

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

CRA-S-1211-SB of 2006

DATE OF DECISION :- March 26, 2018

Manish and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Manoj Kumar, Advocate for the appellants.

Mr. Sulinder Kumar, Assistant Advocate General, Haryana.

Accused Roshni, Manish, Shyam Lal and Mukesh faced trial by Additional Sessions Judge, Faridabad, who vide judgment dated 24.5.2006 convicted them for offences under Sections 323, 325, 333, 342, 353, 120B IPC read with Section 34 IPC and sentenced them as follows :-

“Accused Manish and Mukesh are sentenced to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs.250/- each for the commission of an offence punishable under Section 323 IPC and in case of non-payment of fine the convicts shall further undergo rigorous imprisonment for a period of 15 days. Further the convicts namely Manish and Mukesh were sentenced to undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs.500/- each for the commission of an offence punishable under Section 325 IPC and in case of non payment of fine, the convicts shall further undergo rigorous imprisonment for a period of one month. Further the convicts namely Manish and Mukesh were sentenced to undergo rigorous imprisonment rigorous imprisonment for a period of three years each and to pay a fine of Rs.500/- each for the commission of an offence punishable under Section 333 IPC

and in case of non payment of fine the convicts shall further undergo rigorous imprisonment for a period of one month. Further they were sentenced to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs.250/- each for the commission of an offence punishable under Section 342 IPC and in case of non payment of fine, the convicts shall further undergo rigorous imprisonment for a period of 15 days. They were further sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.250/- each for the commission of an offence punishable under Section 353 IPC and in case of non payment of fine the convicts shall further undergo rigorous imprisonment for a period for 15 days. Further they were sentenced to undergo rigorous imprisonment for a period of three months each and to pay a fine of Rs.250/- each for the commission of an offence punishable under Section 120-B IPC and in case of non payment of fine the convicts shall further undergo rigorous imprisonment for a period of 15 days. All the substantive sentenced were ordered to run concurrently.”

Both the accused/convicts namely Manish and Mukesh thereafter filed an application for suspension of sentence under Section 389 Cr.P.C. and for the grant of interim bail so as to enable them to file an appeal, and therefore, they were admitted to interim bail for one month on their furnishing bail bonds in the sum of Rs.15,000/- each with one surety each in the like amount as per order dated 26.5.2006 passed by the that Court so as to enable them to file an appeal against the judgment dated 26.5.2006 and order of sentence dated 26.5.2006 passed by that Court.

Both the convicts were also directed to appear in that Court on 26.6.2006 for further proceedings. The application was declined and both the convicts namely Manish and Mukesh were taken into custody and sent to jail to serve the sentence by issuance of warrant of imprisonment as per order of sentence dated 26.5.2006.”

Briefly stated facts of the case as per the prosecution version are

that on 17.10.2003 at about 7.50 A.M., ASI Deep Chand, Incharge Police Post, Sanjay Colony, Sector 32, Faridabad gave a notice for summoning Mukesh son of Jagdish, resident of Rajeev Colony, Ballabhgarh to constable Umar Mohd., who along with Sh. Jagdish Chander, father of Sunita-applicant went to the house of Mukesh. Mukesh, his mother Smt. Roshani, uncle Shyam Lal and brother Manish were shown the notice and informed that Mukesh had been called to police post Sanjay Colony in connection with application submitted by Smt. Sunita. Hearing that Mukesh became angry and snatched notice from the hand of Umar Mohd. telling that he should put the notice in his annus. Mukesh states that he would not accompany Umar Mohd. to police post. He also enquired from him as to why he had come to his house with Sh. Jagdish Chander. Mukesh pushed over Umar Mohd., took lathi lying nearby and gave lathi blows upon his head. In the meanwhile, his brother Manish, uncle Shyam Lal and mother Smt. Roshani also grappled with him giving fist blows and leg blows. Manish had forcibly removed the belt of Umar Mohd. and inflicted injuries upon him. Smt. Roshni gave a Danda blow hitting Umar Mohd. on left the eye. Shyam Lal gave a lathi blow hitting Umar Mohd. on the left leg. Jagdish Chander, who accompanied Umar Mohd. was also severally beaten up. Thereafter, they were dragged and confined in a room which was thereafter locked. Davender called a photographer who arrived there and took their snaps. Though several persons have gathered in the street but nobody intervened so as to rescue Umar Mohd. and Jagdish Chander from the accused. Both of them remained confined in the room for five hours. Uniform of Umar Mohd. had been taken while snatching his belt.

On receipt of telephonic message regarding the incident, ASI Rajbir Singh and other police officials raided at the spot. Then accused ran away from there. ASI Rajbir Singh broke open the lock of the room.

Thereafter, report Ex.P34 was lodged by Umar Mohd. with the police. ASI Rajbir Singh put his endorsement Ex.P37. On such report of Umar Mohd., a ruqa was sent to police station on the basis of which formal F.I.R. Ex. P35 was registered. Umar Mohd. and Jagdish Chander were got legally examined. They were subjected to cross examination. The matter was investigated. The danda used in the incident was taken into police possession.

Accused were arrested in this case and interrogated. During the course of which they had suffered the disclosure statements. In pursuance of such disclosure statements of accused Mukesh, Manish and Shyam Lal, lathis and belt were got recovered and were taken into possession.

Statements of witnesses were recorded. After completion of investigation and other formalities, challans against the accused were presented. On presentation of challans, they were supplied copies of documents relying upon therein free of cost as provided under Section 207 Cr.P.C. and finding that offences were triable to the Court of Sessions, learned Judicial Magistrate Ist Class, Faridabad vide order dated 1.9.2004 committed the case to the Court of Sessions. Finding a prima facie case, charge for offences under Sections 323, 325, 333, 342, 353, 120B read with Section 34 of the Indian Penal Code was framed against the accused. They pleaded not guilty and claimed trial. Case was fixed for evidence of prosecution.

During the course of evidence of the prosecution, the prosecution examined 13 witnesses. PW1 Dr. S.K. Mittal, who had radiologically examined injured Umar Mohd. and Jagdish Chander proved their X-ray reports in Ex. P1 and Ex. P5. PW2 Dr. Madhu Lata Paul who had medico legally examined both the injured proved MLRs on injured Umar Mohd. as Ex. P9 and that of Jagdish Chander Ex.P12. PW3 Constable Mahesh Kumar deposed regarding special reports to senior officers. PW4 Ashok Kumar, Photographer,

proved the photographs Ex. P14 to Ex. P17. PW5 EHC Rakesh Kumar proved DDR dated 17.10.2003 as Ex. P22. PW6 Anoj Kumar, Draftsman proved the scaled site plan Ex.P23. PW7 Constable Mohd. Farukh and PW8 Constable Sarjeet Singh recovery witnesses deposed regarding their part. PW9 SI Than Singh proved F.I.R. Ex.35. PW10 ASI Rajbir Singh, the investigating officer of this case deposed regarding the investigation conducted by him. PW11 EHC Umar Mohd. who happens to be complainant-injured gave the eyewitness account of the incident. PW12 ASI Deep Chand proved Daily Diary Report No. 24 dated 17.10.2003 Ex.P51 and teh Hukamnama Talbi Ex.P42. PW13 Udham Singh, an independent witness deposed regarding his part.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them in the prosecution evidence were put to them but they denied the same contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above.

Feeling aggrieved, the accused have knocked the door of this Court by way of filing an appeal.

I have heard learned counsel for the appellants and learned State counsel besides going through the record.

Here the star witnesses for the prosecution happened to be constable Umar Mohd., who while appearing as PW1 provided the ocular version of the incident supporting the prosecution story on material aspects. Though he was cross examined at length on behalf of the accused but he could not be shattered at any material point. No reason has been suggested or proved prompted by which he might have involved the accused in this case wrongly or

at the most to secure their conviction. He having suffered injuries in the incident is a stamped witness and his presence at the spot cannot be doubted. He had gone to the house of the accused on instructions from the superior police officers for the purpose of service of notice along with Jagdish Chander. He obviously comes within the definition of public servant and he was on official duty when he was assaulted. His uniform was torn and belt was taken away. Jagdish Chander, who had also been inflicted injuries was illegally confined by the accused.

Accused are specifically named in the F.I.R. Though Jagdish Chander did not appear as a prosecution witness but I find that statement of Umar Mohd. is sufficient to nail the accused. Corroboration is a rule of prudence and not requirement of law. It is nowhere provided that statement of an eyewitness requires corroboration and in absence thereof cannot be acted upon. Solitary statement of a witness can definitely be relied upon unless it is shrouded by suspicious circumstance and the credibility of witnesses is questionable. Here it is not in the case of Umar Mohd..

The medical evidence corroborates the ocular evidence. Investigation in this case has been conducted in a fair and impartial manner. The investigating officer had no reason to involve the accused in this case wrongly or challan them falsely. The remaining evidence adduced by the prosecution led support to its case. All the necessary ingredients of the offences for which the accused have been convicted and sentenced are fully established on record. The trial Court was justified in convicting and sentencing the accused. There is no illegality or infirmity with such judgments which might have required inference of this Court while exercising appellate jurisdiction. Assaulting of public servant on duty, tearing his uniform, snatching his belt, causing injuries to him and confining him illegally for several hours cannot be

taken lightly lest that should give wrong signal in the society that you can indulge in such type of heinous crime and then get away with them. The persons responsible for such type of offences shall have to be held accountable for the same and may put to undergo the punishment provided under the offence. The trial Court has correctly returned verdict of guilty against all the accused with respect to the offences for which they had been booked. The sentence imposed also does not call for any reduction.

There is no merit in the appeal, therefore, the same stands dismissed. The accused who are stated to be on bail granted by this Court are ordered to be taken into custody so as to make them undergo the remaining sentence.

Learned Chief Judicial Magistrate, Faridabad is directed to issue the necessary warrants so as to get the appellants arrested and send them to jail for undergoing the remaining sentence.

(H.S. MADAAN)
JUDGE

March 26, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No