

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

(1) Crl. Appeal No.S-1887-SB of 2004 (O&M)

Rampat and another

...Appellants

VERSUS

State of Haryana

...Respondent

(2) CRR No.56 of 2005 (O&M)

Sube Singh

...Petitioner

VERSUS

Rampat and another

...Respondents

Date of Decision: February 23, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.T.S.Sangha, Senior Advocate with
 Mr.Narinder Singh, Advocate
 for the appellants.

 Mr.Arjun Singh Yadav, Asstt. Advocate General, Haryana
 for the respondent-State.

 Mr.P.R.Yadav, Advocate
 for the petitioner-complainant.

INDERJIT SINGH, J.

By this common judgment, both the above-stated cases, arising
out of the same judgment, are being decided.

Accused-appellants Rampat and Asha Devi have filed appeal

against the judgment of conviction dated 11.09.2004 and order of sentence dated 15.09.2004 passed by learned Addl. Sessions Judge, Rewari, whereby accused Rampat was convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹15,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of four months under Section 307 IPC and he was further convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 324 IPC, whereas accused Asha Devi was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹7000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 307 IPC and to further undergo rigorous imprisonment for a period of one year under Section 324 IPC. Both the sentences were ordered to run concurrently.

Petitioner-complainant Sube Singh has filed the revision petition for enhancing the sentence imposed upon the accused and also for grant of compensation as no compensation was awarded by the learned trial Court.

The brief facts of the case are that on receiving ruqa regarding injuries on the person of Sube Singh, ASI Jagmal Singh reached General Hospital, Bawal, where he came to know that injured Sube Singh was taken to Lalita Memorial Hospital, Rewari. On reaching said hospital, he moved an application seeking opinion of the doctor regarding fitness of injured to make the statement, but he was declared unfit to make statement. Then ASI Jagmal recorded the statement of Sube Singh Ex.PA after visiting again to hospital and taking opinion of the doctor. Injured-complainant Sube Singh

got recorded his statement in which he stated that he has five daughters,

whereas his wife had already expired. He further stated that his elder daughter Sundeep had taken the examination of 10th class. On 27.07.2002, at about 2.00 p.m., there was a quarrel between his daughters and daughters of his neighbour Lakhi Ram, Jat. Thereafter, when he was bathing his buffalo, then accused Rampat along with his wife came there while abusing him. At that time, his elder daughter Sundeep was also there. The complainant also stated that he asked the accused that he will make understand his children but both the accused remained adamant and accused Rampat caused injury with his knife and stabbed him in the left side of his belly and accused Asha caused injury with a stone, which hit him on his right ear. He raised hue and cry, which attracted Rajinder, who reached the spot and rescued him. Thereafter, both the accused had gone to their house. It is further stated by the complainant that he was taken to CHC, Bawal, where he was medico-legally examined and referred to General Hospital, Rewari, but he was got admitted to Lalita Memorial Hospital, Rewari. On the basis of this statement, FIR was registered. Rough site plan was prepared. Statements of witnesses were recorded. Accused were arrested. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Sections 307 and 324 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Sube Singh,

complainant, who deposed the same facts as stated above while giving brief

facts of the case. In his statement, he also deposed that Jage Ram also reached there and in the meantime, he became unconscious. PW-2 Rajender Singh, eye witness, mainly deposed that on 27.07.2002, he was going towards Firni. When he reached near the house of complainant Sube Singh, accused Rampat took out knife and stabbed in the abdomen of Sube Singh. He also deposed that Asha picked up a stone and threw the same on the ear of Sube Singh. At that time, Sundeep daughter of Sube Singh was also present there. Sube Singh was bathing his buffalo at that time and he fell down after receiving injuries. Thereafter, both the accused ran away from there. Jage Ram also reached there on hearing noise. He further deposed that he left the spot as he had some urgent work, leaving Jage Ram there. PW-3 Jage Ram deposed that on 27.07.2002 at about 2.00 p.m., when he reached near the house of Sube Ram, he saw some persons near his house. Blood was oozing from the body of Sube Singh. He arranged a tractor. In the meantime, Sube Singh became unconscious. He took Sube Singh in the tractor to Civil Hospital, Bawal, first aid was given to him and he was referred to Rewari. He further deposed that Sube Singh was admitted in private hospital. PW-4 Dr.J.S.Mehra, deposed that on 27.07.2002, he was posted as MO, PHC, Bawal and he medico-legally examined Sube Singh and found following injuries:-

1. *There was an incised wound over the anterior abdominal wall, Tender abdomen tense. Vomiting was present. Size of abdomen was one inch x one inch. This injury was kept under observation for surgical opinion.*
2. *There was another incised wound over the right pinna of the size one inch deep to the cartilage. This injury was kept under observation for surgical opinion.”*

In the opinion of the doctor, the duration of both the injuries was within two hours and weapon used was sharp edged. He further deposed that on the application moved by the police, he stated that opinion regarding nature of injury has already been given by the surgeon concerned, so further opinion was not needed. PW-5 Dharampal, Draftsman, mainly proved the scaled site plan Ex.PE. PW-6 Constable Brahm Parkash deposed that he was present with ASI Jagmal in connection with the investigation of this case. He further deposed that on that day, they visited the house of accused, who produced knife which was taken into possession vide memo Ex.PF after duly sealed in a parcel. PW-7 SI/SHO Azim Khan, mainly deposed regarding preparing of report under Section 173 Cr.P.C. He further deposed that he formally arrested accused Asha Devi. PW-9 Constable Jagdish Chander mainly deposed regarding recording of formal FIR Ex.PA/2 on receipt of ruqa. PW-10 ASI Jagmal Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-11 Constable Daya Nand brought the summoned record and proved the report No.29 dated 27.07.2002. PW-12 Dr.Ghansham Mittal, Lalita Memorial Hospital, deposed regarding discharge summary of Sube Singh. He also deposed that patient was operated upon for the injuries. Operation notes are also mentioned in the discharge summary. He further deposed that he gave opinion Ex.PH/1 regarding injuries on the person of Sube Singh as per MLR and declared injury No.1 as dangerous to life and injury No.2 as simple in nature.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence

and pleaded themselves as innocent. Accused Rampat further pleaded that he had not inflicted any injury to the complainant. A buffalo had hit the complainant, as a result of which, he fell down on the iron edged bucket and received injuries and he has been falsely implicated in this case. Accused Asha Devi also took the same plea. In defence, accused examined DW-1 Jai Chand, who deposed that at about 1.30 p.m., Sube Singh was bathing his buffalo with a iron bucket. He was also standing along with Sube Singh in front of his house and was talking to Sube Singh. In the meanwhile, buffalo hit Sube Singh and he fell on iron bucket and sustained injury in his abdomen and on his eyes.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants argued that firstly, there is delay in recording the FIR. The occurrence took place on 27.07.2002 at 2.00 p.m. and the FIR was got registered on 28.02.2002 at 10.15 a.m. and this delay has been used by the complainant side to concoct a false version. He further argued that Asha Devi has been attributed injury with stone but said injury has been declared by the doctor to be caused by a sharp weapon. He next argued that prosecution version is improbable that the complainant has received the injury by falling on a bucket which had iron edge. He further contended that the injured was not admitted in General Hospital, rather, admitted in the private hospital and opinion regarding injury dangerous to life, has been given by the surgeon on the basis of MLR, whereas the injury has been declared as grievous in nature in the MLR. He also contended that prosecution has failed to prove

the guilt of the accused beyond doubt. Learned counsel for the appellants, in

the alternative, prayed for reduction of sentence imposed upon the appellants.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the statement of injured PW-1 Sube Singh, which has been duly supported by PW-2 Rajender Singh, eye witness. The ocular evidence is duly supported by medical evidence and investigation of the case. He further argued that defence version cannot be believed. No material contradictions in the statements of the PWs have been pointed out. He also contended that the delay in recording the FIR has been duly explained by the prosecution as the injured was unconscious and independent witness was not available. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

Learned counsel for the revision petitioner-complainant argued that the sentenced imposed upon the accused should be enhanced and compensation should also be awarded to the complainant.

On the other hand, learned counsel for the accused argued that sentence imposed by the learned trial Court is already excessive as there is only one main injury in the abdomen and there are no repeated blows. He also contended that complainant is not entitled to compensation.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, as regarding Asha Devi, I find that it is the case of the prosecution that she has thrown a stone upon Sube Singh and caused injury on the right pinna of the size one inch deep to the cartilage. This injury has been declared as incised wound over the right pinna by the doctor. Keeping in view the facts and circumstances of the present case and there being inordinate delay in recording the FIR, false

implication of Asha Devi cannot be ruled out. From the perusal of the evidence on record, it looks that the delay in recording the FIR has been used to implicate Asha Devi and a reasonable doubt exists regarding participation of Asha Devi in the occurrence. When accused Rampat had given the injury with knife as per prosecution version, then there is no question of giving injury with stone by Asha Devi and it looks improbable. Secondly, the doctor, who conducted the MLR has stated that this injury is incised wound but no dimensions of the injuries have been mentioned. This is a routine practice to implicate female members of a family to put pressure upon the accused side by using delay in recording the FIR. In the facts and circumstances of the present case, I find that a reasonable doubt exists regarding the injury given by Asha Devi or regarding her participation in the occurrence. There is also possibility that accused Rampat may have given second injury also with the knife as it is a incised wound.

Therefore, by giving benefit of doubt, appellant Asha Devi is acquitted of the charge framed against her. The judgment of conviction dated 11.09.2004 and order of sentence dated 15.09.2004 passed by learned Addl. Sessions Judge, Rewari, are set aside qua appellant Asha Devi.

Now, coming to the case of appellant Rampat, I find that complainant Sube Singh has deposed consistently regarding prosecution version. His statement has been duly supported by PW-2 Rajender Singh, eye witness. The perusal of the cross-examination of both these witnesses show nothing which may make their statements unreliable. No material contradictions have been pointed out in the prosecution version by learned counsel for the appellants which may go to the root of the case. No material

improvements have been pointed in the statements of the complainant and

eye witness. The ocular version is duly supported by medical evidence. Further, knife has been recovered from accused Rampat. The defence version given by accused cannot be believed. This defence version has come in the Court for the first time during the trial. Earlier, there was no version and no representation or application has been given to higher authorities regarding false implication of the accused. The motive is also there for quarrel and causing the injuries to Sube Singh. Therefore, defence version is not believable and statement of accused cannot be relied upon.

As regarding the injury, the doctor has correctly declared injury No.1 as dangerous to life as he operated upon Sube Singh and has given this opinion. Otherwise also, injury has been given in the abdomen, which itself shows the intention to kill. Therefore, the conviction of accused-appellant Sube Singh under Section 307 IPC is correct one. The other injury on the pinna is simple injury and accused has been correctly convicted under Section 324 IPC.

In view of the above discussion, I find that prosecution has duly proved its case beyond reasonable doubt against accused Rampat. The judgment conviction dated 11.09.2004 passed by learned Addl. Sessions Judge, Rewari, is correct, as per evidence and law and same is upheld qua appellant Rampat.

As regarding the sentence, I find that appellant Rampat is suffering from long protracted criminal proceedings since 2002. There are only two injuries, one is dangerous to life and second is simple one. The accused-appellant Rampat is stated to be a poor person and only bread earner of the family. In the facts and circumstances of the present case, the

sentence imposed upon appellant Rampat is reduced and he is directed to

undergo rigorous imprisonment for a period of five years instead of seven years under Section 307 IPC. However, the other sentence and sentence of fine, shall remain the same.

Therefore, CRA No.S-1887-SB of 2004 stands allowed qua appellant Asha Devi and the same stands dismissed qua appellant Rampat with the above-said modification in the sentence.

As regarding CRR No.56 of 2005, filed by petitioner-complainant, I find that there are only two injuries on the person of Sube Singh, one in the abdomen which was first declared as grievous and then dangerous to life and second injury is on right pinna, which is simple. No ground is made out for enhancing the sentence. The trial Court has already awarded the maximum sentence under Section 307 IPC, which has already been reduced to five years, as stated above, in the appeal.

As regarding the compensation, I find that in this case, though the complainant-injured has suffered injuries dangerous to life but no compensation has been awarded by the trial Court. Keeping in view the facts and circumstances of present case and in view of the fact that no income of the accused has been brought on record, I award compensation of ₹40,000/- to the complainant to be paid by accused Rampat within two months from receiving the certified copy of this order. The amount of compensation be given to the petitioner-complainant as per law.

Therefore, CRR No.56 of 2005 stands partly allowed accordingly.

Since, appellant Asha Devi is on bail, her bail/surety bonds stand discharged.

As appellant Rampat is on bail, his bail bonds stand cancelled

and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

February 23, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No