

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

1)

CRA-S-971-SB-2005
Decided on : 31.07.2019

Dharambir and another

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

2)

CRR-2373-2005

Vijay Singh

... Petitioner(s)

Versus

Mohan Lal and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Anil Rathee, Advocate
for the appellant(s) (in CRA-S-971-SB-2005)
for respondents No.1 to 5 (in CRR-2373-2005).

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

Mr. Sudhir Sharma, Advocate
for the complainant (in CRA-S-971-SB-2005)
for the petitioner (in CRR-2373-2005).

MANJARI NEHRU KAUL, J.

This order will dispose of two cases i.e. CRA-S-971-SB-2005 &
CRR-2373-2005, as both have arisen out of the same judgment.

1. The above mentioned appeal has been preferred against the impugned
judgment dated 18.05.2005 and order of conviction dated 20.05.2005 passed by

Addl. Sessions Judge, Fast Track Court, Gurgaon, vide which the accused-appellant(s) were convicted and sentenced as under : -

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) in default of payment of fine(s)</i>
<i>1. Dharambir 2. Sukhbir</i>	<i>307/34 IPC</i>	<i>Rigorous imprisonment (RI) for 05 years each</i>	<i>₹ 3000/- each</i>	<i>RI for 01 year</i>
	<i>325 IPC</i>	<i>RI for 2 years each</i>	<i>₹ 2000/-</i>	<i>RI for 06 months</i>
	<i>323 IPC</i>	<i>RI for one year each</i>		

All the sentences were ordered to run concurrently.

The criminal revision has been preferred by the complainant for enhancement of sentence.

2. The prosecution case was set in motion on the statement of PW-5 - Vijay Singh s/o Ratbal (injured)-PW-6, to the effect that in the noon of 31st August, 2002, when he along with his wife and sister-in-law was working in their agricultural fields, accused – Ranbir, Dharambir, Sukhbir, Devender and Mohan Lal came to the spot armed with 'lathis'. The accused started calling them names and questioned the complainant party as to why they had drawn canal water from the drain. Thereupon, appellant – Sukhbir, thereafter, inflicted a lathi blow on the person of complainant Vijay Singh, which was however warded off by his sister-in-law and wife and he was made to run away from the spot by both of them. A little while later, the father of the complainant Ratbal, his mother and a relative came to the spot followed by the complainant himself. Ratbal questioned the accused about the altercation which had occurred a while earlier with his son Vijay. On being questioned, appellant - Dharambir inflicted a lathi blow on the

head of PW-6/Ratbal, as a result of which, he fell down on the ground. Thereafter, the appellant – Sukhbir also inflicted a lathi blow on Ratbal. The mother of the complainant, his wife and sister-in-law tried to come to the rescue of Ratbal, but they too were not spared and were inflicted lathi and fist blows. Several villagers were attracted to the spot on account of the hue and cry raised. The complainant was chased by the accused Devender and Ranbir (since acquitted) and he fled to the house of his relatives in village Balai. The injured Ratbal was shifted to the Govt. Hospital in Palwal for treatment and thereafter admitted in Safderjung Hospital, Delhi.

3. On receipt of ruqa, formal FIR was registered and the accused were arrested. Thereafter, on completion of investigation, challan was presented and committed to the court of session. The charges were framed under Sections 148/323/325/307/506/447 IPC read with Section 149 IPC, to which the accused pleaded not guilty and claimed trial.

4. The prosecution examined as many as 15 witnesses. In the statement recorded under Section 313 Cr.P.C., the accused pleaded their innocence and false implication. In defense, the accused examined 3 witnesses and tendered Ex.DX (a copy of the Civil Suit 'Mohan Lal Vs. DBHVN').

5. Ld. Trial Court convicted the accused-appellants and sentenced them as already detailed hereinabove.

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

7. Learned counsel for the appellants argued that the Ld. Trial Court failed to appreciate that there was an inordinate delay of more than 2 days in the lodging of the FIR, which cast a shadow of doubt on the authenticity of the case of

the prosecution. He, further, argued that the Ld. Trial Court also failed to appreciate that the medical evidence of injured Ratbal pertaining to the CT Scan which was done at a private clinic created a big question mark, especially, since it was on the basis of this report that the offence under Section 307 IPC was added.

Learned counsel for the appellants while laying a challenge to the authenticity of medical evidence, strenuously argued that the possibility of the injuries being a result of a fall on a hard surface could not be ruled out even as per the deposition of PW-4/Dr. Kalpana Kulshrestha. He, therefore, urged that all these facts and circumstances had to be appreciated in the light of a delayed FIR, wherein, the accused-appellants had seemingly been falsely implicated due to a history of strained relations between the parties, who were closely related as well. In the alternative, learned counsel for the appellants prayed for taking a lenient view *qua* the sentence imposed upon the appellants, as the occurrence pertains to the year 2002 and thus approximately 17 years had elapsed since then. He urged that during the intervening period, the appellants have not been involved in any other untoward incident or criminal offence.

8. State on the other hand opposed the submissions made by the Learned counsel for the appellants. Learned State counsel submitted that the ocular testimony stood fully corroborated with the medical evidence and just because the CT Scan was conducted at a private clinic did not mean that the same was a procured one and not worth any reliance. Thus, he prayed for dismissal of the instant appeal.

9. Learned counsel for the petitioner (in CRR-2373-2005) while reiterating the submissions made by the Ld. State counsel submitted that the Ld. Trial Court had rightly convicted the accused-appellants 'Dharambir & Sukhbir' for the

offences charged with. He, however, submitted that the acquittal of respondents No.1, 2 & 5 by the Ld. Trial Court was on the face of it wrong, as the prosecution evidence had not been appreciated properly by the Ld. Trial Court. He further submitted that in view of the gruesome act committed by all the accused-respondents namely, Mohan Lal, Ranbir, Dharambir, Sukhbir and Devender, the sentence awarded by the Ld. Trial Court was inadequate. He, thus, prayed for enhancement of sentence and imposition of heavy amount of fine as well as compensation to the complainant-Ratbal.

10. I have given my anxious consideration to the arguments advanced by both the parties.

11. As far as the issue of delayed FIR is concerned, there is no denying the fact that indeed there was an abnormal delay, but the same cannot be said to be fatal to the case of the prosecution, especially, when the occurrence has been admitted by the accused themselves by urging that it was a case of sudden quarrel between the parties and the Ld. Trial Court in the impugned judgment as well has made a reference to this argument of the defence.

12. Adverting to the challenge *qua* the medical evidence, on reappraisal of the evidence pertaining to the medical records of the injured Ratbal as well as the testimony of PW-4/Dr. Kalpana Kulshrestha, a serious doubt is indeed raised about the authenticity of the CT Scan report. It would be pertinent to refer to the deposition of PW-8/Dr. Ranbir Singh Surya, PW-9/Suresh Kumar, Record Keeper, Sarderjung Hospital, Delhi, PW-10/Dr. Manu Shankar of Safderjung Hospital, Delhi and PW-12/Dr. S.K. Mittal of Govt. Hospital, Ballabgarh.

It is indeed very strange and does raise eye brows that PW-12/Dr. S.K. Mittal, SMO, GH Ballabgarh, who referred injured Ratbal to the private CT

scan centre at Faridabad, admitted that he had not given any identification mark in his report Ex.PE (Bed Head Ticket) *qua* the injured Ratbal. Even PW-10/Dr. Manu Shankar, in his cross-examination admitted that the treatment given to injured Ratbal was not mentioned in either Ex.PG (Discharge Summary Slip) or Ex.PG/1 (Medical Case Sheet). Strangely, the discharge summary slip comprising of two pages had been prepared by two different persons as also admitted by PW-10/Dr. Manu Shankar. PW-10/Dr. Manu Shankar categorically deposed that the back page i.e. Page No.2 of Ex.PG was in his hand while the first page was not in his hand. PW-9/Suresh Kumar (Record Keeper, Safdarjung Hospital, Delhi), in his cross-examination admitted that the name of the father of the injured and address of injured Ratbal was not reflected in any of the documents prepared at the time of his discharge from Safderjung Hospital, Delhi.

Lastly, coming to the testimony of PW-8/Dr. Ranbir Singh Surya, (Faridabad CT Scan Centre, Escorts Hospital and Research Centre Ltd., Faridabad), he admitted in his cross-examination that in his report Ex.PF (CT Scan report), on the basis of which, he opined that there was fracture on the injured Ratbal, no identification marks as also the name of the father of the injured or his address were mentioned. PW-3/Dr. N.K. Sharma, DTO Ambala, on whose opinion injuries No.1 & 3 on the person of Ratbal were declared dangerous to life, admitted during his cross-examination that as per the X-ray report no fracture was seen and his opinion about the said injuries being dangerous to life was based upon the CT Scan Report.

Another circumstance, which creates a dent in the case of the prosecution is that PW-1/Dr. S.V. Arya, Safderjung Hospital, Delhi, in his cross-examination admitted that the column pertaining to the name of the father of the

patient as well as his address was blank and that even the Discharge Slip, Ex.PA was not signed by anyone. It is thus evident that it is only on the basis of the CT Scan report, the offence under Section 307 IPC was added. Once the CT Scan report itself is under a cloud, in my considered opinion, this Court shall have to confine itself to the X-ray report, wherein, no fracture was seen. Hence, the accused-appellants deserve benefit of doubt and acquittal under Section 307 IPC. Accordingly, they are acquitted of the offence under Section 307 IPC. However, on the other hand, after taking into account the nature of injuries out of which injury No.1 as per MLR, Ex.PD, was found to be a bone deep injury, the only offences for which the accused-appellants can be held liable are under Sections 323 & 325 IPC by the Ld. Trial Court. Accordingly, their conviction under Sections 323 & 325 IPC is upheld.

13. After taking into consideration the facts and circumstances of the case and the agony of a protracted trial faced by the accused-appellants for the last 17 years, the sentence of 02 years and 01 year under Sections 325 & 323 IPC, respectively, imposed upon the appellants, is reduced to the period already undergone by them. As per the custody certificates of both the appellants, placed on record by the Ld. State counsel, appellant-accused No.1 – Dharambir has undergone a total sentence of 01 year and 13 days and appellant-accused No.2 – Sukhbir has undergone a total sentence of 08 months and 14 days. Further, as per the custody certificates, no other criminal case is pending against the accused-appellants. The sentence of fine of ₹ 2000/-, as imposed by the Ld. Trial Court under Section 325 IPC, is maintained. However, both the accused-appellants are directed to pay compensation to the tune of ₹ 25,000/- each, to the complainant within a period of two months from today. It is made clear that in case of non-

deposit of the aforementioned fine and the amount of compensation, the benefit of reduction of sentence shall not accrue to the appellants.

14. With these modifications, the present appeal & criminal revision stand disposed of.

**(MANJARI NEHRU KAUL)
JUDGE**

July 31, 2019

J.Ram

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