

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2334-SB of 2004 (O&M)

Date of decision : 22.1.2020

...

Samunder and others

.....Appellants

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. T.C. Dhanwal, Advocate for appellants no. 1 to 3.

Mr. N.C. Kinra, Advocate for appellant no.4.

Mr. Kuldeep Sharma, Deputy Advocate General, Haryana

Ms. Vandana Rani, Advocate for the complainant.

...

H. S. Madaan, J. (Oral)

Briefly stated, facts of the case are that FIR No.324 dated 23.12.2001 for the offences under Sections 307/323/506/34 IPC was recorded with Police Station Sadar, Dadri on the basis of statement of complainant Sudhir recorded at General Hospital, Charkhi Dadri by ASI Om Parkash. Inter alia, in the statement, the complainant had stated that on 22.12.2001 at about 6:00 p.m., he had gone to his fields; at about 6:30 p.m., a tractor make Eicher being driven by Rajpal accused and three more persons, namely, Samunder, Amarjit and Rajesh sitting on it came there; all four of them alighted from the tractor and stated that the complainant being Member Panchayat wanted to demolish the construction of their houses; at that time,

Samunder was armed with a lathi and he aimed a lathi blow on the head of the complainant but the complainant could save himself by raising his hand; accused Rajpal caught hold of the complainant from the collar of his shirt and gave fist blows on his face; accused Amarjit gave slap blows to the complainant from backside; accused Rajpal asked accused Amarjit to bring the pistol so that he could shot the complainant; however, people from the adjoining fields were attracted to the spot; accused Rajpal put a rope around the neck of the complainant and he along with Rajesh pulled the rope from the opposite sides in order to press neck of the complainant; one of the accused tried to overpower the complainant from the right side whereas another accused put his hand on his mouth; all the accused tried to kill the complainant by strangulation with the help of the rope; the complainant felt uneasy due to closure of his mouth and when the hands of Amarjit were removed from his mouth, he raised alarm; on hearing his cries, Sanjeev and Karambir came there; then all the accused/assailants ran away.

The complainant/injured was taken to General Hospital, Charkhi Dadri, where he was medically treated and medico-legally examined. On a V.T. Message being sent from the said hospital, a police party from the Police Station Sadar, Dadri headed by ASI Om Parkash reached there and recorded statement of complainant Sudhir. The Investigating Officer put his endorsement below statement of the complainant and sent ruqa to the police station, on the basis of which formal FIR was registered. The investigation in the case started. Accused were arrested in this case. Statements of the witnesses were

recorded.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court of Area Magistrate, Dadri.

On presentation of the challan in the Court, the Area Magistrate supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 307 IPC is exclusively triable by Court of Sessions, learned Area Magistrate vide order dated 22.5.2002 committed the case to the Court of learned Sessions Judge, Bhiwani from where it was entrusted to the Court of learned Additional Sessions Judge(Fast Track Court), Bhiwani.

On receipt of case in the Court, learned Additional Sessions Judge(Fast Track Court), Bhiwani, observing that prima facie charge for offences under Sections 307/323/34 IPC was made out against all the accused, charge-sheeted them accordingly. The accused pleaded not guilty and claimed trial. The case was then fixed for prosecution evidence.

During the course of its evidence, the prosecution examined as many as eight witnesses, details of which are as under:

PW1 ASI Shamsher Singh stated that on 23.12.2001 on receipt of ruqa through EHC Chanderbhan, he had recorded formal FIR Ex.PA and put his endorsement Ex.PA/1 below it.

PW2 Sh.Jagdish Kumar, Halqa Patwari deposed that he had prepared a scaled site plan on 20.3.2002, which being Ex.PB.

PW3 SI Chand Singh stated that on 11.2.2001 on completion

of investigation in this case, he had prepared challan.

PW4 EHC Sat Narain testified that accused Samunder was arrested by ASI Om Parkash and he had produced a hockey stick, which was taken into police possession vide recovery memo Ex.PC, its rough sketch being Ex.PC/1. He further deposed that accused Rajesh had produced a nylon rope which was taken into possession vide recovery memo Ex.PD.

PW5 Dr.H.L. Beniwal stated that on 22.12.2001, he had medico legally examined Sudhir Kumar – injured and had found 12 injuries on his person. He proved copy of MLR as Ex.PE stating that after examination, he had sent ruqa Ex.PE/1 to SHO Sadar, Dadri and on 24.12.2001 at 11:00 a.m. on police request, he had declared injured Sudhir Kumar fit to make statement vide his opinion Ex.PF, whereas on police application Ex.PG, he had given his opinion Ex.PG/1.

PW6 Sudhir, complainant-injured provided eye-witness account of the incident deposing in consonance with the prosecution story.

PW7 Karambir, an eye-witness of the incident deposed about it.

PW8 ASI Om Parkash, who had recorded statement of injured at General Hospital, Charkhi Dadri on receipt of a message sent from that hospital, proved the statement of injured as Ex.PC, endorsement appended by him on such statement as Ex.PC/1 and the opinion of the doctor Ex.PF. He further deposed regarding the investigation conducted by him in this case.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court vide judgment dated 19.10.2004 convicted all the accused for the offences under Sections 307/323 read with Section 34 IPC and sentenced them vide order dated 21.10.2004 as under:

Name of accused	Under Sections	Sentence Awarded
Samunder, Amarjit, Rajesh and Rajpal	307 read with Section 34 IPC	Rigorous imprisonment for ten years each and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo simple imprisonment for six months each.
-do-	323 read with Section 34 IPC	Rigorous imprisonment for six months each and to pay a fine of Rs.200/- each and in default thereof, to further undergo simple imprisonment for one month each.

The substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

I have heard learned counsel for the appellants – accused -

convicts, learned Assistant Advocate General for the State of Haryana besides going through the record.

During the pendency of proceedings, the matter has been compromised between the parties. Appellants and complainant injured, have appeared in the Court and furnished their duly sworn affidavits to the effect that with the intervention of the respectables and relatives, good sense has prevailed upon the parties and the matter has been settled with the observation that the parties belong to the same village and they have started attending functions in the families of each other. A copy of that compromise bearing signatures and thumb impressions of the parties and other persons has been attached as Annexure A-1.

As per the custody certificate filed by the State counsel, Samunder has undergone total sentence, including remissions, of 2 years and 2 months; Amarjeet has undergone 2 years, 1 month and 27 days; Rajesh has undergone 2 years, 3 months and 20 days; and Rajpal has undergone 1 years, 7 months and 4 days.

Learned counsel for the appellants has submitted that to promote peace and harmony, between the parties, the appellants-accused be shown leniency in the matter. He has referred to judgment reported as *Narinder Singh and others vs. State of Punjab and another 2014 (2) RCR (Criminal) 482*, wherein guidelines for arriving at compromise have been laid down.

Under the circumstances, the impugned judgments of the Courts below are upheld as regards conviction part, however, as far

as sentence part is concerned, the same is modified and the appellants are sentenced to imprisonment already undergone by them in this case.

Accordingly, the appeal is allowed partly, in as much as it is dismissed with regard to the conviction part, however, as regards the sentence part, the same is allowed and the appellants are awarded sentence of imprisonment already undergone by them in this case, whereas the fine part shall remain intact.

22.1.2020
chugh/Brij

(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No