

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. CRA-S-500-SB of 2004
Date of Decision : August 22, 2017

Rakesh Kumar @ NeetaAppellant

Versus

State of PunjabRespondent

II. CRR 1025 of 2004 and
CRM 9324 of 2012

Som Nath @ Vicky ...Applicant/appellant

Versus

State of PunjabRespondent

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

Present : Mr. B.D. Sharma, Advocate for the appellant
(in CRA-S-500-SB of 2004)

Mr. Naresh Prabhakar, Advocate for the applicant/appellant.
(in CRA-S-1025-SB of 2003 and CRM 9324 of 2012).

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The aforementioned appeals have been filed by convicts-
Rakesh Kumar @ Neeta and Som Nath @ Vicky for challenging the
judgment dated 3.5.2003 passed by learned Additional Sessions Judge
(*Ad hoc*), Jalandhar whereby they were convicted and sentenced, as
mentioned below :-

- (i) Rakesh Kumar @ Neeta convicted under Section
307 IPC, whereas Som Nath @ Vicky convicted
under Section 307 read with Section 34 IPC and
sentenced to undergo rigorous imprisonment for

five years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year;

(ii) Rakesh Kumar @ Neeta convicted under Section 326 IPC and Som Nath @ Vicky under Section 326 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months; and

(iii) Both Rakesh Kumar @ Neeta and Som Nath @ Vicky convicted under Section 324 IPC and Section 324 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for six months each.

All the substantive sentences were ordered to run concurrently.

According to the prosecution, on 17.5.1998 at 7.30 p.m., the accused had caused injuries to Madan Lal making liable Rakesh Kumar @ Neeta accused for committing the offences punishable under Sections 307, 326 and 324 IPC, whereas Som Nath @ Vicky, Nagraj @ Kala and Ajit Singh accused under Section 307 read with Section 34 IPC. Besides, all of them had committed the offences under Sections 506 and 452 IPC. The FIR was registered on the basis of statement made by Sudesh Kumari, wife of Madan Lal-injured. During the investigation of the case, Nagraj @ Kala accused died and proceedings

against him abated. Ajit Singh accused could not be arrested and was declared as proclaimed offender. The trial proceeded against Rakesh Kumar @ Neeta and Som Nath @ Vicky, who were finally convicted and sentenced, as mentioned above.

In her statement made before the police, Sudesh Kumari alleged that she was resident of Madhuban Colony and doing household. On 17.5.1998 at 7.30 p.m., her husband Madan Lal, who was a property dealer by profession had returned home. In front of their house, accused Rakesh Kumar @ Neeta and his brother Nagraj @ Kala alongwith their father Ajit Singh, besides two other persons, one of whom was Som Nath @ Vicky while the other, whose name was not known to her but she could identify him if brought before her, started dancing and uttering abusing. Her husband Madan Lal objected to their dancing but they did not stop. Afterwards they went to their house. Thereafter, they return to the spot. Rakesh Kumar @ Neeta was armed with a knife. His brother, Nagraj @ Kala with kirpan, Som Nath @ Vicky with a hockey and Ajit Singh with a stick. While they were coming, they started abusing Madan Lal and gave him fist blows. Rakesh Kumar @ Neeta gave a knife blow in his chest, while Nagraj @ Kala gave kirpan blow on his left hand. Som Nath @ Vicky gave a hockey blow and other injuries. Both, Rakesh Kumar @ Neeta and Nagraj @ Kala kept on giving kirpan and knife blows. An alarm was raised by Sudesh Kumari which attracted Mukesh Kumar, who resided nearby. All the accused, while carrying their respective weapons, left the spot. The

occurrence was witnessed by Sudesh Kumari-complainant and Mukesh Kumar. According to the complainant the accused had previously acted in a similar manner by dancing and uttering abuses.

After the completion of the investigation and commitment of the case, the two appellants, namely, Rakesh Kumar @ Neeta and Som Nath @ Vicky were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Jasbir Singh, Medical Officer, who testified about medico-legal examination of injured Madan Lal. PW4 Sudesh Kumari-complainant, PW5 Madan Lal-injured and PW8 Mukesh Kumar deposed about the manner in which the occurrence had taken place.

PW3 Dalip Singh, Draftsman proved the scaled site plan prepared by him. PW6 Rakesh Kumar did not support the prosecution case as he simply deposed that when he had reached the spot, the assailants ran away from there. The investigating part of the case was brought on record by PW2 HC Prithipal Singh, PW7 ASI Balkar Singh and PW9 ASI Harpreet Singh.

When examined under Section 313 Cr.P.C., both Rakesh Kumar @ Neeta and Som Nath @ Vicky, who faced trial denied the allegations levelled by the prosecution and claimed innocence. However, according to them they were not present at the spot at the time of the occurrence. Rather, it was Nagraj @ Kala accused, who had

a fight with Madan Lal for reasons which were known to them and during that fight, Madan Lal had suffered injuries.

After hearing learned counsel for the parties and on going through the evidence, the learned trial Court believed the prosecution case and convicted and sentenced the two appellants, as mentioned above. However, both of them were acquitted of the charge under Sections 452 and 506 IPC.

In their defence, the accused examined DW1 Manwinder Singh, who deposed about the quarrel between Madan Lal injured and Nagraj @ Kala-accused.

This Court has heard learned counsel for the parties and perused the evidence with their able assistance.

From the testimony of PW1 Dr. Jasbir Singh, it is made out that following injuries were noticed on the person of Madan Lal injured :-

- (i) Incised wound 3 cms. x 1 cm. depth cannot be measured on the left side of upper abdomen. Obliquely placed. Fresh bleeding was present. The injury was kept for surgical opinion.
- (ii) Incised punctured wound 2 cms. x .5 cm. depth not known on the front of lower abdomen. 3 cms. to the left of mid-line. Transverserly placed. Fresh bleeding was present. The injury was kept for surgical opinion.

- (iii) Incised wound 3 cms. x 1.5 cms. x 1 cm. on the left gluteal region. Fresh bleeding was present.
- (iv) Incised wound 1.5 cms. x .75 cm. punctured on the left side of lower chest. Obliquely placed. Fresh bleeding was present. Kept for surgical opinion.
- (v) Incised wound 2.5 cms. X 1 cm. x 1 cm. on the upper 1/3rd of left forearm on the back. Fresh bleeding was present. X-ray was advised.

The doctor opined that injury No.2 on the person of Madan Lal was dangerous to life as it was found on lower abdomen which was a vital part. Merely because Dr. Raghubir Singh who had conducted the surgery and was not examined is not sufficient to absolve the appellants of the commission of the crime. PW4 Sudesh Kumari, her husband PW5 Madan Lal, besides PW8 Mukesh Kumar had deposed on same and similar lines as were the contents of the FIR which was recorded immediately after the occurrence and, that too, at the instance of PW4 Sudesh Kumari. Despite subjecting them to length cross-examination, the defence could not bring any material on record from which it could be said that the injured and two eye-witnesses had deposed falsely. PW5 Madan Lal is none-else but the injured in the case. PW8 Mukesh Kumar, who happened to be residing in the neighbourhood of the complainant also supported the prosecution case.

According to the appellants, no such occurrence, as alleged by the prosecution, has taken place. Rather, there was a quarrel

between Madan Lal injured on the one hand and Nagraj @ Kala, brother of Rakesh Kumar @ Neeta appellant and in that occurrence Madan Lal had received injuries. In support of their plea, the appellants referred to the testimony of DW1 Manwinder Singh, who testified that in his presence an occurrence had taken place in which Madan Lal received injuries at the hands of Nagraj @ Kala. However, it may be noticed that Nagraj @ Kala had died during the trial of the case and in order to shift the blame on to said Nagraj @ Kala, the accused have taken the plea that no such occurrence, as alleged by the prosecution, had taken place. Rather, there was a quarrel between the injured and Nagraj @ Kala alone. In his cross-examination, DW1 Manwinder Singh admitted that he knew Nagraj @ Kala who was brother of Rakesh Kumar @ Neeta accused. As such, possibility of his coming up with a false version so as to secure the acquittal of the two appellants cannot be ruled out.

In view of the above, no case is made out for any interference in the impugned judgment passed by the learned trial Court while convicting the two appellants of the charge against them.

As regards the quantum of sentence, it may be noticed that out of the sentence of five years imposed upon them Rakesh Kumar @ Neeta has already undergone an actual sentence of one year, two months and twenty four days, besides earning remission of two years, one month and fourteen days. In all, he has undergone total sentence of three years, four months and eight days. Similarly, Som Nath @

Vicky appellant has undergone actual sentence of seven months and three days, besides earning remission of one year and eight days. In all, he has undergone a total sentence of one year, seven months and eleven days. All these facts are recorded in the custody certificates brought on the record by the prosecution. None of them is shown to be either involved or convicted in any other case. Further, during the pendency of the appeals, Som Nath @ Vicky has placed on record the affidavit dated 25.11.2011 executed by Sudesh Kumari complainant wherein she has stated about compromising the matter with him. In order to place on record the affidavit of Sudesh Kumari, Som Nath @ Vicky appellant has filed CRM 9324 of 2012. The application was ordered to be heard alongwith the appeal filed by him against his conviction and sentence.

From the prosecution case, it is made out that there was no serious enmity between the parties. On the day of the occurrence and also on an early occasion, the accused were said to have danced in front of the house of the complainant besides uttering abuses. Both the appellants have already undergone substantial portion of the sentences of imprisonment imposed upon them. They are on bail for the last 13/14 years. There is no material on the record that they have misused the concession in any manner.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars for undergoing their remaining

sentences of imprisonment. Ends of justice would be suitably met if their substantive sentence of imprisonment is reduced to the one already undergone by them.

Resultantly, the conviction of the appellants, as recorded by the learned trial Court, is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.1,000/- imposed upon Rakesh Kumar @ Neeta for the offence under Section 307 IPC and upon Som Nath @ Vicky for the offence under Section 307 read with Section 34 IPC is enhanced to Rs.5,000/- and in default of payment of fine, they shall undergo rigorous imprisonment for one year. The sentence of fine upon Rakesh Kumar @ Neeta under Section 326 IPC and upon Som Nath @ Vicky under Section 326 read with Section 34 IPC alongwith their default clauses are maintained.

Criminal Appeal S-500-SB of 2004 filed by Rakesh Kumar @ Neeta appellant against his conviction and sentence and Criminal Appeal S-1025-SB of 2003 filed by Som Nath @ Vicky appellant against his conviction and sentence, besides CRM 9324 of 2012 are, accordingly, disposed of.

August 22, 2017
satish

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO

