

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

CRA-AD-659-2019(O&M)
Date of decision : January 24, 2023

Jagdish

... Appellant

Versus

State of Haryana and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. N.C. Kinra, Advocate
for appellant.

Mr. Anmol Malik, DAG Haryana.

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HARINDER SINGH SIDHU, J.

The injured-complainant has filed the present appeal under Section 372 Cr.P.C. for setting aside the judgment and order dated 19.7.2019 of the learned Sessions Judge, Sonipat, whereby, accused-respondent No.2 has been acquitted in case FIR No.98 dated 07.08.2017 under Sections 323, 307, 458 and 506 IPC and Section 25 of the Arms Act, Police Station Mohana, Sonapat.

The case of the prosecution is that a complaint (Ex.PW6/A) was submitted by appellant Jagdish to the police party which had reached PGIMS Rohtak on receipt of information of his having sustained injuries in a fight. In the said complaint he stated that on the intervening night 6/7.8.2017, at about 1.00 am, he was sleeping in his house. He heard the noise of barking of dog. He woke up and noticed that accused Pawan had jumped off from the roof of his (complainant's) house. The complainant shouted at Pawan to stop and that he had been identified. After about 20 minutes, accused again entered the

house of complainant and inflicted knife blows on his left shoulder and chest with an intention to kill him. Accused was shouting that he would teach the complainant a lesson for the previous quarrel. The complainant raised alarm. His daughter Anju and mother Bharpai came there. On seeing them, the accused fled away from the spot threatening that he would kill the complainant.

On the basis of this information, FIR(Ex.PA) was registered. During investigation, the place of occurrence was inspected. The IO lifted two swabs of blood from the spot. On 8.8.2017, the accused was produced by his brother Pardeep. On his disclosure, one knife (Ex.PW2/D) was recovered. The knife and the swabs of blood lifted from the spot were sent for FSL examination. The Medical Officer, BPS GMC Khanpur Kalan gave opinion (Ex.PW1/A) to the effect that the injuries sustained by the complainant could have been caused with the knife. The doctor gave opinion (Ex. PW1/F) that all the injuries were simple in nature.

The prosecution has examined 13 witnesses. The complainant was examined as PW6. PW3 Smt. Bharpai, the mother of the complainant and PW4 Anju, his daughter, deposed that they had witnessed the incident.

The accused in his statement under Section 313 Cr.P.C. denied the occurrence and pleaded false implication. In his defence, he has examined Ms. Ritu (daughter of the complainant) as DW1.

The accused was acquitted by the trial Court primarily on the following grounds :

- (i) All the three injuries suffered by the complainant were simple in nature. Those were on non-vital organs of the body. In his cross-examination PW11 Dr. Chisal Bhatia, who treated the complainant at PGIMS Rohtak, admitted that the possibility of the

injuries being self suffered could not be ruled out.

(ii) The version of the complainant was doubted. As per the complainant on the night intervening 6/7.8.2017, he woke up on hearing the dog bark and saw that accused who had trespassed into his house jumped from the wall of his house. The complainant identified him and asked him to stop but the accused ran away. About 15 minutes thereafter, the accused came back and stabbed the complainant 2-3 times. When the complainant shouted for help, the accused fled away threatening him with dire consequences in future.

The Court found it improbable that the accused would again enter the house of the complainant after having been identified on the first occasion. Moreover, if the accused intended to inflict injuries on the complainant, he could have done so when he had intruded into the house on first occasion when the complainant was sleeping. Moreover, as per the version of the complainant he was sleeping in a room on the first floor. There was an open courtyard approximately ad-measuring 12 feet and 10 inch between the room where the complainant was sleeping and the street. The house had a boundary wall of about 5 feet. The accused was arrested on 8.8.2017. He was medico-legally examined. There was no injury on his person. The Court found it highly improbable that the accused would jump from the first floor directly into the street and yet not sustained any injury.

(iii) The deposition of PW3 Smt. Bharpai (mother of the complainant) and PW4 Ms. Anju (daughter of the complainant)

that they had seen the accused inflicting injuries to the complainant was also doubted in view of the the cross-examination of the complainant, wherein, he stated that his mother and daughter (PW3 and PW4 respectively) were sleeping on the other side of the house in open courtyard and had entered the room about 10-15 minutes after the incident.

(iv) PW6 Jagdish in his cross-examination had stated that there was no enmity between his family and the family of the accused. However, DW1 Ms. Ritu (daughter of complainant) stated that she had an affair with the accused. She wanted to marry him but her family was opposing this relationship. She deposed that her father had falsely got registered the present case against the accused. On the day of incident, she was present in her house and no such incident had taken place. On 22.2.2019, her parents quarrelled and gave bearings to her. She had filed a complaint at P.S. Adarsh Nagar, Delhi. They had threatened to kill her in case she deposed in favour of the accused.

Mr. Kinra, learned counsel for appellant has argued that the accused has been wrongly acquitted of charges levelled against him. The blood stained knife was recovered from the accused. Two of the three injuries were opined to have been caused with a sharp weapon. PW1 Dr. Kapil Kumar Swami had tendered opinion (PW1/D) that the possibility of injuries No.1 and 2 being caused with the knife recovered from the accused could not be ruled out. He further argued that the trial Court has wrongly doubted the version of PW6-Jagdish only for the reason that the accused had not sustained any injury while

jumping from the roof of the house on to the street. He contended that it is not necessary that in every case where a person jumps from the roof of a house, injuries are bound to occur. The version of PW3 and PW4 have been wrongly disbelieved. They were present in the house when incident took place and witnessed the occurrence. No reliance could have been placed on the deposition of DW1 to doubt the testimonies of PW3, PW4 and PW6.

We have considered the submissions of Mr. Kinra and also gone through the records. We are of the view that after appreciating the evidence the Trial Court was justified in acquitting the accused of charges levelled against him and there is no ground to interfere with the findings.

PW1 Dr. Kapil Kumar Swami of BPS GMC Khanpur Kalan had medico- legally examined the injured on 7.8.2017. The following injuries were noticed on the person of the injured :-

- 1. Incised wound of size 6 x 2 cm. Present over posterolateral aspect of left shoulder. Margins are clear. Fresh and profuse bleeding present and injury was advised for orthopaedic opinion.*
- 2. Incised wound of size approximately 6 x 1 cm. Present on left auxiliary region. Pain and swelling present on left side of chest. Wound margins are clear and injury was advised for surgeon opinion.*
- 3. Pain, swelling and tenderness present over middle of forehead. Advised surgeon opinion.*

All the injuries were kept under observation. The kind of weapon was sharp for injuries No.1 and 2 and blunt for injury No.3. The duration of the injury was 6 hours. He further deposed that on 21.8.2017, on an application moved by the police, he gave opinion to the effect that the possibility of injuries No.1 and 2 having been caused with knife recovered from accused could not be ruled out. He also opined that all the injuries were simple. In his cross-

examination, he stated that injuries No.1 and 2 were not on the vital organs of the body. The nature of injuries No.1 and 2 was superficial. The nature of the injuries are not dangerous to life. Injury No.3 could be caused by fall from height on hard surface.

PW11 Dr. Chisal Bhatia, PGIMS Rohtak, where the complainant remained admitted from 7.8.2017 to 13.8.2017, opined that the patient was having only two injuries. Both injuries were simple in nature. Those were only skin deep. The possibility of the injuries being self inflicted could not be ruled out. He further stated that the name of the assailant was not mentioned in his records.

The reasons given by the learned trial Court for doubting the version of the PW6-Jagdish (complainant), PW3-Bharpai (mother of the complainant) and PW4-Anju (daughter of the complainant) appear to be sound and well considered. As recorded by the trial Court, once the complainant had identified the accused when he first intruded into his house and the complainant had shouted at him to stop and that he had been identified, it is highly improbable that the accused would again intrude into the house barely 15-20 minutes thereafter and successfully escape after causing injuries to the complainant. The complainant in his deposition has specifically stated that when the accused had entered the house for the first time he had woken up on hearing his dog bark, but the accused escaped by jumping from the wall of the house. The absence of any injury on the person of the accused has been rightly considered as a factor for doubting the version of the complainant. As rightly held by the Trial Court, it is highly improbable for a person to jump from the roof of a house and not to sustain even a scratch. Moreover, if the complainant had a dog in his house which had started barking on seeing the accused

intruding into the house on the first occasion, it is highly improbable that the accused would dare to return to the house immediately thereafter. It is also highly improbable that the dog would not bark when the accused entered the house for the second time and thus pre-warn the occupants of the house before the accused could cause any injury.

The reasons given by the learned trial Court for doubting that the incident had been witnessed by PW3 Smt. Bharpai (mother of complainant) and PW4 Anju (daughter of complainant) are also plausible. The complainant himself in his cross-examination stated that PW3 and PW4 were sleeping on the other side of the house in the open courtyard and had entered his room 10-15 minutes after the incident. Thus, contrary to their claim PW3 and PW4 had not witnessed the incident. PW3, who is aged about 70 years, in her cross-examination had deposed that both her eyes had been operated and she wears spectacles and that she cannot see without the spectacles. She also admitted that when she had gone to the room of the complainant she was not wearing spectacles. From this, the learned trial Court rightly concluded that she could not have identified the accused. Significantly, both PW3 and PW4 in their depositions have not uttered a word regarding the first intrusion by the accused. Nor have they in their deposition stated that the complainant disclosed to them about the first intrusion of the accused.

The knife and two swabs containing blood stained earth and blood were sent for FSL examination. As per FSL report Ex.PY, blood was detected on all three exhibits. On serological analysis, the origin of the blood on the two swabs was 'Human', but no result could be given regarding the origin of the blood on the knife and it was reported as 'Material Disintegrated'. Thus, this report also does not in any way connect the accused with the incident.

The deposition of DW1, who is none other than the daughter of the complainant, cannot be brushed aside. She has stated that on the day of the incident she was present in the house and no such incident had taken place. She has also deposed that she had an affair with the accused and wanted to marry him but the complainant and her family were opposed to this and that the complainant had registered this false case to settle scores with the accused. She also deposed that she had been beaten by her parents regarding which she had lodged a complaint at Police Station Adarsh Nagar, Delhi and that her parents had threatened to kill her if she deposed in favour of the accused. She also stated that she was living with the accused though marriage had not been solemnized.

In view of the above, we find no reason to disagree with the findings of the learned trial Court acquitting the accused.

Resultantly, this appeal being devoid of merit, is dismissed.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 24, 2023
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No