

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

Crl. Appeal S-468-SB of 2004
Date of Decision : February 01, 2018

Bhagwana and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. R.S.Tacoria, Advocate with
Mr. Sumit Sheokand, Advocate
for the appellants.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The appellants, namely, Bhagwana and Devi Singh alongwith two others, namely, Neeta wife of Devi Singh and Bala wife of Ved Parkash were tried for committing the offences punishable under Sections 307/324/323 read with Section 34 IPC. Vide impugned judgment and order dated 31.1.2004, learned Additional Sessions Judge, Jhajjar convicted the appellants under Section 307 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- each. In default of payment of fine, they were directed to further undergo rigorous

imprisonment for two months. They were also convicted under Section 324 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of one year each. They were further convicted under Section 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of six months each. All the sentences were ordered to run concurrently. At the same time, Neeta and Bala Devi-accused were acquitted of the charge under Section 307 read with Section 34 IPC. They were, however, convicted for the offences under Sections 324 and 323 read with Section 34 IPC but were released on probation of good conduct for a period of one year on their furnishing bonds for an amount of Rs. 2,000/- each with one surety in the like amount with the direction to maintain peace and be of good behaviour.

Aggrieved of their conviction and sentences, only the appellants have preferred the present appeal. No appeal has been, however, filed by Neeta and Bala Devi, co-convicts of the appellants against their conviction.

According to the prosecution, on 11.7.1997, ASI Raj Kumar accompanied by other police officials was present at bus stop of Jhajjar and on receipt of an information alongwith the copies of the medico-legal reports pertaining to the injuries sustained by complainant Birmati and her husband Rajender, he

immediately rushed to the hospital and after seeking the opinion of the concerned doctor recorded the statement of complainant Birmati, alleging therein that on 11.7.1997, her husband Rajender who was an Army personnel, had come to the village for night stay while on way from Srinagar to Gwalior. At about 6.00 p.m., she went to call him while he was sitting on the wall of the house of Brahmans. On the way, accused Bala and Neeta, her sister-in-laws met her and taunted that a son of Ahir would abduct her daughter and this resulted in a quarrel between them. Accused Neeta gave a bite to her ear and accused Bala caught hold of her. After hearing noise, accused Bhagwana and Devi Singh, father-in-law and brother-in-law, respectively of the complainant arrived there while carrying lathi and farsa in their hands. Accused Devi Singh inflicted a farsa blow on her right hand and, thereafter, accused Bhagwana and Devi Singh inflicted lathi blows and farsa blows as lathi on her person as well as to her husband Rajender. Accused Bala and Neeta also caused injuries with bricks. After hearing her shrieks, her sister Vedmati arrived there and rescued her as well as her husband from the clutches of the accused.

During the investigation of the case, all the accused were apprehended. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Site-plan of the place of occurrence was got prepared by the Investigating Officer. After completion of

the codal formalities, all the four accused were sent up for trial by presenting report under Section 173 Cr.P.C.

Upon commitment of the case, the accused were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 S.K.Bhatnagar, Draftsman; PW2 Hari Singh, Head Constable; PW3 Hari Singh ASI; PW4 Smt. Birmati complainant-injured; PW5 Rajender injured-eye witness; PW6 Dr. Raj Karan; PW7 Dr. K.C. Aggarwal and PW8 Raj Kumar, Sub Inspector, the Investigating Officer. The witnesses Smt.Vedmati and Ashok Kumar, SI were given up as unnecessary.

When examined under Section 313 Cr.P.C., the accused denied the allegations of the prosecution and stated that they were innocent and falsely implicated in this case as a land dispute was going on between the complainant party and the accused party, who were closely related to each other. In their defence, the accused did not produce any evidence.

After hearing learned Public Prosecutor for the State and learned defence counsel besides going through the evidence placed on the file, learned trial Court believed the prosecution case and convicted and sentenced the accused, as mentioned above.

It may be mentioned here that during the pendency of the present appeal, Bhagwana-appellant has passed away. The factum of death of Bhagwana-appellant stands duly verified by way of status report prepared by Shri Dheeraj Kumar, HPS, Deputy Superintendent of Police, Jhajjar. As such the present appeal survives qua Devi Singh-appellant alone.

This Court has heard Mr. R.S.Tacoria, Advocate for the appellants and Mr. Pramjeet Singh, Asstt. A.G., Haryana and scanned the evidence with their able assistance.

From the testimony of PW4 complainant-Birmati, who had suffered statement Ex. PB before the police on the basis of which the present case was registered, it stands established that the occurrence had taken place in the manner as alleged by the prosecution. Her statement stands duly corroborated by the testimony of her husband PW5 Rajender, who was an eye-witness of the occurrence and had also received injuries in the same. Despite subjecting PW4 Smt. Birmati and PW5 Rajender to lengthy cross-examination, the defence could not shatter the very substratum of the prosecution case. The testimonies of PW4 Birmati and PW5 Rajender have been duly corroborated by PW6 Dr. Raj Karan, who had medico-legally examined Smt.Birmati on 11.7.1997 at about 7.00 p.m. and found as many as seventeen injuries on her person. Injuries No. 3, 4, 6, 7 and

15 were declared simple in nature while injuries No. 1, 2, 5, 8-B, 9 to 14 and 16 were kept under observations. Injury No. 8A was also kept under observation. PW6 Dr. Raj Karan had also medico-legally examined injured Rajender and found three injuries on his person. While injury No.2 was declared simple, injuries No. 1 and 3 were kept under observation. He also deposed that he had given opinion Ex.PF/1 regarding the fitness of the injured to make statement. He also proved his opinion Ex.PG/1 regarding the nature of injuries on the person of Rajender. Injury No.1 on his person was declared dangerous to life whereas injury No. 3 was simple in nature. PW7 Dr. K.C. Aggarwal deposed that on 14.7.1997, he radiologically examined Rajender and found fracture of left temporal bone. The investigation part of the case has been brought on record by the prosecution by examining PW2 HC Hari Singh, PW3 ASI Hari Singh and PW8 SI Raj Kumar. Merely because Smt.Vedmati, who had also witnessed the occurrence, was not examined by the prosecution and given up as unnecessary is not sufficient to reject the prosecution case. PW4 Birmati and PW5 Rajender are the stamp witnesses of the occurrence and there is no material on the record which could indicate that they had falsely implicated the accused.

The main submission of the learned defence counsel

is the non-explanation of the injuries by the prosecution regarding the injuries sustained by Bala Devi, one of the accused. Her injuries have been brought on record by the defence by cross-examining PW6 Dr. Raj Karan, who found as many as seven injuries on her person. Injuries No. 4 to 6 were declared simple in nature whereas remaining four injuries were kept under observation and subjected to X-ray. However, while being examined under Section 313 Cr.P.C., Smt. Bala Devi-accused did not state that she had sustained any injury in the occurrence at the hands of the complainant or others. Even no suggestion was put to PW4 Birmati and PW5 Rajender regarding sustaining of injuries by Bala Devi-accused. The occurrence had taken place on 11.7.1997 at about 6.00 p.m. whereas according to Dr. Raj Karan those injuries were sustained by Bala Devi on 11.7.1997 and regarding those injuries, she was medico-legally examined at 2.45 p.m. Thus, it cannot be said that Bala Devi-accused had sustained injuries in the occurrence as were noticed by PW6 Dr. Raj Karan.

In view of the above, no case is made out for any interference in the conviction of Devi Singh-appellant, as recorded by the learned trial Court.

Coming to the question of sentence, it may be noticed that Devi Singh-appellant is facing the agony of criminal

prosecution for the last more than twenty years. When Devi Singh-appellant was heard by the learned trial Court on the quantum of sentence, he had stated that he was the sole bread winner of his family and having two young children and wife to support. Further, he was not a previous convict. Even according to the prosecution, there was no previous enmity between the parties, who were closely related. Bala Devi and Neetu, co-convicts of the appellants had taunted complainant-Birmati that son of an Ahir would abduct her daughter and this resulted in a quarrel between them. From the custody certificate already placed on record by the learned State counsel, Devi Singh-appellant has undergone an actual period of eleven days. He is not shown to be either involved or convicted in any other case.

Having heard learned counsel for the parties, this Court finds that Devi Singh-appellant, who is on bail for the last about thirteen years and has not misused the concession of bail in any manner, need not be sent behind the bars, once again, for undergoing his remaining sentences of imprisonment. Ends of justice shall be suitably met, if his substantive sentences of imprisonment are reduced to the one already undergone by him. At the same time, the fine amount can be enhanced.

Resultantly, the appeal of Bhagwana-appellant is disposed of as having abated whereas the conviction of Devi

Singh-appellant for the various offences, as recorded by the trial Court is maintained. His sentences of imprisonment on all the counts shall stand reduced to the one already undergone by him. The fine of Rs.1,000/- imposed upon him for the offence under Section 307 read with Section 34 IPC is, however, enhanced to Rs. 50,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for six months. The enhanced amount of fine qua Devi Singh-appellant, when recovered, shall be disbursed in favour of complainant-Birmati and her husband Rajender in equal shares as compensation. The appeal of Devi Singh-appellant is disposed of, accordingly.

February 01, 2018
ajay-1

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No