

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

Reserved on 31st August, 2022

Pronounced on 5th September, 2022

CRA-S No.392-SB of 2004

Shiv Kumar

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Tribhawan Singla, Advocate
for the appellant.

Mr. Ramesh K. Ambavta, Asstt. Advocate General, Haryana
for the respondent-State.

PANKAJ JAIN, J. (ORAL)

This is an appeal against judgment of conviction and order of sentence dated 25th November, 2003/27th November, 2003 passed by Additional Sessions Judge, Ambala, whereby the appellant has been convicted for offence punishable under Section 307 of the Indian Penal Code, 1860 (for short, 'the IPC') and has been awarded Rigorous Imprisonment for 5 years and fine of Rs.5,000/-.

2. On the complaint filed by Poonam (PW9), FIR No.251 dated 30th November, 2002 was registered for the offences punishable under Section 307/309/511 of the IPC and Section 25/54/59 of the Arms Act, 1959 at Police Station Mahesh Nagar, Ambala Cantt., wherein it was alleged that on 30th of November, 2002, the appellant attacked friend of the

complainant with knife and stabbed her in the right thigh. She started bleeding. Thereafter, the appellant consumed some poisonous substance and became unconscious. After some time father of the victim came and took both of them to the hospital. It was alleged that the appellant wanted to marry the victim and had threatened her in morning on the same day that either she should agree to marry him or he would kill her.

3. As per the MLR following injuries were found on the body of the victim :-

1. 6 Cms. x 1 Cm. incised wound over the dorsum of left hand near the thumb. Fresh bleeding was present.
2. 2 Cms. x 1 Cm. incised wound palmer surface of middle of three fingers of right hand. Fresh bleeding was present and x-ray was advised.
3. 10 Cms. x 1 Cm. x 6 Cms. deep incised wound on the lateral surface of right thigh. Fresh bleeding was present.
4. 4 Cms. x 5 Cms. incised wound lateral side of left knee. Fresh bleeding was present.

4. As per the story put-forth by the prosecution, there are two material eye-witnesses viz the author of the FIR i.e. Poonam and the injured-witness i.e. the victim. The complainant Poonam did not support the case of the prosecution. The other witness-the victim herself in her statement has supported the story of prosecution. In her Examination-in-Chief she deposed that while she along with her friend Poonam were going back from their college to her house at Ambala Cantt, the accused came

towards them armed with knife and asked her to marry him. When she refused, the accused tried to give knife stab in her stomach but the same struck on her right thigh. She further deposed that the accused again gave a knife stab which struck on her left thigh. The other blow she resisted with her hands due to which her hands got injured. She deposed that owing to injuries she became unconscious and started bleeding. Believing the statement suffered by the victim and that by PW7, Trial Court convicted the appellant holding him guilty for offence punishable under Section 307 IPC but acquitted him of the offence punishable under Section 309 IPC and Section 25 of the Arms Act. He has been awarded sentence of RI for 5 years and to pay a fine of Rs.5,000/-.

5. Ld. Counsel for the appellant has argued that it is a case where the complainant has not supported the prosecution. Victim herself was not sure as to who attacked her. He has referred to the cross-examination of the victim where she stated that it was the Investigating Officer who told her that she was attacked by Shiv Kumar. He further submits that another eye-witness PW7-Virender Kumar, who happens to be the uncle of the victim claims himself to be present on the spot. While referring to the statement suffered by PW7, Counsel for the appellant submits that Virender Kumar is none else but real uncle (Mama) of the victim, who claims that the injuries were inflicted in his presence. Surprisingly, he did not try to intervene. He asserts that the conduct of PW7 is enough to demolish the story put-forth by

the prosecution. He further contends that the prosecution claims that the knife was recovered at the instance of accused after Disclosure Statement suffered by him Exhibit P17. In case the accused became unconscious after consuming poison, as projected by the prosecution, how could he hide the knife in the bushes and get the same recovered at the later point of time. He has further drawn attention of this Court to the statement of Dr. Tarsem Monga, PW-13. Dr. Tarsem Monga Medico-legally examined the injured-victim and is author of MLR, Exhibit P-19. As per his statement, possibility of injuries inflicted on person of victim by some arm other than Ex.PA cannot be ruled out. Lastly, Counsel for the appellant submits that the incident is of the year 2002. The appellant has already undergone sentence of 1 year, 6 months and 4 days. There is no other case against the appellant. He is a young man of 36 years of age. Both the parties i.e., the appellant as well as the victim are now well settled and have moved ahead in their respective lives. Hence, the sentence of the appellant be reduced and modified to the period already undergone.

6. Ld. State Counsel on the other hand submits that it is a case where injured-witness has fully supported the prosecution. As per settled law testimony of an injured-witness is on higher pedestal and, thus, her sole testimony is enough to convict the accused. Trial Court has given a well reasoned judgment. No other view is possible and, thus, there is no reason to interfere in the present appeal.

7. I have heard Ld. Counsel for the parties and with their able assistance have gone through the evidence on record.

8. In the present case, the victim has suffered four injuries which are all incised wounds. As per settled law, if there is an intent coupled with some overt act in execution thereof, it is sufficient to justify conviction under Section 307 IPC. It is not essential that bodily injury should be capable of causing death. However, the guilt of the accused has to be proved beyond reasonable doubt. As per the prosecution, there are three life witnesses to the incident: PW7-Virender Kumar (real uncle of the injured-victim), PW8-the victim herself and PW9-complainant Poonam. PW9-Poonam, who is the author of the FIR did not support the prosecution. PW7-Virender Kumar, happens to be real uncle (mama) of the victim. In his statement, he submits that he was just at a distance of around 8 ft. where victim was attacked but surprisingly did not intervene when victim was attacked. The conduct of the witness is quite unnatural. After the victim was attacked and she became unconscious, he did not take her to the hospital. The victim was taken to hospital only after her father reached the spot. The conduct of this witness raises serious questions about his testimony. Coming to the testimony of the victim she in her cross-examination stated that -

“After recording my statement I was told by the police that the name of the accused was Shiv Kumar. At the time of occurrence because of fear I had not seen who had given me

the stab injuries. Because of the fear I have become unconscious.”

9. W.r.t. PW9-Poonam, victim states that -

“Poonam was not attacked and I alone was given stab injuries. Poonam was away from me at that time. She was at a distance of 10 steps from me when this occurrence had taken place. But she stopped when she came to know about the occurrence. She did not intervene when I was attacked by the culprit but she raised alarm.”

10. Coming on to the medical evidence, Forensic Report w.r.t. the matching of blood stains on the cloths of the victim and the knife remained inconclusive as the blood group could not be matched. Dr. Tarsem Monga appearing as PW13 stated as under -

“...It is correct that if the edges are sharp from both sides, only then injuries, as mentioned in MLR, can be caused with that weapon. Most of upper portion of the chura Ex.PA is blunt and only 1 cm. portion of the upper side is sharp. Further stated that even this 1 cm portion on upper side is razor sharp. If injury inflicted with weapon Ex.PA, is more than 1 cm. in depth, then one side of wound will be having irregular margins. Injury no.3 can also be caused by the weapon Ex.PA. It is wrong to suggest that Injury no.3 can not be caused by Ex.PA. if it was not sharp edged from both sides. It is correct that the tip of Ex.PA is little bit curved. It is further correct that if any injury would be caused by this weapon, wound caused by it would be elliptical. It is

correct that I have not mentioned in my MLR whether the wound was linear or elyptical. It is wrong to suggest that wounds on person of Monica were caused by some other weapon. The possibility of injuries inflicted on person of Monica by some other than Ex.PA cannot be ruled out.”

11. The appellant was also tried for offence punishable under Section 309 IPC for having made an attempt to commit suicide as alleged by the prosecution. However, on the basis of medical evidence, the appellant stands acquitted as the charges under Section 309 IPC could not be proved.

12. After analyzing the whole evidence on record, this Court finds that there are three alleged eye-witnesses to the occurrence. Presence of PW7-Virender Kumar is highly doubtful. PW8-Victim herself is not sure as to who attacked her. In her cross-examination she is explicit in stating that the name of the culprit was told to her by the police. She having become unconscious could not see as to who stabbed her. PW9-Poonam, the author of the FIR has not supported the prosecution and even as per the statement suffer by the victim, the complainant i.e. PW-9 was about 10-12 steps away from the victim at the time she was attacked. The other thing that needs to be noticed is that PW7, who happens to be real uncle (mama) of the victim claims that he was 8 ft. away from the victim whereas PW9 was about 10-12 steps away from her, PW7 did not author the FIR. The statement of PW13-Dr. Tarsem Monga also raises doubt about the case put-forth by the

prosecution. Trite it is that the benefit of doubt must go in favour of the accused. Consequently, the present appeal is allowed. The appellant is acquitted of the charges punishable under Section 307 IPC, extending him benefit of doubt.

ORDER

- (i) CRA-S No.392-SB of 2004 is allowed.
- (ii) The impugned judgment/order of conviction dated 25th November, 2003/27th November, 2003 passed by Additional Sessions Judge, Ambala, whereby appellant-Shiv Kumar has been convicted for offence punishable under Section 307 IPC and sentenced to undergo Rigorous Imprisonment for 5 years and fine of Rs.5,000/-, and in default of fine to further undergo Rigorous imprisonment for 3 months, is set aside.
- (iii) Appellant namely Shiv Kumar is acquitted of the charge that was framed against him.
- (iv) Fine, if paid, be refunded to him.

September 05, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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