

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRA-S-2152-SB of 2003 (O&M)
Date of Decision: 14.09.2018

Chhota Devi and anotherAppellants

VERSUS

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Keshav Partap Singh, Advocate
for the appellants.

Ms. Dimple Jain, AAG, Haryana.

SURINDER GUPTA, J.

This is appeal against judgment dated 28.10.2003 passed by Additional Sessions Judge, Gurgaon (now Gurugram) whereby appellants, namely, Chhota Devi and Mukesh Kumar were convicted and sentenced as follows:-

<i>Offence under Section</i>	<i>Punishment</i>
307 IPC	To undergo rigorous imprisonment for three years and to pay fine of ₹4000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. FIR was registered on the complaint (Ex. PA) of Mohd. Iqbal, wherein he stated that on 27.07.2001 at about 09.30 p.m., he was repairing the concrete road, which had been freshly laid a day before as cow of neighbourer Suresh had passed on that passage. In the meanwhile, Pardeep son of Suresh came there and complainant asked him to pass from a distance from the newly constructed portion of the road, which resulted in exchange of hot words between complainant and Pardeep. On hearing their noise, appellant no. 1-Chhota Devi, mother of Pardeep, came out and started

quarreling with complainant and also caught his private part. Complainant raised *raula* at which his brother Isak Khan and relative Rahish Khan also came out and tried to get complainant relieved. Nephew of complainant Abid Ali also came in the street and Mohd. Iqbal and Chhota Devi were separated. In the meanwhile, Mukesh brother-in-law of Suresh threw a *gid* (stone) which hit head of Abid Ali. Mukesh threw two-three more *gid* which hit back and right leg of Isak Khan. Abid Ali became unconscious. In the meanwhile, Vinod son of Moti Singh and other neighbours came to the spot and got complainant party released from appellants, who went inside their house threatening the complainant that he had been saved on that day but will not be spared in future.

3. Abid Ali was taken to Government Hospital, Gurugram, where he was examined by Dr. B.K. Rajora (PW-5). He found Abid Ali unconscious, whose general condition was poor and he was having convulsions. There was single injury on his head, a lacerated wound on left parietal region with irregular margins, measuring 3x.5 cms. and fresh bleeding was present over there. Injury was subjected to x-ray skull, C.T. Scan and surgeon's opinion. Abid Ali was referred to Safdarjang Hospital, New Delhi for management. In the opinion of doctor injury on the person of Abid Ali was caused with blunt weapon. He prepared medicolegal report (Ex. PD) and sent *ruqa* (Ex. PD/1) to the police. Dr. B.K. Rajora stated about injury of Abid Ali that the diagnosis made was head injury with extradural haematoma. Craniotomy was done with evacuation of extradural haematoma. On the basis of this, the injury was declared as 'dangerous to life if not treated'.

4. PW-11 Dr. Karam Chand, Sr. Neurosurgeon, Safdarjang Hospital, New Delhi, who examined Abid Ali on 28.07.2001 has stated

about injury and his health condition as follows:-

“.....On examination the patient was conscious but drowsy. He was moving all four limbs. He had a cut lacerated wound in the right parietal region of the head. C.T. Scan of the head revealed fracture on the right fronto temporal region and acute extradural haematoma. He was operated on 28.07.2001 by me. He made good recovery and he was discharged from the hospital on 03.08.2001. In my opinion, nature of injury was dangerous to his life. This statement is made on the basis of case sheet of the patient Abid Ali issued from record section of the hospital.”

5. Dr. Karam Chand has, however, admitted that in the discharge summary it is not mentioned that injury suffered by Abid Ali was dangerous to life.

6. The accused were arrested and after completion of investigation challan against them was presented in Court. Both the appellants were charge-sheeted for offence punishable under Sections 307, 34 and 506 IPC to which they pleaded not guilty and claimed trial.

7. The prosecution in support of its case examined Inspector Sanjay Ahlawat as PW-1, SI Babu Lal as PW-2, Sarwan Kumar, Draftsman, S.P. Office, Gurgaon as PW-3, SI Satinder Kumar as PW-4, Dr. B.K. Rajora as PW-5, Mohd. Iqbal as PW-6, Abid Ali as PW-7, Vinod Singh as PW-8, Isak Khan as PW-9, HC Atma Ram as PW-10, Dr. Karam Chand, Neurosurgeon, Safdarjang Hospital, New Delhi as PW-11 and Dr. Laxman Das, Safdarjang Hospital as PW-12.

8. On conclusion of prosecution evidence, statements of appellants under Section 313 Cr.P.C. were recorded wherein both the appellants denied allegations against them and pleaded their false implication. Appellant

“I am innocent. Cow belonging to us mutilated the freshly constructed road in front of complainant's house. Isak, Iqbal and Abid objected chased Pardeep, who ran and entered in our house. Isak, Iqbal and Abid followed him and entered our house. When I tried to save Pardeep they caused injuries to me. I was dragged out from the house and again caused injuries. In right of private defence of my person I threw a small brickbat towards Abid Ali which hit on his head.”

9. Constable Anil Kumar (DW-1) and Dr. Sushil Khurana, Kalyani Hospital, Gurgaon were examined in defence. Dr.Sushil Khurana has stated that he examined Chhota Devi on 28.07.2001, who was admitted in the hospital and discharged on 02.08.2001. Initially she had been admitted in Government Hospital, Gurgaon where her medical examination had been conducted by PW-5 Dr. B.K. Rajora, who found following injury on her person.

“1. There was single injury, a lacerated wound on the middle of forehead 4.5 x .5 cms. with irregular margins extending just below the hair line towards the back of skull and obliquely present and fresh bleeding was present there.”

10. In the opinion of doctor, above injuries were caused by blunt weapon. Dr. Sushil Khurana has described injuries on the person of Chhota Devi as follows:-

“.....At the time of admission, patient had one stitched wound about 4 inches on the forehead in the mid-line. Patient also have bruise on the left shoulder. Patient gave the history of unconsciousness since last night. On examination patient was conscious and well oriented. Her CT scan was done which showed generalized cerebral oedema. Patient was discharged in improved condition. Ex. DG is the discharge summary and Ex. DH is the photostat copy of CT scan. There was no

haematoma in case of this patient. There was only swelling on the brain. The above injury if left untreated would be dangerous to life.”

11. Learned trial Court on appraisal of evidence found both the accused (appellants) guilty for commission of offence punishable under Section 307 IPC. However, they were acquitted of the charge for offence punishable under Sections 506 IPC.

12. In this case two accused had faced trial with altogether separate and distinct allegations and set of evidence against them. In order to appreciate as to whether injuries on the person of Abid Ali, for which both the appellants have been convicted, were caused in furtherance of their common intention, the evidence against both requires to be seen and appreciated separately.

13. Firstly, I take the testimony of prosecution witnesses against appellant no. 1-Chhota Devi.

14. PW-6 Mohd. Iqbal has stated that during altercation with him and Pardeep, Chhota Devi came there and caught his private part. On hearing his noise, his brother Isak Khan, relative Rahish Khan and nephew Abid Ali came there. With their intervention they were separated and appellant no. 2-Mukesh Kumar had left the place and had gone upstairs on the roof of his house. He pelted brickbat on Abid Ali from the roof top. He has admitted that Chhota Devi and Pardeep did not cause any injury to him and he had not seen both of them causing any injury to anybody.

15. PW-7 Abid Ali has stated that on 27.07.2001 at about 09.30 p.m., on hearing voice of his uncle, Mohd. Iqbal (complainant), he and his sister's husband, namely, Rahish Khan came out. Rahish Khan tried to separate appellants (Chhota Devi and Mukesh Kumar) and Pardeep. The

accused persons left complainant-Mohd. Iqbal and attacked Rahish Khan. Appellant no. 1-Chhota Devi gave slaps and fist blows and other accused also gave fist blows and slaps to him. When he came out accused also attacked and gave him slaps and fist blows. Appellant no. 2-Mukesh Kumar went on the roof of his house and started pelting brick bats on him. One brick hit his head and he became unconscious. This witness had made several improvements in his statement as in the statement under Section 161 Cr.P.C., recorded by the police (Ex. DA), many facts stated by him were not mentioned. In his statement to the police, he has not stated that accused after leaving complainant-Mohd. Iqbal started beating Rahish Khan. He has not stated therein that accused gave slaps and fist blows to him or that Mukesh Kumar went upto the roof and started pelting brick bats. He has stated in his statement to the police that during scuffle Vinod Singh and Moti Singh came to the spot with him and had separated both the sides. However, while appearing as PW-7 he has denied this fact. Mohd. Iqbal PW-6 has also not stated that accused/appellant gave slaps and fist blows to Rahis Khan.

16. Vinod Singh, eye-witness, who appeared as PW-8, has stated that he had seen quarrel between Mukesh Kumar, Chhota Devi (appellants) and Pardeep on one side, Mohd. Iqbal, Abid Ali and one more person on other side. He had seen Abid Ali lying on the ground but he could not see any injury on his person. He was not aware as to how he had suffered injuries.

17. PW-9 Isak Khan has stated that on hearing noise of quarrel between Mohd. Iqbal and child of Suresh and Chhota Devi, he alongwith Vinod Singh came out and found Abid Ali lying on the ground in unconscious state. When he tried to lift him, one or two brick bats hit him on

his chest. Four brick bats, which were thrown by appellant no. 2-Mukesh Kumar hit him on his right leg and belly. He had, however, not got himself medically checked up.

18. From statements of above witnesses, it is evident that there was a quarrel in the street between Pardeep and complainant-Mohd. Iqbal in which mother of Pardeep had intervened. As per PW-6 Mohd. Iqbal, appellant no. 1-Chhota Devi had squeezed his private part. However, his statement is not supported by any medical evidence about any injury or after effect of alleged action of Chhota Devi. There was one injury on the person of Abid Ali, which was on his left parietal region. This injury has not been attributed to Chhota Devi. As per prosecution case, appellant no. 2-Mukesh Kumar had gone upstairs and thrown brick bats, which hit on the head of Abid Ali. Though, it has been stated that other brick bats had also hit Abid Ali and Isak Khan but testimony of prosecution witnesses in this regard is not supported by any medical evidence, as such, cannot be relied upon. PW-6 Mohd. Iqbal has not stated that appellant no. 2-Mukesh even came to the spot. Only role attributed to him in the occurrence is that he threw brick bat which hit Abid Ali.

19. Learned trial Court has convicted appellant no. 1-Chhota Devi for offence punishable under Section 307 IPC read with Section 34 IPC.

20. Section 34 IPC describes the concept of common intention as follows:-

“34. Acts done by several persons in furtherance of common intention — When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

common criminal jurisprudence. In order to prove criminal intention, prosecution is required to prove:-

- (i) criminal act by several persons;
- (ii) such act is done in furtherance of common intention of all;
- (iii) if it is proved that criminal act was done in furtherance of common intention of several persons, each of such person is liable for that act in the same manner as if it was done by him alone.

22. Common intention implies the prearranged plan and acting in concert pursuant to the plan. Such a plan even could take place at spur of moment, which is to be inferred from the act and conduct of parties. What is important to infer common intention is to ascertain meeting of minds of co-accused as a result of premeditated decision or in a given case at the spur of moment or at the scene of crime.

23. In this case trifle issue has resulted in the occurrence. As per statement of Mohd. Iqbal, a cow belonging to Suresh had crossed over the newly laid cemented road in front of his house. He was filling holes created by the cow, when Pardeep son of Suresh also crossed on his cycle towards that side. When he again came towards that side for the second time, he (Mohd. Iqbal) asked him not to cross over plastered portion. Pardeep resisted and Mohd. Iqbal also challenged him with utterances that if he does not desist he would take action against him. In the meanwhile, appellant no. 1-Chhota Devi also came at the spot and started quarreling with Mohd. Iqbal. The only role attributed to Chhota Devi by Mohd. Iqbal is that she squeezed his private part. He had nowhere stated that Chhota Devi slapped Abid Ali or caused any injury to Isak Khan. There is absolutely nothing in the statement of PW-6 Mohd. Iqbal, PW-7 Abid Ali or PW-9 Isak Khan that

Chhota Devi had exhorted appellant no. 2-Mukesh Kumar either to intervene; to cause injury to anybody or to throw brick bats. There is nothing in the testimonies of aforesaid three witnesses to infer common intention of Chhota Devi with Mukesh Kumar while throwing brick bats towards Abid Ali. Learned trial Court concluded that testimony of prosecution witnesses “have amply proved that Abid Ali, PW-7 received head injury as a result of pelting of brick bats by accused Mukesh Kumar from the roof of his house.” While discussing the conduct of Mukesh Kumar, learned trial Court observed as follows:-

“28.Mukesh accused is alleged to have actively participated in the occurrence and he in the course of occurrence went upstairs and started pelting stone pieces on the complainant party as a result of which one piece of stone hit the head of Abid Ali which proved to be dangerous to his life. The act and conduct of accused Mukesh and other accused amply proves that they did so in furtherance of their common intention. All the accused, therefore, are liable for the act of Mukesh accused equally as contemplated under Section 34 IPC.”

24. Act of appellant no. 2-Mukesh Kumar throwing stones from the roof cannot be taken as an act done in furtherance of common intention of other accused i.e. appellant no. 1-Chhota Devi or her son Pardeep. There is nothing to suggest meeting of minds between all the three. At the most act of Mukesh Kumar can be attributed as his individual act during quarrel which took place all of sudden in the street. Chhota Devi, as such, cannot be held liable for offence punishable under Section 307 read with Section 34 IPC. No other injury has been attributed to Chhota Devi. Testimony of PW-9 Isak Khan that Chhota Devi had squeezed private part of his brother Mohd.

Isak Khan cannot be believed as he had reached the spot quite late, when Abid

Ali was lying unconscious on the ground. His version, which is not supported by any medical evidence, appears to be an after thought version.

25. In view of above, I am of the considered opinion that conviction of appellant no. 1-Chhota Devi for offence punishable under Section 307 read with Section 34 IPC is not sustainable in the eyes of law.

26. Now, I take case of prosecution against other convict, namely, Mukesh Kumar. As per statement of complainant-Mohd. Iqbal, Mukesh Kumar had not come to the spot. He pelted brick bats from roof of his house. PW-7 Abid Ali has stated that Mukesh Kumar was at the spot and quarreling with Mohd. Iqbal. He alongwith appellant no. 1-Chhota Devi and Pardeep gave slaps and fist blows to him. Thereafter, Mukesh Kumar went to roof of his house and pelted brick bats at him. PW-9 Isak Khan had come to the spot when Abid Ali was lying unconscious on the ground. He has also stated that Mukesh Kumar was pelting brick bats on them. Immediately after the occurrence, Abid Ali was taken to the hospital and was examined by Dr. B.K. Rajora at about 10.10 p.m. He declared the injury as "dangerous to life if not treated". PW-11 Dr. Karam Chand, Neurosurgeon, Safdarjang Hospital, New Delhi, who had treated and operated Abid Ali, has also stated that nature of injury on the person of Abid Ali was dangerous to his life. From the testimonies of all the three witnesses including injured, it is proved on file that brick bats thrown by Mukesh Kumar had hit on head of Abid Ali resulting in wound at the right parietal region of his head. On C.T. Scan fracture on right frontol temporal region and acute extradural haematoma, was observed. From the testimonies of injured-Abid Ali, PW-6 Mohd. Iqbal and PW-9 Isak Khan, corroborated by medical evidence, it is proved on record that Abid Ali was caused injuries

dangerous to life by Mukesh Kumar. It was a case of quarrel between

Mohd. Iqbal and Chhota Devi as her son was prevented by Mohd. Iqbal from going towards newly laid portion of the street. It is proved on file that Mukesh Kumar from roof of his house had thrown brick/stone which hit head of Abid Ali as a result of which he became unconscious at the spot. From the Government Hospital, Gurgaon he was immediately referred to Safdarjang Hospital, New Delhi for treatment. Keeping in view the testimony of prosecution witnesses and medical evidence on record, trial Court has committed no error while convicting appellant no. 2-Mukesh Kumar for offence punishable under Section 307 IPC.

27. As a sequel of my above discussion, judgment of trial Court qua appellant no. 1-Chhota Devi convicting and sentencing her for offence punishable under Section 307 read with Section 34 IPC is set aside and she is acquitted of the above charge. Conviction of appellant no. 2-Mukesh Kumar for offence punishable under Section 307 is, however, maintained.

28. Learned counsel for appellants has requested for taking a lenient view regarding the quantum of sentence awarded to appellant no. 2-Mukesh Kumar. He has argued that it was a case of sudden quarrel. Mukesh Kumar had no intention to cause serious injury on the person of Abid Ali. As per statements of PW-6 Mohd. Iqbal and PW9-Isak Khan, he had not come in the street to participate in the quarrel. He is not a previous convict and the injury was caused in a sudden fight. He was 22 years of age at the time of incident. Keeping in view his age and antecedents, a lenient view regarding the quantum of sentence may be taken.

29. Learned State counsel has not disputed that appellant no. 2-Mukesh Kumar is not a previous convict and has no criminal history. She has, however, argued that the injury caused on the person of Abid Ali was dangerous to life, as such, the trial Court has rightly awarded him sentence

of rigorous imprisonment for three years. The sentence awarded by trial Court commensurate with nature of offence committed by him.

30. On giving a careful thought to submissions of learned counsel for parties, I find that appellant no. 2-Mukesh Kumar is not a man with criminal record. He is not a previous convict and was a young boy of 22 years of age. In the quarrel between appellant no. 1-Chhota Devi and Mohd. Iqbal, he had thrown a brick, which hit head of Abid Ali causing him serious injuries. It is not a case where appellant had some prior motive, ill-will or reason to cause injury. He participated in the occurrence from top of roof of his house. Though, injury caused by him was declared dangerous to life but keeping in view the fact that Abid Ali after treatment had responded and got cured, age of Mukesh Kumar and his antecedents, I am of the opinion that sentence of rigorous imprisonment for one year to Mukesh Kumar will serve ends of justice. However, sentence of fine is enhanced from ₹4000/- to ₹25,000/-, which on deposit, will be paid to injured-Abid Ali towards expenses of his treatment.

31. As a sequel of my above discussion, the instant appeal is allowed qua appellant no. 1-Chhota Devi and partly allowed qua appellant no. 2-Mukesh Kumar, in above terms.

September 14, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No