

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S No.1190-SB of 2012(O&M)
Date of Decision:28.10.2017

Chhote Lal

...Appellant

Vs.

State of Haryana

...Respondent

CORAM:-HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Dhir, Advocate,
for the appellant.

Mr. Anupam Sharma, AAG, Haryana.

ANIL KSHETARPAL, J. (Oral)

Appeal is against the judgment of sentence and order of conviction passed by Additional District Judge, Rewari dated 28.01.2012, under Sections 307/506 Indian Penal Code. Appellant has been sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.10,000/-, in default to further undergo rigorous imprisonment for a period of 6 months.

Detail facts have been noticed by the learned Additional Sessions Judge, Rewari in his judgment, however to complete the narration, some facts are being noticed. The appellant has been prosecuted on the basis of statement given by one Subhash Devi daughter-in-law of appellant. It was stated by her that previously she was married to Vijay Kumar son of Chotte lal. Two daughters were born out of their wedlock. Unfortunately, Vijay Kumar died on 08.03.2011 and, thereafter, it is the case of complainant that she was re-married with Sunil Kumar son of Manohar Lal and Chhote Lal adopted Sunil Kumar as a son. Manohar Lal and Chhote Lal are brothers, therefore, Sunil Kumar was nephew of Chhote Lal.

It is further alleged that in the intervening night of 18/19th July 2011, Chhote Lal after jumping over the wall came to the portion where Subhash Devi alongwith her second husband Sunil Kumar were sleeping and he attacked Sunil Kumar with an axe. It is further alleged that Sunil Kumar suffered injury. He was first referred to CHC Bawal, thereafter shifted to Government Hospital, Rewari further and shifted to PGI Rohtak and thereafter, referred to Safdarjang Hospital, New Delhi.

FIR was registered on 21.07.2011.

During the investigation, police recovered the axe which was having some blood stains, however, comparison could not be made as the blood stains were very small.

During the trial Subhash Devi was examined as PW3 whereas injured Sunil Kumar was examined as PW11.

On appreciation of evidence, learned Additional District Judge found that the prosecution has brought home the accusations against the appellant.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

Learned counsel for the appellant has submitted that from medical legal report Ex.PA/1, a lacerated wound was found meaning thereby that Sunil Kumar had suffered injuries with a blunt weapon. He has further submitted that if Chhote Lal's intention was to kill or to take life of Sunil Kumar, he would have used sharp side of the axe. He has further pointed out that as per the statement given by Dr. Vipin, who has been examined as PW1, this injury could have been suffered by a fall also. Learned counsel further referred to the statement of Dr. Anurag Sharma

Neurosurgeon from Safdarjang Hospital, New Delhi to contend that although it is the case of the prosecution that the appellant had given injury to Sunil at occipital region of the head, however, no injury was found on the occipital region and there was only one injury at parietal region of the head i.e upper part of the head. He has also submitted that since it is a case of single injury, therefore, case under section 307 is not made out particularly in view of the fact that only blunt side of the weapon was used.

On the other hand, learned counsel for the State has vehemently opposed the arguments submitted by learned counsel for the appellant.

This is a case where eyewitness Subhash Devi has withstood her stand when she appeared in the Court. She has supported the prosecution and the defence could not shake her evidence in the cross-examination. PW11 Sunil Kumar has also been examined who has also supported the case of the prosecution. Two neighbours namely, Hari Singh & Surat have been examined as PW5 and PW12 who have also supported the case set up by the prosecution. It is not a case where prosecution has not brought on file sufficient evidence. Apart from the eyewitnesses, medical evidence and recovery memo has been produced. The axe (weapon of offence) has been recovered.

Of course, there is only one injury on the head and that also a lacerated wound, which can only be caused by a blunt side of the weapon. There is some discrepancy in the statement of Subhash Devi as she says that Chhote Lal (appellant) had hit Sunil Kumar on the back of the head whereas the injury is on the parietal region i.e top of the head. However the occurrence took place at night, hence the contradiction can not be served to

fatal to the case of prosecution.

Although the appellant has tried to create a doubt by asserting that Sunil Kumar was trying to grab the property, however, no evidence in this regard has been produced. Even if Chhote Lal is convicted, the property would not go to Subhash Devi or her children till Chhote Lal is alive.

Taking into consideration the facts available on the file, one thing is certain that blunt side of the weapon had been used. There is only one injury on the head. Had there been any intention to kill Sunil Kumar, then Chhote Lal would have used the weapon from sharp side. Axe has two sides one sharp and second blunt. Still further Subhash Devi was only present at the time of occurrence. It is not her case that she resisted. In such a situation, if Chhote Lal had any intention to kill or to murder Sunil Kumar he would have used the axe again by inflicting several injuries. However, Chhote Lal caused only one injury to the injured .

Taking into consideration the above facts, the conviction of the appellant can not be sustained under Section 307 IPC. However, since the appellant has caused grievous injuries to the injured, therefore, he is found to committed an offence under Section 326 IPC. Taking into consideration that Chhote Lal is now approximately in late 50s and he has already undergone two years, two months and 14 days including period during trial and actual sentence undergone 1 year 9 months and 21 days and there is no incident after the appellant has been released on bail and there is no other case except the present case. He had already undergone 2 years, 2 months and 14 days including the pre-conviction and actual 1 year 9 months and some days.

Taking into consideration, the aforesaid facts the sentence awarded to the appellant shall be the sentence which he had already undergone.

This appeal with the reasons recorded above dismissed with the modification that the appellant shall stand convicted under Section 326 IPC.

(ANIL KSHETARPAL)
JUDGE

28.10.2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No.</i>
<i>Whether reportable</i>	<i>Yes/No</i>