

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

CRA-S-No.1615-SB OF 2002
DATE OF DECISION : 7th FEBRUARY, 2017

Vijay Kumar alias Puka

.... Appellant

Versus

State (UT, Chandigarh).

.... Respondent

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

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Present : Mr. Mohit Jaggi, Advocate for
 Mr. S. K. Vohra, Advocate for the appellant.

Mr. Rajiv Sharma, Advocate
for the respondent-UT Chandigarh.

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A. B. CHAUDHARI, J. (ORAL)

1. Being aggrieved by the judgment and order dated 04.10.2002 passed by Additional Sessions Judge, Chandigarh in Sessions Case No.21 of 17.12.1998 by which the appellant was convicted for offence under Section 307 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of five years and fine in the sum of ₹5,000/-, the present appeal was filed by the appellant in this Court.

2. In support of the appeal learned counsel for the accused vehemently argued that impugned judgment and order recording conviction is clearly illegal and contrary to the law, particularly because the victim Prem Parkash was not examined by the Court. According to him absence of the victim Prem Parkash, the material evidence, itself was

not available and therefore, the trial court committed an error in convicting the accused for offence punishable under Section 307 IPC. He then submitted that reliance placed on the medical evidence *ipso facto* did not prove the offences for which the appellant was charged. He then, submitted that the appellant and the complainant Prem Parkash all were living in slum and over the quarrel amongst the children the incident had taken place in the provocation. At any rate the prosecution case is that the appellant had given a single blow on the head of Prem Parkash. Had there been any intention to kill the victim the appellant would not have stopped after giving one blow. He, therefore, submits that the appellant, has undergone sentence of two years three months.

3. *Per contra* learned State counsel vehemently opposed the appeal by submitting that the appellant very well knew the consequences of his act namely hitting by dangerous weapon on the head which was likely to cause death and therefore the trial Court was right in convicting the appellant for the aforesaid offence. According to him, even the sentence cannot be reduced looking to the fact that Prem Parkash remained in unconscious state due to brain hemorrhage. He, therefore, prayed for dismissal of the appeal.

4. I have heard learned counsel for the rival parties at length. I have perused the finding of conviction as well as the order of sentence.

5. There is ocular evidence of PW-6 Sohan Lal, the brother-in-law of the victim Prem Parkash. I have perused his evidence carefully so also the cross-examination. He is an eye witness and his evidence has not been shaken in the cross-examination. He has clearly deposed about the role of the appellant who had given a blow by means of *fatta* (wooden

plank) on the head of the victim. He has described the entire incident. It would be appropriate to quote the relevant part about the incident from his examination, which I do hereunder:

“Prem Parkash and Dharambir who are my brothers-in-law reside with me. On 20.7.98 at about 6.00 p.m. I was present in my house a small child came and told me that a quarrel was going on there. I asked my wife to go and see what the dispute and quarrel was. Name of wife is Yoagesh Kumari. Then she went inside. Then my brother-in-law Dharambir also went out. Thereafter I also went out to see the quarrel. When I reached the spot I saw that accused Vijay Kumar present in Court and his brother Satish Kumar (juvenile) were quarreling with my son Shomi aged 12 years and were beating him. I asked them why they were beating them. Prem Parkash injured also reached the spot and asked the accused not to give abuses. I also persuaded them not to quarrel but they did not assisted but accused said that there was also an earlier dispute and on that day he would kill us. Satish Kumar picked up a brick bat and gave a brick bat blow on mouth of Prem Parkash. Vijay Kumar present in Court as accused brought a wooden plank from a jhuggi situated nearby and gave a blow in head of Prem Parkash. Prem Parkash fell

unconscious. Accused Vijay Kumar & Satish Kumar ran from the scene alongwith phatta. When they were running they were also throwing bricks bats and stones. One Shalinder Singh received injury in his head. Police came on the spot. Prem Parkash injured was taken to hospital Sec 32 I npolice vehicle, from where he was referred to PGI & he was taken to PGI. Prem Parkash is still lying in unconscious state of mind on bed and has not yet recovered. My statement was recorded by police on 21.7.98 which is Ex.PG which bear my signatures and is correct.”

6. From the perusal of the above evidence it is clear that the appellant was rightly found guilty of assaulting Prem Parkash by means of wooden plank. But then offence for which he could be held guilty would be under Section 324 IPC and not under Section 307 IPC in the light of the above background evidence.

7. Now coming to the aspect of award of sentence, I find that the narration of the incident by Sohan Lal himself clearly shows that the quarrel started over the children fighting with each other and Prem Parkash intervened so also the appellant and in that incident Satish Kumar had given brickbat blow while Vijay Kumar who did not have any weapon in his hand took a wooden plank lying nearby and gave a blow on the head of Prem Parkash. To my mind these facts themselves show that there was no premeditated act and on the contrary due to the quarrel amongst the children, the incident in question took place. Therefore

there was no intention or attempt to commit murder as such. This is clear from the ocular testimony of Sohan Lal. Thus the ingredients of Section 307 IPC are not satisfied in the instant case. However, in my opinion, the offence would fall under Section 324 IPC as the appellant had used the dangerous weapon and caused injury on the head, which resulted in to internal bleeding or the brain hemorrhage.

8. In that view of the matter, I think the conviction of the appellant under Section 307 will have to be altered to the one under Section 324 IPC.

9. In so far as the sentence is concerned, the appellant has undergone the sentence for a period of two years three months which is enough. Looking to the nature of incident and the period that has passed, namely nineteen years, it would not be proper at such late stage to push the appellant again in the jail for offence under Section 324 IPC. In the result, I make the following order:

ORDER

- (i) CRA-S-No.1615-SB OF 2002 is partly allowed.
- (ii) The judgment and order of conviction and sentence of the appellant under Section 307 IPC is altered to the Section 324 IPC.
- (iii) The appellant is sentenced to rigorous imprisonment for two years and three months for offence under Section 324 IPC which he has already undergone.

7th February, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No.</i>