

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

CRA-S-2370-SB-2007(O&M)

Date of decision:-26.9.2022

Satish

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Neeraj Gaur, Advocate
for the appellant.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 2.11.2007 passed by Additional Sessions Judge, Gurgaon vide which on conclusion of trial, appellant Satish, an accused in FIR No.10 dated 3.1.2006 for the offences under Sections 323, 325, 307 IPC, registered with Police Station Sadar, Gurgaon, was convicted for offences under Sections 323 and 325 IPC, whereas acquitted of the charge under Section 307 IPC and in terms of the order dated 6.11.2007, he was sentenced to undergo rigorous imprisonment for a period of six months under Section 323 IPC and he was further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further imprisonment for a

period of 15 days for the offence under Section 325 IPC. Both the sentences were ordered to run concurrently.

2. Briefly stated, facts of the case as per the prosecution story are that on 2.1.2006 at about 9:00 a.m., Smt.Kaushlya wife of complainant Chhattar Singh had gone to her Gher (plot) for doing some work; after returning home Smt.Kaushlya told her husband, the complainant that their neighbour Satish (accused) had abused her and he should be made to realize his mistake; the complainant went to his Gher; he was followed by his wife Smt.Kaushlya, son Manoj and daughter-in-law Smt.Sushila; the complainant inquired from the accused as to why he had abused his wife, hearing that accused Satish went to roof of his house and threw a brickbat therefrom on the complainant hitting him on his head; the second brickbat thrown by the accused hit the complainant on the middle finger of his right hand; when Smt.Kaushlya wife of complainant tried to rescue her husband, the complainant, the accused threw another brickbat hitting Smt.Kaushlya on the right side of her head and back; when Manoj came forward to save his parents, then the accused came down from the roof and gave an axe blow to Manoj, hitting him on his right ear besides giving a fist blow on his back; the complainant party raised alarm, which attracted Ramesh son of Shiv Lal, who intervened and rescued the complainant side from the clutches of the accused; Smt.Sushila wife of Manoj, who is daughter-in-law of the complainant had also suffered injuries in the incident.

Complainant - Chhattar Singh, his wife - Smt.Kaushlya and son – Manoj, all the three injured were removed to Pushpanjali Hospital, Gurgaon, where they were medically treated and medico legally

examined. An intimation regarding hospitalization of the injured was sent to Police Station City, Gurgaon from where a wireless message was flashed to Police Post Badshahpur. On receipt of that information, HC Satya Parkash went to Pushpanjali Hospital, Gurgaon. He collected MLRs of the injured and obtained complaint Ex.PC of complainant Chhattar Singh, which was endorsed by him. Then DDR No.19 Ex.PE was recorded. The doctor had opined the injury on the person of Chhattar Singh to be dangerous to life. FIR was initially registered for the offences under Sections 323 and 325 IPC. Subsequently, on receipt of such medical opinion with regard to the injuries found on the person of Chhattar Singh to be dangerous to life caused by a blunt weapon, offence under Section 307 IPC was added.

The investigation in the case started. The IO went to the spot and prepared rough site plan of the place of occurrence as Ex.PK. He took into possession various medical documents. Accused was arrested in this case on 8.1.2006.

During the course of investigation, the accused suffered a disclosure statement Ex.PL that he had kept concealed an axe used by him in the incident in the room of his house and he could get the same recovered. Subsequently, in pursuance of the disclosure statement, accused got the axe recovered, which was taken into police possession vide recovery memo Ex.PM. The site plan of the place of recovery Ex.PS was prepared. Statements of witnesses were recorded.

3. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Gurgaon.

4. On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Gurgaon, copies of documents relied upon in the challan were supplied 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 Additional Chief Judicial Magistrate, Gurgaon committed the case to the Court of learned Sessions Judge, Gurgaon vide order dated 21.7.2006 from where it was entrusted to the Court of learned Additional Sessions Judge, Gurgaon.

5. On receipt of case in the Court, learned Additional Sessions Judge, Gurgaon, observing that prima facie charge for offences under Sections 323, 325, 307 IPC was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined the following witnesses:

PW1 Head Constable Satya Parkash stated that on 2.1.2006 while he was posted at Police Station Sadar, Gurgaon, on that day on receipt of written intimation Ex.PA from Pushpanjali Hospital, Gurgaon, he along with a Constable went there and submitted an application Ex.PB to the doctor inquiring about fitness of injured Chhattar Singh to make statement; the doctor vide opinion Ex.PB/1 declared him fit to do so, thereafter, statement of Chhattar Singh Ex.PC was recorded on which he made his endorsement Ex.PD on the basis of which DDR No.19 dated 2.1.2006 was entered. He further stated that he had moved an application Ex.PF seeking opinion of the doctor about nature of

injuries on the person of Kaushlya and vide opinion Ex.PF/1, the injuries were declared to be simple and on a similar application Ex.PG filed by him with regard to the injuries on the person of Manoj, the doctor vide his opinion Ex.PG/1 had declared the injuries to be grievous caused with a blunt weapon. He further added that he had submitted an application Ex.PH seeking the opinion of the doctor about the nature of the injuries on the person of Chhattar Singh and vide opinion Ex.PH/1, the doctor declared the injuries to be dangerous. The witness stated that on the same day, formal FIR under Sections 323/325 IPC was recorded by ASI Raj Singh and that on 4.1.2006, he had moved an application Ex.PJ for taking opinion of the doctor regarding nature of injuries on the person of Chhattar Singh and the doctor vide opinion Ex.PJ/1 declared the injuries as dangerous caused by a blunt weapon and for that reason offence under Section 307 IPC was added. According to this witness, he had gone to the spot on the same day and had prepared rough site plan of the place of the incident Ex.PC and thereafter the investigation was handed over to ASI Karan Singh. Going further, the witness stated that on 8.1.2006, ASI Karan Singh had interrogated accused Satish in his presence during the course of which, the accused suffered a disclosure statement Ex.PL and on the basis thereof, he got the axe recovered, which was taken into police possession vide recovery memo Ex.PM.

PW2 Sarwan Kumar, Draughtsman stated that on 9.3.2006, he was posted as such in the office of SP, Gurgaon and on that day he had gone to the spot and on pointing out of complainant - Chhattar Singh, he had prepared scaled site plan Ex.PN.

PW3 ASI Raj Singh deposed that on 3.1.2006 while posted

at Police Station Sadar, Gurgaon, on receipt of statement Ex.PC of complainant Chhattar Singh with endorsement by HC Satya Parkash Ex.PD, he had recorded formal FIR Ex.P1. He had proved his endorsement as Ex.PE/1.

PW4 Chhattar Singh, PW7 Manoj and PW8 Kaushlya, all of them being injured provided the eye-witness account of the incident supporting the prosecution story on material aspects.

PW5 Inspector Satpal stated that on 14.4.2006, while he was posted as SHO at Police Station Sadar, Gurgaon, on that day on completion of investigation in this case, he had prepared report under Section 173 Cr.P.C.

PW6 Dr.Deepak Bhatia stated that on 2.1.2006 while he was posted as Consultant Radiologist at Pushpanjali Hospital, Gurgaon, on that day, he had radiologically examined Chhattar Singh referred to him by Dr.Subrat Saxena and he observed suspected linear fracture in the left frontal and parietal bones vide his report Ex.PD after seeing x-ray films Ex.P1 and Ex.P2.

The witness stated that on the same day, he had radiologically examined injured Kaushlya but no bony injury was found on her person. He submitted his report in that regard as Ex.PE and x-ray films Ex.P3 and Ex.P4.

PW9 ASI Nand Ram stated that on 9.3.2006, while he was posted at Police Station Sadar, Gurgaon during the investigation of the case, he had recorded statement of Sarwan Kumar, Draughtsman and Sushila on 5.5.2006 and that he had collected the treatment record of the injured from Pushpanjali Hospital, Gurgaon.

PW10 Dr.Subrat Saxena stated that on 2.1.2006, he was posted as Surgeon in Pushpanjali Hospital, Gurgaon. This witness had brought the treatment files of Kaushlya, Manoj and Chhattar Singh, which he placed on record as Ex.PO, Ex.PP and Ex.PQ, respectively. He proved his opinion with regard to the nature of injuries on the persons of injured Kaushlya as Ex.PF/1 (simple in nature), Manoj as Ex.PG/1 (grievous in nature with blunt weapon) and Chhattar Singh as Ex.PH/1 (dangerous in nature), respectively.

PW11 Dr.Sunil Goel, who had medico legally examined the three injured on 2.1.2006 at Pushpanjali Hospital, Gurgaon deposed in that regard proving the MLRs of the injured Manoj as Ex.PR, Kaushlya as Ex.PS and Chhattar Singh as Ex.PT. The injuries found on the persons of injured were as follows:

Injuries on the person of Manoj

1. Lacerated wound right ear, bleeding was present. Central Nervous system conscious, oriented.

Injuries on the person of Kaushlya

1. Clean lacerated wound 8 x 2 cm over fronto parietal region. Bleeding was present.

Injuries on the person of Chhattar Singh

1. Clean lacerated wound 6 x 2 cm over frontal region was present.
2. Clean lacerated wound 7 x 2 cm was present over frontal region.
3. Clean lacerated wound 4 x 2 cm was present over parietal region.

PW12 ASI Karan Singh, the Investigating Officer of this case deposed with regard to the investigation conducted by him including arresting accused Satish on 8.1.2006 and interrogating him

during the course of which accused Satish had suffered a disclosure statement and got axe Ex.P1 recovered from his possession in pursuance thereof, which had been taken into police possession.

7. With that the prosecution evidence got concluded.

8. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to such accused but he denied the allegations contending that he was innocent and had been falsely involved in this case on account of party factionalism in the village; the complainant was having an evil eye on his plot and wanted to oust him therefrom; on 1.1.2006, he was on duty in Golden Green Farm House as a guard from 8:00 p.m. to 8:00 a.m. and a dispute was going on between Zile Singh and the complainant party.

9. Accused did not lead any evidence in his defence.

10. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra.

On an application having been filed by him, he was released on interim bail to enable him to file an appeal in this Court.

11. Such judgment of conviction and order of sentence, left accused aggrieved and he has filed the present appeal, which was taken up on 30.11.2007 and it was admitted for regular hearing and on the same day, on an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his remaining sentence, the same was allowed and remaining sentence of the appellant/accused was suspended during the pendency of the appeal and the appellant was ordered to be released on bail subject to the satisfaction of Chief Judicial

Magistrate, Gurgaon.

12. Now the appeal has come up for final hearing.

13. I have heard learned counsel for the appellant – accused – convict, learned Addl. Advocate General for the State of Haryana besides going through the record.

14. In this case, the ocular version was provided by three injured i.e. PW4 Chhattar Singh, PW7 Manoj and PW8 Kaushlya. All three of them supported the prosecution story on material aspects categorically stating that it was the accused, who had inflicted injuries to them. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. These witnesses having suffered injuries in the incident are stamped witnesses and their presence at the spot cannot be doubted. For the reason that these witnesses had suffered injuries, nature of injuries on the person of Chhattar Singh opined to be dangerous to life, Manoj grievous in nature and Kaushlya simple, it would have been earnest endeavour of all the three witnesses to ensure that the person responsible for causing injuries to them is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason. The account of the incident given by them is natural and probable inspiring confidence and I find the same to be worthy of reliance.

15. The medical evidence duly corroborates the ocular evidence. The accused after his arrest during interrogation had got the axe used in the incident recovered from his possession.

16. The investigation in this case has been conducted in a fair

and impartial manner. The IO is not shown to have any motive to challan the accused in this case wrongly and to depose against him falsely to secure his conviction.

17. The remaining evidence adduced by the prosecution is of corroborative nature and supports its case materially. The accused had failed to render any reasonable or plausible explanation for his alleged false implication in this case. The plea taken by him that the dispute had arisen since the complainant party wanted to take forcible possession of the plot from him, to show that not even an iota of evidence has been brought on record by the accused in that regard. No doubt primarily it is duty of the prosecution to prove its charge against the accused beyond a shadow of reasonable doubt and accused is not expected to prove his defence version with same exactness and rigor with which the prosecution is required to prove its charge against the accused but then some plausible explanation should be there as to why out of such a vast population, the accused has been targeted by his allegedly falsely implicating him in this case.

18. As already observed keeping in view the nature of injuries suffered by Chhattar Singh and Manoj Kumar, there is little possibility of their having substituted real culprit by accused without any rhyme or reason. The other facts and circumstances of the case point out towards his involvement in the case and his having caused injuries to Chhattar Singh, Manoj and Kaushlya. The accused has not led any oral or documentary evidence to show that he had in fact been in possession of the plot from where the complainant party wanted to oust him.

19. Another important thing to be seen is that accused while

being examined under Section 313 Cr.P.C. had taken up a plea of alibi contending that as a matter of fact, he was on duty in Golden Green Farm House as a Guard at the relevant time. If that was so, he could very well summon his employer or any other responsible person managing the affairs of Golden Green Farm House to show that as a matter of fact, accused was on duty at Golden Green Farm House at the time of incident and he could not possibly be there at the spot simultaneously. But no such evidence had been adduced.

20. There is nothing on record to show that accused had submitted any written representation to the higher police officers or other wings of administration that he was innocent and had been falsely involved in this case. As already observed, the IO had no reason to involve the accused in this case wrongly. False implication in a criminal case is a very serious offence and a police officer indulging in such type of things runs the risk of suffering seriously in his service career, in addition to the possible prosecution and even going to jail. Therefore, unless a very strong reason is there, the police officers do not indulge in slapping false cases upon innocent persons generally. The complainant party does not come out to be carrying very high financial or political clout so as to make the local police dance to its tunes. Therefore, plea of false implication put forward by accused cannot be accepted.

21. The prosecution had proved its case against the accused conclusively and affirmatively beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

22. As regards the sentence part, keeping in view the number of persons to whom the accused had caused injuries, the nature of injuries suffered by them and the fact that the accused had caused injuries to them without any provocation, the sentence awarded to the accused, rather appears to be on lower side. In any case, there is certainly no scope for reduction in quantum of sentence.

23. As such, the judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

24. Appellant Satish is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Gurugram is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

26.9.2022
Brij

(H.S.MADAAN)
JUDGE

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