

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

CRA-S-1458-SB-2005 (O&M)

Date of decision: 04.09.2019

Rajbir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Samir Rathour, Advocate as Amicus-Curiae
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This appeal has been filed for setting aside the judgment of conviction dated 05.08.2005 and order of sentence dated 09.08.2005, vide which the appellant was held guilty for commission of offence punishable under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs. 5,000/-; in default of payment of fine, the appellant was directed to further undergo rigorous imprisonment for a period of three months.

Brief facts of the case, as per FIR, are that on 12.05.2001 at about 8.30 AM, complainant/injured PW-9 Mahesh going on foot and when he reached in front of the house of accused Muktiar Singh, he was hit on his right arm with a lathi by Muktiar Singh. Other accused Charan Singh also gave a lathi blow which hit on the right side of the chest of complainant and he fell down. In the meantime, both of them climbed over the roof and started throwing brick bats, due to which, Pooja suffered head injury. The inhabitants of the area intervened and rescued them.

Thereafter, the complainant as well as PW-10 Pooja were taken to the hospital, where they were medico-legally examined. Initially the police recorded a DDR Ex. PG and thereafter, the FIR Ex. PG/2 was registered on 24.05.2001. The police arrested two accused persons Muktiar Singh and Charan and thereafter the appellant was arrested. On completion of investigation, the report under Section 173 Cr.P.C. was submitted against all the accused persons.

The trial Court, vide order dated 08.02.2002, framed charge under Section 307 IPC against the accused persons, to which, they did not plead guilty and claimed trial.

Thereafter, the trial Court, while acquitting accused Muktiar and Charan Singh of the charge framed against them, convicted the appellant for the commission of offence punishable under Section 307 IPC and sentenced him for rigorous imprisonment of seven year. Hence, the present appeal.

Learned counsel for the appellant has argued that a perusal of DDR Ex. PG and FIR Ex. PG/2, which was recorded after a lapse of 12 days from the date of occurrence, shows it is alleged that initially, accused Muktiar and Charan Singh were named who have caused injuries to PW-9 Mahesh with their lathis and then both of them climbed over the roof and started pelting stones and brick bats, in which PW-10 Pooja sustained head injury.

Learned counsel for the appellant further argued that the appellant was not named in the FIR and when PW-9 Mahesh appeared in the witness box, he has made drastic improvement by naming the appellant as an accused person who was present on the roof and was carrying a piece of

brick in his hand and has struck the same on the head of PW-10 Pooja.

Learned counsel for the petitioner further submitted that in the cross-examination when PW-9 Mahesh was confronted with DDR No. 7 dated 12.05.2001 (Ex. PG), recorded by the police, it was found that aforesaid part of his statement that appellant Rajbir was also present on the roof and has thrown piece of brick on the head of PW-10 Pooja, is not mentioned therein.

Learned counsel for the appellant has further argued that it has also come in the cross-examination of PW-9 that co-accused Muktiar asked appellant Rajbir not to spare Pooja and directed him to kill her (*jaan se maar do*) and only thereafter, the appellant struck on the head of Pooja with a piece of brick. Again, this witness was confronted with the statement recorded in DDR (Ex. PG), where it was found not so recorded and thus, PW-9 has made improvements while deposing in Court.

Learned counsel for the appellant further argued that PW-9, in his cross-examination, has also admitted that the accused persons and complainant are having litigation in various courts and one of the witness, namely Deep Chand, PW-11 is the uncle of the complainant and the second witness is his neighbour. Learned counsel for the appellant has, thus, argued that by making improvement in his statement as PW-9, the appellant has been falsely implicated in this case.

Learned counsel for the appellant has referred to statement of PW-10 injured Pooja, in which she has stated that the appellant was standing on the roof and he raised the alarm/lalkara and then he hit her on her forehead with a piece of stone. Learned counsel for the appellant has referred to the cross-examination of this witness to submit that she has

stated that appellant Rajbir was all alone on the roof and no other accused was present on the roof at the time of occurrence. Accused Muktiar and Charan did not ascend on the roof throughout the occurrence. Learned counsel for the appellant has, thus, argued that there are major contradictions in the statement of PW-9/complainant Mahesh and PW-10/injured Pooja regarding the manner in which the injuries were caused by accused persons.

Learned counsel for the appellant has further referred to cross-examination of PW-10 Pooja, wherein she has stated that accused Muktiar and Charan did not inflict any injury.

Learned counsel for the appellant has next argued that the trial Court, by relying upon aforesaid part of the statement of PW-10 Pooja, has acquitted two of the co-accused Muktiar and Charan Singh, however, the appellant was wrongly convicted.

Learned counsel for the appellant has also referred to statement of PW-11 Deep Chand to argue that again there is a contradiction in the statement of this witness with the statement of PW-9 and PW-10 regarding the manner in which incident took place.

Learned counsel for the appellant has further referred to the statement of PW-1 Dr. R. K. Leekha, who conducted the medico-legal examination of PW-9 Mahesh and PW-10 Pooja and submitted that as per MLR of PW-9 Mahesh, no injury was found corresponding to the injury attributed to co-accused Muktiar and Charan and on the body of PW-10 Pooja, one lacerated wound on the left side of her forehead was found and this injury was declared dangerous to life. Learned counsel for the appellant has further submitted that in the cross-examination, this witness has

admitted that possibility of this injury, being caused by falling on some surface cannot be ruled out.

Learned counsel for the appellant has further argued that the appellant has falsely been implicated in this case only for the reason that he is a Govt. servant working in Delhi Administration and on that account, after 12 days of the incident dated 12.05.2001, the appellant was named in the FIR on 24.05.2001 in a calculated and a novel method by showing the injury sustained by PW-10 Pooja in some accident, being caused by the appellant.

Learned counsel for the appellant has next argued that on the same set of evidence, the trial Court has acquitted the two of the co-accused, however, the appellant has been convicted on the totally unbelievable version of PW-9 Mahesh and PW-10 Pooja.

It has lastly been argued by learned counsel for the appellant that in the statement of PW-9 and PW-10, not even a single word is uttered with regard to delay of 12 days in registration of the FIR and since there is a long standing litigation between the two parties, on sustaining an injury by PW-10 Pooja, the complainant/PW-9 Mahesh has set up a totally false and concocted story that she was injured by the appellant by throwing a piece of brick, though the presence of the appellant at the spot is not proved from the statement of PW-9, PW-10 and PW-11.

In reply, learned State counsel has submitted that the trial Court has rightly recorded the judgment of conviction on the statement of PW-9 and PW-10 who have supported the prosecution version.

Learned State counsel has further argued that since as per the opinion of doctor, injury No. 1, on the person of PW-10 Pooja, was declared

dangerous to life, the appellant has rightly been convicted under Section 307 IPC.

After hearing learned counsel for the parties and going through the record, I find merit in the present appeal for the following reasons:

(1) A perusal of the DDR dated 12.05.2001 and FIR dated 24.05.2001 (Ex. PG and Ex. PG/2), clearly shows that the complainant approached the police with a version that when he was going on foot and reached outside the house of Muktiar, he gave him lathi blow on his right arm and in the meantime, accused Charan Singh also gave a lathi blow which hit on the right side of his chest. Thereafter, both of the accused persons ascended over the roof and started throwing brick bats and PW-10 Pooja was hit on her forehead. The statement of PW-9 Mahesh shows that he has made improvement while recording his statement on oath in Court by introducing appellant Rajbir as an accused who was also present on the roof having a brick bat and he had thrown the same on the head of PW-10 Pooja. In the cross-examination, this witness could not deny that in his statement in DDR Ex. PG, recorded on the day of occurrence, it is not so recorded. Further, this witness in his examination has stated that accused Muktiar raised lalkara and asked Rajbir not to spare Pooja and directed him to kill her and then appellant Rajbir had struck a piece of brick on the head of Pooja, however, when in the cross-examination, this witness was confronted with his statement recorded in Ex. PG, he could not dispute that it is not so recorded.

(2) Not only this, even the statement of PW-10 Pooja gives another version on the basis of which two co-accused Muktiar and Charan Singh were acquitted by the trial Court. In the cross-examination, this witness has

stated that appellant was all alone on the roof and there was no other accused on the roof at the time of occurrence and they did not inflict any injury. The statement of PW-11 Deep Chand is totally contrary to the version given by PW-9 regarding the occurrence and as admitted by PW-9 in his cross-examination, this witness is closely related to him and he is an interested witness.

(3) Even otherwise, the statement of PW-9 Mahesh is not trustworthy as he has stated that Muktiar and Charan gave two lathi blows on his right arm and right side of his chest, whereas, as per his MLR, as proved by PW-2 Dr. Tek Chand, there was only complain of pain and no physical mark injury or tenderness was found in both the injuries. Therefore, this witness is not trustworthy.

(4) Even in the statement of PW-1 Dr. R. K. Leekha, it has come that the injury sustained by PW-10 Pooja can be caused by falling on some surface and such possibility cannot be ruled out.

(5) Moreover, cross-examination of PW-9 Mahesh further shows that both the parties, complainant and accused persons, are having litigation in various courts and PW-11 Deep Chand is the uncle of PW-9. Therefore, the possibility of false implication of the appellant, being a Govt. Servant, cannot be ruled out.

(6) A perusal of the statement of PW-9, PW-10, PW-11 and PW-6/IO ASI Pyare Lal shows that there is no explanation about the delay of 12 days in registration of the FIR, hence, the appellant is entitled to take the benefit of the same, especially when two accused Muktiar and Charan Singh, named in first version in DDR (Ex. PG) stand acquitted.

In view of the above discussion, the present appeal is allowed

and the judgment of conviction dated 05.08.2005 and order of sentence dated 09.08.2005, passed by the trial Court, are hereby set aside. Appellant Rajbir stands acquitted of the charge framed against him.

Bail/surety bonds, if any, be discharged accordingly.

04.09.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>