

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

CRA-S-1653-SB-2006

Date of decision:-6.4.2018

Ram Dhari

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr.Jagpal Singh, Advocate as
Legal Aid counsel for the appellant.

Mr.Sulinder Kumar, AAG, Haryana.

H.S. MADAAN, J.

Accused Ram Dhari faced trial by learned Additional Sessions Judge (Fast Track Court), Ambala, who vide judgment dated 10.8.2006 convicted him for an offence under Section 325 IPC and vide order of sentence dated 12.8.2006 sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- and in default thereof, to further undergo imprisonment for three months.

The accused-convict – Ram Dhari, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 30.9.2004 on receipt of information at Police Station Sadar, Ambala from Police Post

Urban Estate, Ambala that one Surinder son of Karam Chand was admitted in Civil Hospital, Ambala City in injured condition, the police party headed by HC Balwant Rai went to that hospital and moved an application seeking opinion of the attending doctor regarding fitness of the injured to make statement, however, the doctor opined that the injured was unfit to make statement; since no other eye-witness of the incident was available at that time, therefore, the police party returned to police station; on the next day i.e. on 1.10.2004, HC Balwant Rai again went to Civil Hospital, Ambala and moved a similar application before the doctor but he was informed that injured had been referred to PGI, Chandigarh, as such, HC Balwant Rai went to PGI, Chandigarh and moved an application to seek opinion of the doctor, who declared injured unfit to make statement. At PGI, Chandigarh, HC Balwant Rai came across Karam Chand, father of injured Surinder, who got his statement recorded with HC Balwant Rai in which he stated that he is a labourer by avocation having two sons and three daughters; on 30.9.2004 at about 7:00 p.m., said complainant along with his son Bhag Singh was present at home when they came to know that his other son Surinder Kumar was being beaten up by accused Ram Dhari, therefore, the complainant and his son came out of the house and saw Ram Dhari going on a bicycle at a very fast speed and he entered house of his maternal uncle, namely, Nasib Singh; he had parked his bicycle outside the house and then he brought a wooden baton from inside the house; in the meantime Surinder Kumar also came there on a bicycle; when he had reached in front of the house of Nasib Singh, Ram Dhari gave a blow of wooden baton on the head of Surinder, as a result thereof,

Surinder fell down on the ground; the second blow inflicted by accused hit Surinder on the chest; the complainant Karam Chand and his son Bhag Singh raised alarm, then Ram Dhari left the spot stating that Surinder had been saved on that day and if in future he ever dared to collide with bicycle of the accused, he would be eliminated; Surinder Kumar was bleeding profusely from the injuries on head and he was removed to Civil Hospital, Ambala City. However, since his condition deteriorated, he was referred to PGI, Chandigarh.

Below said statement of complainant, HC Balwant Rai put his endorsement and sent ruqa to Police Station through Constable Ramesh Chand on the basis of which formal FIR was recorded. After registration of FIR, the case was investigated. HC Balwant Rai went to the place of occurrence, prepared rough site plan of the place of incident and recorded statements of witnesses. Subsequently, the investigation of the case was taken up by SI/SHO Babu Ram. Statement of injured Surinder Kumar was recorded on 9.10.2004. Accused was arrested. While being subjected to interrogation, he suffered a disclosure statement that he had kept concealed the wooden baton used by him in the incident at the house of Nasib Singh and he could get the same recovered. Thereafter, accused while in police custody got the same recovered, the sketch of which was prepared and then the same was converted into a sealed parcel, then the said parcel was taken into police possession vide recovery memo. Rough site-plan of the place of recovery of wooden baton was also prepared.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of

learned Additional Chief Judicial Magistrate, Ambala.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Ambala, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 308 IPC is exclusively triable by Court of Sessions, learned Additional Chief Judicial Magistrate, Ambala committed the case to the Court of learned Sessions Judge, Ambala vide order dated 7.1.2005 from where it was entrusted to the Court of learned Additional Sessions Judge, Ambala.

On receipt of case in the Court, learned Additional Sessions Judge, Ambala, observing that prima facie charge for offences under Sections 323, 308 and 506 IPC was disclosed against accused, he was charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as eleven witnesses i.e. PW1 – EHC Pardeep Kumar, PW2 Dr.Sudhir Kapoor, PW3 Dr.B.B. Lala, PW4 ASI Ram Chand, PW5 Krishan Lal, PW6 Dr.D.K. Ray, PW7 SI Babu Ram, PW8 HC Balwant Rai, PW9 Jitender Kumar, PW10 Bhag Singh and PW11 Surinder Kumar.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that injured Surinder Kumar was eve teasing his cousin Suresh and on the

day of occurrence Suresh was at the house of the accused, when Surinder Kumar came there in a drunken condition and tried to outrage her modesty and when accused intervened, Surinder Kumar had a scuffle with him and caused injuries to him; Surinder Kumar also received injuries in the scuffle.

In defence evidence, the accused examined as many as two witnesses, namely, DW1 Suresh and DW2 Resham.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused Ram Dhari as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused - convict, learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the present appeal.

PW5 Krishan Lal, PW10 Bhag Singh, brother of injured and PW11 Surinder Kumar - injured provided the eye-witnesses account of the present occurrence. All three of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the incident. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. PW11 Surinder Kumar having suffered injuries is a stamped witness and the presence of all the three PWs at the spot at the relevant time cannot be doubted. They would have been the last person

to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of such type of persons to ensure that the person responsible for causing injuries to their near and dear is brought to the book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason. The PWs are not shown to have any previous enmity with the accused so as to involve him in this case wrongly or to depose against him falsely.

The medical evidence corroborates the ocular evidence. The 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, challan him falsely or to depose against him to secure his conviction.

The prosecution had successfully proved the charge against the accused beyond shadow of reasonable doubt. No scope for reduction of sentence is made out keeping in view the weapon used and blows were repeated and injured was hit on the vital parts of the body. The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Ram Dhari is on bail in terms of the orders passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo

the remaining sentence. Necessary direction in that regard be issued to
Chief Judicial Magistrate, Ambala.

6.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No