

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

Criminal Appeal S-1365-SB of 2003(O&M)

Date of Decision: July 14, 2016

Dharambir		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Karan Pathak, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. Advocate General, Haryana.

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

The appellant was tried for committing offences punishable under Sections 307 and 506 IPC on the allegations that on 13.3.1999, he voluntarily caused hurt to Radhey Shyam with firearm and also criminally intimidated him. Vide judgment and order dated 16.7.2003 learned Additional Sessions Judge (Adhoc) Fast Track Court-II, Faridabad, convicted him for the offence under Section 307 IPC and sentenced him to undergo imprisonment for a period of five years and also to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo

imprisonment for a period of two months. He was also convicted under Section 506 IPC and sentenced to undergo imprisonment for a period of three years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further imprisonment for a period of one month. Both the sentences were ordered to run concurrently. The period, for which, he had remained in custody during the course of investigation/trial was ordered to be set off against the substantive sentence of imprisonment. The amount of fine of Rs.1,500/- was duly deposited by him there and then.

The case of the prosecution, in nutshell, is that on 13.3.1999, complainant Radhey Shyam was on duty as Assistant Supervisor in room No. 1 of Government Girls Senior Secondary School, Hodal, where matriculation examination was being conducted. As soon as the examination started, the candidate bearing Roll Number 395522 tried to copy/cheat and when the complainant checked him, he threatened to kill him. After the examination was over, the candidate tried to run away by taking answer sheet with him. The complainant stopped him and snatched the answer sheet and also noted down his roll number on his hand. At that time, the candidate whose name was later on learnt to be Dharambir, once again, extended a threat to the complainant. After collecting the answer sheets of other students,

the complainant deposited them with the Superintendent of the Centre. In the meantime, the complainant was told by some boy that he was being called outside. After he had finished his duty, he came out of the examination hall alongwith other staff. When he reached the gate of the school, he saw his brother Mohan Shyam, who had come to take him on a scooter. At that time, Sher Singh, Principal of the school also reached there on his motor-cycle. The complainant alongwith his brother left on the scooter towards the side of the market. When they reached the crossing, known as Jagjiven Chowk, accused Dharambir, who was standing there fired at him, which hit him on the back of his head. The occurrence was witnessed by the complainant's brother, who raised an alarm that the accused be caught hold. The complainant was, thereafter, taken to Goel Nursing Home, Hodal where he was admitted and given first aid.

Further case of the prosecution is that ASI Deen Dayal recorded statement Ex.PA of complainant Radhey Shyam and on its basis, FIR Ex.PA/1 was recorded by MHC Ram Rattan. The Investigating Officer went to the spot, prepared the rough site plan Ex.PH and recorded the statement of PW Mohan Shyam. The complainant was also medico-legally examined by Dr. H.K.Mishra on 13.3.1999, when the following injuries were

noticed on his person:-

“ There were two punctured wounds, one abrasion 1 cm x ½ cm scalp deep, irregular shaped one, other oval-shaped with reddish abrasion 3rd abrasion type over an area of 3" over the right side of occipital region of the scalp. It was horizontally placed over the right side of occipital region 3" above to external occipital protuberance, other 2" lateral to right and 3rd 2 cm below to and lateral to external occipital protuberance. Fresh bleeding was present with tenderness with swelling over and around the wound was present. Blackening area and profound bleeding was there. Advised X-ray skull AP & lateral for injury No. 1. The injury was caused by a gun shot and its duration was within six hours.”

On 14.3.1999, the complainant was radiologically examined by PW4 Dr. D.P.Gupta. The accused was arrested on 20.3.1999 from Jawahar Colony, Faridabad. After completion of the investigation and presentation of challan followed by commitment of the case, the accused was charged for the aforementioned offences, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Radhey Shyam as PW5 and his brother Mohan Shyam as PW6, who deposed about the ocular account of the

occurrence. PW3 Dr. H.K.Mishra, PW4 Dr. D.P.Gupta and PW8 Dr. Kulbhushan Bhartiya testified about the medical evidence. PW9 Khem Chand Shashtri and PW10 Balbir Singh Punia testified about complainant Radhey Shyam being on examination duty. PW12 Anuj Kumar, Draftsman, proved scaled site plan Ex.P1, which he had prepared of the place of occurrence. Investigation part of the case was deposed to by PW1 SI Amir Singh, PW2 ASI Ram Rattan, PW7 SI Jage Ram and PW11 ASI Deen Dayal.

When examined under Section 313 Cr.P.C., the accused pleaded that he was innocent and falsely implicated. However, in defence, he did not examine any evidence.

The trial Court, after hearing learned counsel for the parties and on going through the record, came to the conclusion that it was accused Dharambir, who had fired a gunshot at the complainant with an intention to kill him and had also threatened him twice, once in the examination hall and, thereafter, when the complainant snatched answer sheet from him outside the examination hall. Accordingly, the accused was convicted and sentenced, as mentioned above.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, in which, he was granted the

concession of bail vide order dated 8.12.2003 passed by this Court.

Having heard learned counsel for the appellant as well as learned State counsel and on going through the record with their able assistance, this Court finds that the prosecution has led cogent and convincing evidence to establish that on 13.3.1999, complainant-Radhey Shyam was performing examination duty and in the course of his duty, he noticed that the appellant was trying to copy/cheat and when he checked him, the appellant extended threat to kill him. After the examination was over, the appellant tried to escape from the spot while carrying the answer sheet with him. However, it was the complainant who stopped and snatched answer sheet from him and also noted down his roll number. Even while going out of the examination centre, the appellant had threatened the complainant. Subsequently, when the complainant after completing his examination duty, came out he met his brother Mohan Shyam. Both of them left towards the market. However, on reaching Jawahar Chowk, the appellant, who was standing there fired a shot which hit the complainant on the backside of his head. The testimony of PW5 Radhey Shyam is duly corroborated by PW6 Mohan Shyam, who stated that he was present with him and when they reached Jawahar Chowk, it

was the appellant who fired at the complainant. The testimonies of both PW5 Radhey Shyam and PW6 Mohan Shyam are corroborated by the medical evidence by way of testimony of PW3 Dr. H.K. Mishra, who found two punctured wounds, one of which was an abrasion of 1 cm x ½ cm scalp deep irregular shaped while the other was oval shaped with reddish abrasion over an area of 3" over the right side of occipital region of the scalp. Fresh bleeding was found present with tenderness and swelling over and around the wound. Blackening was also observed. Subsequently, on 30.9.1999, PW3 Dr. H.K.Mishra gave opinion Ex.PC that the injury sustained by complainant Radhey Shyam was a gunshot injury.

In view of the above, no case is made out for any interference in the conviction of the appellant for the offences under Sections 307 and 506 IPC.

It may not be out of place to mention here that during the pendency of the appeal, the appellant filed miscellaneous application (CRM 46978 of 2003) under Section 482 Cr.P.C. read with Section 14 of the Juvenile Justice (Care and Protection of Children) Act, wherein, he prayed for conducting an inquiry into his age as according to him, he was born on 14.7.1982 and on the date of occurrence, i.e. 13.3.1999, he was about sixteen

years and eight months of age and, thus, a juvenile. In support of his stand, the appellant placed on record the admission form issued by Brij Khand Vidya Mandir Senior Secondary School, Hodal, Palwal, Haryana. Upon notice the State filed reply to the said application. Subsequently, on 4.11.2015, this Court directed the Principal Magistrate, Juvenile Justice Board, Faridabad to conduct an inquiry for determining the age of the appellant on the date of commission of the crime. Pursuant thereto, report was received from the Principal Magistrate, who after conducting an inquiry came to the conclusion that the appellant was sixteen years and eight months old on the date of occurrence and, thus, a juvenile.

As per the custody certificate dated 28.10.2015 already brought on record by the learned State counsel, the appellant has already undergone actual sentence of five months and twenty eight days besides earning remission of twenty days. In all, he has undergone total sentence of six months and eighteen days.

By now, it is well settled that if the offender is less than eighteen years of age even before the commencement of the Juvenile Justice (Care and Protection of Children) Act 2000, he is required to be treated as a juvenile despite the fact that when the

Juvenile Justice Act, 1986 was in force, juvenile meant a person who had not completed sixteen years of age.

According to Section 15 of the Act of 2000, any of the following orders may be passed in respect of a juvenile:-

- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- (b) direct the juvenile to participate in group counselling and similar activities;
- (c) order the juvenile to perform community service;
- (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (f) direct the juvenile to be released on

probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

- (g) make an order directing the juvenile to be sent to a special home for a period of three years:

The appellant has been facing the agony of criminal prosecution for the last more than seventeen years. He has also undergone a total sentence of six months and eighteen days. The appellant is not shown to be involved in any other criminal case.

Taking into consideration the totality of the circumstances, this Court is of the view that instead of remanding the matter to the Juvenile Justice Board for passing an order under Section 15 of the Act of 2000, especially when the appellant is facing the agony of criminal prosecution since long and has undergone total sentence of more than six months, it would be fit and proper to set-aside his sentence of imprisonment. Instead, the appellant, who is now about 34 years of age can be directed to pay fine amounting to Rs.30,000/- over and above the fine already imposed upon him for the offences under Sections 307 and 506 IPC.

Resultantly, the conviction of the appellant under

Sections 307 and 506 IPC is upheld. His substantive sentences of imprisonment imposed on both the counts are set-aside. Fine of Rs.1,000/- for the offence under Section 307 IPC and Rs.500/- under Section 506 IPC is maintained. However, the appellant shall pay another fine of Rs.30,000/- to be deposited with the Principal Magistrate, Juvenile Justice Board, Faridabad, within three months from today, failing which, he shall undergo simple imprisonment for six months.

The appeal as well as the miscellaneous application, are accordingly, disposed of.

July 14, 2016
amit rana

(T.P.S. MANN)
JUDGE