

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

**CRA-S-2093-SB-2005(O&M)
Date of decision:-17.8.2022**

Vyas Verma

....Appellant

Versus

The State of Haryana

....Respondent

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

Argued by : Mr. Rahul Verma, Advocate/Legal Aid counsel
for the appellant.

Mr. Viney Phogat, DAG, Haryana.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 9.8.2005 passed by learned Sessions Judge, Panchkula vide which on conclusion of trial, appellant Vyas Verma, an accused in FIR No.53 dated 31.3.2004 for the offence under Section 307 IPC, registered with Police Station Sector 19, Panchkula, was convicted for the offence for which he had been booked and in terms of the order dated 11.8.2005, he was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.2,000/- 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, which was taken up on 5.12.2005 when it was admitted. In terms of order dated 9.3.2006 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 version are that on 30.3.2004 at about 8:30 complainant Ajay Kumar working as a gas weldor in the factory situated at Plot No.247, Phase II, Industrial Area, Panchkula along with Rajesh Kumar working as a Foreman and Vyas Verma working as a bridging weldor, had got assembled in the factory premises; Rajesh and Vyas Verma had taken liquor; under the influence of liquor Rajesh started abusing Vyas Verma; at about 3:30 in the early morning hours of 31.3.2004 Vyas Verma gave a knife blow to Rajesh on his neck and thereafter tried to ran away along with his baggage; though complainant tried to catch hold of him but the accused managed to flee under the cover of darkness; the complainant returned to the spot and saw Rajesh in a pool of blood; the complainant accordingly informed owner of the factory telephonically and then after arranging a vehicle took Rajesh injured to General Hospital, Sector 6 Panchkula, from where he was referred to Govt. Medical College & Hospital, Sector 32, Chandigarh; he was taken there in an ambulance and got him admitted there.

4. On receipt of intimation regarding admission of injured at Govt. Medical College & Hospital, Sector 32, Chandigarh in Police Post Sector 19, Panchkula from Police Station Sector 20, Panchkula, a police party from Police Post Sector 19, Panchkula led by ASI Karamvir Singh (hereinafter referred to as the Investigating Officer/IO) reached Govt.

Medical College & Hospital, Sector 32, Chandigarh.

5. The Investigating Officer had moved a written application for obtaining opinion of the attending doctor regarding fitness of the injured, on which doctor declared injured unfit to make statement. Thereafter, he (IO) recorded statement of complainant Ajay Kumar as Ex.PD and put his endorsement Ex.PD/1 below such statement and sent ruqa to the police station through Constable Ved Parkash, on the basis of which, formal FIR (Ex.PD/2) was recorded at Police Station Sector 19, Panchkula. The Investigating Officer recorded statements of various witnesses and went to the spot but since FSL team had not arrived there by that time, he could not carry out the necessary inspection.

6. On the next day i.e. on 1.4.2004 Sh.G.R.Jain of Ambala Cantt. Range Office, Ambala carried out the spot inspection. The Investigating Officer also prepared rough site plan of the place of incident and lifted knife used in the incident besides taking into possession bed-sheet and blood stains lying on the floor and a piece of *BEEDI*. He prepared rough sketch of the knife attested by the witnesses. Knife, bed-sheet and piece of *BEEDI* were converted into sealed parcels and sealed with the seal of IO having inscription 'KS' and then were taken into possession vide recovery memo attested by the witnesses. On return to the police station, the Investigating Officer deposited the case property with the MHC of the police station. Accused was arrested on 3.4.2004.

7. On 4.4.2004, the accused suffered a disclosure statement that he had kept concealed a T-shirt and a pant, which he was wearing at the time of commission of offence, in the bushes at Ambala.

Thereafter, in pursuance of the disclosure statement, the accused got recovered such clothes, which were converted into a sealed parcel, sealed with the seal of IO having inscription 'KS' and taken into police possession vide recovery memo Ex.PL attested by the witnesses. The seal after use was handed over by the Investigating Officer to Constable Ved Parkash. The Investigating Officer prepared the rough site plan of the place of recovery.

8. On 15.4.2004, the Investigating Officer moved an application Ex.PN before the Medical Officer, Govt. Medical College & Hospital, Sector 32, Chandigarh seeking opinion if the injuries on the person of Rajesh were dangerous to life or not. The doctor vide his opinion Ex.PN/1 opined that the injury was grievous and dangerous to life. On the same day, the Investigating Officer moved another application Ex.PO to know if the injuries were possible with the knife used in the commission of the crime and the doctor vide opinion Ex.PO/1 opined that the injuries could be caused by a sharp weapon and the possibility of the same having been caused with the knife could not be ruled out.

9. On 27.5.2004, the Investigating Officer recorded statement of the injured after he was discharged from the hospital. The Investigating Officer had got prepared scaled site plan of the place of occurrence.

10. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Panchkula.

11. On presentation of challan in the Court of learned Judicial

Magistrate Ist Class, Panchkula, 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 offence under Section 307 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Panchkula committed the case to the Court of learned Additional Sessions Judge, Panchkula vide order dated 5.8.2004 from where it was transferred to the Court of learned Sessions Judge, Panchkula.

12. On receipt of case in the Court, learned Sessions Judge Panchkula, observing that prima facie charge for offence under Section 307 IPC was disclosed against accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

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

PW1 Surinder Singh Chadha, the owner of the factory proved employment certificate of the accused and Rajesh injured as Ex.PA and Ex.PB, respectively.

PW2 Rajesh Kumar injured did not support the prosecution story with regard to accused having caused injuries to him and he was declared a hostile witness at the instance of learned Public Prosecutor, who was allowed to put questions to him in the form of cross-examination, which opportunity was availed of by the State counsel.

PW3 Ajay Kumar complainant provided the eye-witness account of the incident supporting the prosecution story on material aspects.

PW4 ASI Karamvir Singh, the Investigating Officer of the

case deposed with regard to the investigating conducted by him proving various documents.

PW5 HC Rajinder Kumar stated that on 1.4.2004, ASI Karamvir Singh had deposited sealed parcels containing bed-sheet, knife, *BEEDI* and blood stained earth and on 4.4.2004 ASI had deposited the sealed parcels containing clothes of accused with him and sample seal chits were also deposited on that very date and on 15.4.2004 ASI Karamvir Singh had taken from him the sealed parcel containing the knife to obtain opinion of the doctor and redeposited the parcel of the knife, which was again sealed with the seal 'KS'. Then on 23.4.2004 except the parcel containing *BEEDI*, all other sealed parcels were handed over to Constable Ashok Kumar for depositing the same with FSL, Madhuban, who did the needful and on return to police station handed over the receipt to the MHC.

PW6 Dr.Anuj Kaushal proved his opinion Ex.PQ/1 dated 31.3.2004.

PW7 Dr.Surinder K. Singal, Senior Lecturer, Department of ENT, Govt. Medical College & Hospital, Sector 32, Chandigarh stated that Rajesh was admitted in their hospital on 31.3.2004. He was having a horizontal wound on the left side of neck in the area of common carotid artery. The patient was operated and vessel repair was done. He proved the medical legal case summary of injured as Ex.PR, prepared by Dr.Saurabh Aggarwal, whose signatures he identified.

PW8 Constable Ram Saran, Draughtsman, who on 13.5.2004 had prepared scaled site plan Ex.PS of the place of occurrence on demarcation of Ajay Kumar complainant, deposed in that regard.

PW9 Constable Ashok Kumar, who had taken the sealed parcels to FSL, Madhuban on 23.4.2004, testified in that regard.

PW10 Constable Rajesh Kumar, Photographer, who on 31.3.2004 had taken the photographs of the place of occurrence, while deposing about the same proved photographs Ex.P1 to Ex.P4 and negatives Ex.P5 to Ex.P8.

The Public Prosecutor tendered in evidence report from the FSL, Madhuban as Ex.PG, PG/1 and report of Finger Print Expert as Ex.PH and closed the prosecution evidence.

14. 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.

15. Accused did not lead any evidence in defence.

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

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

18. In this case complainant Ajay Kumar fully supported the prosecution story as regards accused Vyas Verma having attacked victim Rajesh with a knife on 31.3.2004 in the early morning hours causing him injuries on the neck. It was he, who had set the criminal machinery in motion by reporting the matter to the police giving precise details of the incident, in which accused is specifically named.

Furthermore, it was the complainant, who had taken the injured to the hospital. The complainant works in the factory in premises of which, the incident had taken place, therefore, his presence at the spot at the relevant time comes out to be natural and probable. No enmity between him and the accused has been alleged or proved prompted by which he might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. I find the version given by the complainant to be truthful and worthy of reliance. Although 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.

19. Surprisingly, the injured did not support the prosecution story with regard to accused having attacked him with a knife causing him injuries on the neck and he was declared a hostile witness but this fact does not cause any dent in the prosecution story. The injured in his statement to the police had clearly stated that it was accused, who had caused injuries to him with a knife, though while appearing in the Court, he had resiled from his statement. The injured was duly confronted with the statement made by him to the police. Some human beings out of fear, inducement or greed go on to conceal truth and tell lies and the injured in this case also come out to be of that type. But the Court is to remain vigilant and not to take version of such type of persons as gospels truth.

20. The law is well settled on the point that version of even a hostile witness is not to be rejected outrightly, rather it is to be analysed so as to separate grain from the chaff i.e. truth from the falsehood and then Court can rely upon the parts of the statements, which are found to

be truthful. The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India.

21. The deposition of the complainant is duly corroborated by the medical evidence inasmuch as the doctor attending to the injured at Govt. Medical College & Hospital, Sector 32, Chandigarh on an application Ex.PN having been filed by the Investigating Officer before him on 15.4.2004, vide his opinion Ex.PN/1 had given opinion that the nature of injury found on the person of victim to be grievous and dangerous to life and on another similar application Ex.PO filed by the Investigating Officer had stated that injuries observed on the person of injured could be caused by sharp edged weapon and possibility of the those having been inflicted with the knife got recovered by the accused from his possession could not be ruled out.

22. The involvement of the accused in the crime is further established from the fact that on 4.4.2004, the accused had suffered a disclosure statement Ex.PK before the Investigating Officer and had got T-shirt and pant, which he was wearing at the time of commission of offence, recovered from his possession. As per the report from the FSL, where the articles relating to this case had been sent in the form of sealed parcels of bed-sheet, knife, *BEEDI* and blood stained earth etc., were found to be stained with human blood.

23. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

24. The remaining evidence adduced by the prosecution lent

corroboration to its version. 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.

25. As regards the sentence part, the appellant/accused had been sentenced to rigorous imprisonment for a period of 5 years and to pay a fine of Rs.2,000/- for the offence under Section 307 IPC. Considering the facts and circumstances of the case that accused by using a dangerous sharp edged weapon in the form of knife had caused injuries on vital parts of the injured, resulting in a horizontal wound on the left side of neck in the area of common carotid artery and he had to undergo for vessel repair, as deposed by PW7 Dr.Surinder K. Singal, Senior Lecturer, Department of ENT, Govt. Medical College & Hospital, Sector 32, Chandigarh, who had proved the medical legal case summary of injured, the intention of causing murder of victim on the part of the accused clearly comes out to be there. It was sheer luck of the victim that he escaped death. Therefore, 5 years of imprisonment awarded to the appellant cannot be held to be on higher side and there is no scope for reduction in sentence.

26. 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.

The concession of suspension of sentence and grant of bail granted to the appellant Vyas Verma was withdrawn vide order dated

13.5.2022. Chief Judicial Magistrate, Panchkula is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

17.8.2022
Brij

(H.S.MADAAN)
JUDGE

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