

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S 1606-SB of 2004 (O&M)

Date of Decision: October 22, 2018

Kuldip Singh Mehta & another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellants.

Mr. H.S.Sitta, AAG, Punjab,
for the State.

AMIT RAWAL, J.

Appellants Kuldip Singh Mehta and Sharda alias Bholi alias Beena are in appeal against the judgment dated 21.07.2004, whereby they have been convicted for commission of offences punishable under Sections 307 and 326 IPC and sentenced to undergo rigorous imprisonment for a period of four years under Section 307 IPC and 3 years under Section 326 IPC to run concurrently.

As per the case of the prosecution, on receipt of the complaint for having caused grievous injuries on the person of Monika by throwing acid on her in the new court premises, Jalandhar, the aforementioned persons were named as accused. Monika was married to appellant No.1 in the year 1986 and two children out of the marriage were born. Kuldip Singh along with his accomplice, i.e., appellant No.2, whose name surfaced later on, was carrying a can containing acid. Monika along with her brother

Lovel Kumar Kalia was to appear in the court to attend court proceedings

pending, though marriage between them had already been dissolved. After throwing acid, both the accused ran away. However, the victim-injured Monika was taken to Tagore Hospital, Jalandhar.

The accused were charge sheeted for commission of the aforementioned offences.

The prosecution examined as many as 12 witnesses including the doctors. While rejecting the defence of the appellants, the court below convicted and sentenced them.

There is no representation on behalf of the appellants. Accordingly, I proceed to decide the appeal in the absence of the counsel and the accused in view of the ratio decidendi culled out in **K.S.Panduranga Versus State of Karnataka, 2013(3) SCC 721.**

As per the grounds of appeal, the marriage between Kuldip Singh and Monika was dissolved in 2001, but many other cases were pending in different courts. The complainant did not go to the government hospital. There was a variation in the reports of the doctors as the doctor of Tagore Hospital opined that the victim had received 40% burn injuries, whereas as per the doctors of Christian Medical College, Ludhiana, it was to the extent of 28%. There cannot be any possibility that 12% of wounds or burns had healed in few days. The injuries were not dangerous to her life and, therefore, the appellants could not have been convicted under Section 307 IPC as the cosmetic surgery to perform was advised very next day. In fact, the appellants were never involved in the crime. Monika, wife of appellant No.1, pressurized him to transfer the property in her name and that was the reason of discord, therefore, falsely implicated in the commission of the alleged offences.

The appellants had not been identified. There was a long drawn litigation between the husband and wife. Reference has also been made to a CRM No.14879-M of 2000, wherein request for restoration of the possession of the property, impartial investigation and security against false implication was made. Ex.D4 copy of the suit revealed that restraint order was sought against Monika being defendant. Appellant No.1 submitted a representation (Ex.D9) to the Senior Superintendent of Police, Jalandhar apprehending danger to his life at the hands of Monika.

On the other hand, Mr. H.S.Sitta, learned Assistant Advocate General, Punjab representing the State supported the story of the prosecution, much less conviction as the factum of involvement of the accused in the commission of crime has been proved. Despite extensive cross-examination, nothing contrary to disbelieve their presence had been proved. Name of appellant No.2 as Sharda @ Bholi also surfaced later on, but witness identified the lady who threw acid on her and, thus, urged this Court for dismissal of the appeal.

Copy of the custody certificate of appellant No.1 Kuldip Singh Mehta has been brought on record, whereby he has undergone 2 years, 4 months and 28 days. This Court, vide order dated 23.09.2004 suspended the sentence of the appellants during the pendency of the appeal, which was admitted on 19.08.2004.

This Court, vide order dated 04.12.2017, in the absence of the counsel for the appellants and as well as appellants, issued notice to the appellants as to why the order suspending the sentence should not be withdrawn and in lieu, counsel had appeared but thereafter he sought adjournments on two occasions, but chose to remain absent.

On perusal of the file and the findings, I am of the view that there is no scope of succession of the appeal, for, version of the doctors with regard to the extent of burn injuries would be immaterial, particularly when PW-2 Lovel Kumar Kalia, brother of the victim, stated that on 03.05.2002 at about 10.15 AM, he accompanied his sister Monika to appear in the Court and seen Kuldip Singh Mehta and co-accused Sharda Bholi present in court, much less possession of a fevicol can and jug containing acid. Specifically attributed role to commission of offence. Both the accused had thrown acid on his sister. To a question in cross-examination, he admitted that the name of Bholi accused came to his knowledge on the evening of the incident. The factum of the various cases pending between Kuldip Singh and his sister, was though not denied. In his statement Ex.PC made before the police, stated that Bholi along with Kuldip Singh raised a lalkara, which was not recorded, thus, the same would not help the accused owing to attribution of specific role. Similar is the statement of PW-4 Monika, who identified both the accused who had thrown acid on her. In cross-examination, she specifically stated that accused Bholi used to accompany her husband. She did not know her name, but could identify her. The factum of Kuldip Singh dealing with some rubber chemical work at the time of the marriage put into cross-examination was also denied. Such a question to eye witness/victim leads to an irresistible conclusion that Kuldip Singh was having chemical business and, therefore, procurement of acid was not a problem. Such an offence, in my view, is most heinous, whereby face of the victim has been defaced. It cannot be believed that if a person who received 30% burn injuries would falsely implicate the innocent person and leave real culprit to go free. I am of the view that the prosecution had proved the involvement of

the accused in the commission of the offence.

Resultantly, the appeal is dismissed. The order dated 23.09.2004 suspending the sentence of the appellants is hereby recalled. The appellants are directed to surrender before the Chief Judicial Magistrate, Jalandhar within a period of two months from the date of order, failing which CJM is directed to issue arrest warrants of the appellants to serve the remaining sentence.

October 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No