

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

CRA-S-2339-SB-2004(O&M)
Date of decision: 11.12.2018

Mohd. Ikhlakh and anr.

.... Appellants

vs.

State of Haryana

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANAJARI NEHRU KAUL

Present: Mr. Lalit Yadav, Advocate for
Mr. S.R.Hooda, Advocate
for the appellants.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal has been filed challenging the judgment of conviction dated 19.10.2004 and order of sentence dated 21.10.2004 passed by learned Addl. Sessions Judge, Sonapat vide which the accused-appellants were convicted under Sections 328/34 and 394 IPC. Both the appellants were sentenced to undergo rigorous imprisonment (in short 'RI') for a period of four years along with a fine of ₹ 2,000/- each under Section 394 IPC and in default of payment of fine, they were ordered to undergo further RI for a period of three months. The appellants were also sentenced to undergo RI for a period of two years along with a fine of ₹ 1,000/- each for the offence punishable under Section 328/34 IPC and in default of payment of fine, they were ordered to undergo further RI for a period of one month. All the sentences were ordered to run concurrently.

2. The case of the prosecution is Mohd. Ibrar Alam (PW-8) in his application EX.PE given to the police on 03.06.2003 stated that he along

with the appellants was residing at Loni, Delhi and doing the work of painting. The appellants as well as complainant on the intervening night of 21/22.05.2003 went to village Shehjadpur, District Sonapat. The complainant was carrying a sum of ₹ 15,000/- in cash with him. On reaching the said village, the appellants gave biscuits and bananas to the complainant to eat. On consumption of the same, the complainant felt drowsy. Thereafter, the appellants and the complainant walked some distance. The appellants while walking with the complainant inflicted injuries on him with iron rods, took away ₹ 15,000/- and left him at the spot believing him to be dead. On the next day, complainant was got admitted in the Civil Hospital, Sonapat in an unconscious state by Hari Om (PW-2). On regaining a little consciousness, complainant sent a message to his brother-in-law namely Mohd. Jamaul (PW-9), who came to Sonapat and shifted him to a hospital at Delhi where he was medically treated. It was thereafter on 03.06.2003, the complainant along with his brother-in-law Mohd. Jamaul (PW-9) came to the Police Station Sadar, Sonapat where he moved an application Ex. PE leading to the registration of formal FIR No.94 dated 03.06.2003 for the offence punishable under Sections 328, 392 and 394 IPC.

3. The investigation was thereafter set in motion by the investigating agency. The appellants were arrested on 14.06.2003 by the police. On their interrogation, both the appellants namely Mohd. Ikhlak and Mohd. Shehjad suffered their respective disclosure statements Ex.PB and Ex.PH/2. In pursuance of their disclosure statements, an iron rod and ₹ 2,200/- in cash were recovered from appellant No.1- Mohd. Ikhlakh while another iron rod was recovered from appellant No.2 Mohd. Shehjad Ex.P2.

4. Both the appellants were challaned and subsequently charge-sheeted for the offences punishable under Sections 328/34 and 394 IPC to which they pleaded not guilty and claimed trial. Prosecution in support of their case examined as many as 10 witnesses besides tendering certain documents. All the incriminating circumstances appearing in the prosecution case were put to the appellants under Section 313 Cr.PC wherein they pleaded false implication. The defence examined DW-1 Mohd. Shamin Akhtar and also tendered some documents in their defence.

5. Learned counsel for the appellants while impugning the judgment of trial Court has argued that the appellants and the complainant had a dispute over some piece of land dating back to the year 1994 and hence, had been falsely implicated in the case. He has further drawn my attention to the MLR Ex.PF of the complainant wherein the name of the patient is recorded as 'Aslam' whereas the name of the complainant is Mohd. Ibrar Alam. He has thus, argued that the FIR which was lodged after a gap of 11 days coupled with the aforementioned facts goes a long way in casting a shadow of doubt on the prosecution case, for which benefit of doubt should go in favour of the appellants.

6. Learned State counsel, on the other hand, has vehemently opposed the submissions made by learned counsel for the appellants by contending that there is sufficient evidence to hold the accused-appellants guilty and fully liable for offence under Sections 328/34 and 394 IPC and prayed for dismissal of the instant appeal.

7. I have heard learned counsel for the appellants as well as learned State counsel and gone through the evidence and other material available on record.

8. The complainant was found lying unconscious with injuries on his person in the fields in village Shehjadpur by PW-2 Hari Om, who was a total stranger to the complainant. It was PW-2 Hari Om, who took him to the Civil Hospital, Sonapat where he was medico-legally examined by PW-6 Dr. Rajiv Sethi. As per MLR Ex.PF, the complainant was admitted by PW-2 Hari Om with the following injuries on his person at the time of admission:

- i) There was a lacerated wound on right eye-brow lateral side size 1.5 x 0.4 cms x @ muscle deep. X-ray advised and referred to Surgeon.
- ii) A lacerated wound on left half of upper lip. Full thickness of the part missing.
- iii) A lacerated wound 1 cm x 0.3 cm x muscle deep in lower lip left to the midline.
- iv) A lacerated wound 2 x 0.6 cm x muscle deep present on the right side of chin. X-ray advised.
- v) Few teeth missing in upper jaw as well as lower jaw. Injury referred to Dental Surgeon for expert opinion.
- vi) Diffused swelling right upper and lower eye-lid with sub-conjunctival hemorrhage right eye. Injury was referred to eye-surgeon.

Injuries as per Dr. Rajiv Sethi (PW-6) had been caused with a blunt weapon within probable duration of 24 hours. Injury No.5 was opined to be grievous in nature.

10. Besides this, it has come in evidence of the complainant that when he regained consciousness, he gave out a few details of himself as

well as the telephone number of PW-9 Mohd. Jamaul i.e. his brother-in-law, who was then telephonically informed by the hospital authorities.

11. As far as the discrepancies qua name being 'Mohd. Ibrar Alam' and not 'Aslam' on the MLR is concerned, it is too minor a discrepancy to be taken note of as it could have been misspelled.

12. Learned counsel for the appellants has laid much stress on the delay in lodging of FIR inasmuch as the occurrence is of 21/22.05.2003 and FIR was lodged on 03.06.2003.

13. I am unable to agree with the learned counsel for the appellants qua the delayed FIR as the testimony of the injured complainant coupled with the testimonies of PW-2 Hari Om and PW-9 Mohd. Jamaul conclusively establishes that the complainant was not in a fit medical condition when he was admitted in Civil Hospital, Sonapat. Moreover, PW-6 Dr. Rajiv Sethi has categorically stated in his deposition that he had sent ruqa Ex.PE to the police immediately after the admission of the complainant in the hospital. This part of the testimony of the complainant has gone unchallenged from the side of the defence. In any case, delay if any, cannot be said to be fatal in the facts and circumstances of the case. There is no reason for the complainant to falsely implicate the appellants much less to fabricate injuries on his person to falsely implicate them. The nature of injuries show that they could not have been self inflicted or manipulated. The suggestion of defence that they have been falsely implicated on account of some land dispute has remained a suggestion only on paper. In support of their defence, the appellants examined DW-1 Mohd. Shamin Akhtar, who deposed qua some land dispute pertaining to the year 1994. The occurrence in hand took place in 2003. There is however,

nothing on record to suggest that during the intervening period between 1994 and 2003, if any, untoward incident took place between the parties. Hence, on the face of it, this defence appears to be an after thought and totally fabricated.

14. In the light of the aforementioned discussion, I do not find any legal infirmity and lacuna in the prosecution case from which it can be said that the guilt of the appellants has not been proved beyond reasonable doubt. The same is accordingly dismissed. The impugned judgment of conviction and order of sentence dated 19/21.10.2004 is accordingly upheld. A copy of this order be sent to the Chief Judicial Magistrate, Sonapat, who shall issue warrants of arrest against the appellants to undergo the remaining part of their sentence.

11.12.2018
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes
Whether reportable?	Yes