

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

Crl. Appeal S-949-SB of 2005
Date of Decision : March 19, 2018

Dalbir

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Sunil Sihag, Advocate
for the appellant.

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

Mr. Sushil Sheoran, Advocate for
Mr. R.A.Sheoran, Advocate
for the complainant.

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

The instant appeal has been filed by convict-Dalbir for challenging the judgment and order dated 6/9.5.2005 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani.

Vide impugned judgment and order, learned trial Court convicted the appellant under Section 307 IPC and sentenced him to undergo rigorous imprisonment for a period of five 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 two

months. The period of detention already undergone by him in the course of investigation and trial of the case was ordered to be set off against the substantive sentence awarded to him.

Sohan Lal, who had received injuries in the occurrence in question, has also filed Criminal Revision 1355 of 2005 wherein he has sought enhancement of the sentence of imprisonment imposed upon the appellant. As the appeal as well as the revision arise from the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, on 18.10.2003 SI Dheeraj Kumar of Police Station Sadar, Bhiwani received a telephonic message from Incharge, Police Post, General Hospital, Bhiwani to the effect that Sohan Lal, Sub Divisional Officer was lying admitted there in an injured condition. On reaching there, SI Dheeraj Kumar sought opinion from the doctor about the fitness of injured-Sohan Lal to make a statement. The doctor declared him unfit to make statement and, accordingly, SI Dheeraj Kumar recorded the statement of Surender Vashist, Junior Telecom Officer, who stated that on 17.10.2003, he alongwith Sohan Lal was coming from Bawani Khera to Bhiwani in a jeep bearing registration No.HR61-1417 driven by the appellant which jeep was taken on contract by the Telecom Department. The appellant was driving the jeep at a very fast

speed and in a rash and negligent manner. When they reached near Bhiwani Jail, the complainant and the injured got the jeep stopped and alighted from the same. The appellant again started the jeep and took it to some distance where after he turned the same backwards and brought it towards them at a very fast speed so as to strike the same against them. The complainant saved himself by moving towards one side whereas the jeep struck against Sohan Lal, who fell down. The appellant uttered abuses and again drove the jeep towards the complainant in order to kill him but the complainant saved himself by entering into a vacant plot. The appellant continued abusing him while sitting in the jeep. Injured-Sohan Lal was then transported to General Hospital, Bhiwani in the same very jeep with the help of other persons, who had gathered at the spot. According to the complainant, the appellant was under the influence of liquor and had tried to kill both of them by striking the jeep against them and caused injuries to Sohan Lal in the process.

After recording the statement of the complainant, SI Dheeraj Kumar made endorsement on the same and sent it to Police Station Sadar, Bhiwani where on its basis, FIR No. 345 dated 18.10.2003 was registered against the appellant.

After completion of investigation, final report under Section 173 Cr.P.C. was submitted against the appellant in the

Court of Ilaqa Magistrate. The case was, thereafter, committed to the Court of Sessions where the appellant was charged for committing the offence under Section 307 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as thirteen witnesses, i.e. PW1 Surender Vashist (complainant), PW2 Balwan Singh, PW3 Dr. Rajender Rai, PW4 Inspector Hoshier Singh, PW5 SDE R.L.Ahuja, PW6 Satbir Singh Naferia, Draftsman, PW7 Dr. Sohail, PW8 Constable Gian Singh, PW9 Manoj, PW10 Sohan Lal (injured), PW11 Sub Inspector Dheeraj Kumar, PW12 Dr. Suchit Sharma and PW13 Dr. Krishan Jain. Thereafter, the prosecution evidence was closed by learned Public Prosecutor, for the State by making separate statement.

When examined under Section 313 Cr.P.C., the appellant denied the prosecution allegations and claimed himself to be innocent. According to him, it was Sohan Lal-injured, who was under the influence of liquor and fell down from the moving jeep and suffered injuries. It was the appellant, who shifted him to General Hospital, Bhiwani and informed his family members. Thus, it was a pure case of accident and later on converted into a case of attempt to murder.

After hearing learned counsel for the parties and on going through the records, learned trial Court accepted the

prosecution case and convicted and sentenced the appellant, as mentioned above.

Sohan Lal-injured was medico-legally examined by PW3 Dr. Rajender Rai on 17.10.2003 at 11.00 p.m., who had found the following injuries on his person:-

- “1. Deformity of left thigh was present. Advised x-ray and orthopaedic opinion.
2. Complaining of pain in pelvis area. Advised x-ray and orthopaedic and surgeon opinion.
3. Abrasion 1 cm x 1 cm and fresh bleeding was present over front of left knee.”

PW7 Dr. Sohail of Sir Ganga Ram Hospital, New Delhi had testified that on 19.10.2003 Sohan Lal-injured was brought to his hospital on account of roadside accident, who was having injury to the pelvis and abdomen having fracture of pelvis and urinary bladder injury. On 30.10.2003, the injured was operated upon for left femoral empolectomy and, thereafter, the left leg was amputated from below the knee portion. On 13.11.2003 debridement was done of amputation stump and the patient was discharged on 8.12.2003.

PW12 Dr. Suchit Sharma, Registrar Surgery Department, PGIMS, Rohtak testified that on 18.10.2003 Sohan Lal-injured was admitted for ortho operation as a referred case from General Hospital, Bhiwani. He also stated that on diagnosis,

there was fracture of pelvis, distal sciatic nerve was deficient of left lower leg and the patient was having haematuria. A pin was inserted and, thereafter, patient was referred to Department of Surgery. On exploratory laparotomy, perivesical haematoma was present with one litre blood clot with perivesical and scrotal swelling with fracture left acetabulum with fracture of left superior and inferior pubic rami and left inferior pubic rami with pubic diastasis alongwith extra peritoneal urine bladder was inserted with malecot catheter and later on the suprapubic malecot catheter was not functioning satisfactorily and the patient was referred to urological expert. In cross-examination, he stated that such injuries were possible in a vehicular accident and also if the patient had fallen from a moving vehicle.

PW13 Dr. Krishan Jain, who had radiologically examined injured-Sohan Lal, had proved his report Ex. PR wherein he had mentioned that he had found fracture of left iliac bone, fracture dislocation of left hip joint, fracture superior and inferior pubic rami of right side. Distasis of pubic symphysis was also seen. During cross-examination, he also stated that possibility of sustaining fractures by the injured in a vehicular accident could not be ruled out.

In order to prove the ocular account of the occurrence, the prosecution had examined complainant-Surender Vashist as

PW1 whereas injured-Sohan Lal as PW10. Both of them have categorically deposed before the learned trial Court that when they were travelling in the jeep driven by the appellant, they had noticed about the jeep being driven at a very fast speed and upon their asking, the appellant stopped the jeep where after they alighted from the same. The appellant, thereafter, took the jeep to a distance and after making a u-turn, started the jeep towards them at a very fast speed. As a result Sohan Lal was hit whereas the complainant was able to move side and, therefore, saved himself. Apparently, it was a case of hitting of the jeep against Sohan Lal and for that reason various doctors, who were examined by the prosecution, did not rule out the possibility of injuries being received by Sohan Lal in a vehicular accident. However, the fact remains that after the complainant and Sohan Lal had alighted from the jeep, the appellant drove the jeep towards the complainant and the injured and in the process the jeep struck against Sohan Lal, who received injuries as a result thereof. Both these witnesses have also deposed that the appellant was drunk at the time of the occurrence. However, after transporting Sohan Lal to the hospital, the appellant had managed to escape from there and, thus, he could not be examined to find out as to whether he was drunk at the time of the occurrence or not. Therefore, no case is made out to acquit

the appellant of the charge against him.

As regards the quantum of sentence, it may be noticed that the appellant has been facing the agony of criminal prosecution for the last fourteen years. It is the prosecution case that the appellant had himself transported injured-Sohan Lal to the hospital. When he was heard by the learned trial Court on the quantum of sentence, he had pleaded that he had aged parents whereas he himself was unmarried. Further, he was not a previous convict.

Custody certificate has already been brought on record by the learned State counsel. As per the same, the appellant has undergone an actual period of ten months and ten days besides earning remissions of twenty four days. In all, he has undergone a period of eleven months and four days. He is not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances and also the fact that the appellant is on bail pursuant to the order dated 28.11.2005 passed by this Court and he has not misused the concession in any manner, a case is made out for showing leniency to the appellant in the matter of sentence by reducing the same to that already undergone by him and at the same time enhancing the fine so as to compensate the injured.

Resultantly, the conviction of the appellant under Section 307 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs. 2,000/- imposed upon him by the learned trial Court is, hereby, enhanced to Rs. 30,000/-. The fine amount be deposited by him in the Court of Chief Judicial Magistrate, Bhiwani within a period of three months from today, failing which he shall be required to undergo rigorous imprisonment for six months. The fine amount, if deposited or recovered from him, shall be paid as compensation to Sohan Lal-injured as compensation.

The appeal filed by the convict and the revision filed by the complainant are, accordingly, disposed of.

March 19, 2018
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No