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

CRA-S-2192-SB of 2004 (O&M)

Date of decision: May 25, 2017

Ombir and others

.....Appellants

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate and
Ms. Bably Kumari, Advocate for the appellants.

Mr. A.S. Yadav, AAG Haryana.

A.B. CHAUDHARI, J (Oral)

Custody certificates filed by the learned State counsel, today
in Court, are taken on record.

Being aggrieved by the judgment and order dated
13.10.2004/15.10.2004 in Session Case No.230 of 2002 passed by the
learned Additional Sessions Judge (Fast Track Court), Bhiwani, by which
the appellants were convicted for offences punishable under Sections 307
read with Section 149 of Indian Penal Code, 1860 (for short 'IPC') and
sentenced to undergo rigorous imprisonment for 7 years with fine; further
convicted for offence punishable under Section 325 IPC read with
Sections 149 IPC and were sentenced to undergo Rigorous Imprisonment
for 3 years with fine; further convicted for offence punishable under
Section 323 IPC read with Section 149 IPC and sentenced to undergo

rigorous imprisonment for six months with fine; further convicted for offence under Section 148 IPC and sentenced to undergo rigorous imprisonment for 2 years with fine, the present appeal was filed by the appellants.

In support of the learned Senior counsel for the appellants contended that date of occurrence is 17.10.2001 at 5:00 PM, when the appellants-accused persons, according to prosecution, had assaulted Attar Singh-PW3 by means of deadly weapons. He contended that the trial Court committed an error in convicting the appellants for offences under Section 307 IPC as the prosecution miserably failed to produce satisfactory evidence to show that indeed there was an attempt to commit murder under Section 307 IPC. Taking the case of the prosecution at its face value on the evidence tendered by the prosecution also, the case is one of the sudden quarrel between the parties. Had there been intention to attempt to commit murder, the appellant-assailants would not have gone away from the place as is the prosecution case. He, then contended, after reading the medical evidence of the doctors, that none proved fractures on the skull. The reports in respect of medical evidence are contradictory and cannot be reconciled. Pointing out evidence of Dr. Ajay Gulati-PW12, he submitted that he deposited that CT scan indicated fracture of frontal bone as against the other X-Ray report showing alleged fracture of parietal bone. He, then submitted in the cross-examination that even the X-ray report has not been proved, as the result, the alleged fracture caused to the head has not been proved, accordingly. Ignoring the injury to the skull as

fracture, obviously, the remaining injuries, even as per the prosecution, are on hands and legs, which are not on vital parts of the body. He, therefore, submitted that at any rate, no offence under Section 307 IPC was proved by the prosecution. Mr. Lakhanpal, Senior Counsel, then contended that there is a previous history in as much as other tried stood convicted in a complaint filed by the appellants and the appeal is said to have been pending in this Court against their conviction. There is thus, enmity existing between the parties right from the beginning and therefore, the trial Court should have examined the testimony of the prosecution witnesses in so far as the ocular evidence is concerned with greater circumferential and keeping in mind that the witnesses who were deposing were the interested witnesses. He, therefore, submitted that the appellants are required to be acquitted in the light of the previous enmity between the parties as there is every reason to doubt the prosecution case itself.

Per contra, learned State counsel supported the impugned judgment and order submitted that the reasons recorded by the trial Court are based on evidence and since all the accused persons had attacked the victim with deadly weapons, the case was well found to have been proved under Section 307 IPC. According to him, ocular testimony of the witnesses is well supported of the medical evidence and therefore, there is a corroboration to the prosecution case. He, therefore, submitted that there is no merit in the appeal and the same should be dismissed. Learned State counsel further submitted that appellant No.4-Mehtab Singh has since died.

Heard learned counsel for the rival parties at length, perused the entire evidence that was tendered by the prosecution before the trial Court during trial.

It is true that the witness by name Bharat Singh-PW2 admitted in his cross-examination about the standing enmity between the parties. He also admitted that the members of his side were convicted in a case filed by the present appellants and against their conviction, appeal is pending in this Court. In my opinion, even, if that were to be shown, there is no automatic inference can be drawn that the prosecution case must be thrown out no sooner the enmity is pointed out in this Court between the parties. That is not the rule of evidence. However, the test of caution to make assessment of the interested testimony witnesses is to be applied by the Court before relying on the testimony of such witnesses. There should be no difficulty in accepting the submission made by Mr. Lakhanpal, Senior Counsel for the appellants that the witnesses who have deposed before the Court by way of ocular evidence are interested witnesses. I have no doubt in mind that the witnesses who have deposed that PW2 and PW3 are all interested witnesses. It is trite law that the testimony of interested witnesses can also be accepted, but then such testimony must pass the rigorous test of truthfulness. Upon reading of the evidence of these two witnesses, I find from the cross-examination of these two witnesses that their testimony has not been shaken on material points. Testimony of these witnesses on material points has remained intact in the absence of any major contradiction or omissions or inconsistencies. There

is, therefore, no reason to reject the testimony of interested witnesses as I have seen their testimony and find the witnesses on those material points to be believable.

The next question is what offences have been proved by the prosecution. Perusal of the evidence and the documents of the incident between the parties with reference to the incident particular in this case, it is seen that the occurrence took place just to teach a lesson to the victim and the reading of the evidence does not anywhere show that there was any evidence to commit murder as such of Attar Singh-PW3. It is true that all the accused persons had assaulted the deceased by means of instruments they had, but then to say that they had a definite intention to commit his murder or rather attempt to commit murder, is absent in the instant case. There is no satisfactory evidence to that effect from the oral evidence of both these witnesses. Apart from that perusal of the medical evidence shows that the alleged fracture to the skull or head has not been proved by the prosecution. On the contrary, there are inconsistencies in the X-Ray report as well as CT scan report about the location of the alleged fracture. That apart, Dr. K.L. Bawa-PW7 has deposed in the cross-examination that *“I did not conduct X-ray of skull of the patient as per record which is in my hand. I conducted X-ray as per MLR”*, which shows that X-ray of skull of the patient was never taken. There is, therefore, a reason to doubt whether there was injury to the head much less in the form of fracture. Thus, after discussing the above position, it is then clear that the fractures on the legs and the hands have been projected by the

prosecution. None of these body parts are vital which would endanger the life of a person. That is one more reason, I am inclined to hold that the offence under Section 307 IPC was not proved by the prosecution. It is in that view of the matter, I have come to the conclusion that at the most, offence under Section 325 IPC read with Sections 148, 149 IPC could be said to have been proved by the prosecution. I am therefore, inclined to set aside and modify the finding of conviction as above.

Now coming to the aspect of sentence to be awarded for the offence under Section 325 IPC, I find that the incident had taken place on 17.10.2001. Admittedly, there is severe enmity between two parties. Not only that, at the behest of the present appellants, the complainant party was convicted by the Sessions Court and their appeal is pending in this Court. Thus, there is reason to believe that both the parties being on inimical terms, quarrel took place due to their inimical attitude towards each other. The appellants have by now undergone actual sentence of 3 months and 12 days. The period of almost 16 years has already passed. The parties must be leaving peacefully in their village. Pushing now in jail to serve out any remaining sentence would tantamount to igniting fire over and again. In my view, looking to the above mitigating circumstances, all the appellants should be let off on the sentence they have already undergone. But for sentence of fine, they will have to pay, if not already paid.

The up-shot of the discussion is that the following order will have to be passed:-

ORDER

- (i) CRA-S-2192-SB of 2004 is partly allowed;
- (ii) The impugned judgment and order dated 13.10.2004/15.10.2004 in sessions case No.230 of 2002 regarding conviction qua appellants No.1, 2, 3 and 5 for offences punishable under Sections 307 read with Section 149 of IPC; under Section 325 IPC read with Sections 149 IPC; under Section 323 IPC read with Section 149 IPC and under Section 148 IPC, is set aside and modified to the extent that they are held guilty of the offences punishable under Section 325 IPC read with Section 148, 149 IPC;
- (iii) The impugned judgment and order of sentence is set aside and modified to one which appellants No.1, 2, 3 and 5 have already undergone;
- (iv) The sentence of fine is maintained and fine shall be paid, if not already paid.
- (v) Appeal qua appellant No.4 stands abated;

(A.B. CHAUDHARI)
JUDGE

May 25, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No