

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

1. CRA-S No.211-SB of 2011 (O&M)

Rajwinder Singh @ Raj

... Appellant

Versus

State of U.T. Chandigarh

... Respondent

2. CRA-S No.324-SB of 2011 (O&M)

Sikander Gilhotra

... Appellant

Versus

U.T. Chandigarh

... Respondent

Date of decision: 10th September, 2019

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate for the appellant
(in CRA-S No.211-SB of 2011),
Mr. D.S. Pheruman, Advocate for the appellant
(in CRA-S No.324-SB of 2011),
Mr. Amit Kumar Goyal, Addl. Public Prosecutor
for the respondent/UT Chandigarh.

FATEH DEEP SINGH, J.

Both these appeals by the appellants convicts Rajwinder Singh alias Raj and Sikander Gilhotra have arisen out of the same very judgment of conviction dated 03.01.2011 and order of sentence dated 05.01.2011 passed by the Court of learned Additional Sessions Judge, Chandigarh while trying criminal case bearing FIR No.165 dated 17.03.2008 under Sections 333/353/294/506/509/34 IPC pertaining to

Police Station Sector 17, Chandigarh, and being out of the same very findings are thus taken up together for disposal.

The appellants have been held guilty for commission of offences under Sections 333 read with Section 34, 353 and 509 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹ 5,000/- each and in default of payment of fine to further undergo imprisonment for two months under Section 333 read with Section 34 IPC, whereas they were sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹ 1,000/- each and in default of payment of fine to undergo imprisonment for fifteen days for offence under Section 353 IPC, and for commission of offence under Section 509 IPC the appellants were sentenced to undergo simple imprisonment for six months and to pay a fine of ₹ 500/- each and in default of payment of fine to undergo imprisonment for seven days. All the sentences were ordered to run concurrently.

Heard Dr. Anmol Rattan Sidhu, Senior Advocate assisted by Mr. Pratham Sethi, Advocate representing appellant Rajwinder Singh alias Raj; Mr. D.S. Pheruman, Advocate for appellant Sikander Gilhotra; Mr. Amit Kumar Goyal, Additional Public Prosecutor, UT Chandigarh on behalf of the respondent/State and perused the records of the case.

On 17.03.2008 SI Usha Rani PW-7 received information regarding some quarrel near Gurudwara in Sector 23-D, Chandigarh. Acting on the same, she went along with the police force to the place of

occurrence and came to know that one of the injured C.Pardeep Kumar PW-6 has been rushed to General Hospital (now Government Multi Specialty Hospital), Sector 16, Chandigarh. Upon reaching the hospital, the Investigating Officer came across C.Pardeep Kumar and L/C Anu Chaudhary PW-9, who got recorded her statement that she along with her colleagues were posted in Sector 17 Police Station, Chandigarh and on that day she was in civil dress on a secret duty along with HC Sohan Singh (now ASI) PW-8 and C. Pardeep Kumar PW-6, the latter in uniform. It was around 5:00 p.m. while they were passing near the Gurudwara at Sector 23-D in a rickshaw, two boys standing there made obscene gestures upon seeing her. The accompanying police officials objected to their behaviour and as a consequence of which both the boys started assaulting the police officials hitting them with bricks. One of the bricks hit C. Pardeep Kumar PW-6 and he was rushed to the General Hospital, Sector 16 where he was medically examined by PW-2 Dr.Deepak Shanoa and subsequently for his broken tooth he was given dental aid by PW-1 Dr. Davinder Kumar. One of the assailants, Rajwinder Singh alias Raj was arrested by PW-8 HC Sohan Singh (now ASI), whereas the other accused identified as Sikander Gilhotra managed to flee. The Investigating Officer procured the medical records of the injured Ex.PA/1, Ex.PB, Ex.PC and sent ruqa leading to registration of the present case. It is during the course of investigations, through C.Yashpal PW-4 Draftsman, scaled site plan of the place of occurrence

Ex.PG was got prepared and who also procured radiological examination reports of the injured Ex.PH and Ex.PI from PW-5 Dr.R. Nijhawa. Upon completion of the investigations, the incriminating evidence was put to the accused to which they pleaded not guilty and claimed trial. The prosecution at the trial, to prove its case examined following witnesses:-

PW-1	Dr. Davinder Kumar;
PW-2	Dr. Deepak Shanoa;
PW-3	C. Deepak;
PW-4	C. Yash Pal;
PW-5	Dr. R.Nijhawan;
PW-6	C. Pardeep Kumar;
PW-7	SI Usha Rani;
PW-8	ASI Sohan Singh;
PW-9	L/C Anu Chaudhary;
PW-10	HC Kartar Singh.

Thereafter, the prosecution closed its evidence. The accused in their stand under Section 313 Cr.P.C. denied the allegations but did not lead any evidence in their defence and subsequently, the impugned findings have come about by the Court of learned Additional Sessions Judge, Chandigarh convicting and sentencing both the accused appellants.

Learned counsel representing both the appellants at the very onset, have sought to displace the allegations of the prosecution on the

grounds that the entire story appears to be highly improbable and unacceptable being a busy thoroughfare and that the allegations of passing obscene gestures were never elaborated in the FIR and have subsequently come about in the evidence of the witnesses, arguing further that the prosecution story suffers from serious infirmities and therefore, needs to be brushed aside. The submissions of the appellant side have been controverted with much force and vehemence by learned State counsel who has sought to claim that the medical evidence proved by PW-1 Dr. Davinder Kumar, PW-2 Dr. Deepak Shanoa and PW-5 Dr. R. Nijhawan is illustrative of the assault on the police officials during the discharge of their official duties. The claim of the defence, as has been debunked by the prosecution that the story is highly unpalusible as the ocular version and the medical evidence duly support each other and there is no worthwhile explanation coming from the side of the defence to displace the same. It is the testimony of PW-6 C. Pardeep Kumar and PW-8 ASI Sohan Singh as well as the victim PW-9, who all are police officials, that both the accused had made obscene gestures towards PW-9, the lady constable and it was when PW-6 intervened to stop them from doing so, the accused are alleged to have assaulted them. It is categorically stated in the ocular version given by these witnesses that accused Sikander Gilhotra gave a brick blow on the left cheek of PW-6 and as is proved by PW-2 Dr. Deepak Shanoa, PW-1 Dr. Davinder Kumar and PW-5 Dr. R. Nijhawan on the basis of medical record that

upon x-ray of the mandible and dental, there was loss of tooth and fracture of both left and right angle of mandible and right body mandible were observed and the report Ex.P1 proved by PW-5 Dr. R. Nijhawan who had radiologically examined the injured had categorically detailed fracture of ramous and body of mandible on the left side and body of right side regarding which skygrams have been proved as Ex.PH and report Ex.PI.

It is unacceptable that such grievous injuries could be self-inflicted or could be caused by a friendly hand. More so, the very testimonies of the material witnesses of the prosecution leave no scope to doubt as to the veracity and truthfulness of the prosecution story. The Court below has taken the pains to go through the testimonies of the PW-6 C. Pardeep Kumar, the injured; PW-8 HC Sohan Singh (now ASI) and PW-9 L/C Anu Chaudhary, the victim, and nothing has come even in their cross-examination which could in any manner derail the prosecution version or cause doubt over its truthfulness. One of the accused Rajwinder Singh alias Raj was arrested at the spot by HC Sohan Singh (now ASI). The claim of the appellants' counsel that what has been detailed by these eye-witnesses and the victim in their examination in chief has never been detailed in the FIR, does not cut much ice for them as the FIR is not an encyclopedia so that each and every minor details are to be explicitly enumerated and it is in their examination in chief all these witnesses have detailed the exact words and gestures attributed to these

accused. Even co-accused appellant Sikander Gilhotra, who managed to escape, has been identified by these witnesses and nothing has come from the defence to deny his identity or his false implication. What one comes across in the suggestions posed by the defence shows that suggestion has been put that there were 10/12 persons present at the spot and that the accused did not utter any of the obscene words or passed any gestures and some boys out of this group actually made these obscene gestures and remarks and fled from the spot and in the process of chasing them PW-6 had lost balance and struck against hard surface and suffered injuries in question and that the accused were mere mute spectators. Thus, from this it clearly ensues that the accused in the cross-examination of material witnesses accept the occurrence, date, time and place as well as their presence and injuries on the person of the injured, and therefore, invariably the entire prosecution story. More so, as has been contended by the learned State counsel, nothing has come in the defence of the accused to controvert the same. The minor discrepancies that the brick was never taken into police possession, has been well elaborated by the investigating officer that when she examined the spot, the same was found missing or that no independent witness as well as rickshaw puller has been examined, is not rule of mandate. The impugned findings have given due appreciation to the oral as well as documentary evidence and have delved at length each and every angle of the case and has come to a totally justifiable conclusion. The accused by their act and conduct have

not only caused grievous injury to a public servant while he was discharging his duties but have also in furtherance of their common intention used criminal force in assaulting the public servant with a view to deter him from discharging his duty and therefore, by such an act and conduct have resulted in insulting modesty of a lady who belongs to the police force. The conduct of the accused certainly is reprehensible and needs to be deprecated. Having regard to the ever increasing number of such incidents of assaulting of law enforcing officials in the tricity, certainly calls for stringent action against such culprits to prevent further deterioration of the law and order situation in the tricity and impels this Court to take a strict view of such an act of the appellants and thus, they do not deserve any amount of leniency.

In the light of what has been detailed and discussed above, this Court does not come across any extenuating circumstance in favour of the appellants necessitating intervention by this Court. The impugned findings are upheld and both these appeals stand dismissed accordingly.

(FATEH DEEP SINGH)
JUDGE

September 10, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No