

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

CRA-S-1342-SB-2005

Decided on : October 16, 2019

Om Parkash & anr.

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Bhuvan Vats, Advocate
amicus curiae for the appellant.

Mr. Karan Sharma, AAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 06/07.07.2005 passed by Addl. Sessions Judge, Hisar vide which the accused-appellants were 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>
Om Parkash Manohar @ Manohari	307 read with Section 34 IPC	Rigorous imprisonment (RI) for five years	Rs.1,000/- each	RI for one month

2. Prosecution case in brief is that on 16.08.2002 on receipt of information regarding the admission of injured PW-6 Raj Kumar @ Raju in General Hospital, Hisar, ASI Raj Kumar -PW-8 along with other police officials went there and sought the opinion of the doctor PW-1 Dr. Sanjay

Sheoran about the fitness of injured PW-6 Raj Kumar to make a statement but he was declared unfit. However, the police recorded the statement (Ex.PD) of eyewitness PW-5 Dharampal, the brother of the injured Raj Kumar @ Raju leading to the registration of FIR No.432 (Ex.PE) at Police Station City Hisar for offences punishable under Section 307 read with Section 34 IPC wherein he stated that on 15.08.2002 at about 11.00 pm when they were about to sleep in their house, they heard the appellant Om Parkash abusing them while standing in the street. The complainant as well as his mother objected to the same and came out from the house and saw that the appellant Om Parkash was accompanied by co-accused Manohar @ Manohari. Both the accused-appellants were asked by the complainant Dharampal and his mother to refrain from using abusive language. Instead both the accused-appellants took out knives, which they were carrying with them at that point of time and declared that they would kill Raj Kumar @ Raju. On a hue and cry raised, Raj Kumar @ Raju was attracted to the spot and asked the accused-appellants to go away. Thereupon, appellant Om Parkash inflicted a knife blow on the right side of the abdomen of Raj Kumar @ Raju. Accused-appellant Manohar @ Manohari also inflicted a knife blow on the left side of the chest of the injured Raj Kumar @ Raju. On receipt of the injuries, he fell down on the ground. Thereafter, the accused-appellants fled away from the spot. It was stated that a couple of days prior to the occurrence, there had been some quarrel between injured Raj Kumar @ Raju and the accused-appellants on account of some money dispute wherein the accused party had suffered some minor injuries. On completion of investigation, the accused-appellants were arrested on

23.08.2002 and 26.08.2002 respectively wherein they suffered their respective disclosure statements Ex.PF and PJ, in pursuance to which the recovery of weapons used in the crime were effected from the place pointed out by the appellants vide recovery memo Exs.PH and PL. Vide MLR Ex.PA, the following injuries were found on the person of injured Raj Kumar @ Raju:

1. Incised wound 3 x 1 cm on abdomen in right lumbar region. Omentum protruding out of wound. Surgeon's opinion was asked for injury No.1.
2. Incised wound 3 x 1 cm on left lower chest. Fresh bleeding was present. X-ray chest was advised. Surgeon's opinion was asked for.

As per doctor opinion, injury no.1 was dangerous to life.

The accused-appellants were charged for offences under Sections 307, 324 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

3. In support of its case, prosecution examined as many as 8 witnesses including PW-1 Dr. Sanjay Sheoran, Medical Officer, PW-5 Dharampal, complainant, PW-6 Raj Kumar @ Raju, injured and PW-8 ASI Raj Kumar.

4. When examined under Section 313 Cr.PC, the accused-appellants pleaded false implication. Appellant Om Parkash further stated that due to a previous money dispute between them, he had been falsely implicated in the instant case. Whereas accused Manohar @ Manohari stated that on that fateful night when he was passing by the house of the

complainant Dharampal, the latter started using abusive language against him under the influence of liquor and when he was requested by him to refrain from the same, PW-6 Raj Kumar @ Raju became aggressive and inflicted injuries on him resulting in the instant case being planted against him in collusion with the doctor and the police authorities.

5. On the basis of the evidence led, the trial court convicted the accused-appellants and sentenced them as already detailed above.

6. Learned counsel for the appellant has primarily challenged the impugned judgment by vehemently urging that the mother of the injured Raj Kumar, who was a material witness, was not examined by the prosecution, which raises a big question mark about the truthfulness of the prosecution version. He argued that in fact both the appellants were innocent and had been falsely implicated on account of their past enmity and animosity and in fact injuries had been inflicted on the complainant by some third person, who had been left out by the complainant party. Lastly it was argued that all the witnesses were interested witnesses being relations.

7. Learned State counsel, on the other hand, prayed for dismissal of the instant appeal by urging that the ocular testimony stood fully corroborated from the medical testimony. It was a case of prompt FIR and hence, the question of any false implication did not arise.

8. I have heard learned counsel for the parties besides going through the evidence and other material available on record.

9. The occurrence is stated to have taken place at about 10-11.00 pm in the vicinity of the house of PW-5 Dharmapal, complainant. Hence, the presence of PW-5 Dharampal, complainant would have been most

natural. No doubt, he is the real brother of PW-6 injured Raj Kumar @ Raju but that by itself would not be sufficient to raise doubt about the truthfulness and veracity of his deposition. Hence, I find the argument of the learned counsel for the appellants to be bereft of any merit that the injuries were inflicted on injured Raj Kumar by some other person but due to the past history of enmity between them, the present accused-appellants had been falsely implicated. It is unthinkable that PW-5 Dharampal, who is admittedly the real brother of PW-6 injured Raj Kumar, would exculpate the real culprit and falsely implicate the present accused-appellants just because there was some history of quarrel which had taken place few days prior to the occurrence. Both the injured and eyewitness i.e. PW-5 Dharampal and PW-6 Raj Kumar have fully supported the case of the prosecution and the defence miserably failed to create any dent in their deposition. Further, the presence of PW-5 Dharampal is rather admitted because it is the case of the accused-appellants themselves that they too suffered some injuries at the hands of PW-5 Dharampal though they were supposedly minor injuries.

10. The occurrence is stated to have taken place at about 11.00 pm on 15.08.2002 and the injured PW-6 Raj Kumar was removed to the hospital without any delay. The statement of the complainant PW-5 Dharampal too was recorded promptly wherein he gave a detailed account of the sequence of events leading to the injuries on PW-6 Raj Kumar. The medical evidence finds full corroboration with the ocular evidence. It is a case wherein it stands fully established that the appellants and appellants alone came to the house of the complainant party armed with lethal weapons and caused injuries to PW-6 Raj Kumar.

11. As a sequel to the above discussion, I do not find any ground to interfere in the impugned judgment and order of conviction dated 06/07.07.2005, which is a well reasoned one.

Consequently, the present appeal stands dismissed being devoid of merit. The accused-appellants are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

October 16, 2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable :	No