

CRA-S-2434-SB-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: August 29, 2019

Khem Chand @ Pappu Appellant

Versus

State of Haryana Respondent

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Rahul Vats, Advocate
for the appellant.

Mr. S.S.Pannu, DAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

The instant appeal has been filed against the judgment and order dated 12/15.06.2004 passed by Addl. Sessions Judge, Faridabad vide which the appellant Khem Chand 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>
Khem Chand	307 IPC	Rigorous imprisonment (in short RI) for 5 years	Rs.5,000/-	RI for 3 months
	25/54/59 of Arms Act	RI for 2 years	Rs.1,000/-	RI for one month

Both the sentences were ordered to run concurrently.

The case of the prosecution in brief is that on 06.03.2003 at about 3.00 pm in village Mujessar when the complainant Birbati-PW-7 was giving fodder to her buffaloes, she heard the cries of one Ravi to the effect ‘Bhabhi mujhe bachao’. On being attracted by his cries, the complainant saw that the appellant Khem Chand @ Pappu was inflicting knife blows on the person of Ravi.

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She thereupon rushed to the rescue of Ravi and tried to separate the two. However, the appellant whipped out a country made pistol and fired upon her as a result of which, she received a bullet injury on her left thigh. Raj Pal-PW-8, who happened to be close by also witnessed the said occurrence. A huge crowd gathered at the spot but the appellant managed to flee with the weapon of offence. The complainant Birbati-PW-7 thereafter was removed to the hospital by Raj Pal-PW-8 for treatment. On the basis of her statement, FIR Ex.PD was registered against the appellant by the police. The appellant was arrested and in pursuance to his disclosure statement Ex.PH, the police recovered and took into possession from him the country made pistol used in the alleged occurrence vide recovery memo Ex.PJ. The police also took into possession the salwar of the complainant as well as the bullet recovered from her person vide recovery memo Ex.PG. After completion of investigation, challan was presented. The charges were framed under Section 307 IPC and 25/54/59 Arms Act against the appellant to which he pleaded not guilty and claimed trial.

Prosecution in support of its case examined as many as 12 witnesses including PW-7 Birbati, complainant, PW-8 Raj Pal, eye-witness, PW-10 Dr. P.S.Parihar, who conducted x-ray upon the complainant, PW-11 SI Ram Kumar, Investigating Officer and PW-12 Dr. Sudhir Khurana, who medico-legally examined the complainant Birbati.

After the conclusion of the prosecution evidence, all the incriminating evidence appearing against the appellant were put to him under Section 313 Cr.PC to which he pleaded false implication by complainant Birbati in connivance with his brothers with whom he had some property dispute. In his defence, the appellant examined Ravi as DW-1.

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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 strenuously urged that even though it is a case of false implication, however, assuming for the sake of arguments that the alleged occurrence had indeed taken place, the mischief of under Section 307 IPC would not be attracted. He further submitted that the learned trial Court completely failed to appreciate that Ravi with whom the appellant was allegedly quarrelling and who had cried out for help, was not even examined by the prosecution but had in fact appeared as a defence witness and demolished the case of the prosecution by deposing that no occurrence as alleged had taken place. Learned counsel for the appellant further urged that PW-12 Dr. Sudhir Khurana, who medico-legally examined the complainant soon after the alleged occurrence, did not give any opinion regarding the nature of the injury sustained by her. Hence, in the absence of any definite opinion of the doctor, it would not be safe to conclude that the injury could have led to her death. Learned counsel further submitted that as per the testimony of the complainant when she rushed to the rescue of Ravi, he was being inflicted a knife blows by the appellant but strangely no medico-legal report was there on record to support the factum of Ravi having sustained any injury much less knife injury in the alleged occurrence, which cast a serious doubt about the authenticity of the prosecution version.

Learned State counsel on the contrary vehemently opposed the arguments raised by learned counsel for the appellant and urged that it was a case wherein PW-7 Birbati, complainant as well as eye-witness PW-8 Raj Pal had supported the case of the prosecution in its entirety coupled with the fact that the weapon of offence was recovered from the possession of the appellant in

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pursuance to his disclosure statement. He further submitted that non-examination of Ravi was inconsequential in the light of the ocular testimony having been fully corroborated by the medical evidence as well as by PW-8 Raj Pal, an eyewitness to the occurrence. Hence, he prayed for dismissal of the instant 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.

Coming to the first contention of the learned counsel for the appellant that it was a case of false implication, the same deserves to be rejected outrightly. The injured complainant Birbati was shifted to the hospital soon after the alleged occurrence by PW-8 Raj Pal. In her statement, which was recorded by the investigating officer soon after her admission in the hospital, she gave a vivid account of the entire occurrence and attributed the fire arm injury suffered by her to the appellant. It cannot be believed that she would fabricate a version just to falsely implicate the appellant and too at the instance of his two brothers with whom he is allegedly not on good terms.

As per PW-12 Dr. Sudhir Khurana, who examined the complainant on her admission in the hospital, found the following injuries:

One lacerated injury 1.8 cm x 0.6 cm x muscle deep on the anterio medical aspect of left thigh. Little above its middle margins were inverted and wound bed was blackened. Fresh blood was present. Blackening was present.

On a perusal of the aforementioned report of the doctor, it makes it clear that the injuries could not have been fabricated or self suffered by the complainant Birbati.

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One fact which thus, stands established is that the complainant had indeed suffered fire-arm injury at the hands of the appellant- Khem Chand. Further, the testimony of PW-8 Raj Pal, an eyewitness comes across as most trustworthy. His presence at the time of occurrence cannot be doubted at all since he was a resident of the same locality and had accompanied the injured Birbati to the hospital soon after the occurrence. He deposed regarding having witnessed the appellant fire at the complainant – Birbati. On appreciation and reappraisal of the entire evidence on record, no other inference can be drawn but the one that the appellant had indeed fired at the complainant Birbati as a result of which, she received the injury as detailed in her MLR Ex.PW-12/A. However, the question which would require the consideration of the Court is whether the appellant can be held guilty under Section 307 IPC or not.

It would be apposite to reproduce Section 307 IPC which reads as follows:

307. 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

A bare reading of Section 307 IPC makes it apparent that to justify conviction under Section 307 IPC, it would have to be seen whether the accused-appellant had the intention or knowledge i.e. his act could lead to the murder of the victim. Hence, murderous intent is an essential element to attract the mischief of Section 307 IPC.

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As already discussed in the foregoing paragraphs, there is no reason to disbelieve or discard the testimony of the complainant, who admittedly is a stamped witness, having received fire arm injury on her thigh, which admittedly was not declared dangerous to her life by the doctor. It means that the injury suffered by her was simple in nature and not even grievous. Hence, it would have to be seen if there was intention on the part of the appellant to cause such injury to the complainant, which would fall within the ambit of Section 307 IPC.

In the case in hand on reappraisal of the entire evidence adduced before the learned trial Court, murderous intent on the part of the appellant is clearly missing. More so, when the genesis of the quarrel leading to the firing by the appellant on the complainant also does not stand proved. In order to convict an accused under Section 307 IPC the prosecution must prove that the appellant did an act with the intention or knowledge that death would be the normal consequence. Hence, it goes without saying that the gist of an offence under Section 307 IPC has to be “intention” on the part of the accused to cause death. However, in the instant case, no cogent evidence of intention to commit murder of complainant Birbati is discernable. Moreover, nature of injury and the seat of injury also do not indicate the intention of the accused to attempt murder of the complainant Birbati as there was no repetition on the part of the appellant to fire again on the complainant and the seat of injury too was on the thigh, which is a non vital part of the body. In the facts and circumstances of the case, the injury suffered by the complainant at best can be said to be incidental and not intentional.

It can be safely inferred from the sequence of events in the case in hand that if the act had been committed resulting in the death of the complainant, it would have been only culpable homicide and not murder. Even as per the

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testimony of the complainant, the appellant fired at her at the spur of the moment when she tried to intervene between him and Ravi. Hence, there was no premeditation on the part of the appellant to attempt murder of PW-7 Birbati.

Hence, in view of the discussion made above, the appellant cannot be convicted for an offence under Section 307 IPC. The contention of learned counsel for the appellant thus, has considerable amount of force in it. I would, therefore, be justified to alter his conviction from Section 307 IPC to that under Section 308 IPC with the sentence awarded being unaltered. However, his sentence and conviction under Section 25/54/59 of Arms Act is maintained.

Having regard to the facts and circumstances of the case and the fact that the appellant has undergone the agony of a prolonged trial for almost 15 years coupled with the fact that there is no other case pending against him as per the custody certificate filed by the State counsel, I am of the considered view that ends of justice would be met if his substantive sentence of 5 years is reduced to the sentence of imprisonment already undergone by him i.e. 02 years 07 months and 24 days in the present case. However, the appellant is directed to deposit an amount of Rs.25,000/- in the trial/successor Court payable as compensation to the victim Birbati within a period of one month from the date of this order failing which he shall undergo the remaining part of his sentence as awarded herein above.

Accordingly, the appeal stands disposed of in above terms.

August 29, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No