

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

CRA-S-447-SB-2007(O&M)

Date of decision:-27.7.2022

Vinod Kumar Sharma

....Appellant

Versus

State of Punjab

....Respondent

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

Argued by :Ms.Sukhanpreet Rangi, Advocate
for the appellant.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 6.1.2007 passed by Additional Sessions Judge, Hoshiarpur vide which on conclusion of trial, appellant Vinod Kumar Sharma, an accused in FIR No.57 dated 20.3.2005 for the offence under Sections 332, 333, 307, 353, 186 IPC, registered with Police Station Garhshankar, was convicted for an offence under Section 307 IPC and in terms of the order dated 8.1.2007, he was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of 3 months.

2. Feeling aggrieved by the judgment of his conviction and

order of sentence, appellant/accused has approached this Court by way of filing the present appeal. Vide order dated 2.3.2007, such appeal filed by the appellant/accused was admitted for regular hearing and recovery of fine was stayed. In terms of order dated 16.11.2007 remaining sentence of the appellant/accused was suspended during the pendency of the appeal. Now the appeal has come up for final hearing.

3. Briefly stated, facts of the case as per the prosecution story are that, on 20.3.2005 at about 4:30 p.m., complainant Dharam Pal working as a Tubewell Operator with Nagar Council, Garhshankar was on duty at motor room situated near Bara Roza Takia having been deputed there, then accused Vinod Kumar riding bicycle mark Ranger of red colour came in front of door of the motor room; the complainant asked him the reason for coming there, which angered the accused and he put a piece of cloth of blue colour (PARNA) around neck of the complainant and tried to strangle him but the complainant managed to free himself; thereafter, the accused had caused injuries on face of the complainant with CHAURSI (a sharp edged implement having wooden handle used by the carpenters for making holes in the wood); the complainant raised alarm, which attracted several persons from the vicinity. On their arrival the accused left the place on his bicycle taking along with him the weapon of offence and the PARNA; the injured was taken to hospital, where he was medically treated and medico legally examined. The copy of MLR of complainant/injured dated 20.3.2005 was sent to the Police Station Garhshankar from where ASI Amar Singh went to Civil Hospital Garhshankar and recorded statement of injured Dharam Pal Ex.PA. ASI Dharam Pal put his endorsement below such

statement and sent ruqa to the police station, on the basis of which, formal FIR for the offences under Sections 332, 353 and 186 IPC was recorded. The investigation in the case started. The Investigating Officer took into possession blood stained shirt of the injured Dharam Pal. He went to the place of incident and prepared rough site plan thereof and got such place photographed. He scrapped blood stained earth from the spot and took that into police possession. The accused was arrested in this case on 24.3.2005. While being interrogated, the accused suffered a disclosure statement that he had kept concealed the PARNA of blue colour and CHAURSI used in the incident regarding which, only he knew and would get those articles recovered. Then in pursuance of the disclosure statement, he led the police party to the disclosed place and got the two articles recovered, which were taken into police possession. Rough site plan of the place of recovery was prepared. The statements of witnesses were recorded. After taking into possession medical documents including the skiagram and the report, offences under Sections 333 and 307 IPC were added.

4. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Sub Divisional Judicial Magistrate, Garhshankar.

5. On presentation of challan in the Court of learned Sub Divisional Judicial Magistrate, Garhshankar, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offences under Sections 333 and 307 IPC are exclusively triable by the Court of Sessions, learned Sub Divisional Judicial Magistrate, Garhshankar committed the

case to the Court of learned Sessions Judge, Hoshiarpur vide order dated 19.5.2005 from where it was entrusted to the Court of learned Additional Sessions Judge, Hoshiarpur.

6. On receipt of case in the Court, learned Additional Sessions Judge (Ad hoc), Fast Track Court-II, Hoshiarpur, observing that prima facie charge for offences under Sections 332, 333, 307 and 186 IPC was disclosed against accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined as many as six witnesses as per details below:

PW1 Dharam Pal complainant/injured provided eye-witness account of the incident and otherwise supported the prosecution story on material aspects.

PW2 Raj Kumar, J.E. lent support to the prosecution story.

PW3 Dr.Gian Chand, Medical Officer, who had medico-legally examined the complainant/injured on 20.3.2005 deposed regarding the injuries observed by him on the person of injured, proving his MLR prepared by him in that regard as Ex.PC and pictorial diagram showing the seats of injuries as Ex.PC/1.

PW4 Dr.Balbir Kumar, stated that he had radiologically examined injured Dharam Pal on 21.3.2005 and found fracture of the left frontal bone of skull corresponding to injury No.1. He proved x-ray report as Ex.PG, skiagrams Ex.PG/1 to Ex.PG/5.

PW5 ASI Amar Singh, since promoted as SI, who had carried out the investigation in this case deposed in that regard.

PW6 Gagan Deep, Photographer, who had taken the snaps

of the place of occurrence deposed in that respect proving the photographs so taken by him along with the negatives.

8. With that the prosecution evidence got concluded.

9. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case; as a matter of fact the injured was suspecting that his wife was having illicit relations with him and due to the illegal activities of his wife, he had enmity with several persons and some unknown person with whom he had enmity caused injuries to him and he could not identify such assailant and had named him wrongly.

10. Accused did not lead any evidence in defence.

11. Learned trial Court had formulated following points for determination in this case:

(i) Whether accused Vinod Kumar caused grievous hurt on the person of the complainant Dharam Pal, public servant who was acting in discharge of his duty, with intent to prevent or deter him from discharge of his duty?

(ii) Whether accused Vinod Kumar did the act of causing hurt on the person of complainant Dharam Pal and the injuries had been caused with the intention to cause death?

(iii) Whether the accused has been falsely implicated?

12. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal.

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

14. In this case complainant/injured Dharam Pal while appearing as PW1 had fully supported the prosecution story with regard to the accused Vinod Kumar having assaulted him, trying to strangle him and then inflicting injuries upon his face with CHAURSI. He was cross-examined at length on behalf of the accused but he stuck to his guns and could not be shattered on any material point. Though as per defence version wife of the complainant/injured was having illicit relations with various persons and complainant had a suspicion that accused was one of such persons and after having been assaulted by some unknown persons, he had named the appellant/accused as a culprit but I do not find such explanation to be convincing and plausible. No person having suffered multiple injuries on a vital part like face, one of the injury being grievous in nature would let the actual assailant go scot free and introduce some innocent person in the case. The account given by the complainant inspires confidence.

15. PW2 Raj Kumar J.E. although does not claim to have seen the incident but he corroborated the prosecution story stating that on 20.3.2005 when he reached at the tubewell at about 5:30 a.m., then complainant Dharam Pal was having injuries on his person and blood was oozing from his forehead; that Dharam Pal had told him that injuries had been caused to him by Vinod Kumar, then he along with Som Nath and Bhajno had taken the injured to the hospital. His testimony being with regard to the facts relating to the period soon after

the incident are quite relevant. The involvement of the accused in this case stands proved from the fact that not only he is specifically named in the FIR but after being arrested by the police, when he was interrogated he had suffered a disclosure statement under Section 27 of the Evidence Act and had got the PARNA of blue colour and blood stained CHAURSI recovered from his possession, which had been seized by the police officer. From the statement of PW5 SI Amar Singh, who had carried out the investigation, it comes out that the investigation has been carried out in a fair and impartial manner. The Investigating Officer had no motive to involve the accused in this case wrongly and to depose against him to secure his conviction. There was sufficient evidence collected during the investigation for that reason the accused had been sent up to face trial. The medical evidence in this case duly corroborates the ocular evidence.

16. PW3 Dr.Gian Chand, Medical Officer, who had medico-legally examined the injured on 20.3.2005 at Civil Hospital, Garhshankar stated that he had observed the following injuries on his person:

(1) Incised wound 16 cm x 2.6 cm on left side of forehead.

Horizontally placed extended up to upper lid of left eye. Bone

Deep. Profusely bleeding. Blackening of left side was present.

Advised x-ray.

(2) 2.3 cm x 0.6 cm incised wound on the left side of forehead bone

deep profusely bleeding 2 cm above the injury NO.1.

(3) Incised wound 3 cm x 0.7 cm on left maxillary area bone deep

horizontally placed profusely bleeding. Advised x-ray.

(4) Reddish colour bruise present in front of neck 4 cm broad 16 cm in length extending upward backward extending up to the level of both ears. Patient complained of deglutation. Kept under observation. Advised x-ray.

He stated that injury No.2 was declared simple at the time of examination and weapons used for injuries No.1 to 3 was sharp and blunt for injury No.4. He further stated that after x-ray report fracture of frontal bone left side of skull was seen and injury No.1 was declared as grievous.

17. PW4 Balbir Kumar, Medical Officer, Civil Hospital, Garhshankar had deposed about fracture being detected with regard to injury No.1 on carrying of x-ray examination of the injured. The seat of the injury No.1, which was found to be grievous and weapon used clearly suggested that the intention of the accused was to cause death of the complainant.

18. With regard to the contention raised by learned counsel for the appellant that there is no corroboration to the statement of the complainant/injured and it is not safe to rely upon his sole testimony, which is doubtful and benefit of doubt be given to the accused, I am not inclined to accept this argument. Corroboration is a rule of prudence and not requirement of law. The sole testimony of an injured witness can certainly be relied upon, if it inspires confidence. In this case, the solitary statement of the complainant with regard to the incident is found to be reliable and worthy of acceptance. I do not see any reason to discard the same and absence of any corroboration does not affect the

merits of the prosecution case.

19. Learned counsel for the appellant has further argued that there is no medical evidence to the effect that injuries found on the person of the complainant/injured were dangerous to life. Therefore, no offence under Section 307 IPC is disclosed. In support of her such contention, she has referred to judgments *Nand Singh Versus State of Punjab, 2007(1) RCR(Criminal) 801* and *Neelam Bahal & Anr. Versus State of Uttarakhand, Law Finder Doc Id # 264158*.

20. However, I do not find myself in agreement with learned counsel for the appellant in that regard. The Court is to see the intention of the appellant and nature of injury actually inflicted may not be decisive factor in concluding as to whether such act of the culprit comes within mischief of Section 307 or not. If it stands proved on the record that intention of the appellant was to cause murder of victim, then the assailant may be convicted for the offence under Section 307 IPC, though the victim/intended victim might not have suffered even a scratch on his body. The deciding factor is intention of the accused. Here from the record, it comes out that the accused tried to strangle the complainant/injured initially with a PARNA and when the complainant managed to free himself, then he caused injuries to him on his face with a sharp edged weapon i.e. CHAURSI. One of the injury having been found to be grievous in nature with fracture of the bone. The seat of that injury clearly suggests the intention of the accused to cause death of the injured.

21. Therefore, I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon

proper appraisal and appreciation of evidence and correct interpretation of law. The prosecution had successfully proved its case against the accused beyond a shadow of reasonable doubt and he was rightly convicted for the offence under Section 307 IPC.

22. The trial Court had sentenced the accused to undergo five years of rigorous imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, he was further sentenced to undergo rigorous imprisonment for a period of three months.

23. Learned counsel for the appellant/accused has contended that now the appellant is aged about 40 years; he has got three school going children; he is poor person working as a daily wager and is sole bread winner of the family; he has already undergone total imprisonment of 1 year, 3 months and 24 days in this case, therefore, sentence of the appellant/accused be reduced substantially.

24. Whereas, learned State counsel has stated as per the custody certificate, the appellant/accused is involved in another case bearing FIR No.134 dated 1.9.2015, under Sections 354, 323, 509, 506, 34 IPC, registered with Police Station Garhshankar. Therefore, he is a habitual criminal and no benefit be given to him.

25. After hearing the rival contentions, I find that the sentence of imprisonment awarded to the appellant should be reduced to some extent considering the facts and circumstances explained by learned counsel for the appellant and that the incident had taken place about more than 17 years back. Therefore, the rigorous imprisonment of five years awarded to the appellant is reduced to rigorous imprisonment for 4 years. The amount of fine to the tune of Rs.5,000/- imposed is kept as

such.

26. With such modification in the sentence part, the appeal stands disposed of accordingly.

27. Necessary intimation be sent to Chief Judicial Magistrate, Hoshiarpur with a direction to prepare necessary warrant in terms of this judgment so that the Appellant – convict is made to undergo the sentence awarded to him vide this judgment after deducting the period of imprisonment already undergone by him in this case.

Since the main appeal stands disposed of with modification, the miscellaneous application, if any, stands disposed of accordingly.

27.7.2022
Brij

(H.S.MADAAN)
JUDGE

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