

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

Criminal Appeal No.1349-SB of 2004 (O&M)

Date of Decision: 11.02.2019

Ram Kumar

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Subhash Godara, Advocate (Legal Aid Counsel)
for the appellant/accused.

Mr. Rahul Mohan, Deputy Advocate General, Haryana
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned judgment of conviction and order of sentence dated 14.05.2004 and 15.05.2004, respectively, passed by learned Additional Sessions Judge, Fatehabad, vide which, appellant has been convicted and sentenced in the following terms:-

<i>Under Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
307, IPC	Rigorous imprisonment for a period of <u>four years</u>	₹ 4000/-	Rigorous imprisonment for <u>one year</u>
452, IPC	Rigorous imprisonment for a period of <u>two years</u>	₹ 2000/-	Rigorous imprisonment for <u>six months</u>

Both the aforesaid sentence were ordered to run concurrently.

Allegations, in brief, are that on 22.10.1999, Medical Officer, General Hospital, Tohana sent an information to the Police Station Tohana regarding the admission of injured/complainant-Sheo Kori (PW-8) with a history of assault. ASI Dharambir (PW-2), after receiving the statement of

Sheo Kori (Ex.PA), recorded by another ASI Dharambir (PW-11), who obtained the opinion from Dr. Vijay Grover (PW-4), regarding the fitness of Sheo Kori (PW-8), who *inter alia* stated that she is resident of Village Dangra. On 22.10.1999 at about 03:00 PM, when she had taken the cattles to Village Pond, appellant-Ram Kumar followed her and some altercation took place between them, which resulted into abusive language by the appellant. Due to that, she immediately came back to her house and thereafter, at about 04:00 PM, when she was alone, appellant, armed with *lathi* along with co-accused Indrawati, reached her house and in the meantime, remaining co-accused, namely, Krishan and Billu (real brothers of appellant) also came there and exhorting the appellant to kill Sheo Kori. Upon this, appellant gave a *lathi* blow on the head of Sheo Kori and consequently, she cried and which attracted Thandu Ram (PW-9), but in his presence also, he gave other *lathi* blows on her hands. Appellant gave another *lathi* blow on her mouth and that resulted into breaking of her teeth. Thereafter, neighbours of Sheo Kori came there and on seeing them, all accused persons fled away from the spot. After sometime, husband as well as son of Sheo Kori reached there and she was shifted to the Civil Hospital, Tohana and medico-legally examined by Dr. S.S. Garg, Medical Officer (PW-2). As per MLR dated 22.10.1999 (Ex.PB), the following injuries were noticed by PW-2 on the person of Sheo Kori:-

- 1) *A lacerated wound 4 cm. x .9 cm. into bone deep on the centre of forehead just above the hair line. Bleeding was present and x-ray was advised.*
- 2) *A lacerated wound 1½ cm. x .9 cm. into bone deep on the planter aspect of base of left thumb. Bleeding was present and x-ray was advised.*

- 3) *A lacerated wound 1½ cm. x 1 cm. bone deep on the planter aspect of in between 3rd and 4th finger. Bleeding was present and x-ray was advised.*
- 4) *A reddish contusion swelling 8 x 8 cm. with centre abrasion 2 x 2 cm. inside on the dorsal aspect of right wrist joint. X-ray was advised.*
- 5) *Missing four upper insizer left to right side socket was full of blood, left upper jaw and inner side of lip was lacerated. Bleeding was present. Total number of teeth in the mouth were 19 and all were loose and sockey. Dental Surgeon opinion was sought.*

On the basis of statement (Ex.PA) of Sheo Kori, formal FIR No.241 dated 22.10.1999, under Sections 452, 323, 325 read with Section 34, IPC, Police Station City Tohana, District Fatehabad (Ex.PA/1) was registered and investigation was carried out in the matter. Thereafter, on 23.10.1999, Sheo Kori was shifted to Central Medical Centre (CMC), Hisar, where, Dr. Vijay Kumar Gupta (PW-6) examined her and found two more injuries on the head as per additional MLR (Ex.PD/1), which are as under:-

1. *Right parietal 10 cm. lacerated wound bone deep. Significant large clotted blood as well as oozing of blood was present.*
2. *Left occipital 3 cm. lacerated wound bone deep was present. C.T. Scan of head was done, which had revealed right temporal bone fracture and right subgaleal swelling.*

Dr. Vijay Kumar Gupta (PW-6) gave an opinion (Ex.PD/1) that head injury could be dangerous to life and thereafter, Section 307, IPC was added.

Paper-book reveals that during investigation, police found the appellant involved for commission of offence and remaining three co-accused were found to be innocent and as such, report under Section 173 Cr.P.C. was

filed only against the appellant. Since the offence under Section 307, IPC was triable by the Sessions, therefore, the case was committed to Sessions Court on 01.02.2000. On the basis of material available on record, learned trial Court charge-sheeted the appellant for the commission of offences punishable under Sections 307 and 452, IPC, vide order dated 27.03.2000, to which, he pleaded not guilty and claimed tried.

It also needs to be mentioned here that after recording the statements of injured-Sheo Kori and Dr. S.S.Garg, an application under Section 319 Cr.P.C. was filed by prosecution and which was allowed on 12.09.2000, resulting into summoning of all the remaining aforesaid three co-accused also for the commission of offences punishable under Sections 307, 452, 34, IPC. Consequently, fresh charges were framed against all the four accused on 31.10.2000, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses, which are as under:-

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|-------------|---|---|
| <i>PW-1</i> | : | <i>Inspector Sukhraj Singh, who submitted report under Section 173 Cr.P.C.</i> |
| <i>PW-2</i> | : | <i>ASI Dharambir, who received statement (Ex.PA) of injured and registered the formal FIR (Ex.PA/1).</i> |
| <i>PW-3</i> | : | <i>Dr. S.S.Garg, Medical Officer, who medico-legally examined Sheo Kori and gave opinion, as to the nature of the injures.</i> |
| <i>PW-4</i> | : | <i>Dr. Vijay Grover, who declared Sheo Kori fit for making the statement.</i> |
| <i>PW-5</i> | : | <i>ASI Bhim Singh, who formally arrested appellant-Ram Kumar.</i> |
| <i>PW-6</i> | : | <i>Dr. Vijay Kumar Gupta, who treated the injured and found two additional injuries on her person, vide additional MLR (Ex.PD/1).</i> |

- PW-7 : H.C. Amar Singh, who collected the opinion of the Doctor regarding nature of injuries.*
- PW-8 : Complainant/injured-Sheo Kori.*
- PW-9 : Thandu Ram (eye-witness).*
- PW-10 : Dr. Parveen Arora, who radio-logically examined injured-Sheo Kori and gave his report (Ex.PD/2).*
- PW-11 : ASI Dharamveer, Investigating Officer.*

Prosecution also produced the following documentary evidence in support of their case:-

- Ex.PA : Initial statement made by injured Sheo Kori*
- Ex.PA/1 : FIR recorded by PW 2-ASI Dharambir*
- Ex.PA/2 : Endorsement made on FIR by ASI Dharambir*
- Ex.PB : MLR dated 22.10.1999 of injured-Sheo Kori, prepared by Dr. S.S.Garg (PW-3)*
- Ex.PB/1 : Injury No.3 found on the left hand as shown in the diagram*
- Ex.PC : Request by S.I. to Medical Officer regarding the injuries.*
- Ex.PC/1 : Opinion dated 03.11.1999 of Dr. S.S.Garg (PW-3), declaring Injury No.1 as grievous*
- Ex.PD : Police Request*
- Ex.PD/1 : MLR by Dr. Vijay Kumar Gupta (PW-6)*
- Ex.PD/2 : X-Ray report prepared by Dr. Parveen Arora, Orthopedic Surgeon (PW-10)*
- Ex.PD/3 : Opinion*
- Ex.PD/4 : Opinion dated 08.01.2000*
- Ex.PE : Intimation to SHO by Doctor regarding the admission of injured-Sheo Kori*
- Ex.PF : Application dated 22.10.1999 by police to the Doctor for recording the statement of injured.*

- Ex.PF/1 : Declaration by Doctor regarding the fitness of Sheo Kori*
- Ex.PG : Memo prepared by ASI Bhim Singh (PW-5)*
- Ex.PJ : Rough Site Plan, prepared by ASI Dharambir (PW-11)*
- Ex.PJ/1 : One Bamboo, having length of 6 feet, taken into possession by ASI Dharambir (PW-11)*
- Ex.P-1 to Ex.P-3 : X-ray Films*

The entire incriminating material was put to all the accused under Section 313 Cr.P.C., but they denied the same and claimed innocence while submitting that Sheo Kori has suffered injuries when she was hit by a buffalo and thus, they have been falsely implicated on account of an old land dispute. Co-accused, namely, Krishan, Indrawati and Billu even denied their presence at the time of occurrence.

In defence, Parkash Chand, Clerk, Government Senior Secondary School, Tohana was examined as DW-1 and also produced photocopy of the Register, showing the attendance of Thandu Ram as Ex.D-1.

Learned trial Court, after taking into consideration the entire material available on record, acquitted Krishan, Billu and Indrawati by giving them benefit of doubt, but convicted Ram Kumar (appellant) under Sections 452 and 307, IPC and sentenced him as mentioned above in the opening of the present order.

Learned Counsel for the appellant has not challenged the conviction under Section 452, IPC, but confined his prayer only to the extent that there is no evidence on record to prove the charge under Section 307, IPC and he further submitted that at best, it could be a case under Section 325, IPC.

Since the conviction under Section 452, IPC has not been assailed during the course of hearing, therefore, the points for determination by this Court are:-

- (i) whether conviction of the appellant under Section 307, IPC is legally sustainable or not?*
- (ii) If yes, then what should be the quantum of sentence in view of the facts and circumstances of the present case?*

(i) Record reveals that initially, injured was medico-legally examined by Dr. S.S.Garg (PW-3), who noticed five injuries inflicted on the body of Sheo Kori, as recorded in the MLR (Ex.PB) and Injury No.5 was declared as grievous, vide opinion (Ex.PC/1). Thereafter, Sheo Kori was examined by Dr. Vijay Kumar Gupta (PW-6) and after examination, he found two more injuries on the parietal region i.e. vital part of Sheo Kori and consequently, the same were declared as dangerous to life by him, vide opinions (Ex.PD/3 & Ex.PD/4). PW-3 has categorically deposed that there was a compound fracture of temporal bone coupled with subgaleal swelling and that was the reason to declare the injuries as dangerous to life, which could result into death in ordinary course of nature. This witness has categorically stated that both these injuries could have proved fatal had there been no proper treatment at the relevant time. Although, this witness has not denied that he could not found the additional two injuries on the person of Sheo Kori, which were noticed by PW-6, but he clarified during cross-examination that sometime, it can happen. No doubt, PW-3 did not have the occasion to examine Sheo Kori after the report of Dr. Vijay Kumar Gupta (PW-6), pertaining to two additional injuries, but that is not much of relevance as his opinion is based on the report of

Dr. Vijay Kumar Gupta (PW-6) and C.T. Scan of Sheo Kori and that was the precise reason, he denied the suggestion on behalf of the appellant that injuries could be caused by falling on hard surface. This witness has also denied the suggestion of defence that he has given a false report in favour of the prosecution. Even PW-6 was subjected to lengthy cross-examination, but he specifically deposed that wounds of Sheo Kori were cleaned and thereafter, he found two more additional injuries i.e. one on right parietal 10 cm. and a lacerated wound bone deep with significant large clotted blood and the blood was oozing out and the second injury was on the left occipital which was 3 cm. lacerated wound bone deep and after C.T. Scan, it was found that this was a bone fracture of right temporal and right subgaleal swelling, as already mentioned in the report (Ex.PD/1).

PW 10-Dr. Parveen Arora, CMC Hospital, Hisar, radio-logically examined Sheo Kori and found following fractures on her person:-

- 1. Fracture of first metacarpal of left hand.*
- 2. Fracture vertebral of right scapula.*

This witness prepared X-ray report (Ex.PD/2) and the same was forwarded to Dr. S.S. Garg (PW-3). Therefore, there is cogent evidence on record to prove the two additional injuries on the person of injured, which have been described as dangerous to life being on vital part of the body of Sheo Kori. Facts of the present case reveals that Sheo Kori had suffered seven injuries at the hands of appellant and out of them, two have been described as dangerous to life and one has been described as grievous in nature.

Learned Counsel for the appellant is not able to substantiate that additional/supplement MLR (Ex.PD/1), prepared by PW-6 Dr. Vijay Kumar Gupta is impermissible in law or in contravention of any legal provision(s).

The weapon (Ex.PJ/1) is a bamboo stick and teeth of the injured have been broken and some were damaged as is clear from Injury No.5. So one thing is clear that appellant had the intention to cause the fatal injury to Sheo Kori. Even the Hon'ble Supreme Court has held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted to attract the provisions of Section 307, IPC and reference in this regard can be made to para 9 of the judgment titled as '**State of Maharashtra Versus Balram Bama Patil, (1983) 2 SCC 28**', which is as under:-

*“ To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. **The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. ”***

The above legal position was followed by the Hon'ble Supreme Court in subsequent judgment, titled as '**State of M.P. Versus Saleem**', (2005) 5 SCC 554. Para 13 of the judgment, being relevant, is extracted hereinbelow:-

“ It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. ”

In view of the facts and circumstances, discussed hereinabove, it is apparently clear that charges under Section 307, IPC have rightly been duly proved by learned trial Court and the same does not deserve any interference by this Court.

(ii) The manner of assault, number & nature of injuries and use of weapon and that too on the person of a female by the young man of 30 years at the relevant point of time clearly reveals that the sentence of four years, imposed by learned trial Court, was commensurate with the act of the appellant, but keeping in view the fact that appellant is facing criminal proceedings for the last about 20 years and as such, he must have suffered a lot. Therefore, to maintain a proper balance, this Court deems it appropriate to reduce the sentence to three years instead of four years.

Hence, this Court does not find merit in the present appeal and consequently, the same is dismissed except the modification of the sentence from four years to three years as mentioned above.

It transpires that sentence of the appellant was suspended by this Court, vide order dated 10.08.2004, therefore, his bail bonds stand cancelled. Consequently, he shall surrender within 15 days from the date of this judgment before learned Chief Judicial Magistrate, Fatehabad (*for short 'CJM'*), who shall send the appellant to custody to undergo the remaining part of the sentence. If he fails to surrender, learned CJM shall take coercive steps to secure his presence in accordance with law and send him to jail to undergo the remaining part of the sentence.

February 11, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>