

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2400-SB-2004
Decided on: 22.02.2019

Lachhman @ Kaka Ram

.... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rajinder Goyal, Advocate
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the accused-appellant against the judgment and order of conviction dated 31.08.2004 passed by learned Additional Sessions Judge Kaithal, whereby he was convicted for committing offence punishable under Section 307 of the Indian Penal Code (in short 'IPC') and sentenced to undergo rigorous imprisonment for a period of eight years alongwith a fine of ₹5000/-. It was ordered that in case of default on account of non-payment of fine, the accused-appellant would further undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution in nutshell is that on 24.02.2000 at about 09.00 p.m. when the complainant Dara Singh (PW-6) was going in a street outside Dera Baba Bhabut Giri, he was accosted by the accused-appellant who was already standing there and was also well acquainted with him. The accused-appellant as well as the complainant had a verbal altercation on account of a gold coin which allegedly as per the accused-appellant, the complainant had stolen from the former. During the verbal altercation that ensued between both of them, the accused-appellant gave a fist blow on the complainant and as per the

complainant himself, he retaliated in the same manner. The accused-appellant thereafter, took out a knife from his dub and stabbed the complainant on the left side of the abdomen, a little below his chest. On an alarm being raised by the complainant, PW-7 Kala @ Ramesh who at that point of time, was in the vicinity, was attracted to the spot. The accused-appellant thereafter took to his heels and fled. PW-7 Kala @ Ramesh then took the injured complainant to his house and left him there. The complainant at that time did not feel much pain due to the stab injury and went off to sleep after narrating the incident to his mother and wife. However, early in the morning he felt severe pain on the seat of injury, for which he was taken to the hospital where on being medico-legally examined by Dr. Parveen Kumar (PW- 4), a ruqa Ex.PD was sent to the police regarding his admission in the hospital with a stab injury. Vide Ex. PF/1, the doctor opined the complainant Dara Singh fit to make a statement. Thereafter, his statement Ex.PA was recorded leading to the registration of formal FIR under Sections 307 and 324 of IPC (Ex. PA/1). The accused-appellant was subsequently arrested and report under Section 173 Cr.P.C. was filed. On an application Ex.PJ, opinion of the doctor Ex. PE was obtained vide which he opined the injury on the person of Dara Singh as being dangerous to life. The appellant pleaded not guilty and claim to be tried.

3. The prosecution examined as many as nine witnesses. All the incriminating circumstances and evidence appearing against the accused-appellant were put to him under Section 313 of the Cr.P.C. He alleged that it was a false and fabricated case registered against him on account of an old enmity with the complainant. He stated that the complainant had stolen his gold coin, but had been compelled to return the same due to the intervention of the panchayat for which he had been nursing a grudge and it was in this background that a false case had been foisted upon him, by the complainant.

4. The accused-appellant examined one witness DW-1 Mohinder and thereafter closed his defence evidence.

5. I have heard learned counsel for the appellant, learned State counsel and perused the evidence on record.

6. The learned counsel for the appellant has vehemently argued that the learned trial Court has not appreciated the evidence in its right perspective and rather has erred in not taking note of the gaping holes in the case of the prosecution in as much as there was an inordinate delay in lodging of the FIR coupled with the fact that at the time of the admission in the hospital, the complainant failed to give the name of the assailant to the attending doctor. He submitted that the delay in lodging of the FIR goes a long way to show that the complainant had tried to falsely implicate the accused-appellant with malafide intention and to wreck personal vengeance upon him. The learned counsel also drew my attention to the fact that after the alleged occurrence, the injured-complainant not only returned to his house, but it was on the following morning that he got himself admitted in the hospital and made his statement Ex.PA. The learned counsel finally submitted that even if it is assumed that the alleged occurrence did take place, an offence under Section 307 IPC could not be said to be made out, in the facts and circumstances of the case, especially as it was a case of single blow having been inflicted on the person of the complainant. The said injury was declared dangerous to life after a considerable period of time and that too by PW-4 Dr. Parveen Kumar, who was not the operating doctor.

7. The learned State counsel on the other hand prayed for dismissal of the appeal and submitted that both the complainant who was injured in the occurrence as well as PW-7 Kala @ Ramesh had supported the case of the prosecution on all material aspects of the case. He further argued that the alleged

delay in the registration of the FIR stood satisfactorily explained.

8. From the perusal of the evidence on record, one fact which emerges and is not disputed is that not only were the complainant as well as the appellant well acquainted with each other, but there had indeed been some dispute between them prior to the occurrence on account of theft of a gold coin. The version of the complainant, thus, comes across as quite believable and probable that it was in this background, the appellant on that fateful day had stopped the complainant, accosted him, leading to a verbal altercation between them which culminated in a stab injury which was declared dangerous to life. In this background, it cannot be said that the occurrence took place at the spur of the moment and the accused-appellant was not having any intention to commit an offence falling under the purview of Section 307 IPC.

9. It would be relevant to reproduce the provisions of Section 307 IPC:-

“Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2 [When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.

10. To attract the penalty under Section 307 IPC, “murderous intent” is an essential ingredient. Direct and strict proof of intention may be hard to get many a times as the same would be locked in the heart and mind of the accused. Hence, the same shall have to be inferred from the facts and circumstances of each individual case. The nature of weapon, the seat of injury/injuries and of course the nature of injury/injuries coupled with the severity of the blow inflicted would

be thus, very important and relevant to arrive at a finding, if the appellant could be convicted under Section 307 IPC or not for which it would be, therefore, relevant to peruse the MLR (Ex.PK) as well as his surgical notes of the doctor-Anil Kumar (PW-9) which are reproduced as under:-

“Under anesthesia the parts were clean and drapped. Abdomen opened by upper middle line in incision and deepened through layers. There was present about 500 or 600 CC of blood in abdominal cavity, which was aspirated and saline irrigation of cavity done. There was active bleeding from greater omentum. Bleeder was under run and haemostasis was achieved. There was present a small perforation in jejunum about three/four of a foot distal to DJ junction which was closed in two layers. There were present multiple perforation in distal jejunum, resection anastomosis done in two layers using 3-0 catgut and number 30 mersilk, rent in mesentery closed with cotton No.30. There was present a rent in the mesentery of colon which was closed with number 30 cotton. Rest of organs were found to be normal. Complete Peritoneal lavage done again. Stab wound which was present in left hypochondrium was communicating with the general peritoneal cavity. It was closed in two layers. Two drains were introduced, one in Morrison pouch and other one in pelvis. Abdomen closed in layers. Antiseptic dressing given.”

11. A perusal of the injury as well as operation notes leaves no manner of doubt that it could not have been by any stretch of imagination been a simple injury. The very fact that the injured-complainant underwent a surgery involving vital organs goes a long way in establishing that not only did the appellant have an intention but also knowledge that his act could prove to be fatal to the complainant. The doctor PW-4 Parveen Kumar was, therefore, right in opining this injury to be dangerous to life. The submissions of the learned counsel for the appellant that at best it was a case falling under Section 324 IPC is thus, bereft of

any merit. Once the appellant had an intention and knowledge and the same was followed up by an overt act then the cardinal ingredient of an offence under Section 307 IPC is clearly made out and for which he cannot escape criminal responsibility.

12. The other submission of the learned counsel for the appellant qua the delay in lodging of FIR is devoid of merit and the same cannot be a factor to hold the version of the complainant as false or fabricated. Complainant is admittedly a stamped witness having received injuries as detailed in the MLR and the surgical notes of the surgeon. Moreover, it is a case of a single accused and most importantly both accused and complainant were well known to each other. It has also come in evidence that the complainant was in pain when he was examined by the doctor who immediately sent the ruqa to the police without any delay.

13. Resultantly, I do not find any merit in the appeal and the same is dismissed. The judgment of conviction and order of sentence passed by the learned trial Court is affirmed. 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

22.02.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No