This injury was declared dangerous to life. The evidence of the complainant had not shaken in the course of trial. Now-a-days, people do not come forward to depose against the villagers, which invariably involve serious prejudice on the basis of factional and political consideration. Non examination of independent witness does not adversely affect the prosecution version, inasmuch as, parrot like ocular version was consistent with the medical evidence. Thus, it can safely be said that the ocular version being duly corroborated by the medical evidence is sufficient to prove the guilt of the appellant.

The other limb of argument is that single injury was not sufficient in the ordinary course of nature to show the intention to kill the injured. However, there is no merit in it, because Dr.M.S.Teena (PW3) specifically deposed that the injury on the person of injured was dangerous to life. In order to strengthen the motive, the prosecution has duly established by leading cogent and reliable evidence that cause of dispute between injured and the appellant was that about 6/7 months earlier, the appellant had passed unchaste comments on his

niece Saroj and the matter was finally compromised. His refusal to marry his niece with the appellant would have resulted into causing of injury. In this view of the matter, the impact of single injury on the vital part of body coupled with motive was sufficient to prove the intention of the appellant.

The last argument is that the Investigating Officer did not collect the blood stained earth from the spot, which shows that the prosecution has not given the truthful account of the occurrence. I find no merit and substance in this argument, inasmuch as, in the light of the fact that the ocular version is in consistent with the medical version proves that the injury was caused to the injured by the appellant.

The reasoning adopted by the trial Court in convicting and sentencing the appellant cannot be disturbed being based on appreciation of evidence.

In view of the aforesaid discussion, the present appeal being devoid of any merit is dismissed.

May 25, 2016
KD

(RAMENDRA JAIN)
JUDGE