

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

CRA S-508-SB of 2006

Date of Decision: March 22, 2018

Sudesh	Versus	 Appellant
State of Haryana		 Respondent

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

Present : Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellant.

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

T.P.S.MANN, J. (Oral)

The appellant, namely, Sudesh alongwith Saroj and Jitender was tried for committing offences punishable under Sections 307/324/326 read with Section 34 IPC. Vide judgment and order dated 27.2.2006/1.3.2006, learned Additional Sessions Judge, Sonapat acquitted Saroj and Jitender of the charges against them. However, the appellant was convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo

rigorous imprisonment for a period of one year. He was further convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. He was also convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for three months. All the substantive sentences were ordered to run concurrently. The period of imprisonment during investigation or trial of the case was ordered to be set off against the substantive sentences awarded to her.

Aggrieved of her conviction and sentence, the appellant filed the present appeal, which was admitted on 17.3.2006. Subsequently, vide order dated 20.4.2006, the Court suspended her sentence of imprisonment during the pendency of the appeal.

According to the prosecution, Smt. Sumitra, mother of injured Azad made a statement before ASI Surat Singh at CHC Gohana, wherein, she stated that her son Azad was married with the appellant 8/9 years ago. Azad alongwith his family was residing separately from the complainant for the last 4/5 years. There used to remain differences between her son Azad and

daughter-in-law Sudesh as there was doubt regarding character of Sudesh, who used to leave the house and come back on her own. Four or five days prior to the occurrence, Sudesh was left at village Chhetera by her brothers, who told her that in case Azad asked her for anything she should kill him. Smt. Sumitra further narrated that on that day, i.e. 18.8.2003, her nephew Surjit had come to see her. At about 12.30 p.m., she alongwith Surjit went to the house of Azad. The door was closed. Voices of “Mar Dia, Mar Dia” was coming from inside. Through the crevice of the door, Smt. Sumitra peeped inside and saw appellant holding a kulhari in her hand, who inflicted two blows with the same on the head of Azad. She continued to cause more injuries. Smt. Sumitra and her nephew pushed the door open at which appellant Sudesh came out with kulhari (axe) and fled away. Smt. Sumitra and Surjit went inside and saw that Azad was lying on the cot and blood was oozing from his head and neck. He was, thereafter, shifted to Civil Hospital, Gohana. According to the complainant, Sudesh in conspiracy with her brothers and sisters had caused injuries to Azad with an intention to kill him.

Dr. Ashok Gupta had medico-legally examined injured Azad on 18.8.2018, who noticed the following injuries on his person:-

“1. 8 cm x 2.5 cm x 2 cm incised wound on left side

of face, horizontally placed. Fresh bleeding was present. Part was tender and movements of jaw were restricted and painful. Advised x-ray of face for mandible-left lateral view and consultation of dental surgeon at P.G.I.M.S., Rohtak.

2. 4 cm x 1.5 cm x 1 cm incised wound on left side of forehead, just lateral to left eye brow. Horizontally skull. AP and lateral view.
3. 3 cm x 2 cm x 1 cm horizontally placed incised wound on the left side of occiput 2 cm from the left pinna. Fresh bleeding was present. Advised x-ray skull and AP and lateral view.
4. 3 cm x 2 cm x 1 cm incised wound 2 cm below the injury No. 3 on the left side of occiput. Fresh bleeding was present. Advised x-ray skull and AP and lateral view.
5. 2 cm x 2 cm x 1cm incised wound on the back of neck, horizontally placed on both side of midline, fresh bleeding present. Advised x-ray cervical spine. AP and lateral view and consultation of Neuro Surgeon.
6. 1 cm x 1 cm x 0.5 cm incised wound on left side of pelvis 2 cm below the left illiac crest. Clotted blood was present, redish in colour. Advised x-ray pelvis AP view.
7. 2.5 cm x 1 cm x 1 cm incised wound on lateral side of left knee. Clotted blood was present, redish in colour. Advised x-ray left knee. AP and lateral view.

8. 2.5 cm x 1.5 cm x 1 cm incised wound on the medial side of right knee. Clotted blood was present, redish in colour. Advised x-ray right knee AP and lateral view.
9. 2.5 cm x 1.5 cm x 1 cm incised wound on medial side or right leg. 2.5 cm above injury No. 8. Advised x-ray right leg. AP and lateral view”.

Dr. Ashok Gupta opined that the injuries were caused with sharp edged weapon within the probable duration of 24 hours. On 13.9.2003, the police moved application before him seeking opinion regarding the nature of injuries, who stated that injuries No. 1, 3 and 4 were having fractures of the parts examined and, hence, these injuries were declared grievous in nature whereas the other injuries were simple. He further stated that the possibility could not be ruled out of all the injuries on the person of Azad being caused by some sharp edged weapon. After going through the surgeon's opinion as well as CT Scan of head of Azad, he opined that injuries No. 3 and 4 on the person of Azad could have been dangerous to life.

At the trial of the case, the prosecution examined PW1 Sumitra (complainant), PW2 Azad (injured), PW3 Shamsher, PW4 SI Balbir Singh, PW5 Shiv Kumar, Record Keeper, PW6 Dr. Krishan, PW7 Constable Rajesh Kumar, PW8 Head Constable Rajbir, PW9 Head Constable Session Kaur,

PW10 ASI Ishwar Singh (Investigating Officer), PW11 Dr. Ashok Gupta, PW12 Constable Parmod Kumar and PW13 Dr. Ashish Goel.

The prosecution, however, gave up Surjit and Ram Parkash being unnecessary.

When examined under Section 313 Cr.P.C., all the accused controverted the evidence produced by the prosecution. The appellant pleaded that she neither committed any offence nor had caused any injury to her husband. She also stated that in fact the case was registered against her due to the matrimonial dispute which she had with her husband as her mother-in-law did not want to keep her as her son's wife and wanted to get his marriage dissolved.

In their defence, the accused examined DW1 Sube Singh.

After going through the evidence and hearing learned counsel for the parties, learned trial Court acquitted Saroj and Jitender accused of the charges against them. However, the appellant was held guilty and, accordingly, convicted and sentenced, as mentioned above.

Learned counsel for the parties have been heard at length and the evidence minutely examined with their able assistance.

PW1 Smt. Sumitra, who had witnessed the occurrence in question has testified about the manner, in which, the appellant had caused injuries to her son Azad. Said Azad was examined by the prosecution as PW2 and he supported the prosecution version. Their testimonies were duly corroborated by the medical evidence brought on record as all the injuries, i.e. 9 in number were found to have been caused with a sharp edged weapon. The investigation of the case was conducted by PW4 SI Balbir Singh, PW8 Head Constable Rajbir, PW9 Head Constable Session Kaur, PW10 ASI Ishwar Singh and PW12 Constable Parmod Kumar. During the investigation of the case, sufficient material was collected by the Investigating Officer, on the basis of which, final report under Section 173 Cr.P.C. was submitted against the accused.

In view of the above, this Court finds that it was the appellant, who had caused injuries to Azad, who was none else but her husband.

As regards the nature of offence, it may be noticed that injuries No. 1, 3 and 4 found on the person of Azad were x-rayed, which revealed fracture of the parts examined and, accordingly, they were declared grievous in nature. However, there is no categorical opinion obtained by the prosecution from PW11 Dr. Ashok Gupta so as to establish the charge of offence

under Section 307 IPC against the appellant. Instead, in reply to a query posed by the Investigating Agency, Dr. Ashok Gupta opined that injuries No. 3 and 4 on the person of Azad as per his medico-legal report could have been dangerous to life. He admitted the suggestion that as per C.T. Scan report, except fracture of occipital bone, all other organs were found normal. He also admitted that if there was only fracture of occipital bone, then death may not occur. As such, it is not safe to uphold the conviction of the appellant under Section 307 IPC. On the other hand, injuries No. 1, 3 and 4 being caused by a sharp edged weapon and were declared as grievous, commission of offence under Section 326 IPC is made out against the appellant.

The appellant is facing the agony of criminal prosecution for the last more than fourteen years. When she was heard by the learned trial Court on the quantum of sentence, she had stated that she had two minor children, aged seven years and 5 ½ years. One of them was residing with her brother while the other with her mother-in-law. She also stated that she was not a previous convict.

As per the custody certificate brought on record by the learned State counsel, the appellant has undergone an actual period of two years, eight months and four days.

Taking into consideration the totality of the

circumstances, this Court is of the view the the applicant, who is on bail for the last about twelve years and there is no allegation that she has misused the concession of her suspension of sentence of imprisonment in any manner, this Court deems it fit and appropriate to reduce the sentence of her imprisonment to the one already undergone by her.

Resultantly, the conviction and sentence of the appellant under Section 307 IPC is set-aside. Her conviction under Sections 326 and 324 IPC is upheld. However, the substantive sentence imposed upon her for the said offences is reduced to the one already undergone by her. The sentences of fine alongwith their default clauses are maintained.

The appeal is, accordingly, disposed of.

March 22, 2018
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No