

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

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**CRA-S-850-SB-2006 (O&M)
Date of Decision: 09.03.2018**

RADHEY SHAM AND ANR.Appellant(s).

Versus

STATE OF HARYANA ...Respondent.

CORAM:- HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vikas Mohan Gupta, Advocate and
Mr. Varun Mittal, Advocate
for the applicant/appellants.

Mr. D.R. Singla, Deputy Advocate General, Haryana.

Mr. Sanjeev Majra, Advocate for
Mr. R.S. Dhull, Advocate
for the complainant.

ANUPINDER SINGH GREWAL, J. (Oral)

This appeal is directed against the judgment dated 17.04.2006, whereby the appellants have been convicted under Section 307 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') as well as the order of sentence dated 18.04.2006, whereby they have been sentenced to undergo rigorous imprisonment for a period of four years each and to pay an amount of Rs.5,000/- each, in FIR No.335 dated 11.06.2002 registered at Police Station Sadar Gurgaon.

2. The case of the prosecution has been registered on the basis of the complainant Rajbir, who was employed as a driver with Jhangu Travels, Gurgaon. About 5-6 months prior to

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the date of occurrence, his cousin Kashmir Singh, who was injured in the occurrence, had come to Gurgaon to learn driving. Accused Radhey Sham and Dhan Singh were also residing in Gurgaon at that time. Rajbir, Kashmir Singh and accused Radhey Sham & Dhan Singh were living in a two room set in House No. 85, Surya Vihar, Gurgaon. They had a joint kitchen. About 15-20 days prior to the date of occurrence, there were differences between Kashmir Singh and accused Radhey Sham and Dhan Singh, as a result of which, Radhey Sham and Dhan Singh had left that house and were residing separately at some distance.

3. On 11.06.2002, at about 08:30 p.m., when Kashmir Singh was present in the courtyard of his rented house, Radhey Sham, Dhan Singh and Sanjay came there. Radhey Sham and Sanjay were armed with knives while Dhan Singh was having a hammer. Sanjay and Radhey Sham gave knife blows on the stomach of Kashmir Singh. Radhey Sham then took a lathi, which was lying nearby and struck the same on the head of Kashmir Singh. Complainant tried to rescue Kashmir Singh but in the meantime Dhan Singh gave a blow on the left elbow of the complainant with a hammer. The occurrence had taken place in the presence of landlord Abhimanyu. Soon thereafter, accused along with their weapons escaped from that place. The matter was reported to the police and injured Kashmir Singh was taken

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to Aryan Hospital, Gurgaon, where he was medico legally examined. He was later taken to Ganga Ram Hospital, New Delhi. The injury in the abdomen of Kashmir Singh was opined as dangerous to life by the Medical Officer and all the accused were arrested along with two knives and one hammer. After investigation, the accused were challaned and later charged under Section 307 read with 34 of the IPC, to which they did not plead guilty and claimed trial.

4. The prosecution had examined as many as 07 witnesses namely Subhash Chand ASI (PW-1), Rajbir singh (PW-2), Kashmir Singh (PW-3), Dr. P.R. Aryan (PW-4), HC Mohammad Usman (PW-5), SI Charan Singh (PW-6) and C Surinder Kumar (PW-7) to support its case. PW-Abhimanyu was given up as having been won over by the accused. Inspector Ramesh Pal and Constable Manoj Kumar were given up being unnecessary and thereafter prosecution closed its evidence.

5. The statements of accused were recorded under Section 313 Cr.P.C wherein they denied all the allegations against them. However, they did not lead any evidence in defence.

6. The prosecution examined PW-1 ASI Subhash Chand who deposed with regard to the registration of formal FIR (Ex.

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PA/1). In his deposition he stated that he received Ruqa at 11.00 PM, on the basis of which FIR was recorded.

PW-2 Radhey Sham, who is the complainant in the present case, reiterated the contents of the FIR in his testimony, specifically naming the appellants/accused injuring Kashmir Singh with knife blows to the abdomen. Appellant/accused no. 1 also inflicted lathi blow on the forehead and scalp of Kashmir Singh. PW-3 Kashmir Singh, who is the injured also deposed corroborating the statement of PW-2 stating that appellants/accused stabbed him in his abdomen and also with respect to the lathi blow on the forehead.

PW-4 Dr. P.R. Aryan, medico legally examined Kashmir Singh, who found the following injuries on his body:-

“1. A clean lacerated wound on forehead left side ½ %
in size.

2. Two wounds on abdomen 1” and 1 ¼” in size.”

It was opined that injury no. 2 was caused by sharp edged weapon and was considered dangerous to life. Injured was referred to Ram Manohar Lohia Hospital, Delhi. PW-4 also adduced in evidence, copy of MLR Ex. PB. He also proved his opinion Ex. PB/2 with respect to fitness of Kashmir Singh to give statement when he was brought to the hospital.

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PW-5 HC Mohammad Usman, proved the affidavit Ex. PC vide which recovery of weapons was proved.

PW-6 Charan Singh, recorded the statement of the complainant on the basis of which formal FIR was registered. He completed the investigation of the case. He also recorded statement of the injured after obtaining opinion of the Medical Officer. Ex P1 (Hammer), Ex. P2 (Knife) and Ex. P3 (Knife) and plastic box containing blood lifted from the spot were taken in police possession.

PW-7 C Surender Kumar, deposed qua forwarding of the recovered articles bearing seal of CS to FSL Madhuban.

7. The trial Court, after appraisal of the evidence, found the accused guilty for an offence punishable under Section 307 read with 34 of the IPC and sentenced them to undergo Rigorous Imprisonment for a period of four years and to pay fine of Rs.5,000/- each and in default thereof, to further undergo simple imprisonment for a period of six months each. Accused Dhan Singh was acquitted of the charges levelled against him.

8. Feeling dissatisfied with the above said judgment of conviction dated 17.04.2006 and order of sentence dated 18.04.2006, the appellants/accused have preferred the instant appeal.

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9. Learned counsel for the appellants has not challenged the conviction and has argued only on quantum of sentence. He, contends that the appellants had undergone a period of 01 year 01 month out of the total sentence of 04 years till 22.03.2007, when their sentence was suspended, and the matter has been compromised with Kashmir Singh, who was the sole person injured in the occurrence. He also contended that the appellant Radhey Sham was 20 years of the age at the time of occurrence, while appellant Sanjay was 28 years. Kashmir Singh had fully recovered from the injury soon after the occurrence.

10. Mr. Sanjeev Majra, learned counsel appearing for injured Kashmir Singh has stated that the matter has indeed been compromised and he has been compensated by the appellants in terms of the compromise arrived at between them on 19.12.2016.

11. I have heard the learned counsel for the parties.

12. The occurrence had taken place 16 years ago and at that time, both the accused were in the prime of their youth. They have undergone a sentence of over 01 year out of the total sentence of 04 years and have undergone the agony of criminal proceedings for 16 years. The matter has been compromised by

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the parties. The injured Kashmir Singh has fully recovered. It would meet the ends of justice that the sentence of the appellants is reduced to the period already undergone by them. The accused were released on bail upon suspension of their sentence during the pendency of this appeal.

13. Therefore, while the conviction of the appellants for offence under Section 307 read with Section 34 of the IPC is maintained, the sentence qua imprisonment of the appellants is reduced to the period already undergone by them.

14. With the modification in the sentence, the appeal stands partly allowed.

(ANUPINDER SINGH GREWAL)
JUDGE

09.03.2018

SwarnjitS

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO