

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1471-SB-2004
Decided on: 28.03.2019

Bachittar Singh Appellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ashwani Bhardwaj, Advocate
as Legal Aid Counsel
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the order dated 05.07.2004 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur, vide which the accused-appellant was convicted under Section 307 of Indian Penal Code (in short 'IPC') and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
307 IPC	Rigorous imprisonment for a period of five years and to pay a fine of ₹5000/-, in default of payment of fine, to undergo rigorous imprisonment for a period of six months.

2. As per statement Ex. PG given by complainant PW-4 Sewa Ram to PW-6 SI Sawinder Singh on 30.01.2002 at 05.00 p.m., his son PW-5 Rajinder Kumar had had a minor dispute with the accused-appellant Bachittar Singh pertaining to some election, a day prior to the alleged occurrence, i.e. on 29.01.2002. The appellant had allegedly threatened PW-5 Rajinder Kumar that he would not be spared by him. The following day, i.e. on 30.01.2002 at about 09.00 a.m., the complainant alongwith his son PW-5 Rajinder Kumar and one Vikram were going on a scooter towards Gurdaspur city for some work. On the way, they

stopped the scooter for answering the call of nature. While they were standing next to the scooter, appellant-Bachittar Singh came to the spot and threatened his son that he would teach him a lesson for their earlier dispute and while saying so, he took out a kirch from his trousers and inflicted two blows on the left ear of his son. PW-5 Rajinder Kumar tried to save himself from this attack but the appellant inflicted a third kirch blow on the left side of his chest as well. On an alarm being raised, the appellant fled from the spot alongwith the weapon. The injured Rajinder Kumar was soon thereafter taken by the complainant and Vikram to the Civil Hospital on the scooter. On reaching the Civil Hospital, Gurdaspur, he was medico legally examined by PW-1 Dr. S.K. Hans on 30.01.2002 at 10.05 a.m. On the said date itself, PW-3 Dr. H.S. Bhatia performed a surgery on injured Rajinder Kumar. Since the injured Rajinder Kumar was unfit to get his statement recorded, the Investigating Officer-SI Sawinder Singh (PW-6) recorded the statement (Ex. PG) of Sewa Ram-father of the injured, leading to the registration of FIR No.15 dated 30.01.2002 under Sections 307 and 324 of IPC (Ex. PW-6/D). After the arrest of the appellant on 02.02.2002, he suffered a disclosure statement in pursuance to which the recovery of the weapon of offence, i.e. kirch was effected vide recovery memo Ex.PW-6/J. The accused-appellant pleaded not guilty to the charge framed under Section 307 IPC and claimed trial.

3. In support of his case, the prosecution examined as many as 6 witnesses and tendered all the relevant documents.

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

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

5. The learned counsel for the appellant has laid a challenge to the impugned conviction by contending that the complainant was not a witness to the occurrence. The inordinate delay of 2 days in reporting the matter to the police clearly indicated that the appellant had been falsely implicated in the instant case. Learned counsel for the appellant also challenged the opinion of the doctor qua the nature of injuries and submitted that the nature of injuries suffered by the injured did not attract the provisions of Section 307 IPC. Learned counsel for the appellant drew my attention to the possibility of the injury having been suffered by the injured after falling on a sharp edged weapon could not be ruled out and the same had to be appreciated in the light of a delayed FIR. He further urged that no independent witness had been produced in the Court in support of the prosecution case. The complainant Sewa Ram was the father of the complainant and hence being an interested witness could not be relied upon. He also urged that there were grave and major discrepancies between the statements of the injured and the complainant, inasmuch as the complainant stated in his first statement Ex. PG that the weapon used in the crime was a 'kirch', whereas the injured stated that it was a 'chhura'. This discrepancy indicated that the complainant was not present at the time of occurrence and it was a fabricated case against the appellant.

6. Learned State counsel on the contrary prayed for dismissal of the instant appeal by submitting that the ocular testimony of the witnesses was fully corroborated by the medical evidence. Qua the discrepancies pointed out by the learned counsel for the appellant, learned State counsel urged that the said discrepancies were too minor in nature which could not be said to be fatal to the case of the prosecution.

7. I have heard learned counsel for the parties as well as perused the evidence and all other material on record.

8. A perusal of the testimonies of the complainant as well as injured PW-5 Rajinder Kumar come across as most trust worthy and is in sync with each other. It would be pertinent to mention that both the chhura (knife) and kirch (small sword/dagger) are small sized sharp bladed weapons having more or less the same shape. There would be very few people who could be in a position to differentiate between the two. A layman may not be able to distinguish and in normal parlance for him, all small sized sharp bladed weapons resembling a knife would be a 'chhura'. In fact, most of the people use the words dagger, knife and even a small sword interchangeably. Hence, this discrepancy qua the weapon of offence is inconsequential and does not create any dent in the prosecution case.

9. The contention of the learned counsel for the appellant that the complainant was not an eye witness to the alleged occurrence and the belated FIR which was lodged after a gap of 2 days, was an indicator that the delay had been used by the complainant to fabricate a false version against the appellant due to their past enmity, is hard to digest. Even assuming that the complainant was in fact not a witness to the occurrence in hand and he could not be trusted being an interested witness, the fact remains that PW-5 Rajinder Kumar is a stamped witness and has supported the prosecution case in its entirety. A finding of conviction can safely be recorded on the evidence of even a single witness, more particularly, if he happens to be a stamped witness and if his testimony inspires confidence. A suggestion was given by the defence to both the doctors, i.e. PW-1 Dr. S.K. Hans and PW-3 Dr. H.S. Bhatia, if the said injuries could have been self suffered or could have been the result of the injured having fallen on some object.

PW-1 Dr. S.K. Hans, no doubt in reply to this suggestion stated that the injury

could have been possible as a result of fall on some sharp object, but in my considered view, the fact remains that it is just an opinion which is very hard to digest in the light of the seat and nature of injuries as well as the overwhelming evidence of the stamped witness himself which comes across as cogent and reliable. It would be not possible to discredit the prosecution case on the basis of the mere opinion of PW-1 S.K. Hans and PW-3 Dr. H.S. Bhatia qua some alternative possibility. The credibility of the evidence of injured PW-5 Rajinder Kumar has to be evaluated on its own merit and cannot just be discarded because it appears to be a little inconsistent with the opinion of the medical expert qua the manner in which he may have received the injuries since a doctor is not an expert on the manner of assault. Whether or not the injury was suffered by PW-5 Rajinder Kumar by a fall on a sharp object cannot be said to be within the ambit of the art of medicine. No doubt, a suggestion was indeed put to this doctor in cross examination, qua the manner in which the injury may have been received by the injured PW-5 Rajinder Kumar and he did give reply to the same, but he did so as any other lay person would do by way of common sense and not as a medical expert, which may not necessarily be correct in each and every case.

10. It is a matter of record that the injured PW-5 Rajinder Kumar had been removed to the Civil Hospital within half an hour of the alleged occurrence and on his admission in the Civil Hospital, he was medico legally examined by PW-1 Dr. S.K. Hans. His MLR (Ex.PA) is reproduced as under:-

- “ 1. 4 x 1cm incised wound on left side of the abdomen 8cm lateral to the abdomen (stab wound). Wound was profusely bleeding and fat was protruding out of the wound. Injury was kept under observation for surgical opinion.
2. 4x 1cm incised wound on left occipital region of the head 1cm posterior to left ear. Wound was profusely bleeding.

Depth of the wound was not measuring. Injury was kept under observation for x-ray and surgical opinion.

3. 7 x 1/3 cm incised wound 1cm interior to left ear. Longitudinally placed. Wound was skin deep on lower part and muscle on upper part. Wound was profusely bleeding. Injury was kept under observation for x-ray and surgical opinion.”

11. It is also not disputed that PW-3 Dr. H.S. Bhatia performed a surgery on the injured PW-5 Rajinder Kumar on the date of his admission in the hospital itself. His surgical notes qua the injured PW-5 Rajinder Kumar are Ex. PE which are as follows:-

PW-3 Dr. H.S. Bhatia testified that the laparotomy was done. Left upper paramedian incision was given. Peritoneal cavity was full of blood. Peritoneal cavity was full of blood. Peritoneal cavity was cleaned with normal saline and injury No.1 of MLR No.11/SKH/02 was communicating with abdominal cavity. The omentum which was protruding from injury No.1 was cleaned with saline and betadine lotion and was placed back in the peritoneal cavity. There was a big cut on the omentum also a cut on the mesentary of small intestine. There was bleeding from the omentum and mesentary which was controlled by repairing the omentum and mesentary. Haemostasis was observed and abdomen was closed in layers after putting drain. Aseptic dressing was done.”

12. It is also a matter of record as per PW-1 Dr. S.K. Hans that on receipt of X-ray report, injury No.1 was declared to be dangerous to life. It has come in evidence that soon after the admission of injured PW-5 Rajinder Kumar in the Civil Hospital, vide Ex. PB, the attending doctor had intimated to the police about his admission in pursuance to which PW-6 SI Sawinder Singh moved an application Ex. PC to the doctor at Civil Hospital qua the fitness of the injured PW-5 Rajinder Kumar on 30.01.2002 as well as 01.02.2002, but he was declared

unfit to make a statement vide Ex. PA/1 by the doctor. It was in this background that the statement of complainant Sewa Ram was recorded wherein he gave out the details of the alleged occurrence in which his son PW-5 Rajinder Kumar suffered injuries. Hence, in this background, the delay in lodging of the FIR stands well explained and cannot be said to be fatal to the case of the prosecution.

13. The intention of the appellant to inflict life threatening injuries on the injured PW-5 Rajinder Kumar is writ large from the fact that he struck 3 consecutive kirch blows on the complainant one after another. In fact, the third blow which was on a vital part of his body was inflicted when the complainant was trying to run for his life. Looking to the sequence of events, there is no doubt that it was a pre-mediated act on the part of the appellant to inflict near fatal injuries on the person of the injured. The case of the prosecution stands fully proved and the discrepancies pointed out by the learned counsel for the appellant does not create any dent whatsoever.

14. As a sequel to the above discussion, the impugned order passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur is upheld.

15. Appeal dismissed. The accused-appellant is on bail. His bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure his custody.

(MANJARI NEHRU KAUL)
JUDGE

28.03.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No