

301/2
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: - 23.9.2017

(1) Criminal Appeal No. S- 1803-SB-2004

SatishAppellant.

versus

State of HaryanaRespondent.

(2) Criminal Appeal No. S-1172-SB-2004

VinodAppellant.

versus

State of HaryanaRespondent.

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Kamaljit Singh Dhillon, Legal Aid Counsel
for petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J (ORAL)

This order shall dispose of above mentioned two criminal appeals
i.e. **Criminal Appeal No. S-1172-SB-2004** and **Criminal Appeal No. S- 1803-SB-2004**. For brevity, the facts are being taken from ***Criminal Appeal No. S-1803-SB-2004***.

The accused-appellant(s), Satish along with co-accused Vinod have
faced trial in case FIR No. 136 dated 22.7.2002, under Sections 307/324/34 IPC,
registered at Police Station Ganaur.

Brief facts of the case are that on 22.7.2002, police received an
information from Aggarwal Hospital, Ganaur, regarding admission of injured
Suresh and Krishan in the hospital. On this, H.C. Azad Singh recorded the
statement of complainant- Phool Kumar (Ex. PF) in which he has stated that their

ancestors gave some land for residential purpose to Dharam Singh, grand father of Satish- accused long time back and since Satish wanted to sell the same, his brother Suresh prevented him from doing so. It is further stated that on 22.7.2002 at about 3.00 p.m., he along with his brother Suresh had gone to Mohit Cement Store, New Grain Market Ganaur, where his brother was sitting with one Krishan, owner of the shop and the complainant- Phool Kumar was standing on the opposite side of the road. In the meantime, accused- Satish and one another person came on a motor cycle. Accused Satish was armed with a *gandasa* and the other person was armed with *daaw*. Both of them entered into the shop of Krishan and Satish accused gave blows of *gandasa* on the head and other parts of the body of his brother when Krishan tried to rescue him, the other person gave blow of *daaw*. On raising voice, both the accused ran away on their motor cycle. On the basis of the complaint, FIR (Ex. PF) was registered and after completing the investigation, challan under Section 173 Cr.P.C was submitted. Trial Court framed the charges against both the accused under Section 307/34 IPC while accused-Satish has also been charge-sheeted for the offences punishable under Sections 307 and 324 IPC individually. Both the accused pleaded not guilty and claimed the trial.

Prosecution in support of his case, examined constable Ashwani Kumar as PW-1; H.C. Ramphal as PW-2; UGC Ram Singh as PW-3; Constable Rajesh Kumar as PW-4; H.C. Azad Singh as PW-5; Mahabir Singh as PW-6; complainant- Phool Kumar as PW-7; Suresh as PW-8; Pale Ram as PW-9, Dharam Pal as PW-10; Krishan Kumar as PW-11; ASI Jagpal Singh as PW-12 and Dr. O.P.Aggarwal was examined as PW-13. After the prosecution evidence

was closed, statements of both the accused i.e., Satish and Vinod under Section

313 Cr. P.C. was recorded in which they claimed innocence and false implication but no defence evidence was led by the accused persons.

Complainant- Phool Kumar, in his statement has stated on the same lines as per the version given in the FIR. He further submitted that accused persons gave injuries to his brother- Suresh and Krishan Kumar. He took them to Aggarwal Hospital, Ganaur and his statement Ex. PF was recorded by the police in his presence, memo Ex. P was prepared by the police for taking blood stained earth from the spot. PW-8 Suresh, one of the injured who also deposed on the same lines, stated that after the injuries were caused to him, he became unconscious and gained consciousness in the hospital. Similarly, PW-11 Krishan Kumar, another injured witness, also stated that both the accused caused injuries to Suresh in his shop and when he tried to intervene, accused- Vinod also gave injuries to him.

PW-9, Pale Ram is a witness to the disclosure statement made by Satish Ex. PJ as well as recovery of *gandasa* vide memo Ex. PJ/1. PW-10, Dharam Pal, is a witness to disclosure statement of Vinod Ex. PK and recovery of *daaw* vide memo Ex. PK/1. PW-5 HC Azad Singh deposed that for recording of the statement, he moved an application Ex. PE before the doctor seeking opinion regarding fitness of injured Suresh and Krishan Kumar and they were not found fit, then he recorded the statement of complainant- Phool Kumar, brother of injured Suresh vide endorsement PF/1. He sent the same to the police station for registration of the case on which formal FIR Ex. PF/2 was registered. On 23.07.2002 doctor gave an opinion Ex. PE/2 that Suresh was not fit to make statement. Thereafter, on 25.07.2002, Suresh was found fit and his statement was

recorded.

PW-12 ASI Jagpal Singh, Investigating Officer, appeared and verified the investigation carried out by HC Azad Singh about the disclosure statement as well as recovery of weapons. This witness also proved the site plan Ex.PN. An application Ex. PO was moved on 01.08.2002 before the Dr. Aggarwal regarding the fitness of injured Suresh. Dr. G. P. Aggarwal had appeared as PW-13; treated the injured persons and conducted their medical legal examination. As per PW-13, Dr. Aggarwal following injury was found:-

1. An incised wound 2.5" x 0.5" over the left fore-arm dorsal surface horizontal, 4" below the left elbow bone deep. Fresh bleeding was present. Advised X-ray.
2. An incised wound 1.5" x 0.5" over the left fore-arm dorsal surface 1" above the injury No.1, muscle deep. Fresh bleeding was present. Advised x-ray.
3. An incised wound 2" x 0.5" over dorsal surface of the left hand above the left index and middle finger. Fresh bleeding was present.
4. An incised wound 7" x 1.5" over the right parity occipital area of the skull 4" medial to the right ear, 1" laterlal to the midline, bone deep. Fresh bleeding present. Advised x-ray.
5. An incised wound 2.5" x 0.5 over the left side of the back just below the left ear muscle deep. Fresh bleedings present.
6. An incised wound 2" x 0.5 over the back of the neck, muscle deep. Fresh bleeding present.
7. An incised wound 3" x 0.25 on the right side of the neck, muscle deep. Fresh bleeding present.
8. An incised wound 2" x 1.5 over the right supra clavicle area, muscle deep. Fresh bleeding present.
9. An incised wound 1.5" x 0.5 on the lateral side of right fore-arm 2" above the right wrist joint muscle deep. Fresh bleeding present.
10. An incised wound 0.5" x 0.25" on the right thumb terminal phalynk. Fresh bleeding present.

He opined that the injures No. 1, 2 and 4 were kept under observation while injuries No. 3, 5, 6,7, 8,9, and 10 were simple. He

further stated that on the same day, the also medico-legally examined Krishan Kumar and found the following injury on his person.

1. An incised wound 2.5" x 0.5" over the right hand at the base of right thumb muscle deep. Fresh bleeding was present”

This witness also proved the MLR dated 23.7.2002 of the injured persons as Exs. PP & PQ; Ruqa Ex. PW/1 was sent to the police station along with the opinion Ex. PQ/2 regarding the nature of injuries on the person of Suresh. This witness also gave opinion Ex. PQ/3 on 1.8.2002 that Suresh is fit to make statement. This witness, however, opined that possibility of injuries caused on the persons of both the injured persons with *gandasa* and *daaw* cannot be ruled out. Rest of the witnesses were formal witnesses who proved the other documents relating to the investigation. The trial Court vide its judgment of conviction dated 30.4.2004, convicted both the accused under Section 307 read with Section 34 IPC and vide order of sentence dated 3.5.2004, sentenced them to undergo rigorous imprisonment for a period of 3-1/2 years and to pay a fine of ₹ 1,000 each and in default of payment of fine sentenced them to undergo further rigorous imprisonment for a period of six months.

Learned counsel for the appellant(s) has argued that PW-13, Dr. G.P. Aggarwal, a private practitioner at Aggarwal Hospital, Ganaur, in his examination-in-chief, though has proved his opinion Ex. PQ/2, regarding the injuries on the person of Suresh but has not specifically stated that as per his opinion, injury No.4 is dangerous to life. It is further submitted that in the absence of his opinion not given in the examination-in-chief that injury No. 4 was dangerous to life, the appellant(s)-accused had no occasion to cross-examine him to ask him as to how this injury was declared dangerous to life.

Learned counsel for the appellant(s) further argued that this witness, in order to declare this injury No. 4 dangerous to life, has not explained that in the absence of any special care, the nature of injuries could have been dangerous to life as accused persons were treated conservatively and there is no evidence to prove any specialized treatment was given qua injury No. 4. He has further argued that the opinion of the doctor i.e. Ex. PQ/2 was given on 23.7.2002 whereas immediately, thereafter vide his subsequent opinion Ex. PQ dated 1.8.2012, this witness has stated that the patient is fit for making statement. It is not explained by this witness that in the intervening period what type of treatment was given to the injured and therefore, it is not proved that this injury was dangerous to life.

Learned counsel for the appellant(s) has further argued that while recording the statement of the accused persons under Section 313 Cr. P.C, this opinion Ex. PQ/2 was never put to the accused persons that on account of causing injuries which was declared dangerous to life by the doctor, they have committed the offence punishable under Section 307 IPC and as such the statement recorded under Section 313 Cr. P.C. is defective. It is further argued that the appellant(s) accused Satish has already undergone 1 year 2 months and 10 days of actual sentence whereas Vinod accused had undergone 4 months and 8 days of actual sentence and they are facing the protracted trial for the last 13 years.

On the other hand, learned State counsel has argued that injured witness PW-11 Suresh and PW-11 Krishan Kumar have duly supported the prosecution version and even the complainant who is eye-witness i.e. PW-7 Phool Kumar has also supported the prosecution version and therefore the trial Court has rightly convicted the appellant(s)-accused. Learned state counsel has

further argued that even from the report of FSL (Ex. PL), blood stains were found on the weapon of offence which proves the guilty of the appellant(s).

After hearing learned counsel for the parties, I find that the moot point involved in both these appeals is whether the ingredients of Section 307 IPC is made out from the evidence produced by the prosecution. Dr. G.P. Aggarwal, while appearing as PW-13 has only stated that he has given an opinion Ex. PQ/2 and has nowhere explained as to how he has given an opinion that injury No. 4 was dangerous to life. Since, it was not stated by this witness in examination-in-chief on what basis he has declared the injury No. 4 as dangerous to life, the accused-Satish had no occasion to cross examine him on this point. A perusal of the opinion Ex. PQ/2 given by this witness shows that it is stated '*injury No. 4 is dangerous to life*' and thus, it is not sufficient to hold that injury No. 4 was dangerous to life specially when an important right of cross-examining these witnesses has not been given. Moreover, the opinion of the Dr. Aggarwal, Ex. PQ/2 was never put to accused while recording the statement under Section 313 Cr. P.C. This witness PW-13, Dr. G.P. Aggarwal has not stated about the nature of treatment given to the accused person with regard to this injury and subsequently vide his opinion Ex. PQ, he has held that patient was fit to make statement.

Looking from another angle from the statement of the injured witnesses as well as eye witness, it has not come on record that appellant(s) accused with intention to cause death of the injured persons have inflicted the aforesaid injuries and therefore, I hold that the ingredients of Section 307 IPC are not made out in the present case.

Accordingly, the order dated 30.4.2004 holding the conviction of the appellant(s) accused i.e. Satish and Vinod under Section 307 IPC is set aside and

accused-appellant(s) Vinod and Satish are ordered to be convicted under Section 324/325 read with Section 34 IPC. Since the appellant-Satish had undergone actual sentence of 1 year 2 months 10 days of actual sentence and appellant-Vinod has undergone 4 months 8 days of actual sentence, sentence awarded to them is reduced to already undergone by them.

In view of above, both the appeals stand disposed of.

A photocopy of this order be placed on the connected file.

(ARVIND SINGH SANGWAN)
JUDGE

23.9.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No