

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1948-SB of 2004

Date of Decision: 8.02.2019

Shiv Parshad

... Appellant(s)

Versus

The State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Bhag Singh, Advocate
for the appellant(s).

Mr. D.K.Mittal, Deputy Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

Present appeal is against the judgment of conviction dated 28.08.2004 and order of sentence dated 09.09.2004, passed by the learned Additional Sessions Judge (Ad hoc), Fast Track Court, Ambala, whereby appellant has been convicted for the commission of offences under Sections 308 & 323 IPC and sentenced him thereunder.

Facts relevant for the purpose of decision of present appeal that the alleged occurrence had taken place on 18.07.2004. As per complainant/injured PW.4 Pusai Ram, on 18.07.2004, he had gone to the vegetable market. At that time, appellant-Shiv Parshad, who is also a vegetable seller, had also gone to the market to sell vegetables. There were some financial dealings between both the complainant/injured and the

appellant. The complainant had asked for his money, on which appellant/accused had given fist and leg blows to him on his abdomen and private parts. The incident was witnessed by PW.5 Laik Ram and thereafter, the complainant/injured was taken to the Civil Hospital, Ambala City for treatment, where he was medicolegally examined. As the complainant was unable to pass urine, his surgical consultation was advised. The complainant was also having pain on his left ear and, therefore, ENT consultation was also advised. Thereafter, he was also examined by PW.11 Dr. V. Raja Rajan, Senior Resident Doctor from PGI, Chandigarh, who deposed that patient remained hospitalized at PGI, Chandigarh for a period of 11 days and his injuries were declared to be dangerous to life and were sufficient to cause death in the ordinary course of nature.

The learned Additional Sessions Judge, after considering the prosecution evidence and defence pleas, held the appellant/accused guilty and convicted him for the commission of offences under Section 308 & 323 IPC and sentenced him as under:-

S. No.	Offence under Section	Sentence Awarded
01.	308 IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000, in default whereof to further undergo rigorous imprisonment for a period of two months.
02.	323 IPC	To undergo rigorous imprisonment for a period of six months.

Both the sentences were ordered to run concurrently.

At the time of arguments, learned counsel for the appellant contended that there was absolutely no motive for the appellant/accused to cause injuries to the complainant/injured. It was just chance meeting of the

appellant and the injured as both of them are vegetable sellers. At that time, sudden fight had taken place. The appellant had not caused any injury with any weapon, rather the allegations are of giving fist and leg blows only. The dispute was involving an amount of Rs.90/- only. More so, the only eye witness in this case i.e. PW.5 Laik Ram had not supported the prosecution case and he turned hostile, whereas the prosecution case is only based upon sole testimony of PW.4 Pusai Ram, complainant/injured. Learned trial Judge has considered all these aspects while deciding the matter. As such, present appeal be accepted and appellant/accused be acquitted of the charges.

Learned counsel for the respondent-State contended that the learned trial Judge has considered all these aspects and already taken a lenient view while awarding the sentence of two years for the commission of offence under Section 308 IPC. The complainant/injured remained admitted in PGI, Chandigarh for a period of 11 days and the nature of injuries was opined to be dangerous to life, though the allegations were of giving legs and fist blows. So, the appeal is liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and perused the record, this Court is of the considered view that there is no dispute regarding identity of the accused person in this case. PW.4 Pusai Ram, complainant/injured had sustained three injuries at the hands of the appellant and for that purpose, he had to remain hospitalized at PGI, Chandigarh for a period of 11 days and one of his injuries has been opined to be dangerous to life even. The learned trial Judge has already dealt with the aspect that legally, there is no bar that conviction cannot be

based upon the sole testimony of injured witness, especially when the same is corroborated by medical evidence. In this case also, the injured had given the complete narration of the incident. His version is duly supported by medical evidence and statement of all the medical officers, who had examined him at Ambala as well as at PGI, Chandigarh. The plea of defence has already been considered by the learned Additional Sessions Judge and the same has rightly been discarded. Though, no weapon was used for causing injuries, but the appellant was conscious enough to understand and foresee the result and effect of his leg and fist blows having been given on the private parts of the complainant/injured. As such, the learned trial Judge has rightly held the appellant/accused guilty and convicted him for the commission of offences under Sections 308 & 323 IPC and present appeal against the judgment of conviction dated 28.08.2004 is without any merits and the same stands dismissed.

As regard to order of sentence, appellant has been awarded rigorous imprisonment for a period of two years for the commission of offence under Section 308 IPC and to pay a fine of Rs.1,000/-, in default whereof to further undergo rigorous imprisonment for a period of two months and six months for the commission of offence under Section 323 IPC. By now, the appellant has undergone 29 days only out of the total sentence of two years rigorous imprisonment awarded to him. The fact is not disputed that appellant is not a previous convict and there was no pre-planned motive on his part to cause injuries to the complainant/injured as he was unarmed. Taking all these facts into consideration, this Court is inclined

to take a little lenient view on the point of sentence. Accordingly, order of

sentence dated 09.09.2004 is modified to the extent that the appellant shall undergo rigorous imprisonment for a period of one year for the commission of offence under Section 308 IPC and rigorous imprisonment for a period of six months for the commission of offence under Section 323 IPC. Both the sentences are ordered to run concurrently. However, the order of sentence, passed by the learned trial Judge, regarding payment of fine amount and default clause shall remain intact.

With the observations and directions made above, present appeal stands disposed of.

(Shekher Dhawan)
Judge

February 8, 2019
“DK”

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No