

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

1) **CRA-S-794-SB-2010 (O&M)**
Decided on : 17.05.2023

Ram Mehar and another
Versus
... Appellant(s)

State of Haryana
... Respondent(s)

2) **CRR-1689-2010**

Satish
Versus
... Petitioner(s)

State of Haryana and others
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Jitender Dhanda, Advocate
for the appellant(s) (in CRA-S-794-SB-2010).
for respondents No.2 & 3 (in CRR-1689-2010).

Mr. Ashwani Bhardwaj, Advocate
for the petitioner(s) (in CRR-1689-2010).
for the complainant(s) (in CRA-S-794-SB-2010).

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

1. This judgment shall dispose of CRA-S-794-SB-2010 and CRR-1689-2010, as they both are interconnected and arising out of the same judgment of conviction dated 08.03.2010 and order of sentence dated 09.03.2010. However, for the sake of brevity, the facts are being extracted from CRA-S-794-SB-2010.

2. By way of present appeal i.e. CRA-S-794-SB-2010, appellants – Ram Mehar, then aged 23 years, and Deepak Kumar, then aged 23 years (as per impugned judgment), have filed the present appeal against the

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 2 -

judgment of conviction dated 08.03.2010 and order of sentence dated 09.03.2010, passed by Ld. Sessions Judge, Hoshiarpur (in short, ‘Ld. Trial Court’), in Sessions Case No.15-SC/ST of 2008, whereby, both the appellants were convicted for committing an offence under Section 308 of IPC read with Section 34 of IPC.

2. Proceedings of trial arose from registration of FIR No.117, dated 06.05.2008, under Section(s) 308/34 of IPC, registered at Police Station Uklana, District Hisar, wherein, accused-appellants were held guilty for commission of offences punishable under Section 308 r/w Section 34 of IPC, and were ordered to undergo sentence(s), as detailed in the following table:

Name of Convict(s)	Under Section(s)	Sentence	Fine	In Default
Ram Mehar, Deepak Kumar	308/34 IPC	04 years RI	Rs.5000/- each	03 months RI

All the substantive sentences were ordered to run concurrently. However, the period of detention already undergone by the accused-appellants, if any, was ordered to be set off against the substantive sentence.

3. Basic story of the prosecution, as discussed in paragraph No.2 of the impugned judgment, is reproduced hereunder:-

“ on 2.5.2008 a medical ruqa regarding admission of Satish Kumar son of Dalbir Singh, resident of Surewala in an injured condition was received by ASI Dharampal from Janta Hospital, Barwala. The said police official reached the hospital but the doctor on duty declared the patient unfit to make statement. The patient was declared fit to make statement on 4.5.2008 when Dharampal ASI, after getting the permission of doctor on duty regarding condition of the patient, has recorded the statement of Satish complainant. The complainant Satish son

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 3 -

of Dalbir Singh has reported that he is a shop-keeper by profession. On 1.5.2008 at about 8/8.30 p.m. he was coming to his home after closing his shop. He was suffering from dysentery, so he took a seat near the house of Mahender son of Dharam Singh, outside the village, to answer the call of nature. Ram Mehar son of Mahender and his brother-in-law Deepak son of Telu Ram were taking liquor on the roof of their house. When Ram Mehar found the complainant while easing on the back of their house, he shouted "who is sitting over there". Meanwhile, his brother-in-law, shouted to throw a brick upon the complainant. Accordingly Ram Mehar threw a brick bat from the roof of his house, which hit on the head of the complainant and he received head injury. In the mean time both of them stepped down from their roof and started giving beatings to the complainant with fist blows and slaps while objecting as to why he was easing while sitting behind their house. Thereafter, the complainant-injured came to his home and told the whole episode to his father, who got him admitted for treatment in Janta Hospital, Barwala, where he remained unconscious up to 4.5.2008 and after regaining consciousness he made statement before the police, which was reduced into writing by the Investigating Officer. One injury on the person of the complainant was kept under observation in his medico-legal report. On 4.5.2008 a rapat was registered in the roznamcha. On 6.5.2008 X-ray report was received and doctor declared the injury upon the head of complainant by blunt weapon and a fracture was found in the X-ray report upon the head of the complainant. The said injury was declared dangerous to life as per the opinion of the doctor. Formal FIR was registered under Section 308/34 IPC and investigation into the matter was set into motion. During the course of investigation, both the accused were arrested. The statements of the other witnesses were also recorded by the police. Rough site plan of the place of occurrence was prepared. Medical papers were also procured from the concerned hospital."

4. After completion of the investigation, final report under Section

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 4 -

173 Cr.P.C., was submitted and after committal of the case to the Court of Sessions on 16.09.2008, Ld. Trial Court framed the charge under Section 307 of IPC, vide order dated 11.11.2008.

5. For proving its case, prosecution examined as many as total 07 witnesses, apart producing some documentary evidence. The details of prosecution witnesses are as under:-

- PW1 – Satish, appeared as a witness of injury and being complainant, in the present case, who explained about the incident.
- PW2 – Satbir, appeared as an eye-witness of the incident.
- PW3 – HC Falil Singh, on receipt of ruqa (Ex.P1/1) on 04.05.2008, recorded formal FIR (Ex.P1/2).
- PW4 – Raju, is the draftsman, who inspected the spot on 26.05.2008, and prepared scaled site plan (Ex.P2) on the pointing out of Satbir s/o Sobha Ram.
- PW5 – MHC Ram Phal, appeared and proved DDR No.24, dated 04.05.2008 (Ex.P3).
- PW6 – Dr. Anant Ram, was in-charge of Janta Hospital, Barwala, and brought the summoned record and tried to prove the treatment and opinion of the Doctors of Janta Hospital about the injury suffered by Satish. Broadly speaking, by producing this witness, prosecution made an attempt of proving the offence being punishable under Section 308 IPC.
- PW7 – ASI Dharampal, is the Investigating Officer of the

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 5 -

case.

Thereupon, witness Satbir could not be examined being already dead, and other witnesses i.e. Rajesh and Anu were left as unnecessary.

6. While recording the statement of accused under Section 313 Cr.P.C., both the appellants stated as under:-

“Q8. Anything else you want to say ?

A. I am innocent. I have been falsely implicated in the present case.”

7. At the time of defense evidence, appellants also produced DW1 – Santosh (mother of appellant No.1 – Ram Mehar), who tried to project a new picture of happening of incident, and as to how injured Satish suffered injury.

DW2 –Vijender, who tried to prove the photographs (Ex.D8 to D21), its negatives (Ex.D23 to D37), and thereupon, on 05.03.2010, defense was closed with the statement of the appellants/accused.

8. Mr. Jitender Dhanda, counsel for the appellants raised his first submission by saying that the alleged incident has not happened in the manner as narrated by the prosecution witnesses, thus, base of the story projected by the prosecution is itself un-believable. Counsel for the appellants tried to project before this Court that infact, actual version of suffering of injury by injured Satish, has been explained by the Santosh (DW1), who is none, but the mother of appellant No.1. Relevant part of the statement (examination-in-chief), as deposed by the said defense witness (DW1) is reproduced hereunder:-

“Santosh wife of Mahender, 50 years, Agriculturist, resident of

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 6 -

Surewala.

Stated that on 1.5.2008 my son Ram Mehar was out in fields. I alongwithwife of Ram Mehar namely Mukesh were sleeping inside the room and my husband was sleeping in court yard. At about 11.00 p.m. Satish after climbing on the window was peeping inside our room from that window, which was in the street. When we raised alarm he fell down. I and my husband caught hold of him by visiting at the spot outside our house. Thereafter, we asked him for his climbing but he managed to escape from the spot. Next day we called the villagers. Thereafter, after about 10 days the police came to our house. Photographs Ex.D1 to Ex.D6 are of our house. The window from where Satish was peeping is at point A in Ex.DI. Photographs Ex.D8 to Ex.D21 (objected to) are of our house. The window from where Satish was peeping is at point A in Ex.D9, at point A in Ex.D13 to Ex.D18. The story of complainant that he was easing out is false and fabricated. The spot was not meant for toilet and was also not possible to do the same as it is the main passage of the village.”

9. On the other hand, learned State counsel, while countering the submission argues that the defense side has tried to set-up a new case before the Court, first time, at the stage of producing of the defense witnesses. Thus, the defense being afterthought is belated one and cannot be relied upon.

10. I have considered the said argument addressed by both the sides, and find that there is some substance in the submission of Mr. Vikas Bhardwaj, AAG, Haryana. I have also examined the cross-examination of the injured Satish (PW1) and another eye-witness Satbir (PW2). Story propounded at the time of defense evidence has not been put to the witnesses of prosecution, and thus, such a stand in the defense evidence cannot be made basis for discarding the prosecution case completely.

Moreover, there was another opportunity with the appellants while recording of the statement of accused under Section 313 Cr.P.C. There again, no such stand is taken by the appellants.

11. Thus, from no stretch of imagination, such an argument that the Satish (PW1), suffered the injury after falling down from the window is believable.

12. Next argument raised by Mr. Jatinder Dhanda, counsel for the appellants is that witness Satbir (PW2) is introduced later on. While referring to the cross-examination of the Investigating Officer - ASI Dharampal (PW7), it is argued by counsel for the appellants that this witness, who conducted the investigation of the case has admitted that *“I have not mentioned in the zimni specifically the fact that Satbir initially has seen the occurrence, but whatever, he has stated was recorded by me in the form of his statement under Section 161 Cr.P.C.”*.

From the said admission, counsel argues that such a statement recorded under Section 161 Cr.P.C., denotes that the witness is procured later on, whose details are completely missing in the police zimni.

13. Had this witness namely – Satbir (PW2), present there at the spot at the time of incident, his presence would have been recorded by the Investigating Officer in the police zimni. May be, argument addressed by counsel for the appellant is genuine one and logical, but this Court is dealing with a situation wherein presence of Satbir (PW2) on the spot, and his statement, would not be of much relevance, because, injured himself is the person, who lodges FIR and also appeared in the Court as a witness for explaining the reasons of suffering the injury by him.

It is also relevant that suffering of injury by the complainant is

not even denied by the appellants.

14. Next argument addressed by Mr. Jitender Dhanda, learned counsel for the appellants is that there is nothing available on record by which prosecution could prove the offence punishable under Section 308 of IPC.

As per case of the prosecution, appellants caused injuries to Satish Kumar (PW1) with brick with such an intention and under such circumstances that if by that act of causing injury, had Satish Kumar died, they would have been guilty of murder. Thus, appellants were initially charged for committing an offence under Section 307/34 of IPC. However, act of the appellants was found to be an attempt to commit culpable homicide not amounting to murder, thus, accordingly, they have been convicted under Section 308/34 of IPC.

15. Mr. Jitender Dhanda, learned counsel for the appellants further submits that prosecution has produced only one witness to prove the injury suffered by the injured Satish (PW1).

16. To deal with the said argument, and for convenience of this Court, statement of Dr. Anant Ram (PW6), Incharge Janta Hospital, Barwala, is reproduced as hereunder:-

“PW6

Dr. Anant Ram, Incharge Janta Hospital, Barwala.

Stated that I have brought the summoned record. As per record Dr Subhash Sharma, medico legally examined one Satish Kumar son of Dalbir Singh, 15 yeas male resident of Surewala on 2.5.2008 at about 12.20 a.m. He was brought by Rajbir son of Lila. The correct carbon copy of the original MLR is Ex.P4 (Objected to on the mode of proof). I identified the signatures and handwriting of Dr. Subhash Sharma, as he remained in my

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 9 -

hospital as Medical Officer for a period of 13 years. I also identified his signatures on medical ruqa Ex.P5 (Objected to). I also identified his signatures as well as his noting on application Ex.P6 (Objected to) moved by ASI Dharampal for seeking opinion regarding fitness of injured and the injured was declared unfit to make statement on 2.5.2008 and 3.5.2008 vide opinion Ex.P6/A & Ex.P6/B (Objected to) but he was declared fit to make statement on 4.5.2008 vide opinion Ex.P6/C (Objected to). On 6.5.2008 ASI Dharampal moved an application Ex.P7 (Objected to) regarding nature of injuries, upon which Dr.Subhash Sharma declared the injury on the person of injured Satish as dangerous to life, vide opinion Ex. P7/A (Objected to). C.T. Scan of the injured was also conducted in our hospital by Dr. Ajay Baja. I am well conversant with the signatures and handwriting of Dr. Ajay Bajaj as he worked in our hospital for about 1¾ years. The original C.T.Scan report is Ex. 8 (Objected to) and the C.T.Scan film is Ex.P8/A (Objected to).

XXXXXXn by Sh.Rajesh Jakhar, defence counsel.

It is correct that I have not been associated with Dr. Subhash Sharma or Dr Ajay Bajaj during the medico legal examination, CT.Scan and treatment of the injured. I am deposing only on the basis of hospital record. I have no personal knowledge about the present case. It is correct that none of the above stated doctors were radiologist. It is incorrect that I am deposing wrongly according to the police story. It is incorrect that the patient was falsely medico legally examined by Dr. Subhash Sharma and his injuries were falsely opined as dangerous to life. It is correct that no certificate has been issued on starting of the original MLR register. It is also correct that few papers of MLR register are lying blanks, which are forms of Medico Legal Examination. It is correct that leaving of blank forms in this register is not proper.”

From the said statement, learned counsel for the appellants

points out that there is a clear admission that said witness had never

associated with any of the Doctors, who conducted Medico Legal Examination, CT scan, X-ray, and treatment of the injured. It is also admitted that he deposed only on the basis of Hospital record, having no personal knowledge about the case. It is also admitted that no certificate had been issued before preparing the MLR; and that few columns of the MLR are lying vacant; and that none of the above named Doctors was radiologist. Thus, learned counsel for the appellants submits that neither the Doctor, who prepared the Medical Legal Report (MLR, Ex.P4), nor the radiologist, who did X-ray and CT scan, nor the Doctor, who gave treatment, has appeared in the witness-box. Thus, in such a situation, neither the CT scan report (Ex.P8), nor CT scan film is proved, based upon which Doctor Subhash Sharma, declared the injury as dangerous to life vide his opinion Ex.PW7/A. Thus, in the absence of any admissible medical evidence and proving of the same by the other Doctor when concerned Doctor is not available, in such a situation, holding the appellants guilty punishable under Section 308 of IPC, would be an incorrect approach.

17. While countering this argument, Mr. Vikas Bhardwaj, AAG, Haryana, vehemently opposed the submission and argued that once the complete record has been proved by Dr. Anant Ram (PW6), it was incumbent upon the defense to cross-examine and prove the opinion available on record as inadmissible or un-proved evidence. Thus, submissions addressed by the appellants is claimed to be against the law.

I have deeply examined the submissions addressed by both the sides by going through the medical evidence available on record viz-a-viz statement of Dr. Anant Ram (PW6), who made an attempt to prove the medical opinion relied upon by the prosecution.

18. On the other hand, learned State counsel while opposing the arguments of other side, has relied upon the judgment of Hon'ble Delhi High Court passed in *Crl.A.481/2019 and Crl.M.A.1845/2022 (For benefit under Section 428 Cr.P.C.)*, titled as, *'Kamlesh Vs. State'*, pronounced on *05.01.2023* (Neutral Citation No: 2023/DHC/000051), and submitted that in a case of rape, Doctor had identified the signature of the examining Doctor, who had left the hospital. Non-examination of the Doctor, who prepared MLC, was not held to be illegal, because, same has been proved by the colleague Doctor, who identified the writing.

I have also gone through the judgment cited by learned State counsel, but the facts and circumstances of the cited judgment are quite different to the present one. In the cited judgment of learned State counsel, two circumstances are apparently different; (i) the Doctor, who appeared to prove the MLC entries was/is herself a Doctor, and (ii) there is reason given that the Doctor who prepared the MLC, had left the hospital.

Both these reasons are not highlighted by the learned State counsel being available on record of the present case. Thus, the judgment of Hon'ble Delhi High Court would not be applicable.

19. Undoubtedly, there is no evidence available on record that how this witness (PW6 – Dr. Anant Ram) is claiming himself to be a qualified Doctor. There is no explanation to that effect on record in his deposition. Merely saying that I identify the signatures of Doctor Subhash Sharma, who prepared the MLR (Ex.P4) and gave opinion (Ex.PW7/A), is not sufficient for proving the said evidence. Executant of the said document/opinion has to be there in the witness-box by submitting himself to the accused for his/her cross-examination. Without there being appearance of such a

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010****- 12 -**

material medical evidence, in law, it would be considered that the accused is being deprived of opportunity of cross-examining the witness by keeping him/her away from the witness-box.

Moreover, it is also surprising that the mode of exhibiting the opinion by the prosecution has also been objected by the accused, but Trial Court has not taken note of the said aspect while deciding the fate of absence of admissible medical evidence. Non-appearance of Dr. Subhash Sharma, Dr. Ajay Bajaj, who did the CT scan and the Doctor, who gave treatment to the injured, is undoubtedly fatal to case of prosecution for the purpose of the examining of the nature of injury.

This Court has taken note of the CT scan report prepared by Janta Hospital Pvt. Ltd., Barwala (Hisar), which is signed by Dr. Ajay Bajaj, but no date is mentioned below it, but on the letter-head of the Janta Hospital Pvt. Ltd., CT scan (Ex.P8) report has been produced, which bears the date as 02.05.08. On the other hand, Dr. Ajay Bajaj has not appeared in the witness-box nor there is any explanation of non-examination of Dr. Ajay Bajaj, or Dr. Subhash Sharma, or the Doctor, who treated the injured in the present case. Letter-head on which CT scan report (Ex.P8) is produced before the Trial Court, does not carry any file No./Memo No./letter No./opinion No. to establish its connectivity with the record of the Hospital. It appears to be simply written on a letter-head by putting the date over it as 02.05.08. Thus, this Court is unable to even accept the authenticity of such document, which is prepared and handed-over to the Investigating Officer by a private hospital.

Moreover, as already noticed and observed here-above, status of Doctor Anant Ram (PW6) of being a Doctor is also doubted in the absence

of any such record and deposition available in the file.

Since, none of them has appeared in the witness-box for proving of the medical evidence, this Court has no hesitation in holding that the prosecution has failed to prove the injury under Section 308 of IPC, for which the appellants have been convicted.

20. In support of his arguments, learned counsel for the appellants has also relied upon the judgment of Division Bench of Hon'ble Patna High Court, rendered in ***Jadu Singh and Ors. Vs. State of Bihar, CRA(DB) N.624 of 1987 and CRA(DB) No.23 of 1988, D.O.D.: 29.11.2002*** (*Law Finder Doc Id # 79762*). Para No.9 of the said judgment is relevant, which is reproduced as under:-

“9. As for evidence about injuries sustained by Birendra Singh, one cannot fail to take notice that even in case of Birendra Singh, entries (Exhibit 6) recorded in the outdoor register of referral hospital, Jhajha in the pen of Dr. Suresh Prasad Barnwal was brought with the aid of Ram Bilash Sharma (PW 9), who was not skilled in the profession. That apart, the Court below itself had taken note of the injury report and also entries recorded by the Police Officer, in the police case diary. Apart from the fact that these documents were not of unimpeachable character on which reliance could have been placed, even the doctor, who was author of the injury report and was very much alive was not examined at trial, and in view of this infirmity that has crept in the prosecution version, no conclusion can be drawn about Birendra Singh having sustained injury from splinters of the bomb for which Jado and other appellants were shown to be answerable.”

Learned counsel for the appellants has also relied upon judgment of Division Bench this Court (Punjab and Haryana High Court) rendered in ***State of Punjab Vs. Harinder Singh @ Raju, CRA-80-DBA-***

CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010

- 14 -

2006, D.O.D.: 28.02.2008 (*Law Finder Doc Id # 140501*), and the judgment dated 12.02.2013 of Hon'ble Delhi Court in case **Surender Mandal Vs. The State (NCT Delhi) & other connected cases, Law Finder Doc Id # 426699.**

21. Thus, in view of the facts and circumstances, addressed by the learned counsel for the appellants and learned State counsel, and the reasons recorded here-above with the help of the cited judgments, I conclude my judgment by observing that happening of an incident is proved, however, in the absence of proving of the medical opinion about the nature of injury, conviction under Section 308 of IPC, cannot sustain, and thus, same is set-aside by holding the appellants to be guilty for committing an offence under Section 323/34 of IPC.

22. Accordingly, the present appeal is **partly allowed by altering the conviction of the appellants for committing an offence punishable under Section 323/34 of IPC only.**

Appeal stands **disposed of** accordingly.

ORDER OF SENTENCE

i) Learned State counsel has filed two separate custody certificates dated 15.05.2023, in Court today, which are taken on record, subject to all just exceptions. Office to tag the same at appropriate place. As per said custody certificates, appellant No.1 – Ram Mehar, has undergone 01 year, 07 months and 01 days inside jail. Whereas, appellant No.2 – Deepak, has undergone 08 months and 01 day inside jail.

ii) It is also noticed that as per custody certificates, none of the appellants has been found involved in any other criminal activity. Therefore, considering the facts and circumstances; that incident had occurred about 15 years back; nature of offence; factum of alteration of

**CRA-S-794-SB-2010 (O&M) AND
CRR-1689-2010**

- 15 -

conviction of the appellants for committing an offence punishable under Section 323/34 of IPC; and that no other instance of involvement of appellants in any criminal activity has been recorded in custody certificate, this Court finds it suitable to pass the order of sentence for the period as already undergone by the appellants till date. However, other part of sentence i.e. imposing of fine or compensation (if any) etc. would remain intact without any change.

In view of the terms and observations made herein-above, present appeal stands **disposed of** with aforesaid modifications in the order of sentence dated 09.03.2010, passed by Ld. Trial Court.

CRR-1689-2010

In CRR-1689-2010, petitioner has prayed for modification of order of sentence dated 09.03.2010, by enhancing the same *qua* accused-respondents No.2 & 3.

Since, the main appeal has been partly allowed and the sentence awarded to the accused-appellants (respondents No.2 & 3 herein) stands reduced to the period already undergone by them, therefore, nothing survives in present criminal revision petition, and same stands dismissed.

Pending criminal miscellaneous application(s), if any, are also disposed of accordingly.

**(SANJAY VASHISTH)
JUDGE**

May 17, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No