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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA-S-656-SB-2004
Date of Decision : October 03, 2017

Pala Ram and another Appellants

Versus

State of Haryana Respondent

2. CRA-S-911-SB-2004

Devi Chand Appellant

Versus

State of Haryana Respondent

3. CRR-293-2006

Roop Chand Petitioner

Versus

Pala Ram and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHAR DHAWAN

Argued by: Mr. Vimal Kumar Gupta, Advocate
for the appellant (in CRA-S-656-SB of 2004).

Mr. Ravinder Malik, Advocate
for the appellant (in CRA-S-911-SB of 2004).

None for the petitioner (in CRR-293 of 2006).

Mr. Munish Dev Sharma, AAG, Haryana.

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SHEKHER DHAWAN, J.

The above titled two appeals, bearing **CRA-S-656-SB-2004** and **CRA-S-911-SB-2004** are directed against the common judgment of conviction dated 2.3.2004 and order of sentence dated 3.3.2004 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby the appellants, Pala Ram and Ramji Lal were convicted and sentenced as under:-

Under Section	Sentence
325 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of 1000/- each.
452 IPC	to undergo Rigorous Imprisonment for a period of 1 year each.

Both the sentences were ordered to run concurrently.

2. Devi Chand, appellant in CRA-S-911-SB-2004, was ordered to be released on probation for a period of one year on furnishing personal bond in the sum of Rs.10000/- with one surety in the like amount.
3. CRR-293-2006 has been filed by Roop Chand, complainant seeking enhancement of sentence awarded to the appellants.
4. Facts relevant for the purpose of decision of the matter in controversy; that the alleged occurrence took place on 27.4.2002 at 10.00 PM and accused-appellant, Ramji Lal armed with gandasi and accused-appellants Pala Ram and Devi Chand, armed with lathies caused injuries to Giano Devi on the head. As per the complainant version, Ramji Lal had given gandasi blow from its reverse side. Giano Devi was shifted to CHC, Mustafabad in injured condition and the Medical Officer, after attending her,

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referred her to Civil Hospital, Jagadhri, but the attendants of Gian Devi took her to Gaba Hospital, Yamuna Nagar, where she remained under treatment. Since Smt. Giano Devi was unfit to make the statement and as such, FIR was recorded on the statement of Roop Chand (PW-3).

5. During investigation, accused-appellants were arrested. Weapons used for commission of offence were recovered. Medical opinion regarding nature of injuries were obtained and the final report under Section 173 Cr.P.C. was filed for commission of offence punishable under Sections 307, 325, 452 and 506 IPC.

6. During trial, learned Court below completed various proceedings of trial including framing of charge under Sections 307, 325, 452 and 506 IPC against the accused-appellants, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence under Sections 452 and 325 read with Section 34 IPC, but acquitted them of offences punishable under Sections 307 and 506 IPC, as the nature of injury was not proved to be dangerous to life; and sentenced them vide order dated 3.3.2004.

7. Aggrieved of passing of judgment of conviction and order of sentence, the appellants Pala Ram and Ramji Lal are before this Court by way of CRA-S-656-SB-2004 and Devi Chand, another appellant has filed separate appeal bearing No. CRA-S-911-SB-2004 . CRR-293-2006 has been filed by Roop Chand, complainant for enhancement of sentence

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awarded to the appellants.

8. Learned counsel for appellants, Pala Ram and Ramji Lal mainly contended that learned trial Judge has completely ignored all these facts while recording the judgment of conviction and order of sentence. The alleged occurrence had taken place on 27.4.2002 and the FIR was recorded after 17 hours. The delay remained unexplained. Learned Court below has also completely ignored the fact that there was no motive with the appellants to cause injuries to Giano Devi (PW-16), although the complainant as well as injured, Giano Devi and one Surinder Kumar (PW-4) have strong motive to falsely implicate the appellants. In fact, prior to the alleged occurrence, one Mohinder Kumar son of Giano Devi teased the daughter of Pala Ram, appellant and raped her. Both the appellants had to remain in Police Station, but the police did not take any action and because of that strong motive, the appellants were falsely implicated in this case. The appellants could not get the case registered as they are poor persons.

9. While arguing further, learned counsel for the appellants raised the plea that the Court below completely ignored the fact that the place of occurrence is not proved in this case and as the prosecution version was incorrect, the appellants were acquitted under Sections 307 and 506 IPC and the entire prosecution case was to be disbelieved, but the Court below relied upon unreliable evidence and convicted and sentenced the two appellants.

10. Learned counsel representing appellant, Devi Chand contended that the appellant was convicted for an offence punishable under Section

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325 and 452 IPC and was released on probation vide order dated 3.3.2004. There was no violation of terms and conditions of probation and as such, the present appeal filed by Devi Chand has become infructuous.

11. Learned State counsel contended that the Court below has considered all the facts and material available on the file and rightly convicted and sentenced the accused-appellants. The plea regarding delay in reporting the matter to the Police was also raised before the trial Court as well and the same was dealt with by the Court below and it was rightly held that there was no delay as the injured was first taken to CHC, Mustafabad and then to Gaba Hospital, Yamuna Nagar. Injured Giano Devi was declared to be unfit to make the statement and subsequently, FIR was registered on the statement of Roop Chand (PW-3) and in that process, there was some delay in the registration of FIR and the delay has been duly explained. The plea raised by learned counsel for the appellants that the appellants have been falsely implicated is not believable at all. Had there been any such incident of committing rape upon the daughter of Pala Ram, the matter must have been reported to the Police and the plea is just an after-thought which the Court below had also disbelieved. Otherwise, the prosecution case is proved on the file of statement of injured Giano Devi (PW-16) and statements of the eye-witnesses of this occurrence, namely PW-2, Raj Pal; PW-3 Roop Chand and PW-4 Surinder Kumar. The ocular testimony is duly supported and corroborated by the medical evidence consisted in the statement of Dr. Pardeep Tehlan (PW-5), who had conducted CT-scan and proved his report Ex. PE and Dr. B.S.Gaba (PW-

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13) of Gaba Hospital, Yamuna Nagar who had given his report on the basis of CT-scan report and declared the injuries to be “grievous and could be dangerous to life”. Learned trial Judge has already dealt with the sentence part of the accused-appellants by taking the most lenient view and there are no grounds for any leniency on the point of sentence even, rather the revision petition filed by the complainant for enhancement of sentence awarded to the appellants, deserves to be accepted.

12. Having considered the submissions made by learned counsel for the parties and appraisal of material and evidence available on record, this Court is of the considered view that as the alleged occurrence had taken place on 27.4.2002 at 10.00PM which resulted into the injuries to Giano Devi wife of Raj Pal. She was taken to CHC, Mustafabad on the same night, i.e. 27.04.2002. She was medico-legally examined by Dr. Sandeep (PW-15) and the following injuries were observed on her person by him:-

“At that time the condition of patient was very serious. Bleeding from the right ear, unconscious. B.P. was 100/60. Pulse was 70 p.m. Respiratory rate 16 p.m., pupil bilaterally normal.

INJURY NO.1

Lacerated wound present on the posterior aspect of the scalp 2 x 1 x bone deep. (Actively bleeding from the ear).

Lacerated wound 4 cm above the right ear. A line joining the two ear. Advised X-ray and surgeon opinion. The injury was kept under observation and kind of weapon used was blunt within 24 hours.

INJURY NO.2

2 x 1 x bone deep lacerated wound present on the fore-

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hear 3 cm above the middle of the left eye brow.

(Transvers) slightly towards the mid line. Advised X-ray and surgeon opinion. Injury was kept under observation and kind of weapon used was blunt. Duration of both injuries was within 24 hours."

13. As the condition of the patient, Giano Devi was serious, she was referred to Civil Hospital, Jagadhri. However, the attendants of Giano Devi took her to Gaba Hospital, Yamuna Nagar for better treatment.

14. Smt. Giano Devi, injured of this case, was examined as PW-16 and she has detailed the entire version and specifically alleged that accused-appellant, Ramji Lal caused injuries to her with *gandasi* and Pala Ram and Devi Chand had given lathi blows to her. There is no dispute regarding identification of the accused-appellants. Her version is duly supported and corroborated by the testimony of complainant, Roop Chand, who appeared as PW-3 and eye-witnesses, namely, PW-2, Raj Pal and PW-4, Surinder Kumar.

15. The ocular testimony is duly supported and corroborated by PW-15 Dr. Sandeep, who had medio-legally examined the injured on the same night i.e. 27.4.2002 at C.H.C. Mustafabad. Apart from that, medical evidence available on the file is the statement of Dr. Pardeep Tehlan (PW-5), who conducted CT-scan and proved his report as Ex.PE. PW-13, Dr. B.S. Gaba had proved the nature of injuries on the basis of CT-scan report.

16. As regards to the plea taken by learned counsel for the appellants that there is delay in reporting the matter to the Police, the same

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has been duly explained in this case. Law on the point is settled that delay in itself is not fatal to the prosecution case. Rather, the delay puts the Court on caution to scrutinize the evidence available on the file with greater care and caution. In the present case, after the occurrence, the injured was immediately taken to C.H.C. Mustafabad where she was medico legally examined. As her condition was serious, she was referred to Civil Hospital, Jagadhari and she was taken to Gaba Hospital, Yamuna Nagar. As Giano Devi was unfit to make statement, as such, statement of Roop Chand was recorded and in that process, there was some delay in lodging of the FIR, which has been duly explained by the prosecution.

17. As regards to the plea taken by learned counsel for the appellants that they have been falsely implicated in this case due to some earlier incident, the same is not believable at all and the same has rightly been discarded by the Court below. Otherwise, it is a case where the occurrence has been duly proved on the basis of statement of the injured and eye-witness account of this case. The ocular version is duly supported and corroborated by medical evidence, apart from statements of remaining prosecution witnesses, who had completed the investigation of this case and learned trial Court has rightly held the accused-appellants guilty and convicted them under Sections 325 and 452 IPC. The appeals filed by the appellants against judgment of conviction dated 2.3.2004 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri are without any merit and the same stand dismissed.

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Appeals against Quantum of Sentence

18. Learned counsel representing appellants - Ramji Lal and Pala Ram, contended that the appellants have already suffered much agony of protracted trial for more than 15 years in this case and also remained in custody for a period of over one month. So, they be released by reducing their sentence to the one already undergone by them.

19. Learned State counsel contended that no further leniency is called for on the point of sentence.

20. After considering rival contentions of both the parties, this Court is of the considered view that though, there is no ground for taking a lenient view on the point of sentence qua Ramji Lal and Pala Ram appellants in CRA-S-656-SB-2004, yet taking into consideration the fact that the appellants are facing trial for more than 15 years, their substantive sentence is reduced from RI 2 years to RI 1 year under Section 325 IPC with no change in fine. The order of sentence dated 3.3.2004 passed by trial Court stands modified accordingly.

21. As regards to appeal - CRA-S-911-SB-2004 filed by Deep Chand, the same has already become infructuous as the appellant was ordered to be released on probation and the period of probation has since expired and there is no allegation of violation of terms and conditions of probation.

22. In view the above findings, there is no merit in the revision petition filed by the complainant, Roop Chand. More so, no one has appeared on behalf of the revisionist. Hence, the same stands dismissed.

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23. Resultantly, **CRA-S-656-SB-2004** stands partly allowed and the sentence awarded to appellants, Ramji Lal and Pala Ram is reduced from RI 2 years to RI 1 year under Section 325 IPC with no change in fine amount. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court. **CRR-293-2006** filed by the complainant for enhancement of sentence awarded to the appellants is also dismissed. **CRA-S-911-SB-2004** stands dismissed as infructuous.

(SHEKHER DHAWAN)
JUDGE

October 03, 2017
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Whether speaking/reasoned :	Yes
Whether Reportable :	Yes