

(2005) 02 P&H CK 0186

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 338-SB of 1993 and Criminal Appeal No. 359-SB of 1993

Kuldeep and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Feb. 16, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 34

Citation: (2005) 14 CriminalCC 564

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Tanu Bedi, for the Appellant; R.D. Sharma, A.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.

By this common order, I propose to dispose of Criminal Appeal No. 338-SB of 1993 and Criminal Appeal No. 359-SB of 1993 as the same emanate from common impugned order of conviction and sentence dated 11/13.9.1993 vide which the appellants Shamsher Singh and Subhash have been held guilty u/s 307 IPC and sentenced to undergo RI for seven years as also to pay fine of Rs. 1,000/- on in default thereof, to further undergo RI for six months, whereas Kuldeep and Krishan, who have filed Criminal Appeal No. 338-SB of 1993, have been held guilty u/s 307 read with Section 34 IPC and sentenced and fined in the same manner as Shamsher and Subhash.

2. The occurrence leading to injuries to Rajinder Singh, PW2, as per the prosecution version, had taken place on 22.9.1992 in the area of village Joully in the school where victim Rajinder Singh was studying. The FIR, with regard to incident, came to be recorded on the same day at 5.45 P.M. on the statement, Ex. PC, of the injured, u/s 307/ 450 read with Section 34 IPC.

3. While unfolding the prosecution version, Rajinder Singh stated that he was studying in Government School, Jouly in 10+1. On the eventful day, as usual, he had come from his village at 7 A.M. in the school for studying. At about 12 noon, Master Yag Dutt Sharma was teaching in his period. AT that time, Shamsheer Singh appellant told the victim that some relatives of his had come to see him, who were waiting for him in a room situated outside the school and he should see them immediately. When he went to that room, Shamsheer Singh and Subhash appellants, were found standing outside that room. As soon as he reached in front of that room, Shamsheer took him in his grips and Subhash put a rope around his neck and dragged him into the room. He raised noise "Killed-killed". In the room, two persons were already present. They shouted to kill him. On that, Subhash and, Shamsheer pulled the rope and other two young men started giving him kikkar Danda blow and he was made to fall on the ground. The victim continued raising alarm of killed-killed. Meanwhile, on hearing his noise, Bhagwan, Raja and Dharam Singh came at the spot, who witnessed the occurrence and saved him from the appellants. Out of the two persons, one was wrestler type having small beard white bushirt and pant of fast colour, aged about 24/25 years and the second one was of medium age, thin and strong person with whitish complexion, wearing blue coloured pant and bushirt, aged about 21/20 years. The reason of his being beaten, he further stated, was that his father prohibited Shamsheer from making obscenity in the street while in drunkard condition. He further stated that if he had not been rescued, he would have been done to death. He received scratches of rope on his neck and there were lathi blows on his neck.

4. In its endeavour to bring home the offence against the appellants, prosecution examined Dr. B.K. Gupta, who appeared as PW1 and stated that on 22.9.1992 at 8.15 PM he had medico-legally examined Rajinder and found following injuries on his person:

1. Reddish contusion was present around the neck in the right half starting 2.5 cm from the middle line in front going upwards and backward behind the neck and crossing the midline and reaching 4 cm beyond the midline from the back. It was situated below the hyoid bone prominence by 3 cm in the front. Abrasion with clotted blood was present over the reddish contusion in a part of it measuring in area of 4.5 x 1.5 cm. Width of contusion was 1.75 cm at its maximum width. It tapered to some extent on either side. Imprint of contusion was regular pattern.

2. Swelling was present on the left half of the face near the lateral angle of the eye. No external mark of injury was seen.

3. Reddish contusion of 8.5cm x 2 cm over back of right forearm in the posterior medial part in upper half. It was longitudinally placed.

4. Reddish contusion of 5.5 x 2.5 cm over back of right forearm near the elbow joint longitudinally placed.

5. Reddish contusion of 21.5 x 1.75 cm over right half back of trunk almost longitudinally placed 11.5 cm from the midline in the lower 2/3 of the trunk.
6. Reddish contusion of 8.5 x 3 over the back of trunk on the right half obliquely placed, upper end was 4 cm from the mid line and situated at the level of L-1 vertebra. Injury then went downward and outward.
7. Reddish contusion of 4.5 x 4 cm over the back of the left half of the trunk almost in the midline at the level of D10 vertebra.
8. Reddish contusion almost transversely placed in the left scapular region back inner and 10 cm from the midline. It measured 8.5 x 3 cm.
9. Reddish contusion of 9.5 x 3 cm over the back of right half of the trunk in the scapular region obliquely placed medial and was 10.5 cm from the midline.
10. Reddish contusion of 9.5 x 3 cm over the antero lateral aspect of the right thigh near the knee joint obliquely placed.
11. Reddish contusion of 8.5 cm x 3 cm over right buttock obliquely placed.

5. The doctor opined that all the injuries were simple in nature and the kind of weapon used was blunt for all the injuries. Probable duration of injuries was within 24 hours except injury No. 2 about which time could not be given. He further stated that possibility of injury No. 1 due to rope could not be ruled out and that it could have caused death if rope would have been pulled with excessive force. When cross-examined, he stated that all the injuries on the person of Rajinder could be possible with a single weapon or with different weapons. Four types of contusions with different width were present on the person of the injured.

6. Rajinder, the star witness, while deposing in tune with the FIR, further stated that appellant Shamsher took him in his grips and other accused Subhash put a rope around his neck and pulled him inside the room whereas other accused Krishan and Kuldeep were sitting on a cot and they said to other accused that he (injured) should be killed. Shamsher and Subhash pulled the rope around his neck with force and that one end of the rope was in the hand of Shamsher and the other in the hand of Subhash and he was made to fall on the ground. Kuldeep and Krishan started giving blows with kikkar dandas on his back. In the context of the only contention raised in support of these appeals, there is no need to make a mention of other evidence led by the prosecution.

7. Ms. Tanu Bedi, learned counsel representing the appellants, vehemently contends that in totality of the facts and circumstances of the present case and, in particular, medical evidence provided by Dr. B.K. Gupta, PW1, and even the narration of facts given in the FIR coupled with the statement made by Rajinder Singh in the Court, no case u/s 307 of Indian Penal Code is made out and at the most, it would be a case covered u/s 323 of the Indian Penal Code.

8. There appears to be considerable merit in the contention of learned counsel, as noted above. The Doctor clearly opined all the injuries to be simple in nature. Injury No. 1 on the basis of which alone, the case, if at all, could be covered u/s 307 IPC, is only reddish contusion around the neck in the right half starting 2.5 cm from the middle line in front going upwards and backward behind the neck and crossing the midline and reaching 4 cm beyond the midline from the back. It appears to be a case of complete misreading of evidence by learned trial Court, who in paragraph 22 of the judgment observed that injury No. 1 around the neck of victim was declared by the Medical Officer to be sufficient to cause death. This was, indeed, not the statement of the Doctor, who had, in fact, stated that if rope put around the neck of the victim was pulled with force, it could have caused death. The very fact that injury No. I has been described as above, would clearly show that the rope was not pulled with force at all. What further appears from the narration of facts given in the FIR and the statement made by the victim is that the rope was put on the neck only with a view to make the victim fall on the ground so that, those, who had put the rope around the neck, could easily cause other injuries to him. Rajinder Singh, victim, while appearing in the witness box as PW2, stated that appellant Shamsheer took him in his grips and other accused Subhash put a rope around his neck and pulled him inside the room whereas other accused Krishan and Kuldeep were sitting on a cot and they said to other accused that the injured should be killed. In later part of his statement, which is not in tune with FIR, he, however, stated that Shamsheer and Subhash pulled the rope around his neck with force and that one end of the rope was in the hand of Shamsheer and the other in the hand of Subhash and he was made to fall on the ground. Assuming the later part of his statement to be correct, the fact still remains that rope was put around his neck to make the victim fall on the ground. The victim nowhere stated that rope was put on his neck, encircling the same and then it was pulled with force. By putting rope either in front of neck or at the back of the neck even with force, was, thus, intended to make the victim fall on the ground. No case, in considered view of this Court, u/s 307 of Indian Penal Code could be made out on the basis of medical and ocular evidence led by the prosecution. Occurrence in this case had taken place in the year 1992. A period of more than 12 years has gone by and the appellants, who all were students between 18 to 20 years, in considered view of this Court, have suffered sufficient agony of protracted trial.

9. In the facts and circumstances, as mentioned above, this appeal is allowed. Order with regard to conviction recorded against the appellants u/s 307 of Indian Penal Code is set aside and they are held guilty for an offence u/s 323 of Indian Penal Code. This Court is informed during the course of hearing that the appellants have undergone sentence for a period of 35 days during the pendency of the trial. That in considered view of this court would meet the ends of justice. So ordered.