

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

CRA-S-1693-SB-2004 (O&M)
Date of decision: 07.12.2018

Jaibir & anr.

... Appellants

versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Deepinder Singh, Advocate with
Mr. Ram Krishan, Advocate
for the appellants.

Mr. R.K.Gupta, Advocate
for appellant No.2.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

Convicts Jaibir and his brother Jagbir have filed the instant appeal challenging the judgment of conviction and order of sentence dated 13.08.2004 passed by learned Sessions Judge, Jind wherein they were sentenced to undergo rigorous imprisonment for a period of 07 years for the offence punishable under Section 307 read with Section 34 IPC and to pay a fine of ₹ 3,000/- each and in default of payment of fine, undergo further imprisonment for a period of six months.

2. Prosecution case in brief is that father of the accused-appellants namely Rameshwar and their uncle namely Mohinder were nourishing a grudge against the family of complainant Ram Mehar pertaining to some dispute over a wall. A day prior to the occurrence i.e. on 11.07.2000, accused Rakesh and appellant Jagbir came in front of the house of the

complainant Ram Mehar in a drunken state and used abusive language against him. The following morning on 12.07.2000, while the complainant Ram Mehar was going out for a walk, both the appellants along with co-accused Rakesh attacked him with gandasas. On a hue and cry being raised by the complainant, Sahab Singh and Daya Nand, father and uncle of Ram Mehar respectively, rushed to his rescue. Injured Ram Mehar was thereafter shifted to the hospital for treatment. On receipt of a ruqqa from the hospital, police went and recorded the statement of complainant Ram Mehar. Thereafter, FIR No.114 dated 12.07.2000 for the offence punishable under Section 307 IPC at Police Station Uchana (Jind) was registered and investigation commenced. The appellants were arrested on 22.08.2000. It would be pertinent to point out that co-accused Rakesh committed suicide on 13.07.2000 and thus, did not face trial. On completion of investigation, report under Section 173 Cr.PC was presented for prosecution of both the appellants under Section 307 IPC.

3. After framing of charges under Section 307 IPC, both the appellants pleaded not guilty and claimed trial.

4. In support of their case, prosecution examined as many as nine witnesses. PW-2 Complainant Ram Mehar and PW-3 Daya Nand (uncle of the complainant) have broadly deposed as per the prosecution version. Complainant Ram Mehar has categorically spelt out the roles of each of the accused in the occurrence inasmuch as accused Rakesh inflicted a blow on his head with a gandasa while appellants Jagbir inflicted a gandasa blow on his back and Jaibir gave a gandasa blow on his left hand.

5. PW-6 Dr. D.S.Deswal, who medico-legally examined the injured Ram Mehar on 12.07.2000 has further corroborated the ocular

testimony of both PW-2 and PW-3. At the time of admission in the hospital, Dr. D.S.Deswal (PW-6) found the following three injuries on the person of injured Ram Mehar:

i) Incised wound was present on occipital region of the skull.

Bleeding was present.

ii) Incised wound was present on the back of chest between two scapular regions. Bleeding was present.

iii) Incised wound was present on right hand dorsum. Bleeding was present.

According to PW-6 Dr. D.S.Deswal, these injuries had been inflicted with a sharp edged weapon. As per his opinion, injury No.1 was declared to be dangerous to life.

6. PW-8 Dr. Umesh Gupta, Sr. Resident, Surgery Department, PGIMS, Rohtak, who was also one of the doctors who treated the injured Ram Mehar, on examination, found that there was 8-10 cm lacerated/incised wound on scalp and one segment of bone was elevated and one depressed dura was found exposed. According to C.T. Scan, there was pneumo-cranium in brain parenchyma and overlying cerebral contusion. Haemorrhagic contusion was seen in right occipital region. There was fracture of right occipital bone. X-ray of skull showed fracture right parieto occipital bone.

7. The accused-appellants in their examination under Section 313 Cr.PC simply denied the incriminating circumstances appearing in the prosecution against them and pleaded innocence.

8. In defence, accused examined two witnesses namely DW-1 Soran and DW-2 Ishwar Singh, who deposed that the appellants had not

caused any injury to the complainant Ram Mehar.

9. Learned trial Court vide impugned judgment dated 13.08.2004 convicted both the accused-appellants for the offence under Section 307 read with Section 34 IPC and sentenced them to undergo imprisonment as mentioned above. Feeling aggrieved, the appellants preferred the instant appeal.

10. During the pendency of the appeal, appellant No.1 Jaibir died. Hence, the appeal qua appellant No.1 - Jaibir stood abated by this Court vide order dated 30.03.2017.

11. As far as appellant No.2 Jagbir is concerned, according to the custody certificate placed on record by the State counsel dated 14.11.2018, he has undergone 11 months and 11 days including remission out of total sentence of 7 years awarded to him.

12. Learned counsel for the appellant submitted that he does not challenge the appeal on merit and prays that a lenient view be taken for the appellant as he has undergone the agony of protracted trial of almost 18 years and the injury attributed to the appellant is simple in nature. Therefore, he prays for reduction in sentence of the appellant to the sentence already undergone by him.

13. I have heard learned counsel for the parties and perused the evidence on record.

14. There is ample evidence led by the prosecution to prove the guilt of the appellants under Section 307 read with Section 34 IPC. Both the material witnesses noticed hereinbefore have fully supported the prosecution case. The ocular evidence further stands fully corroborated with the medical evidence as well. Learned trial Court has analyzed the

prosecution evidence in detail and has recorded cogent reasons for convicting both the appellants under Section 307 read with Section 34 IPC. Learned counsel for the appellants could not adduce any meaningful argument to assail the conviction of the appellants in the aforesaid offence. Accordingly, conviction of the appellants under Section 307 read with Section 34 IPC is affirmed.

15. I have given my anxious consideration to the prayer made by the learned counsel for the appellant for reduction in sentence and submissions that the injury, which has been attributed to the appellant Jagbir on the back of the complainant was an injury of simple nature and that he had been convicted under Section 307 read with Section 34 IPC.

16. In my considered opinion, keeping in view the facts and circumstances of the case while maintaining the conviction of the appellant, it would be appropriate that the sentence imposed upon him is reduced to the one already undergone by him but the amount of fine is enhanced from ₹ 3,000/- to ₹ 25,000/-, which would be payable to the complainant Ram Mehar within a period of one month from the date of receipt of certified copy of this order. In default of payment of fine, the appellant Jagbir shall undergo rigorous imprisonment for a period of three months.

With this modification, the instant appeal stands disposed of accordingly.

07.12.2018
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No