

CRA-S-2262-SB-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2262-SB-2004
Date of decision: 30.09. 2019

Rajbir Singh Appellant

Versus

State of Haryana Respondent

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Arjun Kundra, Advocate
Amicus curiae for the appellant.

Mr. Karan Sharma, AAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

The instant appeal has been filed against the judgment and order dated 03/04.11.2004 passed by Sessions Judge, Kurukshetra vide which the accused-appellant was convicted and sentenced as under:

<i>Name of convict</i>	<i>Offence</i>	<i>Period of Sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Rajbir Singh	Under section 333 IPC	Rigorous imprisonment (RI) for five years	Rs.2,000/-	RI for six months
	Under section 332 IPC	RI for one year		
	Under Section 353 IPC	RI for one year		
	Under Section 186 IPC	RI for two months		

All the sentences were ordered to run concurrently.

Prosecution case in brief is that on 07.02.2003 at about 11.00 am the

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appellant came to the office of the complainant Birender Singh (PW-2) i.e. 'OP' Sub Division, Uttri Haryana Bijli Vitran Nigam Ltd. (for short 'Electricity Board'), Ismailabad where he started misbehaving and creating a nuisance as he wanted to jump the queue and deposit his electricity bill over and above the others already waiting. Despite the complainant Birender Singh asking the appellant to exercise patience, it did not help matters as the appellant continued with his unruly behaviour. The complainant was then compelled to telephonically contact SHO, Police Station Ismailabad for help. Head Constable Ved Prakash(EHC)-PW-3 and Constable Subhash Chander reached the office of the Electricity Board. On seeing them, the accused-appellant continued his disorderly behaviour. He physically manhandled HC Ved Prakash – PW-3 by tearing his uniform and hurting him on his arm. The occurrence was witnessed by complainant Birender Singh, SDO besides Dildar Singh, who was working as cashier in the said office. The appellant did not stop it at that and misbehaved with the other officials of the Electricity Board as well. On the complaint of Birender Singh, SDO to ASI Darshan Lal, FIR No.13 (Ex.PB/2) was registered for the offence punishable under Sections 332, 333, 353 and 186 IPC against the appellant. Injured Head Constable Ved Parkash(EHC) was sent to the Primary Health Centre and thereafter referred to General Hospital, Kurukshetra where he was medico- legally examined vide Ex.PG by Dr. Sarah Aggarwal – PW-8, who found diffuse swelling on his right forearm for which x-ray was advised. On being radiologically examined vide x-ray report Ex.PA, a fracture shaft of right ulna was found.

On completion of investigation, the accused-appellant was charged for the offences under Sections 332, 333, 353 and 186 IPC to which he pleaded not guilty and claimed trial.

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Prosecution in support of its case examined as many as 8 witnesses including Dr. C.R.Khatri PW-1, complainant Birender Singh PW-2, injured HC Ved Parkash –PW-3 and Dr. Sarah Aggarwal PW-8 besides other official witnesses.

On conclusion of prosecution evidence, all the incriminating circumstances appearing against the appellant were put to him under Section 313 Cr.PC to which he pleaded false implication and claimed innocence. He stated that he was an ex army man and had received head injury during his service. Ever since then he had been suffering from epileptic fits under depression and was also suffering from amnesia. He examined one witness in his defence.

After analysing and perusing the evidence available on record, the trial Court convicted the appellant and sentenced him as already detailed above.

Learned counsel for the appellant has vehemently urged that the alleged occurrence took place on 07.02.2003 yet the injured witness was examined only on the following day and that too at General Hospital, Kurukshetra. He has further urged that Dildar Singh cashier and Constable Subhash Chander, who had accompanied the injured were not examined by the prosecution, which creates a dent in the prosecution version. Lastly, it has been urged that the ingredients of Section 333 IPC are not made out. It has been submitted that the shirt, which injured HC Ved Parkash – PW-3 wearing at the time of alleged occurrence, was not handed over to the investigating agency during investigation and only the torn piece of the “shoulder” was handed over, which also creates a serious doubt about the injured receiving a injury in the instant case. In the alternate, it has been urged by the learned counsel that a lenient view be taken and his sentence be reduced to

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already undergone since he has suffered the agony of a prolonged trial of almost 15 years and there is no other criminal case registered against him coupled with the fact that he has been fastened with many liabilities in the past few years.

Per contra learned state counsel while opposing the submissions made by the learned counsel for the appellant has urged that the medical evidence is well corroborated from the ocular testimony and there is no reason for the complainant to falsely implicate the accused appellant. Hence, he prays for dismissal of the appeal.

I have given my anxious consideration to the submissions of the learned counsel for the parties and also gone through the evidence as well as other material available on record.

A perusal of the testimonies of the complainant Birender Singh – PW-2 as well as the injured witness HC Ved Parkash – PW-3 comes across as most convincing and trustworthy coupled with the fact that the medical evidence fully corroborates the ocular testimony. The injury on the injured which is a fracture of right ulna cannot by any stretch of imagination be a self suffered injury. As far as the submission of the learned counsel for the appellant that the injured was examined on the following day of the occurrence is concerned, the same is bereft of any merit. It has come on record that on the day of occurrence itself, the injured had been taken to the Primary Health Centre at Ismailabad but had to be referred to the General Hospital, Kurukshetra as the doctor in the Primary Health Centre was not available. Further a perusal of the MLR Ex.PG reveals that the doctor has specifically given an opinion that the duration of injury was within 24 hours, which coincides with the time of occurrence.

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The next argument of the learned counsel that it was a case of false implication does not appeal to reason as no suggestion whatsoever was put to either the complainant Birender Singh – PW-2 or the injured HC Ved Parkash – PW-3 qua any history of enmity between them. In fact in the statement of the appellant under Section 313 Cr.PC, he has admitted to the occurrence in hand by urging that he had received a head injury during his service in the Army as a result of which he had often been suffering from seizure fits and amnesia. It would be relevant to point out that no medical certificate qua the same was adduced by the appellant in his support. Even assuming for the sake of argument that he indeed been suffering from epileptic fits, it is not his case that at that point of time when the occurrence took place he had actually suffered a epileptic fit. Hence, he cannot derive any benefit of his alleged illness.

Coming to the next submission of the learned counsel for the appellant that the ingredients of Section 333 IPC are not made out, is bereft of any merit. It has come in evidence that the injured HC Ved Parkash was very much on duty and posted at the Government Hospital at the time of occurrence.

As a sequel to the above discussion, I do not find any ground to interfere in the impugned judgment dated 03/04.11.2004 passed by the Court below, which is a well reasoned one. Consequently, the present appeal stands dismissed.

However, keeping in view the fact that he has been subjected to the agony of a prolonged trial for 15 years coupled with the fact that he is not involved in any other criminal cases, I deem it fit to reduce the sentence awarded to him to one already undergone which as per the custody certificate placed on record by the

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respondent-State is 03 months and 23 days out of a total of 5 years. The fine of Rs.2,000/- imposed upon him under Section 333 IPC is enhanced to Rs.6,000/- which he shall pay within two months of the order failing which the benefit of reduction of sentence under various offences shall not accrue to him.

30.09.2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No