

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

**CRA-S-1104-SB-2004
Decided on: 28.03.2019**

Ramesh and another**.... Appellants**

Versus

State of Haryana**..... Respondent****CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Ashwani Bhardwaj, Advocate &
Mr. Aditya Sanghi, Advocate
for the appellants.

Mr. Ayuwan Singh, AAG, Haryana.

MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the order dated 17.05.2004 passed by the learned Sessions Judge, Narnaul, vide which the accused-appellants, were convicted under Section 307 read with Section 34 of Indian Penal Code (in short 'IPC') and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
307 read with Section 34 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of ₹500/-, in default of payment of fine, to undergo rigorous imprisonment for a period of one month each.

2. As per the statement Ex. PD of complainant PW-5 Nathu Ram made on 06.04.2003 before PW-2 SI Mahesh Kumar-Investigating Officer, he had been on visiting terms with one Hira Lal (since acquitted) for the last about 6 years. On the fateful day, i.e. 05.04.2003, the complainant was visiting the house of Hira Lal and sitting with PW-7 Bhartali-mother of Hira Lal. The appellants happened to be present in the said house and were under the influence of liquor. Since the appellants were using abusive language against each other, the complainant

counselled them and sent them away from the place. PW-7 Bhartali also accompanied them out of the house. Meanwhile, complainant continued sitting in the room, closed his eyes and started chanting his prayers. Shortly thereafter, the appellants entered the room and appellant No.2 Beer Singh, who had a bottle of petrol with him, poured the same on the complainant and set him afire, as a result of which, the complainant sustained burn injuries on his hands, head and chest. On an alarm being raised by the complainant, the persons nearby rushed to his rescue and doused the flames with sand. Bhartali also rushed to the spot and saw both the appellants running out of her house. Bhartali tried to catch appellant-Beer Singh, but he managed to free himself from her hands and fled. The complainant was taken to the local Community Health Centre and after being medico legally examined by PW-11 Dr. Jitender Kumar, he was referred to PGIMS, Rohtak as his condition was serious. His statement could only be thus recorded on 06.04.2003, leading to the registration of the FIR No. 81 under Section 307 of IPC (Ex. PN), after the doctor had declared him fit to make a statement. During investigation, pieces of some semi burnt clothes were recovered from the place of occurrence. It would be relevant to mention that the appellants were placed in column No.2 in the challan and they were subsequently summoned under Section 319 Cr.P.C.

3. The prosecution examined 14 witnesses in all, including the complainant and PW-7 Bhartali.

When examined under Section 313 of the Code of Criminal Procedure, the accused-appellants denied all the incriminating evidence appearing against them. They pleaded innocence and falsely implication. They did not examine any witness in their defence.

4. The learned trial Court believed the prosecution version and convicted and sentenced the appellants as already detailed above.

5. It is relevant to mention that vide order dated 27.01.2016, the appeal of appellant No.2 Beer Singh stood abated as he expired on 28.11.2015.

6. Learned counsel for the appellant has vehemently argued that the learned trial Court failed to appreciate that the appellant was summoned under Section 319 Cr.P.C. and hence on the face of it, it was evident that he had been falsely implicated in the instant case on the basis of mere suspicion. Learned counsel further argued that there was no evidence whatsoever against the appellant attracting the provisions of Section 307 IPC as not even a single injury on the person of the complainant could be said to be dangerous to life. Learned counsel also drew my attention to the improvements and embellishments in the statements of the prosecution witnesses. Learned counsel for the appellant submitted that the huge delay in reporting the matter to the police smacked of malafides on the part of the complainant to falsely implicate the appellant.

7. Learned State counsel on the contrary submitted that no time whatsoever was wasted in shifting the injured to the hospital and it is totally unbelievable and unnatural that the complainant, who suffered 40% injuries in the occurrence would exculpate the real culprit and inculcate the present appellant due to malafides.

8. I have heard learned counsel for the parties and gone through the evidence and other material on record.

9. Coming to the first contention of the learned counsel for the appellant that an offence under Section 307 is not made out, the same is bereft of any merit. The learned counsel for the appellant pointed out to the contradictory opinions of the doctor PW-11 Dr. Jitender Kumar, who initially examined the injured and

PW-12 Dr. A.S. Rathee, who treated him in PGIMS, Rohtak by contending that in fact the injuries suffered by the complainant were not dangerous to life and hence he could not have been convicted under Section 307 IPC. I have given by anxious consideration to the same. No doubt, PW-12 Dr. A.S. Rathee deposed that the burn injuries suffered by the complainant Nathu Ram were superficial in nature and curable but the fact remains that in the MLR Ex.PH, it was specifically noted that the burn injuries on the person of the complainant were to the extent of 40% and there was smell of petrol present on his body. In fact, a perusal of the MLR Ex.PH reveals that there were superficial to deep burn injuries seen on most parts of the body of the complainant which extended from his scalp downwards to the lower limbs. The attending doctor had also noted in the MLR that the skin was avulsed at many places. It was in this background, seeing the nature and seriousness of the injuries that the complainant was referred for further management to PGIMS, Rohtak by PW-11 Dr. Jitender Kumar. The fact remains that had timely medical assistance and aid not been extended to the complainant, it would have resulted in serious complications and could have proved to be fatal. The very fact that the complainant was referred to PGIMS, Rohtak by doctor PW-12 Dr. A.S. Rathee goes a long way to show that his condition was in fact serious.

10. It would be relevant to reproduce Section 307 of IPC which reads as thus:-

“ Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender

shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]”

11. One of the essential ingredients for attracting the provisions of Section 307 IPC is an intention or knowledge on the part of the offender that the act committed by him could come dangerously close to the death of his target. Once there is an intent coupled with an overt act in execution thereof, it would be sufficient to conclude that the crime would have been completed had it not been because of some providential intervention which frustrated the design of the assailant. In order to determine whether or not the appellant had any intention to attract the provisions of Section 307, it would not be just essential to see the nature and the degree of the burns caused but also the nature of the product used for setting the complainant on fire. The appellant just about 15 minutes prior to the alleged occurrence had been sent away by the complainant from the house by admonishing him for using abusive language and soon thereafter the appellant alongwith co-accused Beer Singh (since expired) returned with a bottle of petrol goes a long way to prove that not only it was a pre-mediated act on the part of the appellant but besides the intention they also had knowledge that their act could lead to serious repercussions even resulting in the death of the complainant. In the case in hand, had the persons nearby including PW-7 Bhartali not rushed to the rescue of the complainant, he would not have probably lived to be the author of the instant FIR. It is only providence and providence alone which saved him from near death. Thus, the intention of the appellant is proved and is writ large from the product, i.e. petrol used by them to burn the complainant.

12. Qua the delay pointed out by the learned counsel for the appellant, the same is inconsequential for the simple reason that the complainant was declared unfit to make a statement and as soon as he was declared medically fit, his statement was recorded without any delay and in this very statement, he had named the appellants as being the authors of the crime and had given all other relevant details of the alleged occurrence leading to his having suffered burn injuries. In his testimony in Court also, he supported the prosecution version qua all material details.

13. Qua the contention of the learned counsel for the appellant that the appellant had been summoned only under Section 319 Cr.P.C., left no manner of doubt that the complainant including the prosecution witnesses had tried to falsely drag him into the said case, is bereft of any merit. It goes without saying that a Court is duty bound to do justice by punishing the real culprits. In the case in hand, not only the complainant PW-5 Nathu Ram named the appellants in his very first statement which led to the lodging of the FIR, but even when the complainant as well as PW-7 Bhartali stepped into the witness box, they both supported the case of the prosecution in toto. Just because the investigating agency for some reason did not array the appellants as accused in the first instance and placed them under column No.2, would not make the Court powerless in summoning them to face trial.

14. As a sequel to the above discussion, it would be proper to maintain and uphold the conviction of the appellant under Section 307 in the light of testimony of the injured eye witness PW-5 Nathu Ram which proves beyond the shadow of doubt that the appellants in furtherance of their common intention had set injured PW-5 Nathu Ram ablaze by pouring petrol on him, as a result of which, he suffered 40% burn injuries.

15. The impugned order of conviction is upheld. However, so far as the quantum of sentence passed by the trial Court is concerned, the learned counsel for the appellant has prayed for taking a lenient view for reducing the sentence to already undergone qua appellant No.1-Ramesh. He further submitted that the occurrence pertains to the year 2004 and the appellant-Ramesh has faced the agony of a protracted trial for almost 16 years. As per the custody certificate dated 12.02.2019, which has been placed on record by learned State counsel, the appellant-Ramesh has undergone a total of 1 year, 3 months and 8 days. He is not shown to be involved in any other criminal case. Thus, considering the fact that the appellant is not shown to have been involved in any untoward incident in the last 16 years, the ends of justice would be squarely met if his sentenced is reduced to the period already undergone by him.

16. Appeal is disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

28.03.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No