

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

CRA-S-1831-SB-2004

Date of Decision: 27.02.2020.

Rakesh Kumar @ Raju and others

... Appellants

vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Argued by: Mr. Amandeep Singh Gulati, Legal Aid Counsel
for the appellants.

Mr. Sulinder Kumar, AAG, Haryana.

VIVEK PURI, J.

1. The instant appeal has been preferred by the appellant against the judgment of conviction dated 24.08.2004 vide which they were convicted for having committed offence punishable under Section 308 IPC read with Section 34 of the Indian Penal Code (for short 'IPC') and order of sentence dated 25.08.2004 vide which they were sentenced to undergo rigorous imprisonment for a period of two years for having committed the offence punishable under Section 308 IPC read with Section 34 IPC.

2. The facts as put forth by the prosecution are to the effect that on 05.05.2003 at about 09:30 P.M., Dev Raj (complainant/injured) was returning back to his house after attending the marriage in B.D.Hall, Karnal. Sanjiv was accompanying him. When they reached Banso Gate, Karnal, the appellants met the complainant and stopped him. Appellant No.1-Rakesh Kumar was armed with sword and asked the complainant as to why he had entered into a quarrel with his servant Sunil Kumar (appellant No.-3). An

altercation took place between them. Vikki and Sunil Kumar (appellants No. 2 and 3) caught hold the complainant, inflicted fist blows, whereas, Rakesh Kumar (appellant No.1) made an attempt to inflict injury on the neck with the help of sword. However, the complainant took a sudden turn and sword blow landed on his back, causing injury. Sanjiv intervened and rescued the complainant from the clutches of the appellants and he fell unconscious. The matter was reported to the police on 07.05.2003 on the basis of a complaint submitted by Dev Raj and on the basis thereof, FIR has been registered.

3. On completion of investigation, challan was presented in the Court. As the offence under Section 308 IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

4. A *prima facie* case under Section 308 read with Section 34 IPC was made out against all the appellants. Accordingly, the charge was framed. The contents thereof were read over and explained to the appellants, to which they pleaded not guilty and claimed trial.

5. In support of its allegations, the prosecution has examined six witnesses. Dev Raj (PW2) has sustained injuries in the occurrence and Sanjiv (PW3) is an eye witness to the incident.

6. The matter was reported to the police on the basis of a complaint (Ex. PC). Dr. Pawan Kumar Choudhary (PW1) had medico legally examined the complainant/injured and following injuries were found on his person:-

- “1. An incised wound 3.5 c.m.x 1cm muscle deep present on the upper side of right side of chest. 12 cm below the center of neck and 6 cm away from the right scapula. Lateral margin and 4 cm away from midline. Fresh bleeding was present.*
- 2. An abrasion 1cm x .25 cm present on the right elbow*

joint on its posterior aspect. Complaining of pain and mild tenderness was present.

3. Complaining of pain on the right side of the neck on its upper part. Mild tenderness was present but no mark of external injury was seen.”

7. Ex. PA is the copy of the medico legal report. On the application Ex. PB, the doctor had opined that injury No.1 was possible with the sword. The clothes of the injured were handed over to the police on the basis of application Ex.PC.

8. ASI Hukum Singh (PW5) has conducted the investigation of the case. He made the endorsement Ex.PD/1 on the complaint Ex.PD and on the basis thereof, FIR Ex.PD/2 was recorded. He had prepared the site plan Ex.PF depicting the place of occurrence. In pursuance of disclosure statement Ex.PH of appellant No.1-Rakesh Kumar, the sword was recovered which was concealed under the double bed lying in the room of his residential house. The recovery has been effected in the presence of Sanjiv (PW3). Ex.PJ is the sketch of the sword and the same has been taken into possession vide recovery memo Ex.PE after converting the same into a parcel sealed with the seal bearing impression 'HS'. Ex.PK is the site plan depicting the place of recovery. Constable Veer Shakti Singh (PW6) had prepared the scaled site plan Ex.PM pertaining to the place of occurrence. Constable Lakhwant Singh (PW4) took the parcels to the Forensic Science Laboratory and as per the report of FSL (Ex.PN), no blood was detected on the sword and the clothes of the injured were found to be stained with human blood.

9. In their statements recorded under Section 313 Cr.P.C., the appellants have denied the correctness of the incriminating evidence appearing against them and pleaded their false implication in this case.

10. The appellants have examined Ramesh Kumar (DW1) who was working as Manager in B.D.Hall, Karnal and Dr. Mange Ram (DW2) during the course of their defence evidence.

11. Vide the judgment of conviction and order of sentence, the appellants were convicted and sentenced, as mentioned in para No.1 of this judgment.

12. Aggrieved by the aforesaid judgment and order of sentence, the appellants have preferred the present appeal.

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

14. While assailing the judgment of the learned trial Court, it has been mainly contended by learned counsel for the appellants that there is an unexplained delay of two days in lodging the FIR which renders the version of the prosecution to be doubtful. No injury has been attributed to appellants No. 2 and 3, namely, Vikki and Sunil Kumar and even the sword alleged to have been recovered at the instance of appellant No.1-Rakesh Kumar is not connected with the present case. There are discrepancies with regard to the mode and manner in which the occurrence took place as emerging in the statements of the witnesses.

15. On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that the delay in lodging the FIR is inconsequential. At the first instance, the complainant had gone to Civil Hospital, Karnal but the matter was not reported to the police as the appellants also followed him in the Civil Hospital. Thereafter, the complainant/injured remained admitted in the hospital of Dr. Manga Ram, Banso Gate, Karnal for a period of two days. All the appellants have

played an active role in the commission of crime. The discrepancies in the statements of the witnesses are inconsequential. Furthermore, a compromise was effected between the parties and considering that to be one of the aspects, the learned trial Court has taken a fairly lenient view in the matter of sentence and the judgment of the learned trial Court deserves to be upheld.

16. The importance of lodging the FIR with due promptitude has been highlighted in a fairly substantial number of judicial pronouncements. In the event the matter is reported to the police with due promptitude, it rules out the possibility of introduction of coloured, concocted, exaggerated or false version as a result of afterthought. At the same time, it has to be borne in mind that the delay in lodging the FIR is not necessarily a circumstances which would warrant the rejection of the prosecution case in entirety, in the event, a satisfactory and reliable explanation is put forth to justify the delay in lodging the FIR. In the event, there is a satisfactory explanation to justify the delay in lodging the FIR, the fact that there is delay in lodging the FIR becomes inconsequential.

17. Now, it has to be seen as to whether there is delay in lodging the FIR in the present case and if so, whether there is any satisfactory explanation put forth which may inspire the confidence of the Court. The occurrence took place on 05.05.2003 at about 09:30 P.M. However, the first version of the case has been unfolded in the complaint Ex.PD submitted by Dev Raj (PW2), the injured, to the Officer In-charge, Police Station City, Karnal. The endorsement on the complaint has been recorded at 07:25 P.M. on 07.05.2003. As such, there is delay of 44 hours in reporting the matter to the police and lodging of FIR.

18. The explanation sought to be put forth to justify the delay is to the effect that Dev Raj (PW2) was taken to Civil Hospital, Karnal at the first instance where the appellants also followed and threatened him with dire consequences. It is also emerging in the deposition of Dev Raj (PW2) that on 05.05.2003, after medico legal report, he went to the hospital of Dr. Manga, Banso Gate, Karnal, where he remained admitted for two days.

19. It shall not be out of place to mention here that the explanation, as sought to be put forth by Dev Raj (PW2) with regard to delay in lodging the FIR does not sound to be convincing and reliable. Sanjiv (PW3) is an eye witness to the occurrence who also accompanied the injured to the hospital but he never reported the matter to the police. During his cross-examination, Dev Raj (PW2) has sought to put forth a case to the effect that he kept on sitting in the hospital till morning as the appellants were waiting for him outside the hospital. However, it is emerging in the statement of Dr. Pawan Kumar Chaudhary (PW1), who had conducted the medico legal examination, that the patient was not admitted in the hospital and he had left the hospital after medico-legal examination and treatment.

20. Furthermore, the version of the complainant to the effect that he remained admitted in the hospital of Dr. Manga at Banso Gate Karnal, appears to be false and unreliable. No document to indicate the hospitalization and treatment of the injured in the said hospital has been proved on record. However, Dr. Mange Ram, has stepped into the witness box as DW2 and has testified to the effect that in the month of May, 2003, Dev Raj son of Sh. Ganga Dutt, never remained admitted in his hospital as an indoor patient. He has also deposed to the effect that he has not provided any medical aid or medical check-up to the said person.

21. In these circumstances, the explanation sought to be put forth by the prosecution to justify the delay in lodging the FIR does not inspire confidence and cannot be accepted. Consequently, the possibility cannot be ruled out that the intervening time has been utilized in concocting a false version against the appellants as a result of an afterthought. The delay in lodging the FIR causes a serious dent in the version of the prosecution.

22. The version of the prosecution is to the effect that appellants No.2 and 3-Vikki and Sunil Kumar had given fist blows and caught hold Dev Raj (PW2) which facilitated appellant No.1-Rakesh Kumar to inflict sword blow on his person. Significantly, there is no visible mark of injury pertaining to any fist blow. As such, no specific injury is attributed to appellants No. 2 and 3-Vikki and Sunil Kumar, which render their involvement in the occurrence to be doubtful.

23. Furthermore, injury No.1 by means of sword has been attributed to appellant No.1-Rakesh Kumar. The version of the prosecution is to the effect that in pursuance of the disclosure statement Ex.PH, the sword has been recovered from the residential house of appellant No.1-Rakesh Kumar, which was in his exclusive knowledge. It may be mentioned here that the sword allegedly recovered at the instance of appellant No.1-Rakesh Kumar is not connected with the commission of crime. The weapon was sent to FSL and as per the report of FSL (Ex.PN), no blood stains were found thereupon. In such circumstances, the mere recovery of sword in pursuance of disclosure statement of appellant No.1-Rakesh Kumar cannot be termed to be a sufficient circumstance to fasten the criminal liability upon him.

24. The version of the prosecution is to the effect that on

05.05.2003 at about 09:30 P.M., Dev Raj (PW2) and Sanjiv (PW3) were returning back to their house after attending a wedding in B.D.Hall, Karnal. Ramesh Kumar (DW1) was working as Manager in B.D.Hall, Karnal and as per his deposition, the hall was not booked for any party/marriage on 05.05.2003. Although, the learned trial Court has sought to raise doubt with regard to the version given by the said witness on the score that the note book mentioning the detail of functions has been prepared in a single go but it is significant to note that the witness had also brought the receipt book pertaining to the booking of B.D.Hall and there was no such copy of the receipt pertaining to any wedding or function to be held in B.D.Hall on 05.05.2003. As such, the story, as put forth by the prosecution, becomes doubtful.

25. Furthermore, a serious doubt is raised with regard to the mode and manner in which occurrence took place. The version of Dev Raj (PW2) is to the effect that when the appellants waylaid him, appellant No.1-Rakesh Kumar was armed with sword.

26. On the contrary, it has been deposed by Sanjiv (PW3) that all the three appellants gave fist blows and later on appellant No.1-Rakesh Kumar went to his house, brought a sword and injury by means of sword was inflicted on the person of Dev Raj (PW2). A specific case of the prosecution to the effect that appellant No.1-Rakesh Kumar was armed with sword at the time of occurrence stands falsified from the deposition of Sanjiv (PW3).

27. On appraisal of the material on record, it is emerging that there is delay of about 46 hours in lodging the FIR without any reliable and satisfactory explanation to justify the delay. The possibility cannot be ruled

out that the intervening time has been utilized in concocting a false, coloured and exaggerated version against the appellants. The delay in lodging the FIR is fatal to the prosecution case. Moreover, the sword alleged to have been recovered in pursuance of the disclosure statement of appellant No.1-Rakesh Kumar is not sufficiently connected with the crime. There is lack of material to indicate that any specific injury was inflicted by appellants No. 2 and 3-Vikki and Sunil Kumar. The story of the prosecution is to the effect that the injured was returning back after attending a wedding in B.D.Hall, Karnal stands falsified and moreover, a discrepant version is appearing in the statement of the complainant and eye witness with regard to the mode and manner in which occurrence took place.

28. As a cumulative effect of aforesaid observations, the case of the prosecution cannot be termed to be free from reasonable doubt and the appellants are held entitled to benefit of doubt. Consequently, the judgment of conviction and order of sentence are liable to be set aside.

29. For the aforesaid reasons, finding sufficient merit in the appeal and the same is accepted. The judgment of conviction dated 24.08.2004 and order of sentence dated 25.08.2004 are set aside. The appellants are acquitted of the charges levelled against them. The appellants are on bail, and as such they are discharged from the bail bonds.

27.02.2020.
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(VIVEK PURI)
JUDGE

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