

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-352-SB-2017 (O & M)
Date of Decision:28.04.2018

Sukhjit Singh @ Sukhi and others...Appellants

Versus

State of Punjab...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Deepa Jain, Advocate and
Mr. Mahesh Gupta, Advocate
for the appellants.

Mr. Hittan Nehra, Addl. A.G., Punjab.

ANIL KSHETARPAL, J.

This appeal has been filed by four appellants against the judgment of conviction and order of sentence in FIR No.131 dated 24.09.2015 under Sections 307, 352, 323, 341, 506, 34 IPC. Appellants have been found guilty and sentenced as under:-

Sr. No.	Name of the accused	Under Section	R.I. For	Fine	R.I. In default of payment of fine.
1	Sukhjit Singh alias Sukhi	307 of IPC	10 years.	Rs.10,000/-	Two year.
		325 of IPC	2 years.	Rs.5,000/-	One year.
		323 of IPC	1 year.	-	-
		341 of IPC	One month.	-	-
		506 of IPC	Two years	-	-
2	Rupinderji Singh alias Robin	307 of IPC	10 years.	Rs.10,000/-	Two year.
		325/34 of IPC.	2 years.	Rs.5,000/-	One year.
		323 of IPC	1 year.	-	-
		341 of IPC	One month.	-	-
		506 of IPC	Two years	-	-

3	Raghvir Singh alias Gir	307 of IPC	10 years.	Rs.10,000/-	Two year.
		325/34 of IPC.	2 years.	Rs.5,000/-	One year.
		323 of IPC	1 year.	-	-
		341 of IPC	One month.	-	-
		506 of IPC	Two years	-	-
4	Hardeep Kumar	307 of IPC	10 years.	Rs.10,000/-	Two year.
		325/34 of IPC.	2 years.	Rs.5,000/-	One year.
		323 of IPC	1 year.	-	-
		341 of IPC	One month.	-	-
		506 of IPC	Two years	-	-

Case set up by the prosecution has been noticed by the learned Additional Sessions Judge in the following manner:-

“Succinctly stated prosecution version is that on 23.09.2015, complainant Mohinder Pal, got recorded his statement before SI Vijay Kumar to the effect that he is running a fruit shop at Kakkarwal Chowk, Dhuri. On 23.09.2015 at about 7.00 p.m he was going on foot towards City Dhuri. When he reached near the residence of Rahi, then from the front side Sukhpreet Singh alias Sukhi nephew of Dev Sarpanch Dhuri armed with iron rod alongwith 3-4 unknown persons came there and encircled him and proclaimed that he was having old enmity with complainant. The unknown persons apprehended him and accused Sukhi and inflicted 2-3 iron rod blows on his right arm, due to which he fell down. Then accused Sukhi gave rod blow on the back of his head and unknown assailants gave kick blows on his

person. He raised hue and cry. Several persons assembled at the spot on hearing noise. Then all the assailants fled off the scene of occurrence. Accused caused injuries on his person with intention to kill him. Motive behind the occurrence was that few days prior to occurrence, altercation took place between them and on account of which accused party inflicted injuries on his person.

On the basis of this statement of complainant Mohinder Pal present case was registered against the accused under section 325 IPC. On 24.09.2015 supplementary statement of injured/complainant was recorded, wherein he specifically disclosed the names of all the accused as Sukhjit Singh alias Sukhi, Rupinderjit Singh alias Robin, Hardeep and Amninder Singh alias Gaggi, who were having iron rods, base ball bats and hockeys and inflicted injuries upon him with an intention to kill him. Sukhjit Singh gave iron rod blow on his head with an intention to kill him, but he saved himself by raising his hand, on account of which his arm was fractured. He further stated that accused Raghbir Singh gave hockey blow on his head, accused Robin and Amninder gave base ball bat blow on his head and back. He further stated that if people would have not gathered, accused, might have killed him. The occurrence was witnessed by his father Jiwan Kumar. On the basis of

this supplementary statement of complainant offence under Section 307 IPC was added and accused were arrested.

On 04.12.2015 complainant again suffered supplementary statement that he mentioned the name of Amninder Singh, but he did not know him. Accordingly offence under Section 148 and 149 of IPC were deleted and offence under Section 34 of IPC was added. After completion of investigation and other formalities, the final report under Section 173 Cr.P.C was presented in the court against the accused.”

After presentation of the challan, case was committed to the Court of learned Sessions Judge, Sangrur. Prosecution in order to prove its case examined PW-1 Mohinder Pal complainant, PW-2 Jiwan Kumar, PW-3 SI Harinder Singh, PW-4 Paramjit Jindal Radiographer, Civil Hospital Dhuri, PW-5 ASI Sukhdarshan Singh Investigating Officer, PW-6 Dr. Parminder Kaur, PW-7 S.I. Vijay Kumar. All incriminating material was put to the accused while recording their statements under Section 313 Cr.P.C. but they pleaded innocence and false implication and claimed trial.

I have heard learned counsel for the parties at length and with their able assistance gone through the records and the impugned judgment of the learned trial Court.

Learned counsel for the appellants has submitted that the complainant has made an improvement in his statement given to the police on 23.09.2015 on the basis whereof FIR was registered. She drew the attention of the Court towards the statement and submitted that complainant

Mahinder Pal attributed injuries only to Sukhjit Singh @ Sukhi (appellant No.1). She further submitted that complainant Mahendar Pal did not make a mention that his father was accompanying him, whereas on the next day he made a statement attributing injuries to other accused also and has also stated that his father was present. Learned counsel has further drawn attention of the Court to the statement of the complainant dated 04.12.2015 wherein he absolved Amninder Singh.

Learned counsel has further drawn attention of the Court to the statement of the complainant when he appeared in evidence. He has submitted that the complainant did not support the prosecution case as he has stated that injuries suffered by him were on account of his falling down from the cycle and did not identify the accused present in the Court, who had caused injury to him. He further denied that the police had not met him on 17.10.2015, 28.10.2015 and 04.12.2015. He has further stated that he had named all the accused. In his examination-in-chief, he volunteered that somebody had told him their names outside the Court. Learned counsel has further drawn attention of the Court to the statement given by the father Jiwan Kumar, who has been examined as PW-2 had also not supported the case of the prosecution and was declared hostile. Learned Public Prosecutor was given opportunity to cross-examine PW-1 and PW-2 but public prosecutor could not derive anything substantial from the aforesaid witnesses.

Learned counsel for the appellants has further drawn attention of the Court to Ex.PD, recovery memo dated 17.10.2015, when weapons of the offence were allegedly recovered from three appellants namely Sukhjit

has submitted that date on which recovery memo has been prepared has not been mentioned. He has drawn attention of the Court to the signatures of the SHO under which date has been mentioned as 17.10.2015. Learned counsel has further drawn attention of the Court to Ex.PW-5/A, which is a recovery memo dated 28.10.2015, alleged recovery of the weapon from 4th appellant i.e. Hardeep Kumar. Similarly, the recovery was affected by the same constable i.e. Paramjit Singh, who had also signed the recovery memo dated 17.10.2015 and in the same manner under the signatures of SHO, which is down below date 28.10.2015 has been mentioned.

Learned counsel for the appellants has further drawn attention of the Court to the medical evidence. He has submitted that after x-ray examination only injury No.5 was found to be grievous in nature, however, there was no callus formation. Hence, he submitted in the alternative that offence under Section 307 is not made out as injury No.5 is on the arm and remaining injuries on the head are simple in nature and no bony injury was found. He has drawn attention of the Court also to the statement of the complainant, who has stated that he had suffered injuries as he fell from the cycle.

On the other hand, learned State counsel has submitted that PW-1 and PW-2 i.e. complainant and his father supported the prosecution case in examination-in-chief. Thereafter, the cross-examination was deferred to after lunch but after lunch complainant and his father changed the statement either due to compromise or having been won over. He submitted that the Court should examine the evidence minutely in such situation and hence uphold the judgment passed by the Court. He submitted

case.

This Court has analysed the submission of learned counsel for the parties alongwith examining of the evidence available on the file. In criminal cases, prosecution has to prove its case beyond any reasonable doubt.

In the present case, certain doubts are apparent which prosecution has failed to explain. On 23.09.2015, statement of the complainant, which was basis of the registration of FIR, does not attribute any injury to any other accused. Other accused apart from Sukhjot Singh @ Sukhi are not shown to be armed with any weapons. They have been attributed kick blows. Complainant nowhere states in the statement dated 23.09.2015 that his father was present, whereas on 24.09.2015, complainant improves upon his statement and attributes different injuries to other accused and it has been mentioned that each one of them was armed with weapons. The presence of father of the complainant has been introduced on 24.09.2015 for the first time.

Still further on 04.12.2015, complainant suffered a statement and absolved Amninder Singh. It is apparent that the complainant had been changing his stand repeatedly. Coupled with the aforesaid, it is further significant to notice that complainant Mohinder Pal and his father Jiwan Kumar do not support the prosecution case when appeared in the witness box. Learned trial Court has noticed that the statement of the injured and his father changed after post lunch session.

In the considered opinion of this Court, no doubt such evidence has to be examined critically to arrive at a correct conclusion but it must be

only his examination-in-chief.

Still further, complainant while giving statement to the police on 23.09.2015 attributed 2-3 iron rod blows on his right arm to Sukhjit Singh @ Sukhi and attributed another iron rod blow on the back of the head to same Sukhjit Singh @ Sukhi, whereas on the next day, he changed his statement and stated that Sukhjit Singh @ Sukhi gave an iron rod blow on his head but he saved himself by raising his hand on account of which his arm was fractured. This part of the statement is missing in the statement dated 23.09.2015, rather the statement of the complainant is that initially Sukhjit Singh @ Sukhi inflicted 2-3 iron rod blows on his right arm due to which he fell down and thereafter Sukhjit Singh @ Sukhi gave an iron rod blow on the back of his head.

Further, a careful reading of the medical evidence establishes that only injury No.5, which is on the right hand was found to be grievous. Two injuries on the head were not found to be bony injuries. In the recovery memo, iron rod of sufficient length is shown to have been recovered from Sukhjit Singh @ Sukhi, whereas from the other accused baseball bat and hockey sticks have been recovered. Further recovery memo Ex.PD and Ex.P-5/A also do not inspire confidence. Ex.PD does not refer to the date of recovery. After leaving sufficient space where Station House Officer has signed, date has been printed. Similar is the recovery memo Ex.P-5/A. Recovery memos are alleged to be dated 17.10.2015 and 28.10.2015 whereas Mohindar Pal-injured states in his evidence that he did not contact the police during these days. Further, the presence of the father is at the time of incident appears to be doubtful for following reasons:-

information to the police does not refer to the presence of his father;

(ii) Father, who was accompanying his son, when attacked with weapons by four persons, does not even raise an alarm which is not the normal reaction of a father.

Keeping in view the facts and the evidence available on the file, this Court has arrived at a conclusion that the prosecution has failed to prove its case beyond reasonable doubt and hence the appellants are entitled to the benefit of doubt.

Appeal is allowed.

Judgment of conviction and order of sentence is set aside.

28.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No