

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

1. **Crl. Appeal S-918-SB of 2007**
Date of Decision : May 15, 2018

Kiran Bala
.....Appellant

VERSUS

State of Punjab
.....Respondent

2. **Crl. Appeal S-1076-SB of 2007**

Pardip Kumar
.....Appellant

VERSUS

State of Punjab
.....Respondent

3. **Crl. Revision 1923 of 2007**

Dulli Chand
.....Petitioner

VERSUS

State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Sukhdeep Singh Bhinder, Advocate
for the appellant-Kiran Bala.

Mr. Jasmail Singh Brar, Advocate
for the appellant-Pardip Kumar.

Mr. Sarabjit Singh Cheema, Asstt. A.G., Punjab.

Mr. Vikas Garg, Advocate for
Mr. Vivek Goel, Advocate
for the complainant/petitioner.

T.P.S. MANN, J.

Convicts-Kiran Bala and Pardip Kumar alongwith Maina Devi @ Meena Devi accused were charged for committing the offences punishable under Sections 307, 452 and 120-B IPC. Vide judgment and order dated 27.4.2007, learned Additional Sessions Judge, Faridkot acquitted Maina Devi @ Meena Devi of the charge against her. However, Kiran Bala and Pardip Kumar were convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two months. They were also convicted under Section 120-B IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,500/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. Pardip Kumar-appellant was also convicted under Section 452 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one month. All the sentences were ordered to run concurrently. The sentence already undergone by them was ordered to be set off against the substantive sentence of imprisonment imposed upon them.

Aggrieved of their conviction and sentence, Kiran Bala-convict filed Crl. Appeal S-918-SB of 2007 whereas Pardip

Kumar-convict filed Crl. Appeal S-1076-SB of 2007. At the same time, complainant-Duli Chand filed Crl. Revision 1923 of 2007 whereby he challenged the acquittal of Maina Devi @ Meena Devi of the charge against her, besides, seeking enhancement of sentence of Kiran Bala and Pardip Kumar-convicts and for awarding compensation amounting to Rs.5 lacs. As the two appeals and the revision arise out of one and the same judgment and order passed by the learned trial Court, they are being disposed of by a common judgment.

According to the prosecution, Duli Chand injured-complainant was posted as Naib Court in Police Station City, Kotkapura and at that time HC Jasvir Singh was also working as DFC/summoning Constable. On 17.7.2006 at about 5.30 a.m., HC Jasvir Singh went to the house of Duli Chand to collect the summons from him as usual. He pressed the electric bell switch installed at the main gate of the house but the bell was not working. Accordingly, he knocked the main gate for a long time but nobody came from inside the house. However, on account of noise being created due to knocking of the door again and again, many people from the locality gathered there. HC Jasvir Singh and one Prabh Dayal, a boy from the gathering climbed on the main gate and saw that Duli Chand was lying on the ground in the courtyard of the house. An alarm was raised. On hearing the same, Kiran Bala-accused opened the main gate of the house.

On entering the house, HC Jasvir Singh and others found that Duli Chand had received multiple injuries and was unconscious. When asked, Kiran Bala stated that she did not know anything regarding the occurrence as she was sleeping inside the room alongwith her two children after bolting the door from inside while Duli Chand was sleeping in the courtyard. HC Jasvir Singh immediately called Rameshwar Dass, cousin of Duli Chand, whose house was situated near by and they both took Duli Chand to Civil Hospital, Kotkapura from where he was referred to Guru Gobind Singh Medical College and Hospital, Faridkot. He was medico-legally examined there and, thereafter, referred to Dayanand Medical College and Hospital, Ludhiana. In the evening at about 2.00 p.m., HC Jasvir Singh came back alongwith Rameshwar Dass from Dayanand Medical College and Hospital, Ludhiana and was present near Civil Hospital, Kotkapura where he met the police party headed by SI/SHO Nek Singh, who recorded his statement Ex.PA, on the basis of which FIR Ex. PA/2 was recorded at Police Station City, Kotkapura.

During the investigation of the case, SI Nek Singh alongwith his team reached the spot in the house of Duli Chand and got the spot photographed. He also called dog squad and picked up blood from the floor by preparing parcel of the same. He also picked up some long hair lying on the floor. He took mould of foot prints at the spot and recorded the statements of

witnesses. Rough site-plan Ex.PS with correct marginal notes was also prepared at the spot.

It is further case of the prosecution that on 21.7.2006, the investigation of the case was handed over to ASI Nachhatar Singh, who went to Dayanand Medical College and Hospital, Ludhiana and recorded the statement of Duli Chand injured in the hospital, who stated that on the intervening night of 16/17.7.2006, he was sleeping in the courtyard of his house whereas his wife Kiran Bala alongwith two children were sleeping in the room. His wife was having illicit relations with Pardip Kumar, who was son of Maina Devi @ Meena Devi. They felt that Duli Chand was an obstacle and hurdle in Pardip Kumar and Kiran Bala having illicit relations and, thus, he be finished. On that night, both Kiran Bala and Maina Devi @ Meena Devi caught hold of him from his arms whereafter Pardip Kumar came down from the stairs and gave multiple kapa blows on his person. He tried to raise an alarm but fell down on the ground. He was again given multiple blows with kapa by Pardip Kumar. Both Pardip Kumar and Maina Devi @ Meena Devi left the spot whereas Kiran Bala went to sleep inside the room hoping that he would die within half an hour.

It is also the case of the prosecution that ASI Nachhatar Singh conducted raid in the house of Pardip Kumar and apprehended him, who suffered disclosure statement, pursuant to which he got recovered a kapa wrapped in a piece of

cloth under the heap of bricks in a tannery factory. After obtaining necessary permission from the Court, he took mould of his right foot from the spot. He also suffered disclosure statement, pursuant to which he got recovered mobile phone set kept in a trunk in his house which he used to talk with Kiran Bala. He also took specimen hair of Duli Chand. During investigation, Kiran Bala was also arrested. Maina Devi @ Meena Devi was formally taken into custody after she surrendered in the Court of Ilaqa Magistrate. Upon completion of investigation, the police presented challan against the three accused which was committed to the Court of Sessions where they were charged for the various offences, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined nineteen witnesses.

PW1 Duli Chand injured deposed that his wife Kiran Bala was having illicit relations with Pardip Kumar and all the three accused in connivance with each other and after hatching a conspiracy gave multiple injuries on his person with a kapa.

PW2 HC Jasvir Singh deposed that on 17.7.2006 at about 5.30 a.m. he had gone to the house of Duli Chand to collect the summons and then he found him smeared with blood in the courtyard of his house. He proved his statement Ex.PA recorded by the police.

PW5 Dr. D.S.Bhullar, Registrar, Forensic Medicine Department, GGS Medical College and Hospital, Faridkot deposed that he conducted medico-legal examination of Duli Chand on 17.6.2007 and found the following injuries on his person:-

1. Multiple i.e. more than 15 incised wounds length 5 to 10 CM width 0.5 to 1.5 CM. Muscle to bone deep with bone cut at places present on head, front and back of neck, face, front and back of chest with multiple all sides directions of wound with fresh bleeding. X-ray, CT scan and opinion of surgeon was advised.
2. Incised wound 5 x 1 CM on lateral side middle of left forearm.
3. Incised wound 6 x 1 CM on middle side upper part right forearm.

PW16 Dr. Ramnish Garg, Registrar, Department of Plastic Surgery, D.M.C., Ludhiana proved the condition and treatment given to Duli Chand during the period he remained admitted in D.M.C., Ludhiana and proved photocopy of indoor record Ex.PP.

PW6 Pardip Kumar, JTO proved the copy of telephonic calls made by Kiran Bala to Pardip Kumar Exs. PG to PG/1.

PW15 Dharampal Singh proved the posting order Ex.PO of HC Jasvir Singh.

PW17 Gurbachan Singh, Draftsman prove the scaled site-plan Ex.PQ.

PW9 HC Gurdev Singh proved the recovery memo vide which the photographs were taken into possession.

PW7 Hira Ram proved various recovery memos prepared by ASI Nachhatar Singh in his presence.

The investigating part of the case was brought on record by prosecution by examining PW3 Constable Jaswinder Singh, PW4 HC Harinder Singh, PW8 HC Sewa Singh, PW10 ASI Nachhatar Singh, PW11 HC Sukhdarshan Kumar, PW12 C-II Jagjit Singh, PW13 Constable Sukhmander Singh, PW14 HC Jaspal Singh, PW18 SI Hardip Kumar and PW19 SI Nek Singh.

After the close of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., wherein they denied all the allegations of the prosecution and pleaded innocence. They took the plea that some unknown persons had caused injuries on the person of Duli Chand. They further stated that Duli Chand had a suspicion that his wife Kiran Bala was having illicit relations with Pardip Kumar and out of revenge and being in the police department, he had falsely implicated them in the case.

In defence, the accused examined DW1 Joginder Pal,

husband of the sister of mother of Kiran Bala, who deposed that he was a mediator in the marriage of Kiran Bala with Duli Chand and she was not having illicit relations with Pardip Kumar. On 17.7.2006, in the morning, he received a telephonic call from Kiran Bala that some unknown persons had given injuries on the person of Duli Chand. On reaching there, he immediately took Duli Chand to Civil Hospital, Kotkapura alongwith some other persons.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court acquitted Maina Devi @ Meena Devi-accused of the charge against her whereas Kiran Bala and Pardip Kumar-accused were convicted and sentenced, as mentioned above.

This Court has heard learned counsel for the two convicts, learned State counsel and learned counsel for the complainant besides perused the evidence with their able assistance.

From the statement of PW1 Duli Chand, who is the injured in the case and whose presence could not be doubted at the spot, deposed that on the intervening night of 16/17.7.2006 all the three accused after hatching a conspiracy had attacked him and caused injuries. Pardip Kumar-accused was attributed causing of kapa blows to Duli Chand injured. PW5 Dr.D.S.Bhullar, who had conducted medico-legal examination of

Duli Chand, had noticed not just three injuries, as mentioned above but more than seventeen injuries as injury No.1 consisted of multiple injuries i.e. more than fifteen in number. All the injuries were incised in nature and as such could be caused with kapa which was later on got recovered by Pardip Kumar. The medical evidence, thus, fully corroborates the ocular account.

During the investigation of the case, when Pardip Kumar was apprehended, he had suffered a disclosure statement pursuant to which he got recovered kapa which was lying concealed and wrapped in a piece of cloth from under the heap of bricks in a tannery factory. On examining the same, the hairs were adhering to it. Some hairs were also recovered from the place of occurrence. The hairs of the injured were also taken into possession. The hairs on the kapa and the hairs recovered from the place of occurrence, when examined in the Forensic Science Laboratory showed similar characteristic as the scalp hair of Duli Chand injured.

PW1 Duli Chand deposed before the learned trial Court that before the occurrence which had taken place on 9.7.2006, he had seen his wife Kiran Bala with Pardip Kumar in a compromising condition on a bed in his house and when he went inside the room of the house to bring a dang/stick, his wife had closed the doors of the house. In his cross-examination, he stated that he had filed a divorce petition against his wife Kiran

Bala and the house of Pardip Kumar-accused was with a gap of one house from his house.

Having gone through the detailed statement of PW1 Duli Chand and statement of PW2 HC Jasvir Singh which further corroborates the statement of Duli Chand, this Court finds that the prosecution has been able to prove its case against the two convicts beyond reasonable doubt.

In view of the above, no case is made out for any interference in the conviction of Kiran Bala and Pardip Kumar-accused, as recorded by the learned trial Court.

As regards the quantum of sentence, it may be noticed that the two convicts are facing the agony of criminal prosecution for the last about twelve years. As per the custody certificate produced by the learned State counsel, Kiran Bala-appellant has undergone an actual period of one year, seven months and seventeen days besides earning remissions of two months and fifteen days. She is not shown to be involved in any other case apart from the present case. Similarly, Pardip Kumar-appellant has undergone an actual period of four years, seven months and twenty days besides earning remissions of ten months and ten days. It has also been mentioned therein that apart from the present case, he was also convicted in FIR No. 133 dated 26.8.2005 under Sections 302/365/120-B IPC, Police Station City, Kotkapura and sentenced to undergo life

imprisonment but was acquitted on 6.11.2009 by the High Court.

Taking into consideration the totality of the circumstances, this Court is of the view that the sentence of imprisonment of ten years imposed upon Pardip Kumar-appellant deserves to be reduced to imprisonment for seven years whereas that of Kiran Bala-appellant from ten years to four years. At the same time, the fine imposed upon them can be suitably enhanced so as to disburse the same to Duli Chand, as compensation.

Resultantly, the conviction of Kiran Bala and Pardip Kumar-appellants, as recorded by the learned trial Court, is upheld. The sentence of imprisonment of ten years imposed upon Pardip Kumar-appellant under Section 307 IPC is reduced from ten years to rigorous imprisonment for seven years whereas that of Kiran Bala-appellant under Section 307 IPC is reduced from ten years to rigorous imprisonment for four years. The fine of Rs.5,000/- imposed upon them for the offence under Section 307 IPC is enhanced to Rs.25,000/- in the case of Pardip Kumar-appellant and Rs.10,000/- in the case of Kiran Bala-appellant. In default of payment of fine for the offence under Section 307 IPC, Pardip Kumar-appellant shall undergo rigorous imprisonment for six months whereas Kiran Bala-appellant shall undergo rigorous imprisonment for three months. The sentence of imprisonment and fine alongwith the default clause imposed upon Pardip Kumar-appellant under Section 120-B IPC and Section 452 IPC

and upon Kiran Bala-appellant under Section 120-B IPC are upheld. All the substantive sentences of imprisonment shall run concurrently. The entire fine amount when deposited by or recovered from Kiran Bala and Pardip Kumar-appellants shall be disbursed to Duli Chand-complainant, as compensation.

Criminal Appeal S-918-SB of 2007 filed by Kiran Bala-appellant, Criminal Appeal S-1076-SB of 2007 filed by Pardip Kumar-appellant and Criminal Revision 1923 of 2007 filed by Duli Chand-complainant are, accordingly, disposed of.

May 15, 2018
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No