

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-S-1697-SB-2004

Reserved on 30.3.2017

Date of Pronouncement: 27th April, 2017

Shankar Lal

..Appellant

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Akshay Jain, Advocate, for the appellant.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

RAMENDRA JAIN, J.

1. The appellant has filed the instant appeal impugning judgment of his conviction and order of sentence dated 10.08.2004, passed by the Sessions Judge, Sirsa, whereby he was convicted for causing an injury to injured Madan Lal on his head under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years and was directed to pay a fine of Rs.25,000/-. In default thereof, to further undergo rigorous imprisonment for a period of two years. On realisation of fine, if any, a sum of Rs.20,000/- was ordered to pay to injured Madan Lal.

2. Briefly stated, according to the prosecution, around 8.00 P.M. on 15.05.2003, a quarrel took place between the appellant and injured Madan Lal on account of playing radio on the chabutra of village Chormar by Madan Lal, thereby causing disturbance to his uncle as his house was

situated nearby. In the meanwhile, the parents of Madan Lal also reached there. Brij Lal, the father, rebuked and asked Madan Lal to leave the place and go to the house of his grand mother Smt. Bhado Devi. The parents of Madan Lal also tried to pacify the appellant. The appellant threatened Madan Lal that he would teach him a lesson. After reaching the house of his grand mother, PW Madan Lal took his meals and slept. Around 1.30 A.M in the night, the appellant armed with an axe, reached the house of Smt. Bhado Devi and inflicted an axe blow on the head of PW Madan Lal sleeping in the open court-yard. The grand-mother, namely, Smt. Bhado Devi, of injured Madan Lal who was sleeping near him, on hearing noise, also woke up and saw the appellant as, on account of her old age, she was not having a sound sleep in the moon lit night. The appellant, after inflicting the axe blow upon Madan Lal, ran away from the spot. Resultantly, injured Madan Lal became unconscious. His grand mother Smt. Bhado Devi rushed to the house of his son Brij Lal and narrated him the entire incident. In turn, Brij Lal and Smt. Bhado Devi took injured Madan Lal to the Primary Health Centre, Odhan, from where, he was referred to the General Hospital, Sirsa.

3. On receipt of medical ruqa, Ex.PB, from the Medical Officer regarding the admission of injured Madan Lal in the General Hospital, Sirsa, PW-12 ASI Ram Mehar reached there and by moving an application dated 16.5.2003, Ex.PD, before the Medical Officer, he sought opinion as to whether injured Madan Lal was fit to make statement. However, PW-1 Dr. Gobind Gupta, Medical Officer, treating the injured Madan Lal, vide his endorsement, Ex.PD/1, declared him as unfit to make statement. Consequently, PW-12 ASI Ram Mehar recorded the statement of Smt.

Bhado Devi, Ex.PJ, and after making his endorsement, Ex.PJ/1, sent the same to the Police Station. On the basis of which, a formal FIR, Ex.PJ/2 was recorded. Thereafter, PW-12 ASI Ram Mehar, the Investigating Officer, inspected the spot, prepared rough site plan Ex.PO with correct marginal notes and recorded the statements of PWs, namely, Brij Lal, Smt. Vidya Devi and Prem Kumar on the date of incident, itself, i.e., 16.5.2003. On 20.5.2003, the appellant was arrested from his village and interrogated in the presence of PWs H.C. Balwant Singh and Chowkidar Harchet Singh. The appellant, in pursuance of his disclosure statement, Ex.PQ, duly thumb marked by him and attested by PWs H.C. Balwant Singh and Chowkidar Harchet Singh, got recovered an axe, used in the commission of crime, from the septic tank of the residential house of his uncle, namely, Krishan. A rough sketch of axe, Ex.PQ/1, was prepared and the same was converted into a sealed parcel after getting the same washed before taking into possession vide memo Ex PQ/2 duly attested by the aforesaid witnesses. A rough site plan of the place of recovery Ex.PQ/3 with correct marginal notes was also prepared. During investigation, PW-12 ASI Ram Mehar, the Investigating Officer, kept on moving successive applications before the doctors of the General Hospital, Sirsa, where injured Madan Lal was getting treatment, to seek their opinion about his fitness to make statement. However, finally on 6.6.2003 at 11.00 A.M, vide opinion, Ex.PM/1, PW-10 Dr. Viresh Bhushan declared injured Madan Lal fit to make a statement. Consequently, the statement of Madan Lal-injured was also recorded. After completion of the investigation, a final report under Section 173 of the Code of Criminal Procedure was filed before the Ilaqa Magistrate, who committed the case to the Court of Session, for the trial of the appellant.

4. On finding a prima facie case against the appellant, he was charge sheeted under section 307 of the Indian Penal Code, for which he pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined, in all, 12 witnesses.

6. The statement of the appellant under section 313 of the Code of Criminal Procedure putting entire incriminating evidence came on record against him was recorded, to which he denied and pleaded his false implication. In defence, the appellant examined Krishan, his uncle as DW-1 and closed the same.

7. After hearing the arguments of the learned defence counsel and the learned Public Prosecutor, the appellant was convicted and sentenced vide impugned judgment dated 10.08.2004, as referred to in the earlier part of the judgment.

8. Learned counsel for the appellant contended that the statement of the injured Madan Lal was recorded after an inordinate delay of 18 days of regaining of his consciousness and 21 days of the alleged occurrence, which certainly casts a serious doubt upon the prosecution story.

9. There is no force in the above contention of learned counsel for the appellant. The occurrence took place on the intervening night of 15/16.05.2003 at 1.30 A.M. According to the Medico-legal report of the injured Madan Lal, Ex.PA, he was medically examined in the General Hospital Sirsa, on 16.5.2003 at 4.15 A.M. Simultaneously, the treating doctor sent a ruqa Ex.PB to the Police Station, whereupon PW-12 ASI Ram Mehar reached General Hospital, Sirsa and moved an application, Ex.PC before the Medical Officer to seek opinion as to whether injured Madan

Lal was fit to make statement. PW-1 Dr. Gobind Gupta, vide his endorsement Ex.PD/1, declared injured Madan Lal unfit to make statement at 6.40 AM. The said opinion was also endorsed by Dr. G.S. Somani vide endorsement Ex.PD/3. Resultantly, PW-12 ASI Ram Mehar having no other option, recorded the statement of PW-7 Smt. Bhado Devi, the grand mother of injured Madan Lal, Ex.P.J, present in the Hospital. A perusal of the FIR, Ex.PJ/2, shows that the ruqa was received at 9.30 A.M and immediately thereafter, the FIR was recorded. The above sequence of events shows that there was no delay in recording the FIR. Even otherwise, the statement of PW-6 Brij Lal, the father of injured Madan Lal, was also recorded on the same day. Hence, the factum of recording of the statement of injured PW-8 Madan Lal after 21 days of the incident on 16.05.2003 or after 18 days of regaining of his consciousness, allegedly, on 19.05.2003, had lost its significance. Even otherwise, the statement of PW-2 Dr. J.P.Chaudhary qua consciousness of injured Madan Lal, on 19.5.2003 and thereafter, his remaining conscious throughout till discharge, casts a serious doubt being against record and not corroborated or substantiated by any documentary evidence, rather is contrary to endorsement Ex.PD/2, dated 19.5.2003 at 11.00 A.M., of PW-1 Dr. Gobind Gupta, Medical Officer, as he had declared the injured unfit to make statement. Thereafter repeated efforts were made to record the statement of injured Madan Lal by PW12 ASI Ram Mehar. Fourth attempt to record the statement of injured Madan Lal was made by PW-12 ASI Ram Mehar on 30.5.2003 by moving application Ex.PL, but PW-10 Dr. Viresh Bhushan declared him unfit to make statement. Fifth attempt to record the statement of injured Madan Lal was made by PW-12 ASI Ram Mehar, the Investigating Officer, vide

application, Ex.PM, whereupon, PW-10 Dr. Viresh Bhushan finally declared him fit to make a statement on 6.6.2003 at 11.10 A.M and immediately thereafter the statement of injured Madan Lal was recorded. In view of the above factual position, the contention of the learned counsel for the appellant, being devoid of any merit, is untenable.

10. Learned counsel for the appellant next contended that the axe, allegedly, got recovered from the appellant and blood stained earth collected from the spot were sent to the Forensic Science Laboratory, Madhuban, Karnal (for short "F.S.L") but according to the FSL report, Ex.PR, no blood was detected on the axe Ex.P-1 and thus, the involvement of the appellant and the recovery of the axe, allegedly, used in the commission of crime had become doubtful.

11 This argument of the learned counsel for the appellant has no legs to stand, inasmuch as PW-12 ASI Ram Mehar has categorically deposed that after the recovery of axe from the disclosed place pointed out by the appellant, was washed and after preparing its sketch, the same was taken into possession by converting into a sealed parcel. Hence, the absence of blood stains on axe, Ex.P1, has fully been explained by the prosecution.

12 It has also been contended by learned counsel for the appellant that there are material discrepancies in the statements of the prosecution witnesses, namely, PW-12 ASI Ram Mehar and PW-1 Dr. Gobind Gupta, Medical Officer with regard to the size and measurement of the axe, allegedly, recovered from the appellant, which have rendered the prosecution case doubtful, as according to the sketch of the axe, Ex. PQ/1 prepared by PW-12 ASI Ram Mehar, the size of its blade was 16 cm x 10.5

cm, whereas, as per report Ex.PE/1 submitted by PW-1 Dr. Gobind Gupta, Medical Officer, the length of the blade of the axe was 18 cm x 10.5 cm. More so, according to sketch Ex.PQ/1, prepared by PW-12 ASI Ram Mehar, the wooden length of the handle was 2 feet 16 cm, i.e., 76 cm whereas according to the report Ex.PE/1 submitted by PW1 Dr. Gobind Gupta, Medical Officer, its length was 79 cm.

13 The above discrepancy pointed out by the learned counsel for the appellant is, in fact, no discrepancy in the eye of law, inasmuch as in sketch, Ex.PQ/1 prepared by PW-12 ASI Ram Mehar, the Investigating Officer, has mentioned the length of the wooden handle of the axe, Ex.P1, after excluding its portion fitted in the iron axe, whereas PW-1 Dr. Gobind Gupta, Medical Officer, has given a complete measurement of the wooden handle, including its portion fitted in the iron blade. The above difference of 3 cm which is, otherwise, quite negligible in the statements of the witnesses, has come on account of the above stated reason. More so, PW-12 ASI Ram Mehar, Investigating Officer, has even clarified that the length of the blade of the axe shown in the recovery memo Ex. PQ/2 duly attested by HC Balwant Singh was 16 cm x 10.5 cm, though in the seizure memo Ex. DB, which is a printed proforma, the length of the axe is shown as 18 cm by over-writing by someone and was not done nor was initialled by him and thus, he was not able to say as to who had done the abovesaid over-writing. In fact, its length was 16 cm only as shown by him in recovery memo Ex. PQ/2. He has also specifically deposed that the axe recovered from the possession of the appellant is a particular type of axe, which is not easily available in the market. In view of the above, the contention of the learned counsel for the appellant that the recovery of the weapon of offence

has been foisted on the appellant with a view to falsely implicate him, cannot at all be accepted, especially when the appellant, in pursuance of his disclosure statement, Ex.PQ, got it recovered from the residential house of his uncle, namely, Krishan.

14 Learned counsel for the appellant next contended that the identity of the appellant is doubtful as according to the site plan Ex.PG prepared by PW-4 Radhey Sham, Draftsman, PW-7 Smt. Bhado Devi, complainant, was sleeping at a distance of 23 feet from the cot of PW-8 Madan Lal injured and she, being an old lady of 70 years, was not able to identify the assailant in such a dark night, whereas injured Madan Lal had become unconscious after receiving injury.

15 There is no force in the above submission of the learned counsel for the appellant as the site plan Ex.PG prepared by PW-4 Radhey Sham, Draftsman, is liable to be ignored for the reason that the same was not prepared either in the presence of PW-7 Smt. Bhado Devi, complainant, or PW-8 Injured Madan Lal. Its author, PW-4 Radhey Sham, has simply stated that he had prepared site plan Ex.PG on the pointing out of PW-7 Smt. Bhado Devi, but did not state as to whether the same was prepared in her presence or was prepared at the spot. Even otherwise, the aforesaid site plan Ex.PG has lost its significance in view of the overwhelming evidence on the record that there was very short distance between the cot of the complainant and that of injured Madan Lal. According to PW6 Brij Lal, the father of the injured, the distance in between the cot of PW-7 Smt. Bhado Devi, complainant, and that of PW-8 injured Madan Lal was only 2 karam, i.e., 6-7 feet. Even PW-7 Smt. Bhado Devi has testified that the distance in between her cot and that of injured Madan Lal was 3-4 feet. PW-8 injured

Madan Lal has testified the aforesaid distance about 10 feet. It is needles to mention here that every individual has his own perception about the time, distance and measurements. The same are always described by approximation as every individual assesses about the distance as per his own perception. There would always be conflict between two persons in such like matters in the absence of any exact measurement. More so, no body is perfect in the world. The above little difference qua distance between the cot of injured Madan Lal and that of the complainant Smt. Bhado Devi, has lost its significance in view of the depositions of all the material witnesses that the occurrence had taken place in the moon lit night and they had identified the appellant on the spot at that very moment. More so, if the appellant was confident about his non-complicity in the crime, he could move an application before the Magistrate for his test identification parade. Non-adopting of any such exercise by him, requires to draw an adverse inference against him that he did not do so, being guilty in his mind, knowing fully well about his complicity in the instant case. Even otherwise, judicial notice of the fact can be taken that the appellant as well as Smt. Bhado Devi complainant and injured Madan Lal are the residents of the same village. More so, complainant Smt. Bhado Devi has categorically testified that she is an illiterate woman. Judicial notice of the fact can also be taken that in rural areas, a person can even be identified by his physique or by his voice or by style of his moving. Since the appellant and PW-8 injured Madan Lal, on one hand and PW-7 Smt. Bhado Devi-complainant on the other hand, were acquainted to each other being residents of the same village, there could be no confusion about the identity of the appellant by PW-7 Smt. Bhado Devi, complainant, and PW-8 injured Madan Lal. In

view of above factual position, there was hardly any difficulty for Smt. Bhado Devi (PW-7) to identify the appellant in the moon lit night.

16 Learned counsel for the appellant lastly contended that there is discrepancy about the use of weapon of offence and its recovery. The alleged place of its recovery was a open place accessible to all and sundry and in the initial version, Ex.PJ, of complainant Smt. Bhado Devi, the weapon of offence was shown as a gandasas, but the police has recovered an axe from the possession of the appellant.

17 It is pertinent to mention here that the above discrepancy has been dealt with completely by the learned trial court by observing that there are many similarities between an axe or a gandasas. Both are sharp edged weapons and sometime, an illiterate person gets confused in identifying as to whether the assailant was armed with an axe or a gandasas. In the instant case, the appellant had inflicted only one axe blow on the head of the injured and thereafter escaped in the mid night and thus, it was very difficult for the complainant to ascertain definitely whether it was an axe or a gandasas. However, the fact remains that the weapon of offence used by the appellant in causing injury to injured Madan Lal was a sharp edged weapon. PW-8 injured Madan Lal has categorically stated before the police and deposed before the court that the appellant had inflicted injury with an axe on the right side of his head. According to the prosecution, the recovery of an axe was effected from the appellant in the presence of Head Constable Balwant Singh, a witness to the recovery. However, no suggestion was put to DW-1 Krishan, the uncle of the appellant, that there was no septic tank in his residential house from where the alleged axe was recovered from the appellant.

18. It is needless to mention that PW-7 Smt. Bhado Devi-complainant and PW-8 Madan Lal, the eye witnesses to the occurrence, were examined at length, but nothing favourable to the accused could be elicited from their mouth. Despite their lengthy cross-examination, their statements are fully corroborated on material aspects, which have proved to the hilt that it was only the appellant, who had caused injury to PW8 Madan Lal.

19 In the instant case, the FIR was recorded promptly. More so, it is pertinent to mention that the trial court, after visualising the pathetic condition of the injured Madan Lal, when he stepped into the witness box as PW8, made a categoric finding that “ The witness feels a slight giddiness as stated before him and his left hand has not been working and he cannot stand for long and, therefore, he was brought in the court by his father Brij Lal and as such the witness has been made to sit on a chair to record his statement.” Further, this witness has also testified that he remained admitted in the hospital for 38 days on account of the head injury; his left hand has been paralysed; he cannot lift his left hand; he also cannot work effectively with his left leg and thus, he was unable to do work effectively now. The ocular version of the prosecution is fully corroborated by the medical evidence, statements of PW-7 Smt. Bhado Devi-complainant and PW-8 injured Madan Lal. The recovery of weapon of offence has also been proved beyond doubt. The prosecution has been able to prove its case beyond shadow of reasonable doubt. Consequently, finding no merit in the appeal, the same is hereby dismissed. The appellant, who is on bail, shall be taken into custody for serving out the remaining sentence awarded by the trial

court.

27th April, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether reportable | Yes/No |