

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-802-SB-2006 (O&M)
Date of decision: 11.12.2019

Tarlochan Kumar @ Tosha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Kulvir Narwal, Advocate,
for Mr. R.K. Dhiman, Advocate,
for the appellant.

Mr. A.A. Pathak, Addl.A.G., Punjab.

Jitendra Chauhan, J.

Challenged in the instant appeal is the judgment of conviction and order of sentence dated 12.04.2006 (hereinafter referred to as the impugned judgment'), passed by learned Judge, Additional Sessions Judge, Jalandhar (for short, 'the trial Court'), whereby, the appellant stands convicted and sentenced as under:-

Conviction	Sentence	In default
Section 326 IPC	RI for 04 years with fine of ₹1000/-	RI for 01 month
Section 324 IPC	RI for 01 year with fine of ₹500/-	RI for 15 days

However, both the sentences were ordered to run concurrently.

Brief facts of the case as noticed by learned trial Court in para

“2. This case has been registered at the instance of Nirmal Kaur injured on the allegations that he is doing the work in Car Workshop at Goraya. The people of village were preparing effigy of ‘Rawana’ near Gurudwara Sahib on 24.10.01 at about 8.00 PM. He also went there to see the preparation of Rawana. Resham Lal and Tilak Raj were also present there. Then accused Tarlochan Kumar came there and told him that he wanted to talk to him. Both of them went to some distance, then accused immediately brought out ‘dagar’ (knife) from his dub and gave two knife blows on his back and he again gave another blow on his left flank. He raised noise which attracted Resham Lal and Tilak Raj at the spot who saved him from the accused. The motive behind this occurrence is that some days ago a minor quarrel had taken place between him and the accused. He was taken to Civil Hospital Phillaur by his brother Amarjit Singh from where he was referred to DMC Ludhiana. On 26.10.01 statement of injured Nirmal Kumar was recorded by SI Kuldip Singh Investigating Officer of this case. Upon which he made his endorsement Ex.PB/3, on the basis of which formal FIR Ex.PB/1 was registered, and thereafter investigating officer went to the spot and prepared the rough site plan Ex.PE of the place of occurrence. He took into possession blood stained cloth of the injured as Ex.PC.

Statement of the witnesses were recorded and after the completion of investigation, the present challan was resented in the Court.”

Upon completion of investigation, challan was presented against the accused under Sections 324 and 307 IPC.

Finding a *prima facie* case against the accused, charges under Sections 307 and 324 IPC were framed to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Tara Chand, Draftsman, as PW-1; ASI Jatinder Singh as PW-2; Nirmal Kumar, complainant/injured as PW-3; Resham Lal, an eyewitness as PW-4; SI Kuldip Singh, Investigating Officer, as PW-5; Dr. Karnail Singh as PW-6; Dr. Jaspal Singh as PW-7; and Dr. Kavita Saggar as PW-8.

On completion of prosecution evidence, the accused was examined under Section 313 Cr.P.C., while putting all the incriminating circumstances appearing against him in the prosecution version, to which he denied and pleaded innocence. He stated that some unidentified persons had caused injuries to Nirmal Singh and he has been falsely implicated in the instant case on account of party faction. He was picked up by the police from his home. The brother of the injured, namely, Amarjit, is a doctor by profession and a fabricated medical report has been procured at his behest. In defence, the accused examined Tilak Raj as DW-1; and Chaman Lal as DW-2.

After hearing learned counsel for the parties and perusing the

evidence available on record, learned trial Court convicted and sentenced

the accused as narrated at the outset of this judgment.

Hence, the instant appeal.

Learned counsel appearing on behalf of the appellant contends that the solitary independent witness, Tilak Raj, was given up by the prosecution. Withholding of a star witness casts serious aspersions on the prosecution story. There is an inordinate and unexplained delay of two days in recording the FIR. The alleged occurrence took place on 24.10.2001, whereas, the FIR was registered on 26.10.2001. As per the prosecution story, the alarm raised by the injured had attracted Tilak Raj to the spot and he had witnessed the occurrence. However, he was not examined by the prosecution. To the contrary, this witness was examined by the defence as DW-1 who has clearly stated that he could not identify the assailant owing to darkness. His version finds corroboration in the MLR/medical record of the complainant, wherein, the name of the assailant has not been disclosed.

On the other hand, learned State counsel submits that the prosecution has been successful in proving its case against the accused. There was sufficient motive with the accused to launch an attack on the complainant. The delay in lodging the FIR has been satisfactorily explained. Minor contradictions, if any, in the testimonies of the prosecution witnesses deserve to be ignored.

I have heard learned counsel for the parties and carefully perused the record.

As far as the delay in lodging the FIR is concerned, it is to be noticed that the occurrence took place on 24.10.2001 at 8.30 p.m. It has come in the evidence of Investigating Officer, SI Kuldip Singh, PW-5, on

Phillaur on 24.10.2001. On the application, Ex.PK, moved by him, the doctor concerned vide endorsement Ex.PK/1, declared the injured unfit to make statement because of the effect of drugs. On the next date, the injured was admitted to DMC Ludhiana. He was ultimately declared fit vide endorsement Ex.PD/1 and thereafter, his statement could be recorded. Therefore, the delay, if any, in lodging the FIR, has been sufficiently explained.

The second limb of arguments raised on behalf of the appellant is with regard to non-examination of eye-witness Tilak Raj, by the prosecution. It has come on record that on being assaulted, the complainant raised an alarm thereby, attracting Tilak Raj to the spot. This witness was given up by the prosecution as having been won over. Further, while appearing as DW-1, he has admitted being a witness to the occurrence, though, he has denied the injuries having been caused by the appellant. The aforesaid facts lead to two conclusions. Firstly, this witness was examined as a defence witness itself explains as to why the prosecution did not examine him as a witness. Secondly, he has admitted in so many words that the incident actually took place. In the light of the testimony of the injured witness and other surrounding circumstances, the testimony of DW-1 to the effect that the appellant did not cause any injuries does not inspire confidence.

As regards the identity of the accused, merely because the occurrence took place at 8.30 p.m., it cannot be said that the injured could not establish the identity of the assailant, particularly, when the injuries, three in number, have been inflicted with a knife (*daggar*), from an arm's distance. The parties are previously known to each other being co-villagers.

In this case, the injured-witness, Nirmal Kumar, has specifically stated that the accused took him at a distance before causing injuries. The testimony of this witness finds corroboration from PW-4, Resham Lal, an eyewitness. The ocular version is fully supported by the medical evidence on record.

In view of the above discussion, this Court does not find any ground to interfere in the well reasons judgment of conviction and the same is hereby affirmed.

As regards the quantum of sentence, the appellant has already suffered the agony of protracted trial. Therefore, the sentence of imprisonment of the appellant is reduced from RI of four years to two years, subject to payment of enhanced fine of ₹25,000/- to be deposited with the PGIMER Chandigarh's Poor Patient Welfare Fund. The appellant is stated to be on bail. He be taken into custody forthwith, to suffer the remainder of the sentence.

Disposed of.

11.12.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No