

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No. 2910-SB of 2013 (O&M)
Date of decision: 15.12.2018

Laxman

.. Appellant

v.

.. Respondent

State of Haryana

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Khatkar, Legal Aid Counsel for the appellant.

Mr. Paramjeet Singh, Assistant Advocate General, Haryana.

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Avneesh Jhingan, J. (Oral)

Appellant-Laxman (hereinafter referred to as 'the appellant') had faced trial in FIR No. 259 dated 14.10.2011, registered at Police Station Sadar, Sonapat, under Sections 323, 324, 326, 307, 506 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

The learned Additional Sessions Judge, Sonapat, vide judgment dated 30.4.2013, convicted the appellant for commission of offences punishable under Sections 307 and 506 read with Section 34 IPC. Vide order dated 2.5.2013, the appellant was sentenced as under:

<i>Under Section</i>	<i>Rigorous imprisonment</i>	<i>Fine</i>	<i>In default</i>
307 read with Section 34 IPC	Seven years	₹ 5,000/-	Rigorous imprisonment for three months
506 read with Section 34 IPC	One year	₹ 1,000/-	Rigorous imprisonment for one month

Both the sentences were ordered to run concurrently.

The brief facts of the case of the prosecution are that Shamsheer Singh, resident of Lehrara, made a complaint that his brother Raj kumar was doing the work of rori dust and had unloaded rori near the house of one Anita, wife of Laxman, who was tenant at Mohan Nagar. Some amount remained due towards Anita. On 14.10.2011, at about 3.00 PM, Raj Kumar had gone to the house of Anita for taking the remaining amount and the complainant had also gone to Mohan Nagar for some personal work. When the complainant reached near Naveen School, he heard loud noise of his brother-Raj Kumar and saw that the appellant and Suraj, i.e. brother of Anita, were having knives in their hands and were beating Raj Kumar. On seeing him, they ran away. The complainant took Raj Kumar to General Hospital, Sonapat, from where he was referred to PGIMS, Rohtak. In the opinion of the concerned doctor, the injury was found to be dangerous to life. A case was lodged against the appellant and Suraj under Sections 323, 324, 326, 307 and 506 read with Section 34 IPC. On completion of investigation and preparation of report, the case was committed to the court of learned Sessions Judge, Sonapat, vide order dated 4.1.2012.

The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Entire incriminating evidence and documents were put to him in questions. He pleaded innocence and false implication and sought trial. However, he produced no evidence in defence.

In order to prove its case, the prosecution examined as many as 10 witnesses.

The prosecution in order to prove its case examined PW1-Dr. Sarita Mehra. She deposed by way of affidavit (Ex. PA) and also produced

medico-legal report (Ex. PA/1) of Raj Kumar. She recognized her signatures on the medico-legal report. She further deposed that she had sent ruqa to the police about admission of Raj Kumar. She opined that the injury was dangerous to life.

Dr. Surender, Senior Resident of PGIMS, Rohtak was examined as PW-2. He deposed that Raj Kumar was admitted in PGIMS, Rohtak on 14.10.2011 and discharged on 20.10.2011. He deposed that x-ray of Raj Kumar was conducted and chest tube was inserted in left side of thorax.

Inderpal, Draftsman at S. P. Office, Sonapat appeared as PW-3, he proved the scaled site plan (Ex. PD) of the place of occurrence.

Constable-Ajmer Singh was examined as PW-4, he deposed that he was a witness at the time of disclosure statement (Ex. PE) made by the appellant, where he admitted his guilt.

Complainant-Shamsher Singh appeared as PW-5 and supported the prosecution version of the case, he deposed that he was an eye-witness and was present at the place of occurrence, where he saw the appellant and Suraj giving knife blows to Raj Kumar. He further deposed that he shifted his brother-Raj Kumar to General Hospital, Sonapat.

Injured-Raj Kumar was examined as PW-7. He also supported the prosecution version of the case and stated that he had gone to the house of Anita to collect the balance amount, where he was attacked by the appellant and Suraj and they gave him knife blows.

Investigating Officer- SI Sittar Singh and Constable Narender were examined as PW-8 and PW-9 to prove the case.

The injuries suffered by Raj Kumar were duly corroborated by

medical evidence, i.e., affidavit filed by PW-1 Dr. Sarita Mehra. The injuries suffered by Raj Kumar are as under:

- “1. An incised wound of size 2 cm x 1 cm present over left side of chest (anteriorly) just laterally to nipple. X-ray of chest. Ortho's and Surgeon's opinion was advised.
2. 7 incised wound of variable size from 4 cm x 5 cm to 7 cm x .5 cm present over scalp. X-ray of skull and Surgeon's opinion was advised.
3. An incised wound of size 1 cm x 5 cm present over left middle and incised wound of size 1 cm x 5 cm present over left ring finger.
4. An incised wound of size 1 cm. x 5 cm present over distal phalanx of left thumb.”

The learned Additional Sessions Judge, Sonapat, after considering the facts and appreciating the evidence, vide impugned judgment and order, convicted and sentenced the appellant, as stated above.

Learned legal aid counsel appearing for the appellant submitted that no knife was recovered from the appellant, hence, the prosecution failed to discharge the onus to prove that the injuries were inflicted to Raj Kumar by the appellant. He submitted that the trial court has erred in presuming that Suraj, who had absconded, had actually taken the knife along with him. He further submitted that there are discrepancies in the statements of the complainant and the injured with regard to the injuries attributed by the appellant and Suraj.

Learned State counsel contended that the prosecution proved its case beyond doubt by examining as many as 10 witnesses. The eye-witness

to the occurrence supported the case of the prosecution. He further produced custody certificate dated 30.11.2018, issued by Ramesh Kumar, Deputy Superintendent, District Prison (Faridabad), Haryana. As per the custody certificate, the appellant after undergoing the substantive sentence as well as the sentence for non-payment of fine had been released on 16.5.2017.

The contentions raised by learned counsel for the appellant lack merit and are not found enough to create a dent on the prosecution case. Non-recovery of the weapon, i.e., knife will not dislodge the case of the prosecution, as in the present case the occurrence was witnessed by an eye-witness. In his statement, the eye-witness-Shamsher Singh specifically deposed that multiple injuries were inflicted upon Raj Kumar by the appellant with knife. The injuries were duly substantiated by the deposition of PW1- Dr. Sarita Mehra. The injury was found dangerous to life. The fact that a knife was used as a weapon of offence for causing injuries was duly proved beyond doubt.

The second contention raised by learned counsel for the appellant that the trial court presumed that the knife was taken away by Suraj also does not enhance the case of the appellant. For the reasons mentioned above, non-recovery of the weapon itself does not affect the the case of the prosecution, as it would not be material for the said purpose. More so, when use of weapon and injuries inflicted have been proved.

The discrepancies pointed out by the learned counsel for the appellant in the statements of the complainant and the injured with regard to specific injury being inflicted to Raj Kumar by the appellant are not relevant as it has been duly proved that knife blows were inflicted by the appellant on Raj Kumar and with a common intention. The appellant and

Suraj in an attempt to cause death of Raj Kumar inflicted as many as seven stab wounds on his head with knives. Moreover, apart from seven stab wounds on the skull, three other incised wounds were proved on the chest and other parts of the body. These injuries collectively are enough to attract conviction under Section 307 IPC.

The Supreme Court while dealing with scope of Section 307 IPC in the case of **State of Maharashtra . Balram Bama Patil and others,** AIR 1983 SC 305 held as under:

“9. We find considerable force in this contention. A bare perusal of Section 307 IPC would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307 IPC reads:

“Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be

deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. The High Court, in our opinion, was not correct in acquitting the accused of the charge under Section 307 IPC merely because the injuries inflicted on the victims were in the nature of a simple hurt. Therefore, that part of the judgment of the High Court acquitting the accused Nos. I, 2 and 11 of the offence under Section 307 IPC cannot be sustained and must be set aside.”

In view of the above discussion, it is clear that the prosecution successfully proved its case for conviction of the appellant under Sections 307 and 506 read with Section 34 IPC. The judgment and order passed by the learned Additional Sessions Judge, Sonapat do not suffer from any

infirmity. The conviction and the sentence is upheld.

In view of the fact that the appellant has already undergone the substantive sentence as well as sentence for non-payment of fine, no further direction is called for.

The appeal, being devoid of any merit, is dismissed.

(Avneesh Jhingan)
Judge

15.12.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No