

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-2530-SB of 2012

Date of Decision: 18.11.2017

Parvinder Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Veerpal Kaur, Advocate
for the appellant.

Mr. Bhupender Beniwal, AAG, Punjab.

ANITA CHAUDHRY, J

This appeal is directed against the order of conviction and sentence dated 5.6.2012 recorded by the then Sessions Judge, Kapurthala. The appellant had been convicted and sentenced to five years rigorous imprisonment along with a fine of Rs. 10,000/- under Section 307 IPC. He was also convicted and sentenced to rigorous imprisonment for one year under Section 324 IPC and rigorous imprisonment for six months under Section 323 IPC.

The injured in this case was Sandeep Kaur wife of the accused. She had been married to Parvinder Singh for over 10 years and had two children. There were constant quarrels between the couple and she had been living with her parents for the last two years. The allegations were that on 27.12.2011, at about 9.15 A.M., she along with her father were going to the boutique when Parvinder Singh came with a *kirpan* and shouted that he would kill her and inflicted a *kirpan* blow which hit on the left side of her

head. He gave another blow with the intention to kill. The accused then

dragged her by her legs. The allegations were that the accused gave another blow from the blunt side and the incident was witnessed by Joga Singh. On seeing the people the accused managed to run away from the spot.

The police completed the investigation and filed the challan against the accused under Section 307, 324, 323 IPC.

The case was committed. Charge was framed and the prosecution examined five witnesses namely Sandeep Kaur PW-2 and Joga Singh PW-3 besides the medical officer and the investigating officer.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and abjured the trial. He did not lead any evidence though opportunity was granted.

The trial Court extensively referred to the evidence and noted that injury No. 1 was inflicted with a sharp edged weapon whereas two other injuries were simple in nature and since the injury was on the head and the accused had inflicted three *kirpan* blows, therefore, recorded a finding that there was an intention to kill and convicted the appellant to the sentence mentioned hereinbefore.

The submission on behalf of learned counsel appearing for the appellant is that no injury was declared to be grievous nor it was declared dangerous to life and there was no evidence that there was any intention of causing death and merely inflicting one injury on the head would not attract Section 307 IPC. It was urged that had the intention been to kill Sandeep Kaur, the second blow with the *kirpan* would have been from the sharp side. The counsel had referred to the statement of Sandeep Kaur and had urged that as per the injured the second blow was given from the blunt side. The

than two years and three months out of five years and the sentence be modified to the period already undergone. It was also urged that the accused was presently on bail. Reliance was placed upon ***Gurnam and others versus State of Haryana 2012 (1) R.C.R. (Criminal) 297.***

On the other hand, the State counsel supports the judgment and urges that the fact that the appellant had come armed with a *kirpan* and by itself shows that there was an intention to kill and the injury was inflicted on the head.

It would be necessary now to notice the injuries sustained by Sandeep Kaur. The medical officer had noted the following injuries:-

1. *An elliptical incised wound 6 cm x 2 cm in the left temporo parietal region at 10 cm from left ear towards midline. A small bone chip 1 cm x 1 cm coming out along with skin. Fresh bleeding was present. Advised X-ray, Surgeon's opinion.*
2. *An abrasion 1 cm x 1 cm on the back of left elbow, fresh bleeding was present. Advised X-ray.*
3. *An abrasion 6 cm x .1 cm on the left side of the neck about 5 cm below the left ear. Fresh bleeding was present. Advised X-ray.*
4. *An abrasion 1 cm x 1 cm on the back of left hand near base of left little finger. Clotted blood was present. Advised X-ray.*
5. *An abrasion .5 cm x .5 cm on the back of right little finger of right hand in the middle.*

The medical officer had noted that only injury No. 1 was with a sharp edged weapon while the remaining injuries were with a blunt weapon. Ex. PA is the pictorial diagram showing the seat of injury. The injured was also referred to Radiologist and for surgeon's opinion and all the injuries

Since a limited prayer has been made, therefore the examination only is to the extent. It is to be seen whether the prosecution had been able to prove that Section 307 IPC was made out. Indeed there is an injury on the left temporo parietal region i.e. 10 cm away from the left ear towards the midline. The injured was also subjected to a radiological test but no fracture was found. The other injuries are abrasions. All the injuries were declared to be simple in nature. The trial Court had held the appellant guilty under Section 307 IPC since it found that the injury was with a *kirpan* and on the head of the injured and it assumed that there was an intention to kill. Counsel for the appellant had urged that the ingredients of Section 307 IPC can only be said to be made out in case the injury endangers the life of the injured and in this case there is no opinion nor the medical officer had stated so in her statement in the Court. It was also submitted that had the appellant wanted to kill the complainant then the second blow would have been from the sharp side.

Admittedly, no injury had been declared grievous. All the injuries were found to be simple in nature. There is one injury which is on the head which is stated to be with a sharp edged weapon. So far as the conviction under Section 323 and 324 IPC are concerned they have been proved and there is no challenge to it and are affirmed.

The moot point for consideration is whether the offence under Section 307 IPC had been made out. None of the injuries had been declared grievous or dangerous to life and this fact has been conceded by the State counsel. The trial Court also held that no injury was grievous or dangerous to life. In *Phan Rai versus Rajesh 1994(2) Criminal Court Judgments*

the trial Court had observed that Section 307 IPC was made out. It was observed that merely inflicting an injury on the head with a *kulhari*, which is a sharp edged weapon, would not attract the provision of Section 307 IPC.

The present case also has similar facts. None of the injuries were found to be grievous. None of the injuries were found to be dangerous to life. The medical officer had declared the injuries to be simple in nature. Had the intention of the accused been to cause death, he would have inflicted the second injury with the sharp side as well and with greater force. The prosecution had failed to prove that the injuries inflicted upon the injured were given with an intention to endanger life of the injured.

The conviction and sentence recorded under Section 307 IPC is set aside. The accused is acquitted under Section 307 IPC but the conviction recorded under Section 323 and 324 IPC is maintained. The maximum sentence awarded under Section 323 and 324 IPC had been undergone by the accused, therefore no further order needs to be made.

The appeal is partly accepted. The sentence is modified.

(ANITA CHAUDHRY)
JUDGE

November 18, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes