

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

462

**CRA-D-11-DB-2003 (O&M)
Date of Decision : 23.07.2019**

Arjan and others

... Appellants

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. R.S.Cheema, Senior Advocate with
Mr. Ishan Khetarpal, Advocate for the appellants.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Salil Bali, Advocate for the complainant.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment of conviction and order of sentence dated 02.12.2002 passed by the Additional Sessions Judge, Sirsa, vide which the appellants have been convicted and sentenced in the complaint filed by Mange Ram, under Sections 307, 323, 148, 452, 149 of the Indian Penal Code (for short 'IPC') registered at Police Station Ellenabad.

2. As per the prosecution case, on 09.05.1992, complainant-Mange Ram (PW-2) was present in his house along with his family members and at about 10:00 a.m. the appellants trespassed into the house of the complainant. All the accused had attacked the complainant. To save himself, the complainant ran towards the main gate of the house. As he was followed by the appellants-accused, the complainant went onto the roof of

the house. The appellants lifted the complainant and threw him down into the courtyard of the house. The complainant had received serious injuries and was also issued life threats by the appellants. Accordingly, complaint was registered.

3. Charges were framed against the appellants under Sections 148, 307, 452, 149 of IPC to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution had examined as many as 7 witnesses.

5. In the statement recorded under Section 313 Cr.P.C., the appellants-accused denied the allegations against them.

6. Appellant No.1-accused Arjan stated that the property where the occurrence took place belonged to Sarvodya Ashram and was not in the possession of Mange Ram on the date of occurrence. The President of Sarvodya Ashram was present when the complainant Mange Ram went to the roof of the said property and started throwing bricks and one of the bricks hit Atma Ram, as a result of which he had received serious injuries. The appellants-accused had produced 13 witnesses in defence.

7. After taking into consideration the evidence on record, the Additional Sessions Judge, Sirsa, vide judgment of conviction and order of sentence dated 02.12.2002, convicted and sentenced the appellants as under:-

<i>Name of accused</i>	<i>Sections</i>	<i>Rigorous Imprisonment</i>	<i>Fine imposed</i>	<i>Rigorous imprisonment if fine not paid</i>
Arjan	307 IPC	RI for life	Rs.20,000/-	2 years
	452 IPC	RI of 7 years	Rs.10,000/-	
Rajender	307 IPC	RI for life	Rs.20,000/-	2 years
	452 IPC	RI of 7 years	Rs.10,000/-	
Om Parkash	307 IPC	RI for life	Rs.20,000/-	2 years
	452 IPC	RI of 7 years	Rs.10,000/-	

<i>Name of accused</i>	<i>Sections</i>	<i>Rigorous Imprisonment</i>	<i>Fine imposed</i>	<i>Rigorous imprisonment if fine not paid</i>
Sohan Lal	307 IPC	RI for life	Rs.20,000/-	2 years
	452 IPC	RI of 7 years	Rs.10,000/-	
Mahabir Khati	307 IPC	RI for life	Rs.20,000/-	2 years
	452 IPC	RI of 7 years	Rs.10,000/-	

Both the sentences were ordered to run concurrently.

8. Aggrieved of the said judgment and order, the appellants have preferred the present appeal.

9. We have heard learned counsel for the parties and have also gone through the record of the trial Court, with their able assistance.

10. Learned senior counsel for the appellants has argued that as per the statement of Mange Ram (PW-2), the appellants entered his house with an intention to kill him and on the date of occurrence his wife, namely, Mala Devi, along with two children, was present in the house. The appellants were having dandas in their hands and all the appellants/accused gave him blows with dandas on his body. Appellant No.1-Arjan gave him a danda blow on his left upper arm; thereafter, appellant No.2-Rajender gave a danda blow on his person whereupon he ran upstairs by climbing the bamboo stairs (ladder), but as per the medical examination produced by Dr. R.P.Dahiya (PW-5) only one injury was found on the person of Mange Ram-complainant i.e. swelling of left upper 1/3rd of thigh and the movements of left lower limb were painful and restricted. Patient was complaining of pain in left inguinal region. In the examination-in-chief, it was stated that the possibility of said injury could not be ruled out if a person was thrown from the roof on the ground and if he received such injury on his vital part, he might die. In the cross-examination, it was stated that no wound, abrasion or contusion on the person of Mange Ram was

found and possibility of such injury on account of fall from the roof could not be ruled out. It was further stated that the injury on the person of Mange Ram-complainant was not dangerous to life.

11. It has been further argued that Purshotam Lal, real brother of the complainant, who appeared as PW-3, stated that he had seen the appellants giving beatings to Mange Ram and later he had climbed over the roof but all the appellants had followed him and after catching hold of him from his hands and legs, he was thrown from the roof in order to kill him. During this process, the leg of complainant-Mange Ram was broken and he became unconscious. In his cross-examination, he stated that the gate of the house of Mange Ram was open and his wife and two children were present and when he went inside the house of Mange Ram, all the accused were on the roof of the house and he could not tell as to who had caught hold of Mange Ram, but he was thrown on the floor by giving swing and the left side of his waist hit the ground. He was in a semiconscious state when he reached Sirsa Hospital. Learned senior counsel for the appellants has laid stress on the fact that as per the prosecution injuries were given on the different parts of the body of the complainant by the appellants and even when he was thrown in the courtyard with swing, only left side of his waist had hit the ground. All these allegations are brushed aside when only one injury was found on the person of Mange Ram. Moreover, the star witness, Mala Devi, wife of the complainant was not examined by the prosecution. The other important witness like Champa Lal, the first cousin of Mange Ram and Sat Narain, his uncle, were not examined as having been won over by the appellants.

12. It has been further argued that the property, where the

occurrence had taken place belongs to Sarvodya Ashram and complainant-Mange Ram was never in possession of the said property as on the date of occurrence. It has been further argued that the complainant had caused serious injuries to Atma Ram (DW-6) on 09.05.1992 by throwing bricks on him and the complainant had failed to explain these injuries.

13. Learned State counsel has argued that all the appellants had trespassed into the house by jumping over the wall and attacked complainant-Mange Ram. The complainant was thrown from the roof top and his left thigh was fractured. Dr. R.P.Dahiya (PW-5) had medico-legally examined the complainant and had duly proved the MLR (Ex.P-5). Even Dr. S.L.Aggarwal, Radiologist (PW-7) had proved that the complainant-Mange Ram had suffered a fracture on his left lower limb. It has been further argued that in case complainant-Mange Ram had really caused any injury to Atma Ram on 09.05.1992, said Atma Ram who appeared as DW-6, would have got registered an FIR against the complainant in that regard.

14. Mr. Salil Bali, Advocate for the complainant has argued that as per the MLR (Ex.P-5) and the report of the Radiologist (Ex.P-8), it stands proved that injury had been inflicted on the person of the complainant by the accused persons and moreover, by stepping into the witness box, the complainant had brought on record the factual aspects.

15. To our mind, it is a case in which the evidence brought on record is doubtful. It is the case of the prosecution that the accused had scaled the wall which is more than 6 feet in height and entered into the house of the complainant whereas, Purshotam Lal (PW-3) stated that the gate of the house was open and Mange Ram had tried to save himself by going towards the gate but he was caught hold by the accused and

ultimately he climbed the bamboo stairs (cat ladder) and went on the roof of the house. Since the accused were five in number, they could have easily removed the ladders to obstruct Mange Ram from going to the roof.

16. As far as the injuries on the person of Mange Ram are concerned, there is only one injury as per the MLR (Ex.P-5) which had been proved on record by Dr. R.P. Dahiya (PW-5). On the other hand, Purshotam Lal, brother of the complainant (PW-3) stated that many injuries had been inflicted on the person of Mange Ram by the appellants and when he fell from the roof, his waist was also injured. During the medical examination, the Doctor could not find any wound, abrasion or contusion on the person of Mange Ram and it was opined that the injury found could be suffered in the event of a fall from the roof. Thus, the evidence is against the medical record. Other aspect of non-examination of important witness, i.e. wife of Mange Ram, namely, Mala Devi, who had been shown to be in the house along with children, creates a doubt in the prosecution case.

17. Moreover, it is an admitted case that the litigation over the possession of the property was pending between complainant Mange Ram and appellants/convicts. Brahma Nand, father of Mange Ram filed suit for permanent injunction against some appellants regarding property of Sarvodya Ashram Trust which was dismissed on 13.12.1993. Mange Ram in his cross-examination stated that when Bailiff had visited the site for taking possession from Ram Kumar, accused themselves had written on the report that 'Mange Ram' was in possession. Complainant had also admitted that he had also challenged the registration of the Trust and his complaint stood dismissed.

18. Thus, the possible motive for trespassing could only be for

taking the possession of the Trust property with no intention of the appellants to inflict injuries on the person of complainant-Mange Ram.

19. Though as per the case of the prosecution, the complainant was assaulted by five persons, yet there is not even a single scratch on the person of the complainant. Thus, the prosecution version that the complainant had climbed the cat ladders went to the roof top and from there, he was thrown into the courtyard by the appellants by giving him a swing, is highly doubtful. We find no truth in the version of the complainant (PW-2) and his brother Purshotam Lal (PW-3).

20. A Division Bench of this Court in ***Atma Singh and others Vs.State of Punjab***, 2001(1)CLJ (Criminal) 119, has, while acquitting the accused of the charges framed against them (Section 307 IPC being one of the charges), held that accused deserve acquittal in case prosecution case suffers from glaring infirmities.

21. In view of the above, we allow this appeal and set aside the judgment of conviction and order of sentence dated 02.12.2002 passed by the Additional Sessions Judge, Sirsa. The appellants are acquitted of the charges under Sections 307, 323, 148, 452, 149 of the IPC, registered at Police Station Ellenabad. Appellants are stated to be on bail, therefore, their bail bonds stand discharged.

	(AJAY TEWARI)	(HARNARESH SINGH GILL)
23.07.2019	JUDGE	JUDGE
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<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>