

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

325

Criminal Appeal-S-384-SB of 2005

Date of Decision: February 19, 2020.

Rachhpal Singh alias Pala

.....Appellant

versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR.JUSTICE VIVEK PURI.**

\*\*\*

Present: Mr.Ajaivir Singh, Advocate, for the appellant.

Mr.B.S.Sewak, Additional Advocate General, Punjab.

..-

**Vivek Puri, J.**

[1] The present appeal has been preferred against the judgment of conviction dated 27.01.2005 vide which the appellant has been held guilty for the offences punishable under Sections 307 and 323 IPC and order of sentence dated 28.01.2005 vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1000/- under Section 307 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month and to undergo rigorous imprisonment for a period of six months under Section 323 IPC. It was further directed that both the sentences shall run concurrently.

[2] The case as put forth by the prosecution is to the effect that Surinder Singh-complainant/injured was working as agriculturist. On 13.12.2002 at about 5.30 a.m., he was going to the shamlat land of the village to answer the call of nature. He heard the foot steps of someone

coming from behind and he saw the appellant armed with datar in his hand present at the spot. The appellant inflicted datar blow on the right side of the head of the complainant. The appellant gave another datar blow on the back of the complainant. An alarm was raised which attracted Inderjit Singh and Sukhwinder Singh, the brothers of the complainant, at the spot. The appellant slipped away from the spot alongwith the weapon. It has been alleged that a few days ago, an altercation took place between the complainant and the appellant due to dispute of passage in the street and on that score occurrence took place.

[3] On completion of investigation, report under Section 173 Cr.P.C. was presented in the Court for the offences punishable under Sections 308 and 323 IPC. As the offence under Section 308 Cr.P.C. is exclusively triable by the Court of Sessions, the case was committed by learned Illaqa Magistrate to the Court of Sessions at Jalandhar. However, the trial Court found a prima-facie case punishable under Sections 307 and 323 IPC. Accordingly, charge was framed against the appellant who pleaded not guilty and claimed trial.

[4] In support of its allegations, the prosecution has examined as many as five witnesses, i.e., PW-1 Surinder Singh complainant/injured; PW-2 Sukhwinder Singh, the eye witness of the occurrence; PW-3 Dr.Rajnish Kant Nagpal, who conducted CT Scan of the injured; PW-4 Dr.Baljit Singh Johal, who had medically examined and treated the injured and PW-5 ASI Joginder Singh, the Investigating Officer.

[5] In his statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him and pleaded his false implication in this case due to party faction in the

village. However, no defence evidence has been led.

[6] Vide the judgment of conviction and order of sentence, the appellant has been convicted and sentenced, as mentioned in para No.1 of this judgment.

[7] Aggrieved by the aforesaid judgment and order of sentence, the appellant has preferred the instant appeal.

[8] I have heard learned counsel for the parties and perused the record.

[9] While assailing the judgment of the learned trial Court, it has been argued on behalf of the appellant that the occurrence took place on 13.12.2002 and the FIR was registered after a delay of four days, i.e., on 17.12.2002, which renders the version of the prosecution to be doubtful. Furthermore, no reliance can be placed on the deposition of PW-2 Sukhwinder Singh as he is the relative of the injured. Furthermore, his statement under Section 161 Cr.P.C. has not been recorded during the course of investigation. It is further argued that the recovery of the weapon is not connected with the offence and furthermore, the injury on the head of the complainant-injured has been caused by a blunt weapon and no offence under Section 307 IPC is made out.

[10] On the contrary, while supporting the judgment of the trial Court, the learned State counsel has argued that there is nothing to suggest that any false version has been introduced on account of the delay in lodging the FIR. The presence of PW-2 Sukhwinder Singh at the spot is natural and the version given by him cannot be discarded on the score that he is the relative of the injured. Furthermore, the blood stained weapon of offence has been recovered in pursuance to the disclosure statement of the

appellant and there was fracture on the skull of the injured which is indicative of the fact that injury was inflicted with an intention to kill the injured.

[11] The importance of lodging the FIR with due promptitude has been highlighted in 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, but at the same time, it has to be borne in mind that the delay in lodging the FIR is not necessarily a circumstance which would warrant the rejection of the prosecution case in entirety. The FIR is expected to reflect true picture of the occurrence without any embellishment or fabrication. No specific time limit has been fixed for reporting the matter to the police. The delay in informing the police with regard to the incident or lodging of FIR is bound to occur due to the variety of reasons depending upon the surrounding circumstances existing at the time of and even subsequent to the commission of the crime. 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.

[12] On adverting to the merits of the case, the occurrence took place on 13.12.2002 at about 5.30 a.m. and the FIR has been lodged on 17.12.2002. It is significant to note that the complainant was admitted in Johal Hospital, Rama Mandi, Jalandhar on 13.12.2002. No fault can be found in taking the injured to a private hospital. It is emerging in the cross-examination of Surinder Singh- PW-1 that Johal Hospital was at the distance of two kilometers and the Civil Hospital, Jalandhar was 6-8 kilometers from his house. An intimation exhibit PC was sent to the police

authorities with regard to admission of the injured in the hospital. PW-5 ASI Joginder Singh has submitted the request exhibit PB on 13.12.2002 seeking the opinion of the Doctor with regard to fitness of the injured to record his statement. However, the patient was declared unfit to make the statement. Subsequently, vide endorsement dated 14.12.2002, the patient was again declared unfit to make statement. On 17.12.2002, the patient was declared fit to make statement. It is significant to note that there appears to be over-writing with regard to the endorsement dated 14.12.2002 of the Doctor. It appears that the patient was declared fit to make statement on 14.12.2002 and subsequently, an alteration was made to the effect that the “patient is unfit to make statement”. It is also emerging in the statement of PW-4 Dr. Baljit Singh Johal that the patient was declared to make statement on 14.12.2002 and the same has been recorded on the carbon copy of endorsement exhibit PB/4. Even, the dates as mentioned in the statement exhibit PA of the complainant and endorsement exhibit PH/1 of the Investigating Officer, indicates that the date has been altered from 14.12.2002 to 16.12.2002 and then to 17.12.2002. Even the trial court has taken note of this aspect of the case and observed that it amounts to shoddy investigation. It shall not be out of place to mention here that defective investigation is not a circumstance to enure the benefit to the accused. However, it is emerging in the statement of PW-2 Sukhwinder Singh that efforts were being made to effect compromise between the parties, which has resulted into delay in lodging the FIR. It may be mentioned here that the appellant and the injured are the residents of the same village. In such circumstances, it is quite possible that some efforts might have been initiated for amicable settlement between the parties. Further, the material

on record does not indicate that the appellant has been falsely implicated or an attempt has been made to introduce false, coloured, concocted or exaggerated version as a result of afterthought. In these circumstances, there is satisfactory explanation to justify the delay in lodging the FIR. Moreover, the material on record does not indicate that the facts of the case are distorted and a false version has been introduced in the FIR.

[13] The next argument raised on behalf of the appellant is to the effect that the presence of PW-2 Sukhwinder Singh at the place of occurrence appears to be doubtful as he is resident of a different village. It has been further argued that his statement under Section 161 Cr.P.C. has not been recorded and he being cousin of the injured cannot be relied upon.

[14] It is no doubt true that PW-1 Surinder Singh has testified to the effect that PW-2 Sukhwinder Singh is his cousin but he has also deposed to the effect that he had come to the house of the complainant during previous evening and stayed over night. There may not be any bar to base the conviction on the basis of statement of a witness who is relative of the injured, in the event his presence appears to be probable and the material on record does not indicate than an attempt has been made to falsely implicate the accused. Furthermore, the deposition of a witness may not be discarded merely on the score that he is relative of the injured, if otherwise, the same is found to be credible and reliable. The relationship by itself cannot be termed to be a factor to affect the credibility of a witness.

[15] The eye witness count hinges upon the deposition of PW-1 Surinder Singh-injured and PW-2 Sukhwinder Singh-eye witness to the occurrence. It is quite natural that the injured and his relative will not conceal the actual culprit and make a statement against the innocent person.

They will not shield the real offender and falsely implicate any other person. Statements of injured and the eye witness appear to be free from any doubt and inspire confidence. The presence of PW-2 Sukhwinder Singh at the place of occurrence appears to be probable and version given by him and the injured appears to be intrinsically reliable. Furthermore, the deposition of both the witnesses is duly corroborated with the medical evidence appears on record. Moreover, the version as put-forth by PW-2 Sukhwinder Singh is not liable to be ignored on the score that his statement under Section 161 Cr.P.C. has not been recorded. During the course of his cross-examination, the Additional Public Prosecutor in the learned trial Court had pointed out that there was no statement of the witness on the judicial or police file. Further, PW-5 ASI Joginder Singh has deposed to the effect that he had recorded the statement on 17.12.2002 at the place of occurrence. It is pertinent to note here that there is lack of material on record to indicate that the presence of PW-2 Sukhwinder Singh has been procured later on and he has been falsely introduced as witness. His name finds mention in the statement exhibit PA of the injured which unfolds the first version of the case. In such circumstances, no justified ground is made out to discard the version of PW-2 Sukhwinder Singh.

[16] In pursuance to the disclosure statement exhibit PH, the appellant has got recovered the blood stained datar which was concealed in the cattle shed of his house and was in his exclusive knowledge. The datar has been recovered vide recovery memo exhibit PJ and exhibit PK is its rough sketch. Exhibit PL is the rough site plan of the place of recovery of the datar. Although the datar was not sent for forensic examination to verify if the blood stains on it were that of human blood but it cannot be termed

as circumstance to dispute the version of the prosecution. It remains a fact that the blood stained datar was recovered in pursuance to the disclosure statement of the appellant which lends an additional credence to the version of the prosecution.

[17] Lastly, it has been pointed out on behalf of the appellant that the injury on the head was inflicted by a blunt weapon, therefore, offence under Section 307 is not made out. In his statement PW-4 Dr. Baljit Singh Johal has opined the following injuries on the person of the appellant:-

- “1. An oblique wound over the right side fronto prital area margins were lacerated. Fresh bleeding was present from the wound. Pericranium was injured. The underline skull was fractured size of wound was 8 cm x 2 cm.
2. Abruse of 5 cm x 6 cm on the dorsal aspect of the spine 20 cm from the nape of neck in the centre. The colour of injury was blue. No wound was seen over the injury.”

[18] Furthermore, the Doctor who conducted the CT Scan has proved his report exhibit PB, which shows that there was a depressed fracture on the right side of his head. In such a circumstance, head injury has been caused by means of datar on the head which has also resulted in to fracture on the underlying bone. Even if the injury has been caused by blunt side of the weapon, it does not in any manner mitigate the gravity of allegations against the appellant. If a person deliberately strikes another person on the head with a weapon causing serious injuries, which resulted in the fracture, it speak volumes about the intention on the part of the accused causing the injury. The nature of intention has to be gathered not only from the kind of the weapon used, but also the part of the body on which injury was inflicted. The fracture was found on the underlying bone

the injury and consequently, it has to be concluded that the injury was caused with an intention of committing murder. As such, the offence falls under Section 307 IPC.

[19] In these circumstances, no illegality or irregularity is made out in the judgment of conviction and order of sentence passed by the learned trial Court, which has been recorded on the basis of proper appraisal of the evidence on record, which establishes the guilt of the appellant beyond the shadow of any reasonable doubt. Moreover, adequate sentence commensurate with the guilt of the appellant has been imposed. Accordingly, the judgment of conviction and order of sentence passed by the learned trial Court do not suffer from any illegality or irregularity which may call for any interference by this Court. As such, the findings, as recorded by the learned trial Court, are affirmed.

[20] For the aforesaid reasons, finding no merit in the present appeal, the same is dismissed.

[21] The appellant is on bail and necessary steps be initiated for effecting his re-arrest so that he may undergo the sentence imposed upon him.

February 19, 2020

*mohinder*

(VIVEK PURI)

JUDGE

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