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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-404-SB-2003 (O&M)

Date of decision : 07.07.2017

Inderjeet Singh and others

... Appellant(s)

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Keshav Partap Singh, Advocate,
for the appellant(s).

Mr. Naveen Kaushik, Addl.AG, Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 17.02.2003/19.02.2003, passed by learned Additional Sessions Judge, Faridabad vide which the appellants were convicted under Sections 308 and 323 read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced to undergo RI for 04 years and to pay fine of Rs.2000/- with default stipulation.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

"Case of the prosecution is that on 27.05.1997 SHO, P.S.Chhainsa received a V.T.from P.S.City Ballabhgarh regarding admission of Jagdish and Naresh with injuries in hospital. On receipt of the message, H.C.Ranbir Singh alongwith other police officials rushed to the hospital at Ballabhgarh and moved an application for recording statement of injured Jagdish. Injured was declared fit to make statement and he recorded his statement that he along with his cousin Narender and Naresh was going to U.P in his relation on motor cycle of Narender on

27.05.1997 at 2 p.m, and when they reached at the bank of Yamuna, Yamuna was inundated and on seeing Yamuna, they started to move for Chhainsa. The accused came there armed with lathis and asked the complainant and his companion to pay money for crossing Yamuna. But the complainant replied that they have not crossed Yamuna. On this, the accused became furious and started beating him and Naresh with their deadly weapon and they received injuries on their persons. It is also alleged that during the incident, above named accused snatched Rs.5,000/- from complainant Jagdish and Rs.500/- and one golden chain from Naresh. At this time, Om Parkash and Chattri residents of Chhainsa attracted at the police of occurrence and he rescued the injured and admitted in hospital. On the basis of this statement, first information report was lodged and as per MLR No.28/97 of Jagdish three injuries were received and Naresh also received three injuries as per MLR No.29/97. It is also alleged that Jagdish received serious injuries and he was admitted in Escort Medical Centre, Faridabad on 28.05.1997 wherein the doctor attended injured Jagdish had reported that injury No.1 in MLR No.28/97 was head injury and dangerous to life. On the basis of this report, Section 308 IPC was inserted. Statements of PWs were recorded. Rough site plan of the place of occurrence was prepared. After completion of necessary investigation, challan against the accused was submitted.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Sections 308 and 323 read with Section 34 of the IPC was framed against all the accused to which they pleaded not guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-Dr.Madhu Lata Paul, PW2-Jagdish, PW3-Naresh, PW4-Om Parkash, PW5-Roop Chand Patwari, PW6-ASI Chand Ram, PW7-Dr.Alok Gupta and PW8-Chattri and thereafter closed its evidence.

The statement of accused were recorded under Section

313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court vide impugned judgment dated 17.02.2003 and order dated 19.02.2003, convicted and sentenced all the accused as narrated above.

Feeling aggrieved against the judgment dated 17.02.2003 and order dated 19.02.2003, passed by the trial Court, all the accused have filed the instant appeal.

At the very outset, learned counsel for the appellants informs that appellant, namely, Sheoraj @ Kallu has since expired on 14.12.2010. In support of his assertion learned counsel has furnished a copy of the death certificate which is taken on record as Mark 'A'. Learned State counsel does not dispute the factum of death of the appellant-Sehoraj @ Kallu. In this view of the matter the present appeal qua Sheoraj @ Kally abates.

It is contended that the incident in question allegedly took place on 27.05.1997 whereas the FIR came to be registered only on 11.06.1997. There is no explanation for inordinate delay in lodging the FIR. It is further contended that Section 308 of IPC is not made out in this case as there was no intention on the part of the accused to cause a grievous injury, rather all the injuries noticed were found to be simple in nature. The injury declared as dangerous to life was simple but had been declared as such due to blood

clot. Furthermore, the CT Scan and X Ray reports which were the basis of the medical opinion were not produced and proved on record. Even otherwise, it would be a case of Section 323 IPC at the most as all the injuries were simple in nature.

It is further contended that there are glaring contradictions in the prosecution story. PW-2, Jagdish has stated that he remained unconscious for 4-5 days whereas his statement was recorded on the day of occurrence itself. False implication has been asserted at the behest of Om Parkash, an eye witness and relative of injured Jagdish.

On the other hand, learned State counsel has vehemently argued that there is not previous enmity between the parties so as to make out a case of false implication. The injuries on the person of the injured are duly corroborated by medical opinion.

I have heard learned counsel for the parties and have gone through the case file.

As per the case of the prosecution, Jagdish, Narender and Naresh were on their way to go to the State of Uttar Pradesh. After reaching the bank of river Yamuna, they noticed that the river was flooding. Thereafter, they headed towards Chhainsa village. The accused, armed with lathis came there and asked the complainants/injured persons to pay money for crossing river Yamuna. When the complainants replied that they had not crossed the river, the accused became furious and started beating Jagdish and Naresh with their respective weapons. They also snatched Rs.5,000/- from complainant Jagdish and Rs.500/- along with a gold chain from

Naresh. At that point of time, Om Parkash and Chatri residents of village Chhainsa reached the place of occurrence and rescued the injured and got them admitted to the hospital. On the same day i.e. 27.05.1997, the SHO of Police Station Chhainsa received a V.T. from Police Station City Balabhgarh regarding admission of Jagdish and Naresh in the Hospital. Thereupon, HC Ranbir Singh along with other police officials reached the hospital and moved an application for recording statement of injured Jagdish. The injured was declared fit to make statement and his statement was recorded there and then. On the contrary when examined as PW-2 injured/complainant, Jagdish has stated that he was hit on the head by the accused persons and soon after receiving the injury he became unconscious. He regained consciousness only after 4-5 days. Therefore, there are altogether two different versions in the prosecution story, which makes it highly doubtful.

The second limb of the argument with regard to the non-production of CT-Scan and X Ray reports in the evidence is also material. Dr. Alok Gupta- PW-7 stated that on 28.05.1997 injured Jagdish was brought to Escort Medical Centre, Faridabad with the history of head injury. He was subjected to CT Scan of head which revealed large blood clot on the right side of his brain. He was operated upon and was discharged from Hospital on 04.06.1997. He further stated that police made a request (Exhibit-PE) upon which he gave his opinion Ex.PE/1, whereby, the injury was declared as dangerous to life. However, neither the CT Scan report nor the X-Ray report, which formed the very basis of the opinion of the doctor declaring the injury as 'dangerous to life' were produced or proved on record.

Therefore, in the absence of this vital documentary evidence, the opinion of the doctor loses its credibility. Otherwise also, accused and the complainants are not previously known to each other, therefore, the possibility of their false implication at the behest of Om Parkash, PW-4, an eye-witness and co-villager of the accused persons, cannot be ruled out. The appellants are stated to be not involved in any other FIR.

In view of the above discussion, this Court finds that the prosecution has not been able to prove its case beyond reasonable doubt and benefit thereof ought to go to the accused/appellants.

Resultantly, the present appeal is allowed and the impugned judgment of conviction and order of sentence passed by the trial Court are set aside. Appellants, namely, Inderjeet and Suresh are stated on bail. Their bail bonds and surety bonds stands discharged.

The appeal is allowed.

July 07, 2017

vanita/atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No