

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

Criminal Appeal S-1095-SB of 2005

Date of Decision: August 30, 2017

Rama Nand

.....Appellant

Versus

State of Haryana

..... Respondent

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

Present : Mr. Munish Kapila, Advocate
as legal aid counsel for the appellant.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

The appellant was tried for committing offence punishable under Section 307 IPC. Vide judgment and order dated 23.12.2004/7.1.2005, learned Sessions Judge, Rohtak, convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. The amount of fine, on its recovery, was ordered to be paid as compensation to Tejbir Singh injured-complainant.

Criminal Appeal S-1095-SB of 2005

-:2:-

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 4.7.2005. Subsequently, vide order dated 21.8.2006, a co-ordinate Bench of this Court ordered for his release on bail during the pendency of the appeal.

The case of the prosecution, in nutshell, is that on 11.10. 2003, at about 10.00/11.00 p.m., Tejbir Singh complainant came out of his house to shut the door. He found accused Rama Nand posted as a peon in the office of Excise Department hurling abuses after consuming liquor. He stopped him from hurling abuses. The accused was armed with some pointed weapon and gave a blow with the same in his abdomen. Thereafter, the accused fled away from the scene of crime. The complainant-injured was taken to the P.G.I.M.S., Rohtak by his brother Rambir Singh, where he was medico-legally examined and operated upon. The Medical Officer sent information to the Incharge, Police Post P.G.I.M.S., Rohtak that Tejbir Singh was admitted in the hospital having stab injuries. The Police Post P.G.I.M.S., Rohtak informed Police Post Model Town, Police Station Civil Lines, Rohtak on telephone about the admission of the injured in the hospital.

Further case of the prosecution was that after obtaining opinion of Dr. Asha Sehrawat that the injured was fit to make statement, Head Constable Rajbir Singh recorded the

Criminal Appeal S-1095-SB of 2005**-:3:-**

statement of Tejbir Singh, on the basis of which, FIR No. 509 dated 12.10.2003 under Section 307 IPC was registered at Police Station, Civil Lines, Rohtak.

In order to investigate the case, Head Constable Rajbir Singh reached the spot and prepared rough site plan of the scene of crime. The appellant was arrested on 10.12.2003. On interrogation, he suffered disclosure statement that he had thrown the knife in the bushes and he could get the same recovered. Pursuant to the same, he got recovered the knife from the disclosed place. Rough site plan of the place of the recovery was prepared. Before taking the same into possession, the police had prepared its sketch. It is also the case of the prosecution that on 30.10.2003, Head Constable Rajbir Singh moved application before the Medical Officer, P.G.I.M.S., Rohtak to find out as to whether the injury on the person of Tejbir Singh was sufficient to cause death in the ordinary course of nature. The medical officer opined that the injury was dangerous to life. On completion of investigation, the police had presented report under Section 173 Cr.P.C. The case was, thereafter, committed to the Court of Sessions, where the appellant was charged for the aforementioned offence, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. Asha Sehrawat, Casualty Medical Officer, P.G.I.M.S., Rohtak

Criminal Appeal S-1095-SB of 2005

-:4:-

as PW1, who proved the medico-legal report Ex.P1 pertaining to Tejbir Singh. PW2 Constable Sumit Kumar proved the scaled site plan as Ex.P9, which he had prepared at the asking of the police and on the demarcation of Tejbir Singh. Assistant Sub-Inspector Jagram, who stepped into the witness box as PW3 tendered his affidavit Ex.P10. PW4 Inspector Ram Parkash deposed that he has prepared the final report on completion of investigation. Sub-Inspector Mahender Singh while appearing as PW5 deposed that he had sought the opinion of the Medical Officer by moving application Ex.P6 as to whether the injuries on the person of Tejbir Singh could be caused with knife Ex.P7 or not. PW6 ASI Megh Raj deposed that he had recorded formal FIR Ex.P12 on receipt of ruqa Ex.P11 containing the statement of Tejbir Singh. Injured Tejbir Singh while appearing as PW7 and his brother Rambir Singh as PW8 deposed about the manner, in which, the occurrence had taken place. PW9 Dr. Yogesh Jain testified that he had operated upon the injured. The investigation part of the case was brought on record by the prosecution by examining PW10 Head Constable Rajbir Singh.

When examined under Section 313 Cr.P.C., the appellant pleaded that he was innocent. Further, it was Tejbir Singh and his brother Rambir Singh, who had given beatings to him. He was medico-legally examined and in that regard, he tendered in evidence his medico-legal report Ex.D1. He also

stated that he had not caused any injury to Tejbir Singh. However, Tejbir Singh had received injuries by a fall while he was in an inebriated condition.

In support of his plea, the appellant examined DW1 Ramesh Singh, DW2 Mukesh and DW3 Pawan Kumar.

After hearing learned counsel for the parties and on going through the evidence available on record, the trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

This Court has heard Mr. Munish Kapila, Advocate as legal aid counsel for the appellant and Mr. Pramjeet Singh, Asstt. Advocate General, Haryana and with their able assistance, carefully scanned the evidence available on record.

The star argument of the learned defence counsel is that the appellant had not caused any injury to PW7 Tejbir Singh, rather it was Tejbir Singh, who had caused an injury on his person. Tejbir Singh himself received injury while falling on some pointed object, which was lying at the spot. However, there is no merit in the stand taken by learned counsel for the appellant as the doctor, who had medico-legally examined the appellant was not produced as a witness before the learned trial Court, rather the medico-legal report was simply tendered in evidence but not formally proved. Further, the alleged medico-legal examination of the appellant had been conducted on 12.10.2003 at 7.30 p.m. At

that time, there was already a POP stab present on his right forearm extending upto below the elbow and only fingers were visible. There is no material on the record that he had received the solitary injury on 11.10.2003 at 10/11.00 p.m. It is also not made out that as to what was the weapon likely to have been used by the assailant in causing the aforementioned injury on his person. Further, he did not get his statement recorded so as to initiate a cross-case against Tejbir Singh nor also he had instituted any private criminal complaint. Under these circumstances, no benefit can be extended to him for the reason that he was medico-legally examined on 12.10.2002 during which examination one injury was found on his person.

As regards the injury, which was found on the person of Tejbir Singh, the defence has taken a stand that it was caused on account of Tejbir Singh falling on the ground and landing on some sharp object. However, PW10 Head Constable Rajbir Singh stated that no construction was going on at the spot at the time of the occurrence and he had also not found any scrap at the spot. Further, PW1 Dr. Asha Sehrawat testified in her cross-examination that it was not possible for a person to receive the injury as was found on the person of Tejbir Singh if he had fallen on some scrap lying on a hard surface.

PW1 Dr. Asha Sehrawat had deposed before the learned trial Court that the injury received by Tejbir Singh could be

dangerous to life. While saying so, she relied upon the fact that there was perforation in the anterior wall of the stomach and in gall bladder. PW9 Dr. Yogesh Jain, who had operated upon the injured deposed that there was an incised wound present in epigastric region with peritoneal breach and on ultrasonography, free fluid was found present. There was perforation in anterior wall of the stomach and of the gall bladder. Closure of perforation with cholecystostomy was done. In reply to Court question, he also stated that the injury could be sufficient to cause death, i.e. it was dangerous to life.

In view of the above, there is no scope for interference in the impugned judgment to the extent of convicting the appellant under Section 307 IPC.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fourteen years. The weapon used by him in causing a solitary injury on the person of Tejbir Singh injured was described by the prosecution to be a kitchen knife.

As per the custody certificate already brought on record by the learned State counsel, the appellant has undergone an actual period of one year, ten months and eighteen days out of the sentence of five years imposed upon him. He is not shown to be convicted or sentenced in any other case.

Criminal Appeal S-1095-SB of 2005

:-8:-

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose shall be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine amount of Rs.2,500/- imposed upon him by the learned trial Court can be enhanced so as to further compensate Tejbir Singh injured-complainant.

Resultantly, the conviction of the appellant under Section 307 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.2,500/- is, however, enhanced to Rs.10,000/-. The entire amount of fine, shall be deposited by him with the learned Chief Judicial Magistrate, Rohtak, within a period of three months from today, failing which, he shall be required to undergo rigorous imprisonment for one year. The entire amount of fine, if recovered/deposited shall be paid to injured Tejbir Singh as compensation.

The appeal is, accordingly, disposed of.

August 30, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No