

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

SR. No.337

CRA-S-300-SB-2004 (O&M)

Reserved on 24.11.2022

Pronounced on:29.11.2022

Dharmender

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Narinder Singh, Advocate,
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

Mr. D.S. Randhawa, Advocate,
for respondent No.2.

N.S. SHEKHAWAT, J.

The instant appeal is directed against the judgment of conviction and order of sentence dated 12.01.2004 passed by the learned Sessions Judge, Narnaul, whereby the appellant had been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

Brief facts of the case are that the FIR in the instant case was got registered by Devender Singh S/o Amar Singh, who stated that he was doing the agricultural work. On 14.09.2002, at about 7.00 p.m., he along with his uncle Sube Singh was standing in front of the shop of Lala Ram, Barber, situated in the village and when his sister Anita reached in the street near the Paras, Dharmender @ Kalia son of Mahender Singh (the appellant)

resident of the same village, came there from the back side with his tractor and hit her while driving the tractor in a rash and negligent manner. In order to save herself, his sister Anita had come close to the wall of the house of Ram Singh Bheel, still accused Dharmender had struck his tractor from her back side and both the tyres of the tractor had run over Anita and she sustained multiple injuries on her abdomen and chest. Accused-appellant Dharmender left the spot immediately along with his tractor and the complainant, his uncle Sube Singh and his father Amar Singh took the injured Anita to Community Health Centre, Mahendergarh, after arranging a vehicle. After providing her first aid, the doctor referred her to PGIMS, Rohtak. On the basis of the statement made by Devender, the FIR was initially registered under Sections 279 and 337 IPC. Later on, the statement of injured Anita was recorded on 23.09.2002, after she was declared fit to make the statement and it transpired therefrom that the case under 307 IPC was made out against the appellant/accused. Thereafter, the investigation of the case was conducted by Krishan Kumar, ASI and the Deputy Superintendent of Police, Mahendergarh also recommended the addition of the offence under Section 307 IPC.

After the presentation of challan, the charge under Section 307 IPC was ordered to be framed against the present appellant and to prove the charge, the prosecution examined 11 witnesses in all.

PW-1 Dr. Gajraj Singh medico legally examined Anita, injured on 14.09.2002 and found that the general condition of the patient was poor, her pulse was 92 per minute feeble, B.P. was 70/50 mmHg, vitals were not stable and he found the following injury on her person:-

“Multiple abrasions of variable sizes with a tyre mark

bruise 8cm wide was present on right side of the chest laterally and anteriorly lower 1/3rd region. Red in colour.”

He had sent ruqa Ex. PB to Police Station, Mahendergarh and referred the patient to PGIMS, Rohtak for further management. The prosecution examined PW-2 Dr. Rajesh Godara, Consultant, Department of Surgery, PGIMS, Rohtak. The investigation was done and injury was found on the abdomen and chest. The injured Anita was operated on 15.09.2002 and on exploration, there were two litres of blood in peritoneal cavity with amputation of spleen and shattering of left lobe of liver. The spleen was removed and the liver injury was repaired. She was discharged on 28.09.2002 in a stable condition. The prosecution examined PW-3 Bhim Singh ASI, who had partly conducted the investigation. Still further, the prosecution examined PW-6 Krishan Kumar ASI, who also investigated partly and ordered to add the offence under Section 307 IPC. The prosecution further examined PW-7 Devender, who stated that at about 6.30/7.00 p.m. on 14.09.2002, he was standing near the shop of Lala Ram, Barber with his uncle Sube Singh. His sister Anita was going from their house to the nohra with the meals of her father. When his sister Anita was near the wall of house of Ram Singh Bheel, accused-appellant Dharmender @ Kalia came there with his tractor. He had hit his sister at her back side with the tractor. After hitting, he reversed the tractor and with the intention to kill Anita, he had hit her again. He and his uncle Sube Singh rushed to the spot to rescue Anita. However, the appellant escaped with his tractor. Anita had suffered injuries on her chest and she was shifted to CHC, Mahehdergarh. After the first aid, she was referred to PGIMS, Rohtak. The said witness was duly confronted with his earlier statement. Even in his

initial statement, he had not told the police that the tractor was reversed after hitting his sister and with a view to kill his sister, he again came forward. The prosecution further examined PW-8 Anita, who deposed on similar lines. However, she added that Dharmender @ Kalia, appellant, had been teasing her earlier also. He had been uttering obscene words to her, whenever he came across her on the passage. On one occasion, at about 8.00 p.m., when she was returning home, he caught her with an intention to outrage her modesty. She gave him a slap, however, she did not tell her parents in this regard for the fear of disgrace. On an earlier occasion also, he tried to kill her by hitting her with a tractor and she had escaped. He, however, threatened her that he would kill her whenever he got an occasion. She did not tell her parents in this regard, fearing the quarrel between the two families. The prosecution further examined PW-9, Dr. Vivek Girotra, P.G. student, General Surgery, PGIMS, Rohtak, who had obtained the opinion with regard to the fitness of the injured. The prosecution further examined PW-10 Mahesh Kumar, Sub-Inspector, who deposed that he had recorded the formal FIR Ex.PH. The prosecution also examined PW-11 Sumer Singh, who conducted the initial investigation. On receipt of the information regarding admission of the injured in the hospital, he went to Police Station, Mahendergarh on 15.09.2002 and obtained medical ruqa and MLR of Anita. He went to PGIMS, Rohtak and Anita was declared to be unfit to make a statement. Consequently, he recorded the statement (Ex.PF) of Devender S/o Amar Singh, the complainant, and made his endorsement on the said statement and sent the same for registration of the case. He also inspected the spot and prepared a rough site plan of the place of occurrence and also recorded the statements of various witnesses.

The entire evidence led by the prosecution was put to the accused. In his statement under Section 313 Cr.P.C., he pleaded false implication due to enmity. He did not lead any evidence in support of his case and the case was finally heard by the Court of learned Sessions Judge, Narnaul.

After hearing the counsel for both the parties and going through the record of the case, the learned trial Court concluded that the prosecution has successfully proved its case, bringing home the guilt against the accused/appellant. Accordingly, accused/appellant was convicted and sentenced as noted above.

Hence, the present appeal.

Learned counsel appearing for the appellant submitted that the appellant has been falsely implicated in the instant case. It was alleged that the tractor had run over the injured Anita and after reversing it, the appellant tried to hit her for the second time. However, the said version has been belied by the medical evidence, which shows single tyre mark measuring 8 cm wide on the right side of the chest of the injured. Still further, PW-7 Devender had not even witnessed the occurrence. He allegedly shifted the injured to the CHC, Mahendergarh on 14.09.2002 and the police station was just opposite the hospital, still he did not report the matter to the police. Still further, even in the records, he was not mentioned as the person who shifted the injured to the hospital. Apart from that, the said witness had made considerable improvement in his testimony and was duly confronted with the same. Further, learned counsel appearing for the appellant has taken this Court through the statements of PW-7 Devender and PW-8 Anita and submitted that there are material contradictions

between the statements of the said witnesses and both the statements could not mutually co-exist. Still further, learned counsel also submitted that a simple case of accident has been converted into a case of attempt to murder and the story of prosecution is liable to be disbelieved.

The submissions made by learned counsel for the appellant have been vehemently opposed by the learned State counsel. Learned counsel submitted that the impugned judgment of conviction and order of sentence are based on due appreciation of evidence and the settled law. She further submitted that the impugned judgment of conviction and the order of sentence are liable to be upheld by this Court.

At this stage, it requires mention that the learned counsel for the complainant/injured submits that the matter has been compromised between the parties with the intervention of the Panchayat and respectable persons of the village and both the families were living peacefully for the last 20 years. He has no objection in case the appellant is ordered to be acquitted on the basis of the compromise or some other appropriate order is passed by this Court in view of the compromise between the parties.

This Court has heard the learned counsel for the parties and perused the case file minutely.

Learned trial Court has rightly observed that PW-7 Devender and PW-8 Anita have made considerable and material improvements in their respective testimonies, however, this improvement does not cause any damage to the basic structure of the case and does not render the prosecution case to be doubtful. The testimonies of PW-7 Devender and PW-8 Anita are to be examined carefully in the light of the other attending circumstances. The initial case set up by PW-7 Devender was that his sister

Anita was very close to the wall of the house of Ram Singh Bheel and to avoid hitting by the tractor, she had been standing on one side near the wall of the house of Ram Singh Bheel. Still further, the appellant drove his tractor in a rash and negligent manner and had hit Anita on her back. While appearing as PW-7, he tried to improve his version by adding that the appellant had reversed the tractor and had hit Anita on her back. However, he was duly confronted with his earlier statement made by him during the course of investigation. However, there is one more aspect of the matter, which would establish that the offence under Section 307 IPC is made out against the present appellant. The injured Anita had stated in her initial statement itself under Section 161 Cr.P.C. that accused/appellant Dharmender had hit his tractor with an intention to kill her. Even prior to this, he had been teasing her and had used objectionable words for her. At about 8 O' clock in the night, she was returning home and he had caught her forcibly and she had slapped him. She did not disclose to anyone to save the honour of the family and to avoid further enmity between the families. Similarly, while appearing as PW-8, Anita clearly stated that accused-appellant Dharmender @ Kalia had been teasing her earlier also and had been uttering obscene words to her, whenever he came across her on the passage. At one occasion, she was returning home at about 8.00 p.m. and he had caught her with an intention to outrage her modesty, she gave him slap also. She did not tell her parents in this regard for the fear of disgrace. On earlier occasion also, the appellant had tried to kill the injured Anita, but she saved herself by rushing on one side.

The statements of the above-said witnesses are duly corroborated by the medical evidence as well as the investigation, which

was conducted by the local police. PW-2 Dr. Rajesh Godara, Consultant, Department of Surgery, PGIMS, Rohtak, was examined by the prosecution, who examined and operated her on 15.09.2002. The said witness clearly stated that on exploration, there were two liters of blood in the peritoneal cavity and the injured had suffered serious injuries on her abdomen and chest. There was amputation of spleen and shattering of left lobe of liver. The spleen was removed and the liver injury was repaired. However, she was discharged on 28.09.2002 in a stable condition. Even during the course of investigation, the offence under Section 307 IPC was made out against the appellant under Section 307 IPC, which is evident from the testimonies of PW-6 Krishan Kumar, ASI and PW-11 Sumer Singh, ASI. Thus, it is apparent that the learned trial court has rightly convicted the appellant under section 307 IPC.

Learned counsel for the appellant has submitted that the incident is of the year 2002 and the appellant has suffered the agony of the trial/appeal for the last about 20 years. Learned counsel also submitted that he was granted the concession of suspension of sentence by this Court vide order dated 20.08.2004 and he never misused the said concession. Learned counsel further submitted that at the time of his conviction on 12.01.2004, he was aged about 22 years and is the sole bread winner of the family and has to take care of the entire family and is also not involved in any other case. Learned counsel also referred to the custody certificate and stated that he has undergone more than six months of actual custody. The custody certificate has been filed by learned State counsel and it also shows that the appellant had undergone more than six months of actual custody. Learned counsel for the appellant has prayed for a lenient view of the matter and

urged for reduction of the sentence imposed on the appellant. He also submitted that the matter has already been compromised between the appellant and the injured Anita and compromise deed has already been placed on the file as Annexures A-1 and A-2. Learned counsel for the appellant has also relied upon the judgment of Hon'ble the Supreme Court in the case of **"Gulab Das and others vs. State of M.P., 2011(10), SCC 765"**. He also relied upon the judgment passed by the Co-ordinate Benches of this Court in case titled as **"Sukhdev Singh @ Sukha Vs. State of Punjab, 2019(4) R.C.R (Criminal) 760"** and **"Inderjit @ Inder vs. State of U.T., 2011 (1) R.C.R. (Criminal), 234"**. In the matter of **Gulab Das** (supra), the Hon'ble Supreme Court upheld the order of conviction recorded by the learned trial Court, however, the sentence awarded to the appellants was reduced to the period already undergone by them. Even the conviction in the said case was under Section 307 IPC and the Hon'ble Supreme Court had not allowed the parties to compound the offence under Section 307 IPC, but the sentence was reduced to the period already undergone by the appellants. Even the Co-ordinate Benches of this Court have held to the similar effect in the judgment cited by the learned counsel for the appellant.

Thus, keeping in view of the above-said facts and circumstances of the case as well as in view of the ratio laid down by Hon'ble the Supreme Court and this Court in the above referred judgments, this Court is of the considered view that it is just and expedient to reduce the sentence of the appellant to the period already undergone by him, while upholding his conviction.

In view of the above, the present appeal is partly allowed. The impugned judgment of conviction dated 12.01.2004 passed by the learned

Sessions Judge, Narnaul is upheld, however his sentence is ordered to be reduced to the period already undergone by him.

With the above modification, the instant criminal appeal stands partly allowed, to the extent indicated above. Pending application(s), if any, shall also stand disposed of.

29.11.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO