

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

**Criminal Appeal S-127-SB of 2004
Date of Decision: August 16, 2017**

Sohan Singh @ Boghi	Versus	Appellant
State of Punjab		 Respondent

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

Present : Mr. S.P.S. Sidhu, Advocate
for the appellant.

Mr. Sandeep Vermani, Additional A.G., Punjab.

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

The appellant was tried for committing offence punishable under Section 459 IPC. Vide judgment and order dated 29.11.2003, learned Additional Sessions Judge, Fast Track Court, Ferozepur convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

Aggrieved of his conviction and sentence, the

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appellant filed the present appeal, which was admitted on 15.1.2004. Subsequently, vide order dated 3.5.2005 a co-ordinate Bench of this Court suspended his sentence of imprisonment and released him on bail subject to his furnishing necessary bonds.

Complainant Shavinder Kaur has also filed Criminal Revision 1645 of 2004 with the prayer that the sentence awarded to the appellant be enhanced. The said revision was ordered to be heard alongwith the present appeal. As such, vide a common judgment, this Court intends to dispose of the present appeal as well as the revision filed by the complainant.

According to the prosecution, family members of complainant Shavinder Kaur resided jointly in one house. Her Jeth (brother-in-law) Balwinder Singh was looking after the Commission Agency of her in-laws. On 15.5.2003, Balwinder Singh alongwith his wife and children were away to Gurudwara Baba Budha Sahib for paying obeisance whereas Amar Kaur, mother-in-law of the complainant was away to village Kohlewal in order to meet her daughter. The complainant's husband Joginder Singh, her another brother-in-law Sukhchain Singh and father-in-law Harnam Singh had gone to the fields for performing agriculture work. Appellant Sohan Singh had been working as a servant for the last one year in the house of the complainant. One Nirmal Singh was also employed by the complainant party as a

servant about two months earlier. Both Sohan Singh and Nirmal Singh had also accompanied Joginder singh and others for working in the fields. The complainant was all alone in her house. After finishing her household, she was resting in her room. At about 11/12.00 noon, she heard some noise from the room of her Jeth Balwinder Singh. She immediately rushed to that room where the appellant was found present in an inebriated condition. On seeing her, he became perplexed. The complainant tried to raise an alarm but the appellant gagged her mouth with one of his hand and pressed her neck with the other. She tried to disentangle herself from the clutches of the appellant but he threw her on the floor and pressed her neck with both of his hands. He also gave injuries to her. In the meantime, the complainant's husband Joginder Singh and brother-in-law Sukhchain Singh returned home on a motor-cycle. On hearing the noise of motor-cycle, the appellant fled away after leaving the complainant in semi-conscious stage. Joginder Singh and Sukhchain Singh placed the complainant on a cot and removed her to Civil Hospital, Ferozepur where she was medico-legally examined. The appellant was aware of the activities of the house of the complainant being their servant and, accordingly, had entered the room of Balwinder Singh in order to commit theft finding that all the members of the house were away.

In support of its case, the prosecution had examined

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PW1 Dr. M.S. Tina, E.N.T. Specialist, who deposed that on 22.5.2003, he examined complainant Shavinder Kaur and observed as under:-

“Under GA direct laryngoscopy was done and there was submucosal haematoma in the right pyriform fossa and lateral wall of laryngopharynx with paralysis of right vocal cord. Right aryepiglottic fold and arydenoid areas were congested. No movements of right vocal cord were seen. Left cord was moving normally. Patient was advised treatment.”

He proved his observation slip Ex.P1 from her bed head ticket. PW2 Krishan Lal, Draftsman proved scaled site plan Ex.P2. PW3 Tilak Raj, Photographer proved photographs Ex.P3 to P5 and negatives Ex.P6 to Ex.P8, which were taken into possession from him by ASI Lakhwinder Singh vide recovery memo Ex.P9. PW4 Buta Singh, Record Keeper, Civil Hospital, Ferozepur, proved bed head ticket of the injured as Ex.P10 (containing 9 pages).

PW5 ASI Lakhwinder Singh, Investigating Officer, recounted the entire part of investigation conducted by him and as delineated above. He proved wireless message Ex.P11, applications Ex.P12 and Ex.P13, statement of the prosecutrix Ex.P14, endorsement Ex.P14/A, F.I.R. Ex.P15, site plan Ex.P16, recovery memo Ex.P17, another recovery memo of sabbal

Ex.P18 and recovery memo of photographs and negatives Ex.P9. He also identified the iron sabba as MO-1, which was recovered from the place of occurrence. PW6 HC Joginder Singh deposed that broken handle of almirah and iron sabba were recovered by ASI Lakhwinder Singh from the place of occurrence in his presence vide recovery memos Ex.P17 and Ex.P18 duly attested by him.

PW7 Shavinder Kaur, complainant, recounted the entire part of the incident. Her testimony had been corroborated by PW8 Sukhchain Singh, her dewar.

PW9 Dr. J.S. Sandhu deposed that on 15.5.2003, he medico-legally examined Shavinder Kaur and found the following injuries on her person:-

1. Reddish contusion multiple in number varying from 4 cm x 1.5 cm to 8 cm x 2 cm on neck on its interior part between the two sternomastoid muscles. E.N.T. Surgeon opinion was advised.
2. Multiple abrasion on right and left and middle part of interior part of tongue. Suggestive of teeth bites.
3. Reddish contusion 8 cm x 5 cm on back and lower part of neck in its middle.
4. Patient was complaining of pain in abdomen, back and back of head.

According to him injuries No.2 to 4 were simple in nature. Probable duration of injuries was within six hours and kind of weapon used was blunt. He proved copy of MLR Ex.P19 and

pictorial diagram Ex.P19/A. According to him, vide endorsement Ex.P20, he declared the injured unfit to make the statement and vide endorsement Ex.P21, he declared the injured fit to make the statement on 16.5.2003. He also proved his signatures and notings on bed head ticket Ex.P10 (containing 10 pages). According to him, after receipt of report Ex.P1 made by Dr. M.S. Tina, he declared injury No.1 on the person of Shavinder Kaur as grievous in nature and sent intimation Ex.P22 to the Police.

PW10 SI Mukhtiar Singh deposed that on receipt of ruqa he registered FIR Ex.P15. According to him, on 23.5.2003 he arrested accused Sohan Singh @ Boghi and prepared memos Ex.P23 to Ex.P25.

When examined under Section 313 Cr.P.C., the appellant admitted working with the in-laws of the complainant. He also admitted that on the day of the occurrence only the complainant was present in his house whereas remaining family members were away. He also stated that he had developed intimacy with the complainant and had been maintaining sexual relations with her. On the day of the occurrence, no one was present in the house excepting the complainant and, accordingly, he was having sex with her but both of them were caught red handed by her husband Joginder Singh and brother-in-law Sukhchain Singh. Later on, he was falsely implicated in the present case.

Having heard learned counsel for the parties and on going through the evidence, the trial Court convicted and sentenced the appellant, as mentioned above.

From the testimonies of PW7 Shavinder Kaur, it stands clearly established that the appellant committed lurking house trespass by entering into the house of the complainant and while doing so had caused a grievous hurt to the complainant. The medical evidence duly corroborates the prosecution case. PW9 Dr. J.S. Sandhu had medico-legally examined and found as many as four injuries on her person. Injury No.1, which was on the neck of the complainant was declared to be grievous in nature. During the investigation, the police had collected sufficient material connecting the appellant with the commission of the crime. Under these circumstances, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fourteen years. When he was examined by the trial Court under Section 235 Cr.P.C., he had claimed that he was having wife and small children to look-after. From the custody certificate dated 8.8.2017 already brought on record by the learned State counsel, he has undergone an actual sentence of four years, one month and twenty seven days which

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includes earned remission of two years, two months and twenty three days. He is on bail pursuant to the order dated 3.5.2005.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 459 IPC is upheld. His substantive sentence of imprisonment is reduced from seven years to the one already undergone by him. The sentence of fine alongwith its default clause is maintained.

Criminal Appeal S-127-SB of 2004 and Criminal Revision 1645 of 2004 are, accordingly, disposed of.

August 16, 2017

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No