

Bijender And Others Vs State Of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 29, 2019

Acts Referred: Indian Penal Code, 1860 " Section 34, 307, 353, 384, 506

Arms Act, 1959 " Section 25

Code Of Criminal Procedure, 1973 " Section 313

Constitution Of India, 1950 " Article 21

Hon'ble Judges: Manjari Nehru Kaul, J

Bench: Single Bench

Advocate: Deepshikha Chauhan, S.S. Pannu

Final Decision: Dismissed

Judgement

Name of

Convict(s)", Offence(s)", "Period of

sentence(s)", "Fine(s)

imposed", "Period of

sentence(s) in

default of

payment of

fine(s)

Bijender

Satish

Ramesh", 353/34 IPC, "Rigorous

imprisonment (RI)

for 01 year each", " 1000/-

each", "RI for 01

month

, 307/34 IPC, "RI for 03 years

each", " 2000/-

each", "RI for 02

months

Ramesh, 25 Arms Act, RI for 01 year, ` 500/-, "RI for 01

month

appellants No.1 & 2 - Bijender & Satish could not be said to be sharing a common intention with the main accused i.e. accused-appellant No.3. " , , , ,

Ramesh, in committing the offence under Section 307 IPC." , , , ,

9. Per contra, learned State counsel submitted that the prosecution witnesses supported the case of the prosecution in its entirety and there was no" , , , ,

occasion for them to falsely depose against them in the instant case. Learned State counsel further submitted that in fact the appellants had criminal, , , ,

antecedents and had been involved in a criminal case a day prior to the occurrence in hand qua which FIR No. 102, dated 27.07.2003, under Sections" , , , ,

384, 506, 34 IPC too had been registered at P.S. City Gohana against them. Hence, when they were signaled by the police party headed by PW-8/SI" , , , ,

Ram Kishan to stop, they fled away as they would have been conscious that the aforementioned FIR stood registered against them. Learned State" , , , ,

counsel also drew the attention of this Court to the FSL Report Ex. PE, which proved that the cartridges recovered had been fired from the pistol" , , , ,

recovered from appellant No.3. " Ramesh (since expired). He, thus, prayed for dismissal of the instant appeal." , , , ,

10. I have heard learned counsel for the parties and gone through the evidence on record. , , , ,

11. Before proceeding further, it would be apposite to reproduce Section 307 IPC, which reads as under:-" , , , ,

"307. Attempt to murder. "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused" , , , ,

death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also" , , , ,

be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is" , , , ,

hereinbefore mentioned. , , , ,

Attempts by life convicts. "When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be" , , , ,

punished with death. " , , , ,

12. On a bare perusal of the provisions of Section 307 IPC, it leaves no manner of doubt that to bring home the offence under Section 307 IPC, both" , , , ,

mens rea and actus reus on the part of the accused qua murderous intent would have to be present. Presence of injury/injuries would not be necessary, , , ,

to attract an offence under Section 307 IPC. Whether there was a murderous intent on the part of the accused or not, would have to be gathered from" , , , ,

the nature of weapon used in the crime and the seat of injury. , , , ,

13. In the case in hand, the appellants Bijender and Satish, exhorted the appellant-Ramesh (since expired) to fire back at the police and who in fact did" ,,,,

oblige them, though luckily it did not hit anybody. Thus, there appears no reason whatsoever to infer that 'intention' was missing on the part of the" ,,,,

accused- appellants No.1 & 2 (Bijender & Satish) to harm the police party. In fact, the intention of the accused-appellants is clearly discernible from" ,,,,

the weapon which one of their companions i.e. accused-appellant No.3 " Ramesh was carrying on his person. The sequence of events leading to" ,,,,

the occurrence in hand clinchingly shows that both 'intention' and 'knowledge' were very much present on the part of all three accused-appellants. All" ,,,,

the three were riding together on the same motorcycle, coupled with the fact that the accused-appellant No.3 " Ramesh was armed with a pistol" ,,,,

which was used by him in the occurrence is a clinching circumstance which establishes the complicity of accused-appellants No.1 & 2 " Bijender & ,,,,

Satish in the crime. Both the appellants had the knowledge that accused-appellant No.3 - Ramesh was carrying a firearm on his person, which was" ,,,,

used by him and that too on the exhortation of accused-appellants No.1 & 2 (Bijender & Satish). The fact that nobody was injured in the cross-firing" ,,,,

in the alleged occurrence would be of no consequence because as already observed earlier, Section 307 IPC can be attracted even in the absence of" ,,,,

any injury having been suffered by any person in an occurrence. The next argument of the learned counsel for the appellants that it was a case of" ,,,,

false implication as no independent witness was joined in by the Investigating Agency is hard to digest in the absence of any previous enmity muchless" ,,,,

any other motive having been attributed to the Investigating Agency. No doubt all the witnesses were members of the police force, but that by itself" ,,,,

would not render the prosecution case untrustworthy enough to be discarded. In fact, the evidence adduced before the Ld. Trial Court comes across" ,,,,

as fully credible and sufficient enough to nail the appellants in the crime in question" ,,,,

14. The argument of the learned counsel for the appellants that it was a case of defective investigation and against the settled law, because the" ,,,,

complainant and Investigating Officer were the same. She placed reliance upon Mohan Lal Vs. The State of Punjab, (2018) 17 SCC 62,7 which is" ,,,,

however, would not be applicable to the facts and circumstances of the instant case. In Varinder Kumar Vs. The State of Himachal Pradesh, 2019" ,,,,

SCC Online SC 170, the Supreme Court has dealt at length on this issue. The relevant paragraphs are reproduced as under" ,,,,

"9. The only issue surviving for consideration is with regard to the prosecution being vitiated because PW-10 was the informant as also the" ,,,,

Investigating Officer, in view of Mohan Lal (supra). The ground not having been raised at any earlier stage quite obviously, the prosecution never had" ,,,,

a chance to contest the same. It has not even been pleaded in the appeal. Nonetheless in view of the reliance placed, we shall examine the issue." ,,,,

10. In Mohan Lal (supra) our attention had been invited to the divergent views being taken on the issue with regard to the informant and the ,,,,

investigating officer being the same person in criminal prosecutions, and the varying conclusions arrived at in respect of the same. The facts in Mohan" ,,,,

Lal (supra), were indeed extremely telling in so far as the defaults on part of the prosecution was concerned. In that back ground it was held that the" ,,,,

issue could not be left to be decided on the facts of a case, impinging on the right of a fair trial to an accused under Article 21 of the Constitution of" ,,,,

India, observing as follows:" ,,,,

“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the" ,,,,

point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in" ,,,,

this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible" ,,,,

abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has" ,,,,

to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the" ,,,,

investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined" ,,,,

conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. “

xx xxx xx xxx ,,,,

12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for ,,,,

the system to send the right message to all in the society “be it the law-abiding citizen or the potential offender. Human rights are not only ,,,,

of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole." ,,,,

xx xxx xx xxx ,,,,

xx xxx xx xxx ,,,,

15. Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an accused for ,,,,

being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was" ,,,,

nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in Mohan Lal (supra) were telling with ,,,,

regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the" ,,,,

appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or" ,,,,

concluded, and appeals pending all of which will necessarily be impacted. xx xxx xx xxx" ,,,,

xx xxx xx xxx ,,,,

18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni- directional exercise. A" ,,,,

proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law" ,,,,

laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other" ,,,,

considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (supra) shall" ,,,,

continue to be governed by the individual facts of the case.Ã¢â€â€ ,,,,

In the instant case as well, the appellants have criminal antecedents and a day prior to the occurrence, they had been involved in a criminal case, for" ,,,,

which an FIR too was registered against all of them. Hence, in the opinion of this Court, the investigation would not stand vitiated in the facts and" ,,,,

circumstances of the case.,,,,

15. Resultantly, as a sequel to the above discussion, I have no hesitation that the conviction of the appellants under Section 307 IPC with the aid of 34" ,,,,

IPC and Section 353 IPC cannot be set aside just because they did not participate in the shooting, which took place between the police party and the" ,,,,

appellant Ã¢â€â€ Ramesh (since expired). They definitely had the knowledge that one of them i.e. appellant - Ramesh was carrying a firearm. Further, it" ,,,,

was the appellants, who had exhorted the appellant Ã¢â€â€ Ramesh to shoot at the police party. Hence, they shared a common intention with appellant" ,,,,

Ã¢â€â€ Ramesh to attempt to kill the police. All the ingredients of Section 307 IPC are present in the instant case. I, therefore, see no reason to interfere" ,,,,

with the impugned judgment dated 24.08.2004 and order of conviction dated 25.08.2004. Consequently, the instant appeal stands dismissed. The" ,,,,

accused-appellants are on bail. Their bail/surety bonds stands cancelled. Necessary steps be taken to secure their custody.,,,,