

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

CRA-S-2285-SB-2004
Date of Decision :04.07.2019

Teju @ Tarsem

.... Appellant

versus

State of Haryana

.... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Arnav Sood, Legal Aid Counsel
for the appellant.

Mr. Vijesh Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The instant appeal arises against the impugned judgment of conviction and order of sentence dated 22/24.09.2004 passed by Addl. Sessions Judge (Fast Track Court), Karnal vide which the accused-appellant was convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of 07 years and pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2. The story of the prosecution in brief is as follows:

Injured PW-3 complainant Sonu @ Gurwinder on being declared fit to make a statement by PW-1 Dr. Lalit Kumar, got recorded his statement Ex.PB before PW-7 ASI Ilam Singh to the effect that on 29.11.2003 at about 7.00 pm when he was standing in front of his house, appellant Teju @ Tarsem along with his brother-in-law Daler Singh (since

acquitted) and another unknown boy came to the spot. Appellant Teju @ Tarsem, who was under the influence of liquor, without any provocation, picked up a quarrel with the complainant Sonu @ Gurwinder and started using abusive and foul language against him. When it continued for 10-15 minutes, PW-3 complainant Sonu @ Gurwinder pleaded with the appellant to refrain from using abusive language but in vain. On the contrary, co-accused caught hold of the complainant Sonu @ Gurwinder and the appellant Teju @ Tarsem inflicted a knife blow on the stomach of the complainant Sonu @ Gurwinder. A hue and cry was raised by the complainant, which attracted his mother PW-6 Gurmit Kaur and uncle Gulab Singh to the spot. On seeing them, the accused fled away along with the weapon, leaving the injured in a pool of blood at the spot. The complainant Sonu @ Gurwinder was thereafter removed to the General Hospital, Karnal by his mother PW-6 Gurmit Kaur.

3. The investigation was set in motion, accused Teju @ Tarsem and Daler Singh were arrested on 03.12.2003 and weapon of offence i.e. knife was recovered from appellant Teju @ Tarsem vide recovery memo Ex.PF/7. Finally, they were charged under Section 307 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

4. In support of their case, the prosecution examined as many as 08 witnesses including PW-1 Dr. Lalit Kumar, Medical Officer of General Hospital, Karnal, PW-2 Constable Lakhwant Singh, PW-3 complainant Sonu @ Gurwinder, PW-4 Dr. Adhishwar Sharma, Medical Officer, General Hospital, Karnal, PW-5 Constable Prem Kumar, Draftsman, PW-6 Gurmit Kaur, mother of the complainant, PW-7 ASI Ilam Singh and PW-8

Dr. Niharika, Medical Officer, General Hospital, Karnal and tendered all the relevant documentary evidence.

5. After closure of the prosecution evidence, when the accused was examined under Section 313 Cr.P.C. he denied all the incriminating evidence, which had come on record against him. The accused-appellant Teju @ Tarsem pleaded that he was not present at the place of occurrence and the complainant had received injuries at the hands of unknown assailants, who had left him unconscious at the spot. He also pleaded that in fact the injured was in a state of intoxication when he received the said injury.

6. Learned trial Court convicted the accused appellant Teju @ Tarsem and sentenced him to undergo imprisonment as already detailed above.

7. Learned counsel for the appellant vehemently argued that there was an inordinate delay of almost 24 hours in the registration of FIR, which was used by the complainant to fabricate a false version against the appellant. He further argued that the presence of eye-witness PW-6 Gurmit Kaur i.e. the mother at the spot was highly doubtful and her testimony should not have been relied upon by the trial Court. It was strenuously submitted that the nature of injury suffered by the complainant itself was in doubt inasmuch as PW-1 Dr. Lalit Kumar opined that the said injury was dangerous to life only after going through the operation notes of the operating doctor, PW-2 Dr. Adhishwar Sharma, who had simply opined that the injury suffered was serious in nature. In the alternative, it was urged that the conviction of the appellant at best could have been only under

Section 326 IPC and not under Section 307 IPC as it was a case of single blow and thus, failed to satisfy the essential ingredients of Section 307 IPC.

8. Per contra, learned State counsel prayed for dismissal of the instant appeal on the ground that the ocular testimony found full and total corroboration with the medical testimony.

9. Heard learned counsel for the parties and perused the evidence as well as other material available on record.

10. As far as the contention of learned counsel for the appellant qua the delay in lodging of the FIR is concerned, the same deserves to be rejected outrightly. It has come on record that the injured PW-3 Sonu @ Gurwinder was removed to the General Hospital, Karnal within an hour of the occurrence. It is also a matter of record that intimation regarding the admission of the injured was sent by the attending doctor to the Police Station City Karnal. On receipt of the information, PW-7 ASI Ilam Singh had reached the hospital for recording the statement of the injured but as the doctor had opined him to be unfit to make a statement, statement of the injured PW-3 Sonu @ Gurwinder could be recorded only on 30.11.2003 by PW-7 ASI Ilam Singh after he had been declared fit by the attending doctor. Hence, in this background, the delay in lodging of the FIR is inconsequential.

11. I have given my anxious consideration to the argument of learned counsel that the trial Court gravely erred in relying upon PW-6 Gurmit Kaur as her presence at the spot was highly doubtful and had she actually been present at the spot, there was nothing which prevented her from reporting the matter to the police soon after the occurrence. I find the

same devoid of any merit precisely for the reason that in the case in hand, the injured PW-3 Sonu @ Gurwinder, who is the star witness, has supported the prosecution case in its entirety. The defence could not create even an iota of dent in his testimony. Moreover, it has come on record that at the time of admission in the hospital, PW-6 Gurmit Kaur was present with the injured. The occurrence was right in front of the house of the injured and PW-6 Gurmit Kaur and hence, her presence at the spot would have been most natural and probable. Moreover, reliable evidence of even a solitary witness would be sufficient to prove the case of the prosecution. In the case in hand, the testimony of injured Sonu @ Gurwinder is fully credible. The defence could not create any dent. Thus, even without going into the evidence of PW-6 Gurmit Kaur, mother of the injured, the case of the prosecution stands fully proved against the appellant.

12. In order to bring a case within the purview of Section 307 IPC, it is necessary to prove, that, if the act of the accused had caused death, it would have amounted to murder, provided the same was done with such intention or knowledge as would be necessary to be proved in a case of murder. Whether it was a case of infliction of solitary injury or for matter even a minor injury, the same would be of no consequence for the purpose of deciding whether the act of the accused amounted to an attempt to murder or not. To attract the penalty under Section 307 IPC, intent and knowledge are essential ingredients, which would have to be gathered from the nature of weapon used, seat of injury and nature of injury inflicted.

On his admission in the General Hospital, Karnal, injured PW-3 complainant Sonu @ Gurwinder was examined by PW-1 Dr. Lalit Kumar on

29.11.2003 at about 8.30 pm, who found the following injury on his person:

“There was an incised wound on left iliac region 10 cm above left iliac bond 1.5 x 1 cm in size. There was fresh bleeding present at that time, Surgeon's opinion was advised.”

In the opinion of PW-1 Dr. Lalit Kumar, the injury on the person of the complainant Sonu @ Gurwinder was found to be dangerous to life.

13. In the instant case, the accused inflicted an injury with a knife, which he was carrying, on the abdomen of the injured. The medical evidence on record clinchingly indicates and establishes that the injury suffered by PW-3 Sonu @ Gurwinder could not have by any stretch of imagination be said to have been not dangerous to life. Not only was the seat of injury on a vital part of the body but the nature of injury was such, that a surgery had to be performed. So much so, it has come on record that the injured complainant had to undergo a second surgery as well for colostomy closure.

14. The very fact that the appellant indulged in an unprovoked verbal attack on the injured for almost 10-15 minutes and despite the injured pleading with him time and again to refrain, he continued with the same and finally it culminated with the infliction of an injury on a vital part of his body with a knife, goes a long way to safely draw an inference, that not only was the appellant conscious of the consequences, which would follow in the circumstance but the severity of the blow leaves no manner of doubt that the appellant had both the knowledge and intention to cause the death of the injured. Had providence not stepped in, in the form of his mother, who was

nearby and attracted by the cries of her injured son, the injured complainant would have definitely met his end.

15. As a sequel of above discussion, I find no illegality or perversity in the impugned judgment and order of sentence passed by the trial Court. Accordingly, the present appeal is dismissed. The accused-appellant is on bail. His bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure his custody.

04.07.2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned?	Yes / No
Whether Reportable?	Yes / No