

(2004) 07 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No's. 351-SB and 352-SB of 1992

Ajay Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 1, 2004

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 394, 397

Citation: (2005) 139 PLR 808

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: H.S. Gill and R.K. Dhiman, for the Appellant; Sunil K. Vashisth, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

Satish Kumar Mittal, J.

This judgment shall dispose of two Criminal Appeals bearing Criminal Appeals No. 351-SB of 1992 and 352-SB of 1992, both filed by the accused. The appellant has been convicted u/s 397 I.P.C. and sentenced to undergo rigorous imprisonment for 7 years with fine of Rs. 1000/-, and in default of payment of fine, to undergo further rigorous imprisonment for two months; u/s 394 I.P.C. and sentenced to undergo rigorous imprisonment for 5 years with fine of Rs. 1000/- and in default of payment of fine, to undergo further rigorous imprisonment for two months in case F.I.R. No. 341 dated 16.10.1991 under Sections 394 and 397 I.P.C. registered at Police Station Sadar Rohtak; and u/s 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three months in case F.I.R. No. 342 dated 16.10.1991 u/s 25 of the Arms Act registered at Police Station Sadar Rohtak.

2. In brief, the prosecution case is that on 15.10.1991, one Jeet Ram, driver, was taking his truck from Gurgaon to Nabha via Rohtak. His nephew Joginder was also accompanying him. On the way at Farook Nagar, they took their meals at about 12.30 midnight. They reached a crossing in the area of village Dighal where one tyre of the truck got punctured. When they were changing the wheel, the accused Ajay Singh approached them and told them that he wants to go to Rohtak to join his duty, and requested for a lift in the truck. Thereupon, Jeet Ram agreed and gave him a lift. The accused sat by the side of the driver Jeet Ram. Joginder sat on the seat behind the seat of the driver. When the truck entered into the area of Village Kalauntha, the accused drew out a knife and put it on the neck of Jeet Ram asked him to stop the truck otherwise he would kill him. Jeet Ram stopped the truck on the right side. Then accused caused a slap on the face of Jeet Ram and removed an amount of Rs. 1,450/-, a goods receipt and the purse from his pocket. He also removed the wrist watch of Jeet Ram and gave him 3-4 fist blows. After that, when the accused was alighting from the truck. Jeet Ram caught hold him from the back side and asked his nephew Joginder to give him the iron rod lying in the truck. With that rod, Jeet Ram caused blows to the accused. In the scuffle, accused caused tooth bite on the nose and hand of Joginder. Thereafter, the accused jumped down from the truck and entered into the nearby Harbar field and hide himself therein. Then, Jeet Ram took his truck to Police Station Sadar Rohtak and reported the matter to the police. His statement was recorded, on the basis of which, the F.I.R. was registered against the accused while giving his description. Thereafter, the police accompanied Jeet Ram in a jeep and reached at the place of occurrence. On search, the accused was found lying in injured condition in the field. He was identified by Jeet Ram and was arrested by the police. The looted property, i.e. the amount of Rs. 1,450/-, purse and the bill were recovered from the accused and were taken into possession vide memo Ex.PD. Thereafter, both Jeet Ram as well as accused Ajay Singh were got medically examined. Ex.PA is the M.L.R. of the accused which has been proved by PW-2, according to which, there were eight injuries on the person of the accused. Ex.PK is the M.L.R. of Jeet Ram got proved by PW-6, according to which, five injuries were found on his body.

3. The accused was charge-sheeted for the offence punishable u/s 394 read with Section 397 I.P.C. as well as Section 25 of the Arms Act. To prove its case, the prosecution examined only six witness, including PW-4 Jeet Ram and PW-5, the Investigating Officer. In his statement u/s 313 Cr.P.C., the accused had taken the plea that on the date of occurrence, he had boarded the truck of Jeet Ram for going to the house of his sister. Jeet Ram took liquor with him on the Jind road by-pass in the area of Rohtak and asked him to bring more liquor, when he refused. Jeet Ram picked up a quarrel with him and then gave iron road blows to him which was supplied to him by Joginder. From there, he was taken to the police station where a false case was planted on him.

4. The trial Court, on the basis of statements of two witnesses, namely, PW4-Jeet Ram and PW-5-Investigating Officer, along with the other documents, namely, the Recovery Memo, the Site-Plan etc., came to the conclusion that the aforesaid prosecution version stood proved and thus convicted the accused for the offence under the aforesaid Sections. Hence, these appeals.

5. The learned counsel for the appellant submitted that in the instant case, prosecution has not established the guilt against the accused beyond reasonable doubt. He submitted that in the case, there are two versions. One given by the complainant Jeet Ram and the other by the accused. The version given by the complainant Jeet Ram is quite improbable for various reasons. Firstly, that as per medical report of the accused Ex.PA, 8 injuries were found on the body of the accused, some of which were grievous in nature, but the version given by Jeet Ram did not properly explain causing of those injuries by him. Secondly, when the complainant along with the police party came back to the spot for search of the accused, it is not clear how they identified the place of occurrence in the dark night and how they located the injured in the field. Thirdly, that the accused after committing the crime remained in a nearby field and did not run away from the spot, appears to be quite improbable because normally an accused after committing the crime must run away from the place of occurrence. The learned counsel for the appellant further pointed out that not only the version given by the complainant Jeet Ram is highly improbable but there are material contradictions in the statements of two star witnesses, i.e. PW-4 and PW-5. These contradictions and the improbabilities have caused a doubt in the prosecution version. In that situation, the conviction should not be based only on the statement of PW4. particularly when the prosecution did not examine the other witness, namely, Joginder, who was very much present at the place of occurrence to corroborate the statement of PW-4.

5. The learned counsel for the appellant further submitted that admittedly no injury was caused to Jeet Ram with knife which was alleged to have been recovered from the possession of the appellant. While referring to the decision of the Madras High Court in Raja v. The State 1986 CrL.J. 285, the learned counsel submitted that the knife recovered from the possession of the appellant does not fall under the definition of deadly weapon, therefore, his conviction u/s 397 is not sustainable and at the most he can be convicted u/s 394 I.P.C. Since he has already undergone more than 1 year 3 months, therefore, he should be released as undergone by convicting him u/s 394 I.P.C.

6. On the other hand, learned counsel for the respondent-State submitted that the prosecution has fully proved the case against the appellant and he has been rightly convicted u/s 397 I.P.C. He further submitted that mere non-examination of Joginder, who was minor at that time, was not fatal and the statement of Jeet Ram which is being corroborated by the statement of PW-5. Investigating Officer and the other documents proved on record, are sufficient to establish the knife recovered

from the possession of the appellant was a spring actuated knife having a button to operate. The blade of the said knife was more than 4" and the handle was of 5". Therefore, the said knife fall under the definition of "deadly weapon". Thus, the appellant was rightly convicted by the trial Court for the offence u/s 397 I.P.C.

7. After hearing the arguments of the learned counsel for the parties and perusing the record of the case, I am of the opinion that these appeals deserve to be allowed and the appellant also deserves to be acquitted.

8. In this case, the occurrence is admitted. However, there are two versions of the occurrence: one given by the complainant Jeet Ram and the other given by the accused Ajay Singh in his statement u/s 313 Cr.P.C. To prove its version, the prosecution has only examined Jeet Ram as PW-4. The other witness, namely, Joginder, who was very much present at the time of occurrence and has also participated to some extent in the occurrence, was not examined by the prosecution. Thus, in this case, there is no corroborative oral evidence.

9. The question now for consideration is whether in the facts and circumstances of the case, the conviction of the appellant merely on the basis of the statement of the complainant without there being any corroborative evidence of the said version, is justified and safe. If the prosecution version and the statement of the two material witnesses, i.e. PW-4 and PW-5, are closely examined, then there appears to be many suspicion and doubts. The version of Jeet Ram about the manner in which the occurrence took place, does not seem to be probable. In the statement of PW-4, which he made before the police and the statement which he made in the Court, there are contradictions regarding causing of the injuries to the accused by the iron rods. This statement did not explain the 8 injuries caused on the body of the accused, some of which were grievous in nature. It also creates doubt that when due to the injuries the leg of the accused was fractured and even thereafter he ran away from the clutches of the complainant and hide himself in the Harhar field. If after the injuries, he was capable of run away, then there was no reason for the accused not to run away from the Harhar field during the intervening period when the complainant came with the police later on. On one hand, the prosecution explained that due to the fracture on his leg, the accused could not run away and on the other hand, the prosecution was putting the version that even after receiving the injury, the accused ran away from the spot. This contradiction cannot be accepted. Secondly, the version of the prosecution that the place of occurrence was identified by Jeet Ram when he was accompanied with the police party to the place of occurrence which led to the arrest of the accused, cannot be accepted. This version does not seem to be probable. In this regard, there are contradictions in the statement of the accused and the Investigating Officer. Thus, in my opinion, some doubt has been created regarding the prosecution version. In such situation, the corroboration of the prosecution's version by another witness was necessary. In the instant case, the other witness of the occurrence was available but the prosecution

did not examine him. The reason given by the prosecution was that he has 12 years old, therefore, he was not examined as his statement would have been dubbed as a statement of the child witness and an interested witness as he was relative of the complainant. In my opinion, both these reasons are not sustainable. A boy of the age of 12 years is enough competent to give his statement, and secondly there was no question of interested witness in this case as Joginder himself participated in the occurrence. The observation of the trial Court that the defence version given by the accused is improbable, cannot be accepted. It is for the prosecution to prove the guilt beyond reasonable doubt against the accused. In this case, the prosecution has not established the guilt against the accused beyond reasonable doubt. The other evidence which has been taken against the accused are the Recovery Memos Ex.PD and PE vide which stolen articles as well as the knife were recovered from the possession of the accused. Admittedly, no independent witness was associated at the time of recovery of the aforesaid articles. The Recovery Memo was signed by the Investigating Officer as well as the complainant. If the other evidence available on the record i.e. Site-plan (Ex.PB) which was prepared by PW3-Bal Kishan, Patwari and the other two site-plans i.e. Ex.PF and PG available on the record which were prepared by the Investigating Officer, are closely scrutinised, then the major contradiction appears with regard to the place of occurrence and the place where the accused was lying injured. In the site-plan prepared by the Investigating Officer, he has shown the kutcha path and a water khal whereas in the site-plan prepared by the Patwari, neither any khal nor any path is existing. This shows that the site-plans were not prepared on the spot and it creates doubts. In my opinion, the conviction of the appellant, on the basis of solitary statement of Jeet Ram without any corroboration, is not safe and in such a situation, the benefit of doubt must go to the accused.

10. In view of the afore-said, both the appeals are allowed and the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Rohtak, are set aside, and the appellant is acquitted of the charges framed against him.