

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

Crl. Appeal S-841-SB of 2004
Date of Decision : June 01, 2017

Sukhi and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Manoj Bajaj, Advocate
for the appellants.

Mr. Kapil Aggarwal, Addl. A.G., Haryana.

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

The appellants, namely, Sukhi, Omi and Chander, who are brothers being sons of Muni Lal and residents of village Phulwari, Tehsil Palwal, District Faridabad, have filed the present appeal against the judgment and order dated 26/29.3.2004 passed by learned Additional Sessions Judge, Faridabad whereby they were convicted and sentenced as below:-

- i) Omi under Section 323 IPC whereas Sukhi and Chander under Section 323 read with Section 34 IPC to undergo rigorous imprisonment for six months each;

- ii) Sukhi and Chander under Section 324 IPC whereas Omi under Section 324 read with Section 34 IPC to undergo rigorous imprisonment for two years each; and
- iii) Sukhi and Chander under Section 326 IPC whereas Omi under Section 326 read with Section 34 IPC 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 undergo further rigorous imprisonment for three months.

All the sentences were ordered to run concurrently. Period, if any, already undergone by them was ordered to be set off against the term of sentence awarded. The fine imposed by the trial Court was deposited by them there and then.

The appeal came to be admitted on 22.4.2004. Subsequently vide order dated 3.9.2004, a co-ordinate Bench of this Court ordered the release of the appellants on bail subject to furnishing of bonds to the satisfaction of the Chief Judicial Magistrate, Faridabad.

According to the prosecution, on 7.5.1999 at about 6.00 a.m., Baljeet was preparing to fix khunta in front of his house

for tethering cattle. Sukhi-appellant, who resided in the adjacent house, protested to the same and stated that no khunta would be allowed to be fixed. This resulted into a verbal altercation. Sukhi-appellant carrying an axe, Omi-appellant carrying a lathi and Chander-appellant, who was also armed with an axe, pounced upon Baljeet, his wife Shyamwati and their son Anil. Omi gave a lathi blow on the back of Shyamwati whereas Sukhi gave an axe blow on the head of Baljeet. Chander also gave an axe blow on the head of Shyamwati. Omi gave lathi blows on the person of Baljeet. Anil was also given a lathi blow on his back by Omi. One Bhana Ram, who was relative of Baljeet, intervened and rescued the complainant party. All the injured were, thereafter, removed to Civil Hospital, Palwal from where Baljeet was referred to B.K.Hospital, Faridabad whereas Shyamwati and Anil were administered first aid in the hospital and they were, thereafter, discharged.

It is also the case of the prosecution that on the statement of Shyamwati, FIR No. 143 dated 8.5.1999 under Sections 323/324/34 IPC was registered at Police Station Sadar, Palwal against the three appellants. Subsequently, after receiving medical opinion, the police added the offence under Section 307 IPC in the FIR. The appellants were arrested and on completion

of the investigation, final report under Section 173 Cr.P.C. was submitted in the Court of the Ilaqa Magistrate from where it was further committed to the Court of Sessions.

In order to prove its case, the prosecution examined PW2 Shyamwati, PW4 Baljeet Singh and PW5 Anil, who deposed about the manner in which the occurrence had taken place. All of them categorically stated about receiving of injuries at the hands of the appellants.

The medical evidence was brought on record by the prosecution by examining PW1 Dr. S.M.Mehra, who had radiologically examined PWs Shyamwati and Anil, PW6 Dr. Deepak Aggarwal, who proved the discharge summary of Baljeet and PW8 Dr. M.C. Sehrawat, who testified about medico-legally examining the three injured, namely, Baljeet Singh, Shyamwati and Anil besides proving the nature of injuries sustained by PW4 Baljeet. PW8 Dr. M.C. Sehrawat during his cross-examination also stated about conducting medico-legal examination of Sukhi, Chander, Rajni, Vimla and Roopwati on the accused side.

The investigation part of the case was brought on record by the prosecution by examining PW3 ASI Keshav Ram,

PW7 Inspector Sawtantra Singh, PW9 ASI Dalbir Singh and PW10 Constable Subey Singh.

When examined under Section 313 Cr.P.C., the appellants pleaded their innocence and claimed that they have been falsely implicated. However, no evidence was led by them in their defence.

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

This Court has heard learned counsel for the appellants, learned Additional Advocate General, Haryana and scanned the evidence with their able assistance.

Having heard learned counsel for the parties, this Court finds that PW2 Shyamwati, PW4 Baljeet Singh and PW5 Anil, who had received injuries in the occurrence in question, have categorically deposed about the manner in which the occurrence had taken place. Their testimonies are corroborated by the medical evidence. Even the investigating agency after collecting the relevant material, had come to the conclusion that the appellants had committed the offences under Sections

307/324/323/34 IPC.

It is true that the occurrence had taken place on 7.5.1999 at 6.00 a.m. whereas the FIR came to be recorded on 8.5.1999 on the statement of PW2 Shyamwati but that will not render the prosecution case doubtful. It has come on the record that after receipt of intimation Ex. PJ from Civil Hospital, Palwal, the police had reached the said hospital but by that time Baljeet Singh stood referred to B.K.Hospital, Faridabad whereas Shyamwati and Anil had already been discharged. It being a case under Section 307 and allied offences of IPC, there was no necessity of sending the special report immediately to the Ilqa Magistrate after the recording of the FIR. Similarly, the fact that the blood stained clothes worn by the injured and blood stained earth at the spot had not been taken into possession is no ground to reject the prosecution case outrightly. The occurrence had taken place in the village street and, therefore, with the passage of time the blood stains at the spot would have disappeared. The injured after receiving the injuries on their persons and consequently the clothes worn by them getting blood stains is not sufficient to disbelieve their testimonies as they were not aware of the intricacies of law requiring them to produce their blood stained clothes before the police.

It has come on the record by way of opinion Ex. PM given by PW8 Dr. M.C. Sehrawat, who had mentioned therein that the injuries on the person of Baljeet Singh were dangerous to life. It has also come on the record that there was a compound depressed fracture of frontal region with frontal lobe contusion noticed on the head of Baljeet Singh. However, as no opinion had been given by the doctor that the injuries received by Baljeet Singh were sufficient to cause death in the ordinary course of nature, the trial Court absolved the appellants under Section 307 IPC and, instead, convicted them under Section 326 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than eighteen years. The appellants are presently on bail pursuant to the order passed by this Court on 3.9.2004. According to learned counsel for the appellants, none of the appellants is a previous convict. The occurrence in question had taken place on a petty issue i.e. fixing of khunta in the street and, thus, the attack on the complainant party was not pre-meditated. Further, injuries were also received by the accused side. As per the custody certificates already brought on

record by the learned State counsel, the appellants have undergone total sentence of five months and eighteen days each out of the sentence of four years imposed upon them. None of them is shown to be either involved or convicted in any other case.

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, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants for the offences under Sections 326/324/323/34 IPC, as ordered by the trial Court, is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

June 01, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No