

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

**CRA-S-1258-SB-2004 (O&M)
Date of Decision: 16.12.2022**

Anil Kumar and another	Versus	...Appellant
State of Haryana		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Balram Singh, Advocate as
Amicus Curiae, for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 28.05.2004 passed by the Court of learned the Additional District and Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, whereby, the appellants had been convicted under Section 324/34 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2500/- each alongwith default stipulation.

The brief facts of the case are that the FIR in the instant case was registered on the basis of statement made by complainant Surinder Pal Sharma son of Dhani Ram resident of village Sandoli. The complainant stated that his son Amarjeet was residing with his sister in Delhi and was doing the business of condiments. Anil @ Bittu son of Om Parkash, accused, who is also resident of village Sandoli was living in the same Mohalla in Delhi. Anil @ Bittu started some business with his son in Delhi and huge investment was made

by Anil Kumar and Amarjeet etc., in the business. Anil Kumar used to say that he had to take lot of money from Amarjeet and due to this Anil Kumar had ensured the disappearance of his son. Apart from that, he also pressurized the complainant by saying that he had to give an amount of Rs. 18 lacs to him, which he had given to his son. Two Panchayats were also held at Pehowa in this regard. The first Panchayat was held at Sitamai Dharamshala and Anil Kumar stood up in the Panchayat and stated that it was possible that someone would be killed at their hands. When the complainant could not find any clue about his son, he filed a petition in the High Court to direct the police to search his son. His son was produced in the Police Station Janakpuri through Avtar Singh Lambardar of the village Sandholi. In the meantime, Ramesh Kumar Dhawan, Dimple Dhawan and Suresh Dhawan had beaten up the complainant and in this regard a complaint was made in the Police Station Pehowa but few respectables had intervened in the matter and the matter was closed. He further stated that on 26.09.2001, when the complainant was preparing to return to his house, a person, namely, Suresh son of Krishan Lal Dhawan went to the bank and saw as to whether he had left the bank or not. At that time, the complainant was standing outside with the staff of the bank. After some time, the complainant was going on Moped towards his village Sandholi from the office, a Maruti car of white colour bearing registration No.DL-4CC-5810 hit him from the behind, as a result of

which, he jumped over from his Moped and fell down. Two persons were sitting in the car. Anil Kumar Dhawan was driving the said vehicle and one person was sitting with him. At the same time, Shiv Kumar owner of Sunrise Hotel was going towards Kurukshetra in his car. Anil Kumar Dhawan fled away from the spot after hitting him with his car, but Shiv Kumar stopped his car and asked me to sit in the car. They chased the car of Anil Kumar Dhawan and the said car stopped at saw mill of Ramesh Kumar Dhawan @ Titu and Shiv Kumar also stopped his car there and Shiv Kumar called Ramesh Kumar Dhawan and told him that this vehicle had sped away after hitting Surinder Pal. At that time, certain staff member of the Bank at Kurukshetra were also returning towards Kurukshetra from Pehowa and the complainant signalled them to stop. The bank staff shifted the complainant in their jeep to the hospital at Pehowa. As per the complainant, Anil Kumar hit him with his car due to old enmity, whereas the complainant was going on his correct side. Due to this accident, Rs. 3000/- and one wrist watch had also fallen at the spot. Due to the accident, the complainant suffered injuries on the fingers of his right hand, elbow, neck, left shoulder, left knee, chest and back bone. He also stated that regarding this occurrence Panchayats were being held upto that day to find out the truth and Anil Kumar and others were not able to satisfy him. During the course of investigation, the statement of Shiv Kumar was recorded by the police on

28.09.2001, wherein, he had supported the statement of the complainant regarding hitting the moped of the complainant intentionally by the car, which was being driven by Anil Kumar. Later on, supplementary statement of Surinder Pal was recorded by the police on 08.11.2001, wherein, he stated that the person, who was sitting with Anil Kumar in the said car was Ajay Kumar son of Mudrika Singh. The case was initially registered under Sections 307, 323 and 34 IPC.

After completion of the necessary investigation, the challan was presented by the local police under Sections 323, 307 and 34 IPC.

After hearing both the sides, the learned trial court, vide order dated 26.11.2002 ordered framing of charge under Section 307/34 IPC against the appellants/accused, to which, they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined 12 witnesses.

Dr. Harjinder Singh, Medical Officer, PHC Thaska, District Kurukshetra was examined as PW1 and he found the following injuries on the person of the complainant:-

- 1. Superficial abrasion 5 c.m. X 2 cm tapering distally triangle shape vertically placed on dorsal aspect near elbow joint right forearm. Fresh*

bleeding was present. Tenderness in joint movement was present.

2. Superficial abrasion 8 cm. X 1 cm cylindrical in shape vertically placed ulna-aspect of right forearm. Distal to elbow joint. Fresh bleeding was present. There was tenderness in joint.

3. Multiple superficial abrasion of varying size and shape 1 cm. X 1 cm. placed on dorsal aspect of middle, index and little finger of right. Fresh bleeding was present.

4. Superficial abrasion 1 cm. x 1 cm. left knee was present. Clotted blood was present.

5. Contusion reddish 2 cm. x. 2 cm. alongwith multiple abrasion superficial in nature was present on the left shoulder.

6. Superficial abrasion 1 cm. x. 1 cm. lower sacral region on back oval shape.

He stated that all the injuries were simple in nature and were caused by a blunt weapon within a duration of six hours. He further stated that in his cross-examination that patient Surender Pal Sharma was fully conscious on his arrival in the hospital and could tell and answer questions put to him. The history about the receipt of the injuries in a road side accident was given by the patient Surinder

Pal Sharma himself and accompanied by one more person, namely, Pradeep Sharma. He was not even admitted in the hospital and was discharged. After about 1 ½ hour, the patient again arrived in the hospital and was referred to L.N.J.P., Hospital Kurukshetra. PW2 Dr. C.P. Khatri had declared the injured to be fit for the statement. However, he stated that as per the application Ex.PC moved by the police, it was a road side accident. PW3 HC Seth Pal was examined by the prosecution, who had mechanically examined Maruti car and had submitted his report Ex.PD. He stated that there was no mark of any impact on the front side of the vehicle examined by him. He could not give age of the mark on the back side window on the left side, because the mark was found to be old and was rusted. It could be 2/3 months old at the time of the examination. PW4 SI Niranjan Singh had prepared the report under Section 173 Cr.P.C. PW5 HC Balbir Singh and PW7 A.P.Verma, J.E., were the formal witnesses. The complainant Surinder Pal was examined as PW6 and he supported the case of the prosecution. He admitted in his cross-examination that it was correct that Anil Kumar etc., had demanded Rs. 18 lacs from him and they had given beatings to him also and he was also made to swear in the Panchayat and on those grounds he was nursing a grudge against Anil Kumar. Sham Lal son of Karam Chand was examined PW8, who was member of the Panchayat convened in Sita Devi Dharamshala on 17.04.2001. In the said Panchayat, Anil @ Bittu had

extended a threat to the complainant that in case the money was not returned, some one may also killed by him. Further, Constable Hardeep Singh was examined as PW9, who had photographed the place of the occurrence. PW10 HC Surender Singh had recorded the formal FIR. Further PW11 Shiv Kumar, had witnessed the occurrence and supported the case of the prosecution. Still further, PW12 ASI Raj Kumar had partly investigated the matter.

The entire incriminating evidence produced by the prosecution was put to the accused in the shape of the statement under Section 313 Cr.P.C., and they pleaded their false implication. They submitted that no occurrence had taken place in their presence and had been falsely implicated in the instant case. Anil Kumar, accused had taken an additional plea that the complainant got the case registered after due deliberation and in connivance with the police. Amarjeet son of Surinder Pal complainant had taken money from him for running the business and he had given money on the assurance of Kimiti Lal and Surinder Pal. However, Amarjeet did not return the same and a dispute arose for return of the money. A Panchayat was held at Pehowa in which the complainant asked Surinder Pal to return the money but he was putting off the matter on the one pretext or the other. Anil Kumar got a case registered at Delhi against Kimiti Lal, Surinder Pal, Rajeev Sharma and Amarjeet etc., for cheating. Kimiti Lal was in custody in the said case, whereas Surinder Pal was also an

accused in the said case and had been granted anticipatory bail. Rajeev Sharma, who was son-in-law of Surpinder Pal was absconding. Surinder Pal also filed a petition before the Hon'ble Delhi High Court by levelling wrong allegations that his son had been kidnapped from the Courts at Delhi and his son had been kidnapped by the accused. Later on, Amarjeet appeared before the Hon'ble High Court and made a statement that he was never kidnapped or abducted by anyone. The Hon'ble Delhi High Court allowed him to go wherever he liked after recording his statement. Even Anil Kumar was not present at the place of the occurrence. Still further, the present case was got registered by the complainant as a counter blast to the case lodged by the present accused Anil Kumar.

In defence, the accused examined Darshan Lal Chopra as DW1 who stated that a Panchayat was convened by Anil Kumar three years back in Sita Devi Dharamshala, Pehowa and the complainant was present in the said Panchayhat, which was convened at the instance of Anil Kumar as son of the complainant did owe money to Anil Kumar accused. Anil Kumar had pleaded for refund of his money from the son of the complainant. The complainant disclosed in the Panchayat that his son had been kidnapped by Anil Kumar and money shall be returned after his son was released. Anil Kumar did not threaten any one and only requested the complainant to return his money.

DW2 Sant Dass was also examined by the defence and he also supported the version of DW1.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellants has vehemently argued that in the instant case, they had been falsely implicated due to old enmity between the parties. In fact, son of the complainant had invested money with Anil Kumar, appellant No. 1 and he owed money to Anil Kumar and to avoid the payment of the said amount, a false story was coined by the complainant. Still further, there were material contradictions in the statements of PW6 Surinder Pal, complainant and PW11 Shiv Kumar, the eye witness of the occurrence.

On the other hand, learned counsel for the State has opposed the said submissions and submitted that minor variations in the statements of the said witnesses are liable to be ignored by this Court.

I find no substance in the submissions made by the learned counsel for the appellants. PW6 Surinder Pal, complainant is an injured witness and had given vivid description of the occurrence. His statement has been duly corroborated by the evidence of PW11 Shiv Kumar, eye witness. On 26.09.2001, when the complainant was going on his moped from Kurukshetra to Pehowa and as he reached near village Murtzapur, the car driven by accused Anil Kumar with

Ajay Kumar as the occupant with him, had hit the moped from behind and due to this the moped as well as the complainant fell down and he suffered the injuries. PW11 Shiv Kumar was following the moped of the present complainant and he had supported the statement of the complainant in all material particulars. Still further, even though, the statement could not be recorded on 26.09.2001, however, the same is no ground to discard the testimony of the complainant PW6 Surinder Pal. In fact, on 26.09.2001, the complainant was admitted in the hospital and he had refused to make the statement. However, on 28.09.2001, he made a statement to the police and the FIR was registered and thereafter the investigation progressed. In the instant case, the complainant has suffered several injuries and the case of the complainant cannot be thrown only on the ground of minor delay in registration of the FIR and the testimonies of PW6 and PW11 are liable to be believed. Still further, minor contradictions are bound to appear in the statements of various witnesses, who had deposed before the Court after a long period and the findings recorded by the learned trial Court are liable to be upheld in this regard.

The statements of the complainant and PW11 Shiv Kumar, eye witnesses have been duly supported by the testimony of PW1 Dr. Harjinder Singh, who was posted as Medical Officer, PHC, Pehowa and had examined Surinder Pal Sharma, complainant with the history of road side accident. It is apparent that accused had hit the

moped of the complainant and consequently, the complainant had suffered multiple injuries on various organs even though the injuries were simple in nature. Consequently, the ocular account is duly corroborated by the medical evidence. Still further, the trial Court has rightly observed that the moped did not suffer any damage and it was a case of just a single hit on the moped. Even, the car was examined and no damage to any part was observed. In the instant case, the moped has not been mechanically examined, which could further reveal the incident of damage to the Moped and in turn would have established the force used to hit the Moped. However, it appears that there was no major hit on the moped and consequently there was no intention, motive or knowledge on the part of the accused to cause the death of the injured/complainant and the findings recorded by the learned trial Court are upheld.

Vide order of sentence, the appellants were sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2500/- each for the commission of the offences under Section 324/34 IPC. Learned counsel submitted that a lenient view may be taken in the matter in view of the fact that the appellants were facing the agony of trial/appeal since September 2001, i.e. for more than 21 years.

The custody certificate had been filed on behalf of the State of Haryana, which clearly showed that Anil Kumar appellant

No. 1 had undergone three months and three days of actual sentence, whereas, Ajay Kumar appellant No. 2 had undergone 25 days of actual sentence out of total sentence of one year awarded by the learned trial Court.

I have considered the submissions made by the learned counsel for the appellants. It is apparent that both the appellants are facing trial/appeal since September 2001, i.e. for more than 21 years now. Still further, both the appellants are the sole bread earners of their respective families and their respective families are dependent upon them. Even, the custody certificates show that in the last 21 years, they are not involved in any criminal activity and no other case has been registered against them in the last 21 years. Thus, ends of justice will be suitably met, if the sentence is reduced to the period already undergone by them.

Resultantly, the conviction of the appellants, as recorded by the learned trial Court is maintained. The sentence of fine will remain the same and the same has already been deposited by the present appellants. However, the substantive sentence is ordered to be reduced to the one undergone by them.

With these above modifications, the present appeal stands partly allowed in the above terms.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

In the end, I record my appreciation for Mr. Balram Singh, learned Amicus Curiae, who had rendered able assistance to this Court.

16.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No