

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

Crl. Appeal S-984-SB of 2004
Date of Decision : February 17, 2017

Sunder Kumar and others

.....Appellants

VERSUS

State of U.T., Chandigarh

.....Respondent

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

Present : Mr. S.S.Lamba, Advocate
as amicus curiae for the appellants.

Mr. Gagandeep S. Wasu, Addl. Public Prosecutor
for U.T., Chandigarh.

T.P.S. MANN, J.

The appellants have filed the present appeal for challenging the judgment and order dated 9.4.2004 passed by learned Additional Sessions Judge, Chandigarh whereby they stand convicted under Sections 323/326/34 IPC and sentenced as below:-

- i) Arun Kumar @ Sonu to undergo rigorous imprisonment for six months under Section 323 IPC whereas Devinder Chauhan @ Sonu and Sunder Kumar to undergo rigorous imprisonment for four months each under Section 323 read with section 34 IPC; and

- ii) Sunder Kumar to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- under Section 326 IPC and in default of payment of fine, to further undergo rigorous imprisonment for six months whereas Arun Kumar @ Sonu and Devinder Chauhan @ Sonu to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each under Section 326 read with Section 34 IPC and in default of payment of fine, to further undergo rigorous imprisonment for six months.

All the sentences were ordered to run concurrently.

The period of detention, if any, already undergone by them during the investigation and trial of the case was ordered to be set off against the substantive sentences of imprisonment imposed upon them.

According to the prosecution, on 21.12.2001 when ASI Devinder Singh of Police Station Manimajra, Chandigarh was present on patrol duty in the area near Bachan Dhabha, Main Bazar, Manimajra alongwith other police officials, one Ashfaq Ahmed met him and got recorded his statement that he worked in TV repair shop of his brother at village Kishangarh, Chandigarh. Arun Kumar @ Sonu, his maternal uncle Sunder Kumar and Devinder Chauhan @ Sonu-appellants became friendly with him. They also started visiting each others place. Arun Kumar @

Sonu had a misunderstanding that the complainant had been flirting with his sister Meenu. Arun Kumar @ Sonu enquired from the complainant about the matter who told him that there was no truth therein. However, the misunderstanding persisted in the mind of Arun Kumar @ Sonu. On 20.12.2001 at 9.30 p.m., complainant alongwith his cousins Kamrudin and Salaudin was standing near his house. Arun Kumar @ Sonu while accompanied by his maternal uncle Sunder Kumar came there on a scooter bearing registration No. CHM-178. They told the complainant that their motor cycle had developed some problem near Kharar and, accordingly, they solicited his help. Believing their word, the complainant accompanied Arun Kumar @ Sonu and Sunder Kumar on the above scooter and reached Mohali. After stopping the scooter near an office, Arun Kumar @ Sonu entered the said office. Devinder Chauhan @ Sonu emerged out of the office and called Sunder Kumar, who was standing with the complainant at that time and whispered some thing in his ear. Thereafter, they called the complainant near them and asked them to wait there. At about 12.00 midnight, Arun Kumar @ Sonu came out of the office after finishing his work. Thereafter, they left for the place where the motor cycle had gone out of order. When they reached near Swaraj Tractor Factory, Chappar Chiri on the scooter, Devinder Chauhan @ Sonu who was driving it,

stopped the scooter on the pretext of urinating. All of them alighted from the scooter. Devinder Chauhan @ Sonu and Sunder Kumar caught hold of the complainant from his arms whereas Arun Kumar @ Sonu put a thin steel wire around the neck of the complainant. The complainant fell down. The accused started beating him. Sunder Kumar gave some blow with something on the right wrist of the complainant. The complainant was then dragged on to the edge of the road and given beatings. The complainant raised hue and cry. On seeing lights of an approaching vehicle, the accused ran away on their scooter. The complainant kept on groaning with pain. In the morning, he found that his gold chain, ring and earrings were missing. The complainant went to his house by taking an auto rickshaw. According to the complainant, the accused had tried to kill him.

On the basis of the statement made by complainant-Ashfaq Ahmed, FIR No. 241 dated 21.12.2001, under Sections 364/34 IPC was registered at Police Station Manimajra, UT, Chandigarh.

During the investigation of the case, ASI Devinder Singh took into possession the sweater and pant of complainant-Ashfaq Ahmed into police possession. The Investigating Officer moved an application for medical examination of the complainant and then got him medico-legally examined. He prepared rough

site-plan of the place of occurrence and recorded the statements of the witnesses. Two of the accused, namely, Sunder Kumar and Devinder Chauhan @ Sonu were arrested on 21.12.2001. On the disclosure statement of Sunder Kumar, scooter bearing registration No. CHM-178, make Bajaj Chetak, was taken into possession. Accused-Arun Kumar @ Sonu was also arrested on 23.12.2001. Pursuant to disclosure statement suffered by him, the accused got recovered stolen earrings from his house at Manimajra. After obtaining the report of CFSL, Chandigarh, challan was presented against the accused in the Court of the Ilaqa Magistrate. The case was, thereafter, committed to the Court of Sessions where the three accused were charged for committing the offences under Sections 364, 323, 326 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 Sarabjit Singh, PW2 Ashfaq Ahmed, complainant injured, PW3 Salaudin, PW4 Kamrudin, PW5 Dr. D.C.Chauhan, PW6 Dr.Sanjiv, Senior Scientific Officer, CFSL, Sector 36, Chandigarh, PW7 C. Yash Paul, PW8 C. Suresh Kumar, PW9 HC Zile Singh, PW10 HC Anil Kumar, PW11 ASI Devinder Singh, IO of this case, PW12 HC Satnam Singh, PW13 ASI Asha Sharma and PW14 Dr.Veena Garg, Medical Officer, General Hospital, Chandigarh and, thereafter, evidence of the prosecution was closed by the

learned Public Prosecutor for the State.

When examined under Section 313 Cr.P.C., the accused denied the allegations of the prosecution case. They stated that they had been falsely implicated by complainant-Ashfaq Ahmed by concocting the story of abduction and beatings. As a matter of fact, the complainant, who was residing about 1½ kilometres away from the residence of Arun Kumar @ Sonu-accused, used to loiter around his residence and pass remarks against his sister. Accused-Sunder Kumar and Devinder Chauhan @ Sonu had asked the complainant not to unnecessarily loiter near the house of Arun Kumar @ Sonu-accused. No such incident had taken place near Swaraj Mazda Factory, Chappar Chiri. The entire case was fabricated by the complainant.

In their defence, the accused examined DW1 Rajinder Kumar and DW2 Pammi Sharma.

Learned trial Court after hearing learned Public Prosecutor for the State and the learned defence counsel besides examining the record, acquitted the appellants of the charge under Section 364 IPC. However, they were convicted and sentenced for the offences under Sections 323/326/34 IPC, as mentioned above.

This Court had heard learned counsel for the

appellants and learned Additional Public Prosecutor for U.T., Chandigarh besides scanning the evidence with their able assistance.

It is the case of the prosecution that Devinder Chauhan @ Sonu and Sunder Kumar-appellants had caught hold of the complainant from his arms. It was followed by Arun Kumar @ Sonu-appellant putting a thin steel wire around the neck of the complainant. As a result, the complainant fell down. He was then given some blows by Sunder Kumar on his right wrist. The complainant was medico-legally examined by PW14 Dr.Veena Garg, who had found the following injuries on his person:-

- “1. Lacerated wound of 3 cm x 1/2 cm on the front of the neck. No fresh bleeding present. Very less amount of pus comes out from the wound. No stitching done only dressing done.
2. Lacerated wound of 6 cm x 3 cm on the right upper arm 2 cm just above the right wrist joint. Tendon exposed. Small amount of pus comes out. Stitching not done and only dressing was done. Advised X-ray right fore-arm AP and lateral view and sent for the orthopaedic opinion.
3. Multiple abrasion contusion of various sizes on the face, both legs and both feet, colour of the abrasion contusion reddish bluish.”

Injuries No. 1 and 3 were declared simple whereas

X-ray examination was advised qua injury No.2. Complainant-Ashfaq Ahmed was, thereafter, referred to PGI, Chandigarh where he was examined by PW5 Dr. D.C.Chauhan, who had deposed that he had found an incised cut injury on the right wrist, volar aspect and neck. He, further, proved that the wound on the right wrist was measuring 6 x 2 cm and tendons were cut. As such, this injury which was on the right wrist of the complainant and attributed to Sunder Kumar was opined to be grievous in nature.

Regarding the occurrence in which complainant-Ashfaq Ahmed had received injuries, there is solitary testimony of the complainant himself, who had stepped into the witness box as PW2. As the said statement is fully corroborated by the medical evidence by way of the testimonies of PW14 Dr. Veena Garg and PW5 Dr. D.C.Chauhan, it can safely be concluded that the appellants had caused injuries to him. In order to establish that the complainant had not received injuries in the manner as alleged by him and, on the other hand, the complainant had sustained the injuries by falling in a ditch, the defence relied upon the testimony of DW1 Rajinder Kumar. However, his testimony does not inspire confidence. He appears to have deposed at the instance of the appellants in order to save them. As such, no benefit of any sort can be extended to the appellants. DW2

Pammi Sharma has deposed that the complainant used to stand by the side of his house which was opposite to the house of the accused. Further, he had been asking the complainant not to stand there. Even the accused used to complain about the complainant standing opposite to their house. In cross-examination, he testified that the accused had a quarrel with the complainant on account of his standing in front of their house. Thus, the witness, instead of supporting the accused, has further proved the prosecution case that the accused had a grudge against the complainant as the latter used to have an evil eye on the sister of Arun Kumar @ Sonu-appellant.

While making statement Ex. P2 and narrating the manner in which he had received injuries, the complainant had stated that it was Sunder Kumar, who had given him a blow with some thing on his right wrist. During medico-legal examination, which was conducted by PW14 Dr.Veena Garg, injury No. 2 which was 2 cm above the right wrist joint of the complainant was noticed. The said injury was found to be lacerated in nature. It is true that PW5 Dr. D.C.Chauhan had testified that he had found incised cut injury on the right wrist and during operation, he had repaired both the cut tendons and, as such, the said injury was grievous. However, as the complainant while lodging FIR and subsequently while deposing before the trial Court as PW2 did

not state that any of the accused was carrying some sharp edged weapon with him and used the same in causing injuries, especially an injury on right wrist, in such a situation, the conviction of Sunder Kumar under Section 326 IPC for causing the grievous injury on the right wrist of the complainant ought to be converted to one under Section 325 IPC.

The appellants are facing the agony of criminal prosecution for the last more than fifteen years. The only grievous injury falling within the ambit of Section 325 IPC was on the right wrist of complainant-Ashfaq Ahmed. The remaining injuries were simple in nature. From the custody certificates already brought on record by the learned State counsel, it is made out that none of the appellants is either involved or convicted in any other case. Under these circumstances, it would be in the fitness of things to extend the benefit of probation to the appellants.

Resultantly, the conviction of Arun Kumar @ Sonu-appellant under Section 323 IPC and of Devinder Chauhan @ Sonu and Sunder Kumar under Section 323 read with Section 34 IPC are upheld. The conviction of Sunder Kumar under Section 326 IPC is altered to one under Section 325 IPC whereas the conviction of Arun Kumar @ Sonu and Devinder Chauhan @ Sonu under Section 326 read with Section 34 IPC is altered to

one under Section 325 read with Section 34 IPC. The sentences of imprisonment imposed upon them by the learned trial Court are set-aside. Instead, they are ordered to be released on probation subject to their furnishing of appropriate bonds to the satisfaction of Chief Judicial Magistrate, Chandigarh within three months from today with an undertaking to keep peace and be of good behaviour for a period of two years and to receive the sentence as and when called upon to do so. The fine of Rs.1,000/- imposed upon each of the appellants shall be treated as costs of proceedings. The appellants shall also deposit an amount of Rs.5,000/- each to be paid as compensation to complainant Ashfaq Ahmed.

The appeal is, accordingly, disposed of.

February 17, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No