

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-1519-SB-2004 (O&M)

Date of Decision: 03.05.2023

Rajbir and others		...Appellants
	Versus	
State of Haryana		... Respondent

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

Present : Mr. Balram Singh, Advocate
as Amicus Curiae for the appellants.

Mr. R.K.Girdhwal, Advocate
for appellants No. 2 and 3.

Appellant No. 1 dead.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Nitish Yadav, Advocate
for respondents No. 2 and 3.

N.S.SHEKHAWAT, J.

1. Feeling dissatisfied with the judgment of conviction dated 10.07.2004 and the order of sentence dated 12.07.2004 passed by the Court of learned Additional Sessions Judge, Jhajjar, whereby, the appellants were convicted for the offences punishable under Sections 324/34 and 307/34 IPC and were sentenced to under rigorous imprisonment for four years and to pay a fine of Rs. 2,000/- each under Section 307/34 IPC alongwith default stipulation and rigorous imprisonment for one year under Section 324/34 IPC, the appellants have preferred the present appeal before this Court.

2. The brief facts of the prosecution, as may be culled out from the report under Section 173 Cr.P.C., are that the FIR in the instant case was registered on the basis of the statement made by

Jagbir, injured on 27.07.2000, after obtaining the opinion regarding his fitness. The complainant stated that there was a plot of Suraj Bhan, Numberdar and Rajbir, Mehtab and Prem sons of Paras Ram in front of their house. Suraj Bhan, Numberdar, Mehtab and Prem had given their shares in the plot to him ten days earlier while Rajbir son of Paras Ram, accused refused to give his share in the plot. On 27.07.2000, he was constructing a wall over his share of plot after leaving vacant the area falling to the share of Rajbir son of Paras Ram and had raised the wall up to the height about 3 feet, in the meantime, at 12.00 p.m, Rajbir and his two sons Balbir and Sudhir, all accused came there duly armed with jellies. The accused started demolishing the wall and when the complainant raised objection, Balbir gave a blow with jelly on the left thigh of Jagbir, complainant, whereas, Sudhir accused inflicted jelly blow three times on the head of Sunil. Rajbir inflicted a blow with the jelly on the stomach of Satpal and the complainant side raised the alarm. Jai Bhagwan son of Jai Narain and Balbir son of Pehlad rushed at the spot and saved the injured from the assailants. All the accused went away with their respective weapons and the injured were shifted to the hospital. The statement of the complainant was got signed from him and after making an endorsement, the formal FIR in the present case was registered.

3. After the registration of the FIR, the medical record regarding the other two injured namely, Sunil and Satpal was also collected. Since Satpal had received serious injuries, so the doctor had referred him to the PGIMS Rohtak on 27.07.2000. The injuries on the person of Satpal were declared to be dangerous to life by the doctor

vide his opinion Ex.PF/1 and on this offence under Section 307 was

added. On 13.09.2000, all the three accused, namely, Rajbir, Balbir and Sudhir were arrested and one jelly each was recovered from the accused. After completion of the necessary investigation, a report under Section 173 Cr.P.C. was prepared by Mahender Singh Inspector and was presented in the Court of learned Area Magistrate. Thereafter, the matter was committed to the Court of Sessions and the learned trial Court ordered framing of charges under Sections 307, 324 and 34 IPC against all the accused and the accused pleaded their innocence and claimed trial.

4. In support of the charge, the prosecution examined ten witnesses, PW1 Dr. S.P.S.Bhatia, Constable PW2 Jai Chand, PW3 Constable Naresh Kumar, PW4 Jagbir, PW5 Satpal, PW6 Sunil Kumar, PW7 Balbir, PW8 ASI Ram Avtar, PW9 Mahender Singh, PW10 Head Constable Randhir Singh and PW Jai Bhagwan was given up as unnecessary by the learned public prosecutor.

5. Thereafter, the statement of accused Rajbir under Section 313 Cr.P.C. was recorded and he stated that on 27.07.2000 his sons Balbir and Sudhir were raising construction in their plot to make a wall towards the *Gher* (courtyard) of the complainant so that they might not encroach on their plot, as they were directed to do so. When the wall reached at ground level, the complainant party came there and had beaten up his sons. His sons left the place and went home. Thereafter, the complainant party reached their home and started knocking the doors. His wife opened the door and the complainant party started beating his wife and his sons. In exercise of right to private defence, even they had caused injuries to the complainant side to save themselves. However, the complainant side has colluded with

the local police and got the present FIR registered against the

appellants/accused. Similar stand has been taken by the remaining two co-accused as well.

6. The appellant/accused did not examine any witness in the defence.

7. I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

8. At the very outset, learned counsel for the appellants No. 2 and 3 submits that the appellants did not wish to challenge their conviction and prayed for taking a lenient view in the present case as both the sides have amicably resolved all their disputes and were living in the village in the same street peacefully for the last more than 18 years. The learned counsel for the appellants also referred to the compromise deed dated 02.02.2023 (Annexure P-2) in this regard and submitted that the parties had compromised the matter and are living peacefully for the last several years in the same street of their village. He prayed that lenient view may be taken, while awarding the sentence. At this stage, it requires mention that during the pendency of the present appeal, Rajbir Singh son of Paras Ram appellant No. 1 has expired and the appeal stands abated qua him. However, the appeal has been pursued on behalf of appellants No. 2 and 3.

9. Even though, the learned counsel for the appellants No. 2 and 3 submits that he does not wish to challenge the judgment of conviction, still, this Court has examined the merits of the case. In support of the charge, the prosecution had examined PW4 Jagbir, injured in the present case. While appearing as PW4, he stated that at about 2.00 p.m., on 27.07.2000, he alongwith his son Sunil and Satpal, his nephew were raising construction and all the accused

present in the Court arrived there and started demolishing the wall.

When Jagbir asked them not to do do, Balbir accused inflicted a jelly blow on his left leg, whereas, Rajbir inflicted a jelly blow on the abdomen of Satpal. Sudhir accused inflicted jelly blows thrice on the head of his son Sunil. On hearing their cries, his uncle Balbir and Jai Bhagwan arrived there and rescued them from the clutches of the accused. Thereafter, they were shifted to P.G.I.M.S., Rohtak by his uncle in his vehicle for medical treatment. His statement has been supported by PW5 Satpal and PW6 Sunil Kumar, another injured. The testimonies of all three injured namely, PW4 Jagbir, PW5 Satpal, PW6 Sunil have been supported by PW7 Balbir. All the said four witnesses have been examined by the learned defence counsel, but their testimonies could not be shattered in any manner.

10. In the present case, the ocular version of the prosecution was duly supported by the statement of PW1 Dr. S.P.S. Bhatia, Medical Officer, Civil Hospital, Jhajjar. As per him, he medico legally examined Sunil son of Jagbir Singh on 27.07.2000 and found the following injuries on his person:-

“1. An incised wound obliquely placed on anterior aspect of left parietal bone. It was bone deep and was of the size 3 cms. x. 5cm. X-ray skull was advised.

2. An incised wound 3 cms. x. 5cm. on left parietal bone 6 cms. above the left ear bone deep. X-ray skull was advised.

3. Same kind of injury 2cms. on right side of injury No.3. Injuries No.1,2 and 3 were kept under observation”.

11. He proved on record original MLR Ex.PA. On the same day, he also examined Satpal son of Balwan Singh and found the following injuries:-

“1. An incised wound 1.5cms x.3 cm. horizontally placed in left side iliac region. Depth of the wound

could not be ascertained and patient was referred to PGIMS, Rohtak for surgical opinion.

2. An incised 1.5 cms. X 3 cm. Horizontally placed 5 cms. above and medial to injury No.1. Depth of the wound could not be ascertained and patient was referred to PGIMS, Rohtak for surgical opinion”.

12. On the same day, he also examined Jagbir Singh son of Sher Singh and found the following injury:-

“1.An incised wound in middle and lateral side of left thigh vertically placed 2.5 cms x 1 cm. Depth of the wound could not be ascertained. X-ray left thigh was advised”.

13. On 27.07.2000, he radiologically examined Sunil Kumar son of Jagbir and no fracture was seen. Even, no fracture was seen on the person of Jagbir. However, on police request Ex.PF, he had given the opinion that injuries No. 1 and 2 on the person of Satpal were dangerous to life, if timely medical aid was not provided. He had given this opinion after perusing the medical record of Satpal and his opinion in this regard is Ex.PF/1. He had further given opinion as Ex.PG/1 and had pointed that possibility of the injuries on the person of Satpal by a jelly could not be ruled out.

14. Apart from that, the prosecution examined PW8 ASI Ram Avtar, who had formally recorded the FIR Ex.PJ/1 on receipt of the information Ex.PJ through Constable Jagdish Chander. The prosecution further examined PW10 HC Randhir Singh, who had initially conducted the investigation in the present case and also arrested the accused. Even, he had prepared the sketch of jellies recovered from all the three accused and their sketches Ex.PM, Ex.PN and Ex.PO, respectively and the same were taken into possession vide recovery memo Ex.PI. He had also moved applications to the Medical Officer regarding taking opinion from the doctors. The application

Ex.PF was moved in this regard and the doctor gave opinion Ex.PF/1 to the effect that the injury on the person of Satpal was dangerous to the life and Section 307 IPC was added in the present case. The prosecution further examined PW9 Mahender Singh, who was posted as SI/SHO of Police Station Jhajjar on 12.10.2000 and had prepared a report under Section 173 Cr.P.C., in this regard. From the above testimonies, it is apparent that on 27.07.2000 all the accused reached at the place of occurrence with premeditation and all were carrying jellies in their hands and on reaching there, the three assailants had caused injuries to the three injured PW4 Jagbir, PW5 Satpal and PW6 Sunil Kumar. The MLR's of all the three injured Ex.PA, Ex.PB and Ex.PC were proved on record by PW1 Dr. S.P.S. Bhatia, Medical Officer, Civil Hospital, Jhajjar, who had initially examined the injured.

15. Apart from that, the opinion Ex.PF/1 was given by PW1 Dr. S.P.S. Bhatia after examining the entire medical record and clearly stated that the injuries suffered by Satpal were dangerous to life. Even during the course of investigation, the weapons of offence, i.e., one jelly each was recovered from all the three appellants. All the prosecution witnesses had supported the case of the prosecution in all respects and were able to withstood the test of cross-examination. Thus, the appellants have been rightly convicted for the offence punishable under Sections 307, 324 and 34 IPC. Even otherwise, I have gone through the impugned judgment of conviction passed by the learned trial Court and the learned trial Court has recorded valid reasons for convicting the appellants and the impugned judgment of conviction passed by the learned trial Court is ordered to be upheld.

16. Now adverting to the order of sentence, it is apparent that vide order dated 12.07.2004, the appellants were sentenced to rigorous imprisonment for a period of four years and to pay a fine of Rs. 2000/- each under Section 307/34 IPC alongwith default stipulation and were further sentenced rigorous imprisonment for a period of one year under Section 324/34 IPC. After conviction, the appellants preferred the appeal before this Court and all the appellants were on bail since on 09.12.2004, i.e. for the last more than 18 years, all the appellants were on bail. During the course of hearing, the learned State counsel has produced the custody certificate of Sudhir, appellant No. 2 and, as per the custody certificate, the appellant No. 2 has undergone six months and twenty four days of actual sentence. Still further, Balbir, appellant No. 3 has undergone three months and nine days of actual sentence whereas appellant No. 1 Rajbir has already expired. I find sufficient force in the submissions made by the learned counsel for the appellants No. 2 and 3 that a lenient view should be taken in the present case in view of the fact that the parties have entered into a compromise and have signed a compromise deed dated 02.02.2023 (Annexure P-2). Learned counsel for the appellants No. 2 and 3 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

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 appellants No. 2 and 3. Still further, the custody certificates also reveal that appellants No. 2 and 3 have never misused the concession of bail granted to them and were first offenders. Even, the FIR in the instant case, was registered on 27.07.2000 and in the last about 23 years, no other criminal case was registered against appellants No. 2 and 3. Even, both the appellants No. 2 and 3 are rustic and poor villagers and are sole bread earners of their respective families. The appellants as well as all the three injured are neighbours and live in the same street. As per the learned counsel for the appellants, since for the last 22 years, the parties are living peacefully in the village and have resolved all their disputes.

17. In view of the facts and circumstances, it would be just and expedient, if the sentence awarded on the present appellants is reduced to the period already undergone by them. As per the learned State counsel, both the appellants No. 2 and 3 have already deposited the amount of fine.

18. All pending applications, if any, are disposed off, accordingly.

19. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

20. Records of the Court below be sent back.

21. In the end, I record my appreciation for Mr. Balram Singh, learned Amicus Curiae, who had rendered able assistance to this Court.

03.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No