

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1121-DB-2015 (O&M)

Date of decision: 12.01.2016

Hardial Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

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

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Vinod K. Kaushal, Advocate for the appellant.

RAMENDRA JAIN, J.

CRM-23915-2015

Prayer in the instant application filed under Section 5 of the Limitation Act is for condonation of 45 days delay in filing the instant appeal.

Heard.

There are sufficient grounds mentioned in the application for condonation of delay of 45 days. Hence, the instant application is allowed and delay of 45 days in filing the instant appeal is condoned.

CRA-D-1121-DB-2015

Hardial Singh, appellant-complainant has preferred this appeal for setting aside the impugned judgment of acquittal dated 19.02.2015, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, acquitting respondents No. 2 and 3, namely; Inder Singh and Gurdeep Kaur.

Brief allegations of the prosecution against respondents No. 2 and 3 are that on 22.01.2010, the appellant-complainant HC Hardial Singh, was on traffic duty at Hukam Singh Road, Amritsar. Around 4.30 P.M., he saw a Mahindra Car bearing No. PB-02-AT-9401, coming at a very high speed from Majitha Road side. He gave signal to stop it. One clean shaved person later on came to be known as Kuljinder Singh resident of village Taragarh Talawan, alighted from the said vehicle and started quarreling with the appellant-complainant and abused him. The appellant-complainant when asked him to cool down, said Kuljinder Singh became enraged and torn his uniform and also broke his belt. His accomplices attacked the appellant-complainant with iron rod towards his head and in order to save himself, the appellant-complainant, raised his right hand and resultantly, the rod hit his index finger. Blood started oozing out. He was also obstructed in discharging his duties as a public servant and also criminally intimidated. Thereafter, Kuljinder Singh along with his accomplices fled away from the spot. The appellant-complainant followed them and way laid them by stopping his motorcycle in front of their vehicle, but its driver with an intention to kill him attacked him with iron rod which hit on his index finger of his left

hand. Two ladies sitting on the rear seat also gave him fist blows. The incident was witnessed by ASI Kulwinder Kumar.

Qua this occurrence, FIR No. 11 dated 22.01.2010, under Sections 353/307/332/ 333/186/506/279 read with Section 34 of the Indian Penal Code (IPC) was registered at Police Station 'A' Division, Amritsar, against respondents No. 2 and 3 as well as their accomplices, namely; Kuljinder Singh and Navdeep Kaur, who were declared as proclaimed offenders by the learned trial Court. ASI Balkar Singh conducted the necessary investigation and prepared rough site plan of the place of occurrence; took into possession the torn shirt and belt; got the appellant-complainant medico-legally examined and arrested respondents No. 2 and 3. After completion of investigation, final report was presented before the learned Area Magistrate.

The learned Area Magistrate, after complying with the provisions of Section 207 Cr.P.C., committed the case for trial to the Court of Session vide order dated 25.01.2014, as the offence under Section 307 IPC is triable by the Court of Session.

Upon finding a *prima facie* case respondents No. 2 and 3 were charge-sheeted for offences punishable under Sections 307/34, 186, 353, 332, 506 IPC, by the learned trial Court to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined as many as 11 witnesses.

PW-1 ASI Dalwinder Singh, simply proved memo Ex. PW-1/A vide which torn uniform and belt of the appellant-complainant were

taken into possession.

PW-2 HC Narinder Singh, had proved memo Ex. PW-2/A vide which respondent No. 2 Inder Singh was arrested and released on bail in compliance of the order passed by this Court and memo Ex. PW-2/B vide which photocopy of the registration certificate Mark A was taken into possession by him.

The appellant-complainant appeared as PW-3 and supported the prosecution story.

PW-4 ASI Kulwinder Kumar, the eye-witness of the occurrence also supported the prosecution story.

PW-5 SI Balkar Singh (retd.) deposed about the steps taken by him during investigation, recording of statement of the appellant-complainant Ex. PW-3/A and his attestation of the same vide Ex. PW-5/A coupled with endorsement Ex. PW-5/B. He also proved FIR Ex. PW-5/C; rough site plan Ex. PW-5/D of the initial place of occurrence and also site plan Ex. PW-5/E of the second place of occurrence. He also proved application Ex. PW-5/F moved by him to the doctor for medico-legal examination of the appellant-complainant and memo Ex. PW-1/A vide which he took into possession the torn uniform and belt of the appellant-complainant.

PW-6 ASI Narain Singh, is another Investigating Officer of this case. He deposed that he arrested respondent No. 2 Inder Singh and, thereafter, released him on bail in pursuance of the orders of this Court. He also proved arrest-cum-intimation memo Ex. PW-2/A and recovery memo Ex. PW-2/B vide which he took the vehicle into possession and he

further proved application Ex. PW-6/A moved by him to DTO, Amritsar for verification of ownership of the vehicle of Gurdeep Kaur.

PW-6/1 ASI Azad Singh, simply brings the original record pertaining to the posting order of ASI Kulwinder Kumar; HC Hardial Singh (appellant herein) and Constable Hardev Singh vide orders Ex. PW-6/A and Ex. PW-6/B.

PW-7 HC Prithvipal Singh, proved the posting orders of ASI Kulwinder Kumar and HC Hardial Singh @ Hardev Singh, appellant-complainant besides *roznamcha* report Ex. PW-7/A and Ex. PW-7/B.

PW-8 Dr. Rajeev Kumar Chaudhary, proved the MLR of the appellant-complainant Ex. PW-8/A, pictorial diagram Ex. PW-8/B, besides request form for X-ray Ex. PW-8/C. He deposed that after obtaining the X-ray report, he declared all the injuries on the person of appellant-complainant as simple in nature vide his report Ex. PW-8/D.

PW-9 Dr. Gurbinder Singh, has proved X-ray report Ex. PW-9/A and request form for X-ray Ex. PW-8/C.

PW-10 Harbhajan Singh, retired Inspector, has proved ruqa Ex. PW-3/A, FIR Ex. PW-5/C and endorsement Ex. PW-10/A. He also deposed that on 12.04.2010, respondent No. 3 Gurdeep Kaur was joined in the investigation and was released on bail as per orders of this Court.

PW-11 Dr. Mohit Bansal, has proved the bed head ticket of the appellant-complainant Ex. PW-11/A.

After closure of the prosecution evidence, the statements of respondents No. 2 and 3 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to

which, they denied and pleaded their false implication.

In defence, respondents No. 2 and 3 have examined DW-1 Prem Singh, an alleged eye-witness who deposed that in his presence, the appellant-complainant and ASI Kulwinder Kumar had inflicted injuries to respondents No. 2 and 3 and their accomplices with sticks. Due to his interference and raising alarm, the appellant-complainant and ASI Kulwinder Kumar, fled away from the spot after giving threats to him.

DW-2 Dr. Iqbal Singh, proved the injuries on the person of respondents No. 2 and 3 vide MLRs Ex. DW-2/1 and Ex. DW-2/3, respectively.

DW-3 Ashok Kumar has proved the copy of summoning order dated 26.04.2014 Ex. D-4, in a criminal complaint filed by respondent No. 2-Inder Singh against the appellant-complainant and ASI Kulwinder Kumar vide which they were summoned under Sections 323/339/506 read with Section 34 IPC. It is pertinent to mention here that the appellant-complainant denied to have caused any injuries to respondents No. 2 and 3.

After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 2 and 3 of the charges framed against them under Sections 307/34, 186, 353, 332, 506 IPC by giving them the benefit of doubt vide the impugned judgment.

Aggrieved against the same, the appellant-complainant has preferred the instant appeal.

Learned counsel for the appellant-complainant argued that

the impugned judgment passed by the trial Court is based on surmises and conjectures. Learned trial Court has failed to appreciate the evidence led by prosecution that respondents No. 2 and 3 have obstructed the appellant-complainant in discharging his official duties as a public servant with an intent to kill him by hitting him with iron rod was well convincing and, thus, it ought to have convicted them. Learned trial Court has also erred in not relying upon the deposition of the appellant-complainant simply because he did not mention the name of Inder Singh-respondents No. 2, in his complaint under Section 161 Cr.P.C. before the police because the respondents, at the time of assaulting the appellant-complainant were not known to him and, thus, it was impossible for him to name Inder Singh in his initial complaint. The learned trial Court has also misread the evidence by observing that the appellant-complainant did not mention in his initial statement under Section 161 Cr.P.C. that two women who were sitting on the rear seat, after coming out of the vehicle had given him fist blows. With these broad submissions, learned counsel for the appellant-complainant prayed for conviction of respondents No. 2 and 3 by setting aside the impugned judgment.

We have given our thoughtful consideration to the submissions made by learned counsel for the appellant-complainant and we find that the instant appeal is completely devoid of any merit for the reasons to follow:-

- (i) To prove offence under Section 307 IPC, the following two ingredients of the offence are necessary:-

- (a) An intention or knowledge to commit the crime;
- (b) In pursuance thereto, with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder.

In the instant case, as per the prosecution story, the appellant-complainant and respondents No. 2 and 3 were not known to each other prior to the occurrence. There was no motive for respondents No. 2 and 3 to commit murder of the appellant-complainant. Hence, it cannot be said that they had an intention to commit murder of the appellant-complainant.

- (ii) Under Section 307 IPC, intention of the accused has to be gathered from all the circumstances i.e. the nature of weapon used in commission of crime; motive; parts of body where injuries caused and other relevant features. In the instant case, the appellant-complainant only suffered simple injuries. PW-8 Dr. Rajeev Kumar Chaudhary, had declared all the injuries on the person of appellant-complainant simple in nature that too with blunt weapon vide his report Ex. PW-8/D. Even as per version of the appellant-complainant, when he tried to save himself from the blow with iron rod, he raised his right hand and in that process the iron rod hit his index finger. Index finger of right hand is not a vital part and, thus, it cannot be said that the injury could cause death of the appellant-complainant.

Hence, the prosecution has miserably failed to prove the offence under Section 307 IPC.

- (iii) PW-8 Dr. Rajeev Kumar Chaudhary, while medico-legally examining the appellant-complainant found him under the heavy influence of liquor and, thus, he kept his opinion pending till the receipt of report of Chemical Examiner. Ex. PW-8/E is the report of Chemical Examiner. The aforesaid report fully corroborated the deposition of PW-8 that the appellant-complainant was under the influence of heavy liquor at the time of his alleged duty, because as per report of the Chemical Examiner, ethyl alcohol was found in the blood and urine sample of the appellant-complainant. The alcohol concentration in the blood of the appellant-complainant was 51.75 mg per 100 ml. which proves that he was heavily drunk. In the above circumstances, the learned trial Court has rightly observed that the statement of appellant-complainant does not inspire confidence, more particularly when the iron rod with which he was assaulted was neither recovered nor produced in Court. As per statement of PW-5 ASI Balkar Singh, he did not even prepared any recovery memo in this respect.
- (iv) PW-5 ASI Balkar Singh, the Investigating Officer, did not take into possession the record regarding the duty

of appellant-complainant on the alleged date of occurrence, but the same was produced at the time of making statement in Court. The investigation in this case was conducted by two Investigating Officers i.e. PW-5 ASI Balkar Singh and PW-6 ASI Narain Singh. Both of them have categorically admitted in their cross-examination that no document relating to the posting of appellant-complainant was taken during investigation. The prosecution has, thus, miserably failed to prove its case which created a serious doubt in the prosecution story.

No other point was urged before us.

From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondents No. 2 and 3 and they have been rightly acquitted by the learned trial Court. The instant appeal is completely devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 12, 2016
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