

313

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

CRA-S-2366-SB of 2003

Date of decision: 22.08.2019

Nirvail Singh @ Nirvair Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Aman Partap Singh, Advocate
for the appellant.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned judgment and order dated 25.11.2003 passed by learned Additional Sessions Judge, Amritsar, vide which the appellant was convicted and sentenced under Section 307 of the Indian Penal Code to undergo rigorous imprisonment for a period of four years and to pay fine of Rs. 500/- with a default clause to further undergo rigorous imprisonment for two months.

As per the allegations in FIR, on 01.03.2001, the complainant -Shingara Singh (PW1) along with Balwinder Singh, Ravinder Singh sons of Sohan Singh, residents of Village Toot Bhangala, Hari Singh s/o Massa Singh resident of Village Kale Bhikhiwind, Sadha Singh S/o Budh Singh resident of Balipur and Kulwinder Singh s/o Roor Singh resident of Gorkha had come to attend the court of learned Sessions Judge, Amritsar in connection with hearing of a murder case pending against Onkar Singh (brother of the appellant) for causing death of Jasbir Kaur. Said Onkar

Singh was produced by the jail authorities accompanied by a police guard; appellant had also come to attend the hearing and was waiting outside Court room on that day. At about 2:30 p.m., learned trial Court held the above Onkar Singh guilty and sentenced him for life imprisonment. When, complainant along with other persons came out from the Court, Onkar Singh told the appellant regarding his conviction and sentence. Upon which, appellant raised a lalkara that *complainant has got his brother sentenced for life*, therefore, he would not spare him. Immediately he picked up a brick and hit on the head of the complainant. As a result thereof, complainant fell down and appellant was immediately apprehended by Kulwinder Singh, Balwinder Singh and Hari Singh. After arranging a vehicle, complainant was shifted to Guru Nanak Dev Hospital, Amritsar by Davinder Singh and others.

Investigation was completed and report under Section 173 Cr.P.C. was submitted in the matter.

Learned trial Court after taking into consideration the material collected during investigation, charge-sheeted the appellant under Section 307 IPC, to which he pleaded not guilty.

In order to prove its case, prosecution examined complainant Shingara Singh - PW1, Davinder Singh - PW2, Dr. Gurnamjit Rai - PW3, ASI Krishan Kumar - PW4, HC Narinder Kumar - PW5, LC Ranjit Singh - PW6, Dr. Tejwant Singh - PW7 and Dr. Ramandeep Kaur - PW8 and also produced documentary evidence.

Entire incriminating material was put to the accused under Section 313 Cr. P.C., wherein he claimed innocence by raising the plea of false implication. Appellant also examined Ranjit Singh as DW1 and

Gurbhej Singh as DW2.

After hearing both sides and perusing the record, learned trial Court convicted and sentenced the appellant in the terms as mentioned in the opening para of this order.

Hence, the present appeal.

At the outset, learned counsel for the appellant stated that he does not wish to challenge the conviction imposed by learned trial Court; rather confines his prayer only regarding the quantum of sentence.

It is contended by learned counsel for the appellant that FIR in the present case was registered on 01.03.2001, and appellant was convicted by learned trial Court on 25.11.2003 for causing single brick blow to the complainant-PW1 and as such there was no pre-mediation, rather this was at the spur of moment. Further argued that the appellant is facing the criminal proceedings for the last about eighteen years and as such he has already suffered a lot. Also contended that appellant is the first offender as there is no other criminal case pending against him. Again argued that appellant was granted the concession of bail by this Court vide order dated 03.09.2004 and he never misused the same, thus, sending him to the prison at this stage in the company of criminals would not serve any purpose.

On the other hand, learned State counsel has opposed the prayer and submitted that in view of the nature of injuries inflicted by the appellant, he does not deserve any leniency and appeal is liable to be dismissed.

Heard both sides and perused the record.

Although learned counsel for the appellant is not assailing the conviction, but since this is the first appeal, therefore, in all fairness this Court deems it appropriate to examine the merits of the case as well.

It transpires from the record that on 01.03.2001, the appellant had

gone to the Court of learned Additional Sessions Judge, Amritsar in connection with the hearing of a murder case pending against his brother, namely Onkar Singh. At about 2:30 p.m. when learned Additional Sessions Judge pronounced the judgment of conviction and order of sentence for life imprisonment of his brother, then appellant became furious on the premise that his brother has been sentenced on the basis of the deposition of the complainant. Suddenly, the appellant picked up a brick from the ground and hit on the head of the complainant resulting into four injuries.

Complainant while appearing as PW1 has supported the prosecution case and deposed that accused had inflicted injury on his head with single brick blow. The factum of causing injury with brick by the accused is duly corroborated by LC Ranjit Singh-PW6, who was posted as Guard in Court complex. As per the testimony of PW3-Dr. Gurnamjit Rai, who had medico legally examined Shangara Singh, found following injuries on his person:-

1. 3.5x1 cm lacerated wound vertically placed on right side of forehead, 4 cms above out end of eye brow. Fresh bleeding was present.
2. 1.5x0.5 cm lacerated wound on right side of forehead 0.5 cms above out end of eye brow. Fresh bleeding was present. It was obliquely placed.
3. 5x2.3 cm reddish bruise irregular in shape was present on right upper eye lid and it was covering the whole of eye.
4. 4x 1.5 cm reddish abraded bruised irregular in shape was present on the top of right shoulder.

Injuries No.1 and 2 were declared dangerous to life; whereas injury No. 3 and 4 found to be simple in nature vide report Ex. PC.

PW2 Davinder Singh has also corroborated the version of PW1 about the factum of causing injury on the head of the complainant by the appellant.

ASI Krishan Kumar (PW4) has deposed that on 01.03.2003 he

went to Guru Nanak Dev Hospital, Amritsar and moved an application to Doctor Ex.PD regarding the fitness of PW1, on which he made an endorsement Ex.PD/1 to the effect that PW1 is fit to make the statement. Thereafter, on the statement Ex.PA, which was endorsed to Police Station, FIR Ex.PA/2 was registered by ASI Ranjit Singh. PW4 went to the place of occurrence, prepared site plan Ex.PE, brick in question was taken into possession vide memo Ex.PF and sealed with seal bearing impression 'KK'.

PW5 HC Narinder Kumar No.1717 has deposed to the effect that he produced Onkar Singh, brother of the appellant from Jail in the Court of Additional Sessions Judge at Amritsar and had taken him back to the jail premises on the same day.

In view of the facts and circumstances discussed hereinabove, this Court has no hesitation while opining that since two of the injuries i.e. injury Nos.1 and 2 caused to the complainant were declared dangerous to life, thus learned trial Court has rightly convicted the appellant for the offence under Section 307 IPC. Therefore, after appreciation of the entire material available on record, the conclusion recorded by learned trial Court for conviction of the appellant under Section 307 IPC does not require any interference.

Custody certificate of the appellant has been produced in Court by learned State counsel and the same is taken on record.

Perusal of the custody certificate reveals that out of total sentence of four years, the appellant has already undergone the sentence of three years and nineteen days including period of remission. During custody, appellant was having good conduct and that is the reason that he has been granted the benefit of remission by Jail authorities. Custody certificate further reveals that there is no other criminal case pending against the appellant and even this fact is duly acknowledged by learned State counsel as well.

Since the appellant has already suffered the agony of protracted litigation and he is not found involved in any other criminal case during all this period uptill date; the act of the appellant was not as a result of any pre-mediation, rather happened at the spur of the moment, thus, he cannot be termed as a hardened criminal. Moreover, the appellant has already undergone the substantial sentence out of total sentence of 4 years, therefore, at this stage, sending him to jail in the company of the criminals to undergo the remaining imprisonment, would not serve any purpose; rather could prove counter productive.

In view of the above, the conviction of the appellant imposed by learned trial Court under Section 307 IPC is upheld, however, the sentence is reduced to the period already undergone by him. Sentence qua fine shall remain intact. If fine not paid, the same be deposited with learned trial Court/Successor Court within three months from the receipt of certified copy of this order. In case of failure to deposit the fine within the stipulated period, the learned trial Court/Successor Court may take coercive steps to recover the same as per law.

Ordered accordingly.

Pending miscellaneous applications, if any shall also stand disposed off.

(MAHABIR SINGH SINDHU)
JUDGE

August 22, 2019

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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No