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

1. CRA-D-219- DB-2005
Date of Decision : April 18,2017

Bale Appellant

Versus

State of Haryana Respondent

2. CRA-S-408-SB-2005

Sanjay Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE [DR.] SHEKHER DHAWAN

Present Mr. S.S.Malik, Advocate,
for the appellants.

Mr. G.S.Wasu, Addl. A.G. Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

The above mentioned two appeals are directed against the
common judgment of conviction dated 28.01.2005 and order of sentence
dated 29.01.2005 passed by learned Additional Sessions Judge, Rohtak,

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whereby the appellants were convicted under Sections 307, 307 read with Section 34 and Section 452 IPC and were sentenced as under:-

Under Section	Sentence	In default
<u>Appellant - Bale</u>		
U/S 307 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹20,000/-.	to further undergo RI for three years.
U/S 452 IPC	Rigorous Imprisonment for Three years and to pay a fine of ₹3,000/-.	to further undergo RI for six months.
<u>Appellant - Sanjay</u>		
U/S 307 read with Section 34 IPC	Rigorous Imprisonment for a period of Seven years and to pay a fine of ₹10,000/-.	to further undergo RI for 15 months.
U/S 452 IPC	Rigorous Imprisonment for Three years and to pay a fine of ₹3,000/-.	to further undergo RI for six months.

Both the sentences were ordered to run concurrently.

Therefore, both these appeals are being disposed of by this common judgment.

2. Relevant facts for the purpose of decision of these appeals are that on 8.6.2004, Smt. Kalawati was brought to PGIMS, Rohtak in injured condition with alleged history of assault and she was medico legally treated. As per statement [Ex. PB] of Smt. Kalawati, on that day at about 1.30/2.00 p.m., she was present in her house. Appellant – Bale, who was her tenant alongwith his brother's son, Sanjay [other appellant] came there. At that time, Bale was armed with a 'DAO' [a wood cutting instrument]. On entering the house, Sanjay caught hold of Smt. Kalawati and Bale gave

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DAO blows on her neck, forehead, right nipple, inner side of her right hand, arm, wrist joint, inner side of her left arm, Palmer surface of her left hand near thumb, on little finger and on her face. As per the complainant, the injuries were caused to her by Bale with the intention to kill her. She raised alarm, which attracted Kundal Lal and Vashish Kumar, who had seen the occurrence. Both the accused fled away from the spot and injured was shifted for medical treatment.

3. Police started investigation. Medico-legal examination and radiological examination of injured were got done. Accused were arrested and after completion of requisite investigation proceedings, report under Section 173 Cr.P.C. was presented in the Court for trial.

4. During the process of trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of ten prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version, learned trial Court held the appellants guilty and convicted them vide judgment dated 28.1.2005 for commission of offence punishable under Sections 307, 307 read with Section 34 and Section 452 IPC and sentenced them on 29.1.2005.

5. Aggrieved of passing of impugned judgment of conviction and order of sentence, the appellants are before this Court by way of two separate appeals.

6. The prosecution case is mainly based upon the statement of

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injured, Smt. Kalawati, who appeared as PW-2 and narrated her tale of woes as detailed above. PW-3, Kundan Lal, an eye-witness was also examined, who had supported the version of injured. Apart from that, the statement of the injured was also supported and corroborated by medical evidence by way of statement of Dr. Ravinder Sahu, [PW-7], who had observed the following injuries on the person of Smt. Kalawati :-

- “(i) There was chopped wound of size 12x7 cm, up to bone deep i.e. up to skull and corresponding vertebra, with clean cut margins, situated 3 cm. Below the left mastoid process, running posteriorly in transverse plain, up to mid line, gapping present. Under lying of soft tissues, muscles and ligaments cut, with fresh bleeding.
- (ii) There was a lacerated wound of 6x1 cm. situated over the left side of forehead in oblique plain with base, just above and medial end of left eye brow. It was muscle deep, margins were clean cut and fresh bleeding was present.
- (iii) Lacerated wound of size 7x5 cm. X muscle deep with clean cut margins, situated in transversely oblique plain with fresh bleeding. Adipose tissue extruding out situated at the upper end, so as to be located 2 cm, medial to the mid calvicular and right over the margin through to the lower end of right breast.
- (iv) Lacerated wound of size 7x4 cm X muscle deep situated

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over the right forearm ventral aspect in transverse plain, such as its medial end just over the tattoo mark present, with clean cut margins, with fresh bleeding.

- (v) Lacerated wound of size 8x6 cm. X muscle deep, situated distal and medially two cm., below injury No.4 in transverse plain, with fresh bleeding, with clean cut margins.
- (vi) Lacerated wound of size 8x6 cm., X bone deep situated 7 cm. distal to injury No.5, placed in transversely oblique plane, underlying soft tissues, ligaments and vessels were cut, with clean cut margins, with fresh bleeding present.
- (vii) Lacerated wound of 4x2 and half cm. X bone deep, obliquely placed over the left forearm, lateral aspect, situated 2 cm., above the wrist, muscle deep with clean cut margins and fresh bleeding was present.
- (viii) A lacerated wound of size 5x3 cm., situated over base of left thumb bone deep, with severing of the joint, abnormal mobility present, so that thumb was held by means of tag of skin.
- (ix) Lacerated wound of size 4x2 cm., X bone deep over the lateral aspect of left hand, palm, extending up to the left little finger.
- (x) Lower two central incisors were missing one right lateral

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incisor was loosened and upper portion was partially missing.”

7. Dr. Ravinder Gill, PW-6 radiologically proved report, Ex. PK, whereby he had observed fractures in her right ulna bone, in frontal bone of her skull on left side and dislocation of her first metacarpal phalanx joint of left hand. The ocular testimony was supported by medical evidence. PW-1, Constable Sumit Kumar, Draftsman; PW-4 HC Ram Kumar; PW-5 ASI Dalel Singh; PW-8 EHC Jagbir Singh; PW-9 ASI Lekh Raj and PW-10 ASI Parveen Kumar, who had completed the investigation formalities, had deposed accordingly before the Court.

8. Against the above prosecution evidence, the defence version is by way of statement of accused recorded under Section 313 Cr.P.C. wherein they had completely denied the prosecution version, but no defence evidence was led.

9. At the time of arguments, learned counsel for the appellants contended that the prosecution version is not believable at its face value. The statements of injured and eye witness are full of material contradictions and learned trial Judge has mis-appreciated the evidence while placing reliance upon the same. The prosecution version itself is not believable that Sanjay caught hold of the complainant and appellant-Bale inflicted injury on her person because the prosecution case is that Kalawati was sitting on a cot. If PW3 Kundan Lal and other eye witness, Vishesh Kumar (who was not examined during trial) were present at the place of occurrence, they could

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certainly rescue Kalawati from the accused/appellants and this fact itself establishes that the names of eye witnesses have been introduced just to support the prosecution case, which is otherwise not believable.

10. Learned counsel for the appellants also contended that Vishesh Kumar, who was originally cited as an eye witness, was not examined during the trial and he was withheld so that real facts may not come to light. That has seriously prejudiced the interest of the appellants and in turn makes the prosecution case highly doubtful.

11. The statement of official witnesses are also not believable as the theory of recovery of 'DAO' from the possession of accused was not proved, rather, it was a case of planted recovery though no recovery was actually effected. Learned counsel for appellant Sanjay contended that even if the prosecution case is taken at its face value, appellant Sanjay had not caused any injury to Kalawati and he had just caught hold of the injured. This version is not believable. At any rate appellant Sanjay has already undergone actual sentence of 1 year, 2 months and 10 days in this case.

12. While arguing on these points, learned State counsel contended that prosecution has been able to prove the guilt of accused beyond all reasonable doubts. Injured Kalawati had no reason to depose falsely against both the accused. She has sustained as many as 10 injuries including seven lacerated wounds. Her version is supported and corroborated by PW3 Kundan Lal. Both these witnesses have well stood the test of cross-examination. Their testimony is duly supported and corroborated by medical evidence by way of statements of PW7 Dr. Ravinder Sahu and PW6 Dr.

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Ravinder Gill, who had radiologically examined the injured. The investigation proceedings were duly completed and recovery of 'DAO' from the possession of the appellant was effected. The defence version is mainly plea of denial and same has rightly been negated by the Court below. The appeals are without any merit and deserve to be dismissed.

13. We have considered the submissions made by learned counsel for both the parties and also appraised the record and are of the considered view that the prosecution has been able to prove the guilt of the accused beyond any reasonable doubt. In this case, ocular testimony by way of statement of injured herself is fully supported and corroborated by testimony of PW-3, Kundan Lal, who is an eye-witness. The plea taken by learned counsel for the appellants does not hold much ground that Kundan Lal is not an eye witness, rather, he was a planted witness. Nothing had come by way of cross-examination of both the witnesses so as to reach such a conclusion. More so, the appellants have not led any defence evidence except for the plea of denial in their statements recorded under Section 313 Cr.P.C. The ocular version of the injured and eye-witnesses is duly supported and corroborated by medical evidence. Dr. Ravinder Gill, PW-6 radiologically proved report, Ex. PK, whereby he had observed fractures in her right ulna bone, in frontal bone of her skull on left side and dislocation of her first metacarpal phalanx joint of left hand.

14. We are unable to accept the contention raised by learned counsel for the appellants that accused - Sanjay was not present at the spot and not

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associated with the crime by catching hold of the injured. Rather, the facts and nature of injuries itself suggest that it was the active role of appellant – Sanjay who had caught hold of Smt. Kalawati and appellant – Bale had inflicted 10 injuries with DAO blows. If appellant – Sanjay had not caught hold of Smt. Kalawati, she could certainly make an escape from the spot and in that eventuality, the number of injuries would have been on the lower side. In view of above, learned trial Judge has rightly held both the accused-appellants guilty and the appeals filed by both the appellants against the impugned judgment of conviction dated 28.1.2005 stand dismissed.

15. Now, coming to the point of sentence; learned counsel representing both the appellants contended that the sentence awarded to the appellants is on the higher side and little lenient view on the point of sentence be taken.

16. Learned State counsel contended that keeping in view the nature of injuries caused by the appellants, no leniency is required to be taken in this case on the point of sentence.

17. Having considered the submissions made by learned counsel for the parties on the point of sentence, we are of the considered view that the sentence awarded to both the appellants is certainly on the higher side. Appellant – Sanjay was found innocent during investigation and was summoned to face trial under Section 319 Cr.P.C. and allegations against him are that he had caught hold of injured Smt. Kalawati. As per custody

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certificate, he had undergone actual sentence of 1 year 2 months and 10 days and total sentence [including remissions] of 1 year 6 months and 18 days. Appellant – Bale has already undergone actual sentence of 4 years 2 months and 24 days and total sentence [including remissions] of 6 years 2 months and 24 day as per custody certificate dated 26.2.2017.

18. Taking all these factors into consideration, we accept the appeals partly on the point of sentence and reduce the substantive sentence in case of appellant – Bale from Imprisonment for Life to Rigorous Imprisonment for 7 years under Section 307 IPC and of appellant – Sanjay from Rigorous Imprisonment for 7 years to RI for 3 years under Section 307 read with Section 34 IPC. The other sentence awarded by the Court below including fine shall remain intact.

19. Both accused-appellants, Bale and Sanjay are bail. Their bail/surety bonds are cancelled. They be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

20. The appeals stand partly allowed in the above terms.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

April 18, 2017

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Whether speaking/reasoned : Yes

Whether Reportable : Yes