

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

**Criminal Appeal S-2362-SB of 2004
Date of Decision: March 20, 2017**

Pardeep		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. S. K. Biriwal, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

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

The appellants, namely, Pardeep and Vijay alongwith Sandip were tried for committing offences punishable under Sections 307, 324 read with Section 34 IPC. Pardeep appellant was also tried for committing offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 15/20.10.2004, learned Additional Sessions Judge, Panipat, convicted the appellants and Sandip under Section Section 307 read with Section 34 IPC. While the case of Sandip was referred to the Juvenile Justice Board, Sonapat, for passing appropriate orders for the reason that he was a juvenile on the date of commission of the crime, the appellants were sentenced to undergo rigorous

imprisonment for five years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo simple imprisonment for one year. Pardeep appellant was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for one month. Both the substantive sentences of imprisonment of Pardeep appellant were ordered to run concurrently. The period of detention already undergone by the appellants during the investigation and trial of the case was ordered to be set off against the period of sentence awarded.

Aggrieved of their conviction and sentence, Pardeep appellant filed the present appeal, i.e. Criminal Appeal S-2362-SB of 2004 whereas Vijay appellant filed Criminal Appeal S-2417-SB of 2004. Both the appeals stood admitted and the appellants are presently on bail.

According to the prosecution, on 5.12.2000, complainant Naresh alongwith Suresh Kumar started on a bicycle from village Puthar for their school. At about 8.45 a.m., when they were near the tubewell kotha of Ram Singh, Patwari, they saw the three accused, namely, Sandeep, Pardip and Vijay present there. Vijay caught hold of the complainant whereafter Sandip gave a knife blow on the right side of the belly of the complainant.

Pardeep gave a khukhri blow on his right arm. The complainant was, thereafter, taken to General Hospital, Panipat from where he was further referred to P.G.I.M.S., Rohtak where he was medico-legally examined and, thereafter, his statement recorded by ASI Amar Nath on the basis of which FIR No.155 dated 6.12.2000 under various sections of the IPC and the Arms Act was registered at Police Station, Israna.

At the trial of the case, the prosecution had examined complainant Naresh Kumar as PW4 and Suresh Kumar as PW5, who deposed about the manner in which the occurrence had taken place. PW3 Dr. Sunil Mahajan deposed about conducting medico-legal examination of the complainant on 5.12.2000 at 9.00 a.m. and noticing the following injuries on his person:-

- “1. An incised wound with clean cut margins about 2 x 1 cm elliptical in shape with sub-cutaneous fat lying outside abdominal wall. Active blood ooze was present. Abdomen was distended. Bowel sounds were negative on examination. Probing was not done because of risk of bleeding. Surgeon opinion was advised.
2. A lacerated wound 5 x 2 cm lateral aspect right forearm in distal half, muscle deep was present. Blood ooze was present. Movements at elbow, wrist joint were full.”

The doctor kept injury No. 1 under observation whereas injury No. 2 was declared to be simple. The probable duration of injuries was within six hours. The kind of weapon used for injury No. 1 was sharp while it was blunt qua injury No. 2. On 15.5.2001, the doctor gave opinion on the application submitted by the police that injury No. 1 on the person of injured Naresh was dangerous to life.

PW3 Dr. Sunil Mahajan also deposed that he had medico-legally examined Pardeep accused on 6.12.2000 and noticed the following injuries on his person:-

- “1. An incised wound with clean cut margins obliquely placed 3 x 0.2 cm, partial skin depth with tapering ends, tailing medially on right palmer aspect and between distal crease and M.P. joints of 4th & 5th finger. Clotted dark reddish blood was present. On cleaning fresh blood ooze was present.
2. An incised wound with clean cut margins 6.5 x 0.3 cm of partial skin depth with tapering ends, tailing upwards placed vertically on right thigh anterior aspect in distal half. Clotted dark reddish blood was present. On cleaning fresh blood was present. The trousers, showed a cut 10.5 cm in length. The trousers was sealed and handed over to the police.”

Similarly, Dr. Sunil Mahajan PW3 testified that he had

also medico-legally examined Sandeep Kumar accused on 6.12.2000 at about 7.15 p.m. and noticed the following injuries on his person:-

- “1. An incised wound with clean cut margins with tapering ends, tailing medially was present in the region of thenar eminence of the right hand, and it was placed obliquely. The size was 3 x 0.2 cm of partial skin depth. Clotted dark reddish blood was present. On cleaning fresh blood ooze was present.
2. Two incised wounds with clean cut margins over-lapping each other at medial 1/3rd on superior aspect of left shoulder of the sizes of 1.0 x 0.3 cm and 2.0 x 0.3 cm. The ends of both the wounds were continuous with each other making a total size of 3 x 0.3 cm. Clotted blood was seen. On cleaning, fresh blood was seen. The Sweater, T-Shirt were torn and were sealed and handed over to the police. There was an abrasion reddish, very superficial 1.0 x 0.1 cm, just abutting on the lateral half of the wound.”

The remaining witnesses produced by the prosecution deposed about the steps taken by them during the investigation.

After hearing learned counsel for the parties and on going through the evidence on the record, the trial Court accepted

the prosecution case and convicted and sentenced the appellants.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that the prosecution has led cogent and convincing evidence in the shape of the testimonies of PW4 Naresh Kumar, who had received injuries in the occurrence in question. His testimony is corroborated by PW5 Suresh Kumar, who had accompanied the complainant on the date of occurrence to the school. Despite being subjected to lengthy cross-examination, both PW4 Naresh Kumar and PW5 Suresh Kumar stood to their ground and stated that it were the two appellants and their co-accused, who had launched attack upon the complainant.

As regards the injuries noticed on the persons of Sandip and Pardeep accused, PW3 Dr. Sunil Mahajan had testified that they were superficial in nature and could be self-inflicted and self-suffered. Further, injuries were caused within the duration of twenty four hours. The occurrence in question had taken place on 5.12.2000 at about 8.45 p.m., which further confirmed the fact that the injuries were suffered by Pardeep and Sandip accused some time around 7.15 p.m. on 5.12.2007 and not at 8.45 a.m. on 5.12.2007.

During the investigation of the case, the police had

collected sufficient evidence which connected the appellants with the commission of crime. The medical evidence duly corroborates the ocular account. Complainant Naresh Kumar was subjected to operation at P.G.M.I.S. Rohtak. Upon perusal of the operation notes, PW3 Dr. Sunil Mahajan had declared injury No. 1 to be dangerous to life. The treating surgeon had done exploratory laparotomy with haemoperitoneum with perforation jejunum-ileal junction with reaction anastomosis done. Further, during the investigation of the case, Pardeep appellant had suffered disclosure statement and got recovered khukri, the weapon of offence. As he did not possess any licence or permit to carry the same, he has rightly been held guilty under Section 25 of the Arms Act.

In view of the above, no case is made out for any interference in the conviction of the two appellants.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than sixteen years. Vijay appellant was attributed the role of catching hold of complainant Naresh Kumar. The injury, which was declared to be dangerous to life was attributed to Sandip accused, whose case has already been segregated and referred to the Juvenile Justice Board for determining as to what type of order could be passed in respect

of him. At the same time, Pardeep appellant was said to have been given a khukhri blow on the right arm of the appellant but the said injury was found to be simple in nature. As per the custody certificates brought on record by the learned State counsel, Vijay appellant has undergone seven months and nineteen days whereas Pardeep appellant has undergone nine months and twenty six days. None of them is shown to be either involved or convicted in any other case. They were students at the time of commission of the offence.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellants, who are out on bail for the last more than twelve years, do not deserve to be sent behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. At the same time, the fine amount can be enhanced so as to compensate the complainant.

Resultantly, the conviction of the appellants under Section 307 read with Section 34 IPC and of Pardeep appellant under Section 25 of the Arms Act is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.10,000/- imposed upon the

appellants for the offence under Section 307 read with Section 34 IPC is, however, enhanced to Rs.30,000/- each. The fine of Rs.500/- imposed upon Pardeep appellant for the offence under Section 25 of the Arms Act is maintained. The appellants shall deposit the fine amount with the learned Chief Judicial Magistrate, Panipat, within three months from today, failing which, they shall be required to undergo simple imprisonment for 1½ years. The entire amount of fine, when recovered from the appellants shall be disbursed in favour of complainant Naresh Kumar, as compensation.

Both the appeals are, accordingly, disposed of.

March 20, 2017

amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No