

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

Date of Decision: 16.11.2016.

CRA-S-889-SB-2004

Harvinder		Appellant.
	VERSUS	
State of Haryana		Respondent.

AND

CRA-S-1146-SB-2004

Mahesh		Appellant.
	VERSUS	
State of Haryana		Respondent.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Dilpreet Singh, Advocate
for the appellant (in CRA-S-889-SB-2004).

Mr. P.C. Chaudhary, Advocate
for the appellant (in CRA-S-1146-SB-2004).

Mr. Sulinder Kumar, Assistant Advocate General, Haryana.

SNEH PRASHAR, J.

This judgment shall dispose of two appeals: CRA-S-889-SB-2004 filed by appellant Harvinder and CRA-S-1146-SB-2004 filed by appellant Mahesh, as both these appellants had been held guilty, convicted and sentenced by a common judgment of conviction and order of sentence dated 20.03.2004 recorded by learned Additional Sessions Judge, Fast Track Court, Gurgaon, in Session Case No.3 of 07.03.1998/22.01.2003 based on First Information Report No.1812 dated 30.09.1997 registered at

Appellants-accused were held guilty and were convicted for commission of offence under Section 307 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and were sentenced to undergo rigorous imprisonment for five years and to pay fine of ₹1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months.

The First Information Report in this case was registered on 30.09.1997 on the statement of Kuldeep, brother of injured Sandeep as the doctor opined that the injured was unfit to make statement. Kuldeep Singh stated that on receipt of a telephonic message from Civil Hospital, Gurgaon, he immediately reached the hospital and saw his brother in pool of blood and having multiple injuries on his body inflicted with a sharp edged weapon. On the advise of the doctor, he shifted his brother in an ambulance to Batra Hospital, Delhi. On the way, injured Sandeep regained some consciousness and told him that on that day at about 8:00 a.m., when he was at the gate of Mission School, Gurgaon Hemant, with whom there was a boy of the side of Badshahpur, asked him to accompany them to village Kasan where some idols had been recovered. All three of them then left for Kasan on a scooter. Hemant, who was driving the scooter, turned the scooter towards village Begampur Khatola and suddenly stopped the scooter in the fields on the pretext of urinating. As they got down from the scooter, Sandeep saw Narender and one more boy present with him at the spot. Instantaneously, the boy, who was from Badshahpur, caught hold of him (Sandeep) and Narender, Hemant and the fourth boy, who was standing with Narender, simultaneously started inflicting injuries upon him with knives.

He became unconscious and after some time when he regained consciousness, one passerby brought him to the hospital in a jeep.

Complainant Kuldeep added that his brother Sandeep was studying in Mission School, Gurgaon in 10+2. The motive was that his family had a dispute with father of Narender and because criminal litigation was going on between them, Narender and Hemant alongwith two other boys had planned and caused injuries to his brother. On completion of investigation and other formalities, the final report as envisaged under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was submitted by the prosecution for trial of the case.

The appellants were charge-sheeted under Section 307 read with Section 34 I.P.C., to which they pleaded not guilty and claimed trial.

The prosecution examined PW1 Dr. Rekha Yadav, PW2 Dr. S.K. Jain, PW3 Ram Phal, PW4 Dr. Vidur Jyoti, PW5 Dharampal, Retd. Sub Inspector, PW6 Dr. V.K. Gupta, PW7 Kuldeep Singh (complainant), PW8 Inspector Shamsheer Singh, PW9 Dr. S.K. Sharma, PW10 Dr. B.B. Aggarwal, PW11 Dr. Sanjay Narula, PW12 Sandeep (injured), PW13 Dalip Singh, Sub Inspector and PW14 Madan Lal, Record-keeper.

After closure of evidence of the prosecution, statements of appellants under Section 313 Cr.P.C. were recorded by putting to them the incriminating evidence available on record. They pleaded innocence and contended that they have been falsely implicated in this case.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants, learned trial Court convicted and sentenced the

appellants as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 20.03.2004 passed by learned trial Court, the appellants preferred these two appeals.

The submissions made by Mr. Dilpreet Singh, learned counsel representing appellant-Harvinder, Mr. P.C. Chaudhary, learned counsel representing appellant-Mahesh and Mr. Sulinder Kumar, Assistant Advocate General for the State of Haryana have been heard and record perused.

Learned counsel for the appellants argued that the First Information report was lodged by Kuldeep Singh (PW7), brother of injured Sandeep, but he was not an eyewitness of the occurrence. He stated that his source of information about the occurrence was Sandeep, who had told him about the same when on way to the hospital he had regained some consciousness. The appellants were not named in the First Information Report which apparently means that Sandeep did not state about their presence while narrating the occurrence to his brother Kuldeep. Subsequently also, when the statement of injured Sandeep was recorded under Section 161 Cr.P.C., he did not name either of the appellants. During his deposition in the Court, Sandeep stated that he had come to know the name of appellant Harvinder after 1½ / 2 months and of appellant Mahesh after 2/ 2½ months of the incident whereas he admitted that prior to the occurrence he once had an altercation with Mahesh in a Health Club during which also he had suffered injuries but had not lodged any report with the police. From his own statement, it stood proved that Mahesh was known to complainant Sandeep prior to the occurrence but what to say of stating his

before the police. After arrest of the appellants, no test identification parade was arranged by the Investigation Officer. It was for the first time in the Court that Sandeep identified the appellants and that identification had no value in the eyes of law and could not be made basis for conviction of the appellants.

Learned counsel for the appellants also argued that according to injured Sandeep, the occurrence took place in the fields of Dhani Ram and Ajit Singh. It was stated by PW1 Dr. Rekha Yadav, who medico legally examined injured Sandeep at General Hospital, Gurgaon that Sandeep was brought to the hospital by Ajit Singh. Dhani Ram and Ajit Singh, being owners of the fields, were natural and independent witnesses of the occurrence, but were not examined by the prosecution.

There appears no force in the arguments of learned counsel for the appellants. The appellants may not have been named in the First Information Report, but it was stated by Kuldeep (PW7) in his statement which formed the basis of First Information Report and also when he appeared in the witness box that his brother Sandeep told him that Hemant was accompanied by a boy, who was a resident of some place towards Badshahpur when Hemant asked his brother to accompany them to village Kasan where idols had been recovered. He further deposed that later on he came to know that the name of that boy was Harvinder. Similarly, it had come in the First Information Report and was also stated by PW7 Kuldeep as well as PW3 Sandeep that when Narender, Hemant and Harvinder attacked on him with knives, there was one more boy with them who gave knife blow into the right side of his ribs and they later came to know that the

Since there had been a quarrel between injured Sandeep and appellant Mahesh prior to the occurrence and injured Sandeep had told that the boy accompanying Hemant hailed from some village towards Badshahpur, there remained no doubt that the said boy namely Harvinder was known to injured Sandeep by face. Similarly, from the statement of Sandeep, it is proved that earlier also some altercation had taken place between him and Mahesh (appellant) which proves that Mahesh was also known to him by face prior to the occurrence. The appellants may not have been named in the First Information Report, but injured Sandeep knew them by face prior to the occurrence and was in a position to identify them. Therefore, their identification by injured Sandeep in the Court could not be questioned on the ground that it was identification for the first time before the Court.

Injured Sandeep (PW3) identified both the appellants as the assailants and attributed specific role to each of them. The witness also unequivocally and very fairly deposed that it was after the occurrence that he had come to know the names of the appellants. The identification of the appellants by the injured in the Court was unimpeachable since he had remained with them for some time prior to the occurrence and had also seen them when they alongwith their co-accused had attacked on him. Sandeep stated that Narender gave a knife blow on left side of his chest. Harvinder grappled with him from the backside and caught him from his neck when Narender tried to give a second blow with the knife on his chest, but somehow he saved himself from that blow. Stating that Hemant gave a knife blow on his head, he specifically stated that Mahesh hit on his right side ribs

other three carried on to inflict injuries on him with knife. The statement of the injured left no suspicion with regard to identity of the assailants including the appellants.

As many as 22 injuries, among which 16 were incised wounds that too on both side of chest, neck and arms etc. and were bleeding, were found on the person of injured Sandeep when he was medico legally examined by PW1 Dr. Rekha Yadav at General Hospital, Gurgaon at 10:50 a.m. on the day of occurrence itself i.e. 30.09.1997. PW2 Dr. S.K. Jain, Chest Surgeon, who treated the injured stated that the injuries suffered by Sandeep were dangerous to life.

The argument of learned counsel for the appellants that there were inimical relations between injured Sandeep and the appellants and to settle the scores he had falsely indicted the appellants, is devoid of merit. Enmity is like a double edged weapon. Because of some enmity if Sandeep had reason to falsely implicate the appellants, there is no reason why injured Sandeep should not be believed that due to the said enmity the appellants alongwith their co-accomplices had attacked on him and caused him injuries especially when his statement is duly corroborated by medical evidence. As a sequel to the above discussion, the conclusion inevitable is that the appellants in furtherance of their common intention had caused multiple injuries to Sandeep alongwith two other co-accomplices. The injuries caused were proved to be dangerous to life. Accordingly, the judgment of conviction of the appellants under Section 307 read with Section 34 I.P.C. is maintained.

As regards sentence awarded to the appellants, considering the

taken place 20 years ago and at that time the appellants were in their early twenties which means by now they are in their middle age and as submitted by learned counsel for the appellants they have young children who are dependent on them, the sentence of rigorous imprisonment of five years awarded to them is reduced to three years rigorous imprisonment. The period of imprisonment already undergone by them shall be set off against the sentence of rigorous imprisonment awarded to them today.

With the above modification in the order of sentence, both the appeals are dismissed.

The appellants are on bail in this case, their bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them 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. However, in case either of the appellant has already served the sentence of three years rigorous imprisonment, he need not be re-arrested.

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

16.11.2016.
jitender sharma

Whether speaking/ reasoned : Yes
Whether Reportable : Yes