

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3151-SB-2015 (O&M)

Date of Decision:-21.07.2018

Bijender

.... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present:- Mr. Ashwani Bhardwaj, Legal Aid Counsel
for the appellant.

Mr.Siddharth Sanwaria, DAG, Haryana.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the appellant challenging the judgment of conviction dated 30.03.2015 and order of sentence dated 31.03.2015 passed by learned Additional Sessions Judge, Rohtak. The appellant was held guilty under Section 307 of the Indian Penal Code, 1860 (for short, 'IPC') and was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5,000/- and in case of default in payment of fine to further undergo simple imprisonment for a period of six months.

The brief facts as narrated by the prosecution are that a telephonic message was received on 20.06.2007 in the Police Post Sabzi Mandi, Rohtak that Raju son of Tej Raj resident of Salara Mohalla, Rohtak, was admitted in Dr. Ram Manohar Lohia Hospital, New Delhi, due to the injuries received in a quarrel. Head Constable Satyawar and Constable Vinod Kumar reached the hospital and collected copy of MLR of Raju.

After getting opinion from the doctor regarding fitness of Raju for making

statement, his statement was recorded. He stated that about 15-16 days ago, Bijender was staring towards his house and when he objected, an altercation took place between them. On 14.06.2007 at about 6.30 p.m. when he was going through the street near the grocery shop, three accused namely Kala, Dharo and Bijender intercepted him. Bijender was having a rod and gave a blow on his head; Kala threw a brick which hit on his chest and Dharo was having a danda and she gave a blow on his back. On raising an alarm, his elder brother Sanjay and brother-in-law Krishan rescued him from the clutches of the accused. The accused fled away along with their respective weapons after threatening to kill him. He was admitted to Medical College, Rohtak by his brother and brother-in-law and thereafter, he was shifted to Dr. Ram Manohar Lohia Hospital, New Delhi.

In order to prove its case, the prosecution examined as many as twelve witnesses including complainant-PW1; two eye witnesses, namely, Krishan PW2 and Sanajy PW3 and two doctors namely Dr. Ravi Shankar PW9 and Dr. Prasun Keshri PW12.

The appellant was examined under Section 313 Cr.P.C. and all incriminating circumstances and evidence were put to him. He denied the same and pleaded his false implication in the case but no evidence was led in his defence.

During the trial, accused Kala died on 30.07.2007 and co-accused Dharo was acquitted vide order dated 04.11.2008. The appellant was declared proclaimed offender and subsequently arrested on 15.02.2012 and thereafter he faced the trial.

Learned Additional Sessions Judge, Rohtak, after considering the facts of the case and witnesses examined, convicted appellant Bijender

under Section 307 IPC.

No one is present on behalf of the appellant today. Even on the last date, no one had appeared for the appellant. Keeping in view the fact that the accused was sentenced to undergo rigorous imprisonment for seven years, out of which he had already undergone six years and six months, Mr.Ashwani Bhardwaj, Advocate, who is present in court today, is appointed as legal aid counsel to represent on behalf of the appellant. A copy of paper book is handed over to him and after going through the paper book, he assisted the court.

Learned counsel for the appellant contended that the occurrence took place on 14.06.2007 whereas the FIR was registered on 21.06.2007. There was a delay of seven days in registering the FIR. He further contended that the complainant had suffered injuries on 14.06.2007 and as per the statement of Dr.Prasun Keshri PW12, he had examined the complainant on 15.06.2007. His further contention is that two eye witnesses were related to the complainant and hence not worth reliance.

Learned State counsel argued that the prosecution has proved its case by examining as many as twelve witnesses. Krishan PW2 and Sanjay PW3 were eye witnesses to the occurrence. The doctors proved the injuries and the fact that the injuries sustained were dangerous to life. FIR was registered on receiving a telephonic message on 20.06.2007. Thereafter, on *ruqa*, FIR was registered on 21.06.2007. The fact that even on that day the complainant was hospitalised and was being treated for a skull fracture should be considered. The statement of complainant (Ex.P1) was recorded by Head Constable Satyawan after getting opinion from the doctor that the complainant was fit to give a statement. The facts given by

the complainant in the statement were duly supported by two eye witnesses namely Krishan PW2 and Sanjay PW3. The police officials, Head Constable Sumit Kumar PW4, who prepared the site plan, Ranbir Singh PW5 received ruqa, on the basis of which he recorded formal FIR; SI Ajmer Singh PW6 arrested Dharo on 15.10.2007 and two investigating officers i.e. ASI Satyawar PW7 and SI Ram Karan PW8 supported the case of the prosecution. The deposition of Dr. Prasun Keshri PW12 proved the injury suffered by the complainant which he had examined on 15.06.2007. Dr. Ravi Shankar PW9 opined that the skull injuries suffered by the complainant were dangerous to his life.

The contentions raised by learned counsel for the appellant that the eye witnesses were related to the complainant and hence not worth reliance, is not well founded. There is no allegation of any animosity or ill-will against the accused. Merely because the fight took place in a street and on hearing the hues and cries of the complainant, it was his relatives who reached the spot, will no way affect the worthiness of the witnesses especially when they have stood the test of cross-examination. The reliance of learned counsel for the appellant that in cross-examination, Dr. Ravi Shankar PW9 stated that the possibility of skull fracture having been suffered because of falling against a hard surface causes no dent to the case of the prosecution. He has opined that the injuries suffered were dangerous to life. He was not the sole witness on which the prosecution's case was relying upon. MLR report of Dr. Prasun Keshri PW12 proves the case of prosecution. Once the eye witnesses and the police witnesses have supported the case of the prosecution, the cross examination of the doctor cannot be read in isolation. The delay in lodging the FIR is not inordinate.

The injuries suffered by the complainant were serious. The first and foremost thing for the family members was to ensure that he gets the proper treatment. The delay is explained in itself, as it has come on record that initially he was admitted to Medical College, Rohtak and thereafter shifted to Dr. Ram Manohar Lohia Hospital, New Delhi. Even otherwise, it has not been established that delay in registering the FIR has caused any prejudice to the accused. The conviction of the appellant is upheld.

Learned State counsel has produced the custody certificate dated 20.07.2018 issued by Dharamvir Singh Kadma, Deputy Superintendent, District Prison, Rohtak, Haryana. As per custody certificate, the appellant has undergone actual sentence of five years, one month and nineteen days and earned a remission of one year, four months and eighteen days, hence total sentence undergone including remission by the accused is six years, six months and seven days. The custody certificate is taken on record. The appellant has faced criminal proceedings for almost six years. His age is about 54 years at present. As per the sentence order he was diabetic and suffering from high degree of hypertension.

The Hon'ble Apex Court in case of ***Naresh and others vs. The State of Uttarakhand & ors., 2018 SCC Online SC, 453*** has held as under :-

“14. So far as the remaining three accused-appellants are concerned, namely, the appellant Nos.1, 3 and 4, we modify their respective jail sentences awarded by the High Court mentioned above and reduced to what they have already undergone and enhance the fine amount awarded by the High Court, i.e., from Rs.7000/- to Rs.75,000/- to each appellant.

15. *This we are inclined to do for the following reasons.*

16. *First, the incident is of 1998 and we are in 2018. In other words, it is now almost 20 years have passed that this litigation is pending in various Courts.*

17. *Second, there were seven injuries noticed by the doctor on the body of injured-Tej Singh but the injuries noticed were not very serious in nature as would be clear from the Doctor's report mentioned above.*

18. *Third, Tej Singh survived leaving no disability much less permanent on his body due to causing of the injuries and lived for twenty years after the date of alleged incident and died recently in last week as was stated by learned counsel for the appellants.*

19. *Fourth, all the appellants(accused) have undergone almost one year of jail sentence including remission out of the total jail sentence awarded by the High Court except appellant No.2 – Suresh(A-2), who underwent around three months.*

20. *Fifth, all the appellants were first offender and were not found involved in any criminal activity in the last 20 years, though remained on bail throughout and lastly, appellant Nos. 2 and 3 are reported to be in Government Service.*

21. *However, so far as the involvement of appellant Nos.1, 3 and 4, in commission of offence in question, is concerned, we have perused the findings of the High Court qua each and find that no case for interference on such findings of fact though of reversal is called for by this Court. In our view, it is just and proper and, therefore, we*

uphold the finding of conviction of appellant Nos.1 , 3, and 4.

22. For all these aforementioned reasons, which are relevant in the facts of this case, we are inclined to interfere only in the quantum of jail sentence awarded by the High Court and reduce their jail sentence to the sentence already undergone and at the same time consider it just and proper to enhance the fine amount imposed by the High Court on appellant Nos.1, 3 and 4.”

With regard to sentence, this court in **Mahabir Vs. State of Haryana, 1997 (3) RCR 649**, reduced the sentence to the period already undergone, keeping in view the delay in trial.

Keeping in view the facts of the present case and the period already undergone by the appellant, the sentence is reduced to period already undergone and fine imposed upon him is set aside. The accused be set free, if not required in any other case.

The appeal is disposed of accordingly.

21.07. 2018
anju

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No