

CASE NO.:
Appeal (crl.) 694 of 2004

PETITIONER:
JAGDISH & ANR.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 12/05/2005

BENCH:
P.VENKATARAMA REDDI & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T

P.VENKATARAMA REDDI, J.

The two appellants herein were convicted under Section 307 read with Section 34 and Section 323 read with Section 34 IPC and they were sentenced to undergo rigorous imprisonment for ten years for the offence under Section 307/34 IPC and to pay a fine of Rs.100/- each.

On appeal to the High Court of Punjab & Haryana, the High Court upheld the conviction under the aforementioned Sections but reduced the sentence of the second appellant Balbir from ten years to seven years. The High Court further directed the appellant Jagdish to pay Rs.1 lac and the other appellant Balbir to pay Rs.50,000/- as compensation to Sukhbir (PW-8).

They were charged for attempt to murder Sukhbir (who was examined as PW-8) on 9.8.1990 at about 11.15 AM in the village Sihol. The prosecution case is that there were some ill-feelings between the accused and the members of the prosecution party on account of a land dispute. On 9.8.1990, PW-8 along with his brother Om Prakash (PW-9) went to Palwal in order to get the ticket reservation done and also to purchase some household goods. At about 11.15 AM, when they crossed G.T. Road, all of a sudden, the second accused Balbir, armed with a lathi and the other accused Jagdish, armed with Gandasa accosted them. The second accused Balbir hit Sukhbir (PW-8) on the knee with lathi as a result of which Sukhbir (PW-8) fell down. Thereafter, the accused Jagdish attacked Sukhbir (PW-8) with gandasa and inflicted injuries on the head and both the arms of Sukhbir. The gravity of injuries on the hands was such that Sukhbir suffered amputation of hands. After hue and cry being raised by Om Prakash (PW-9), the accused fed away. He also lodged a report to the police station at 12.15 PM on the same day. Om Prakash and others took Sukhbir to the hospital. FIR was registered by ASI Bhagat Ram (PW-10). Initially, the victim underwent treatment at city hospital, Palwal and, thereafter, he was shifted to Army Hospital, Delhi in the evening of the same day. Though the prosecution claimed that the weapons gandasa and lathi were recovered on the basis of the disclosure statement made by the accused persons, it was disbelieved by the trial court. The victim was first examined at Palwal Hospital by PW-6 (Dr.A.K.Malik) who found six incised wounds on the scalp and hands and two abrasions of 1/2"to 1/2"on both the knees. He gave the opinion that injuries 1 to 5 were cumulatively dangerous to life. Amongst the injuries, PW-6 found the right hand with lower 1/3rd of the forearm in an amputated form. There was also an incised injury on the left wrist 3 1/2" x 2 1/4" and the left hand was found attached with left forearm through skin flaps and ligament of ulnar side. Thus, the impact of the injuries inflicted with a sharp-edged weapon were such that both the hands suffered amputation. PW-5, the doctor in Army Hospital, found incised wound over left parieto occipital region of scalp. He also found the following three injuries:-

" 1. Lacerated wound left parietal region 3" long already sutured.

2.Lacerated wound occipital region 3" long already sutured.

3.Left upper limb traumatic amputation through left wrist with hand hanging free."

He did not mention any incised injury apparently because by that time the injuries were sutured. He also did not note any abrasions on the knees. PW-9 Om Prakash (the brother of the informant) lodged a report to the police. Sukhbir, the injured, gave evidence as PW-8. The evidence of these two witnesses was believed by both the courts. We do not find any material contradiction or anything unnatural in the evidence of these eye witnesses including the injured eye witness. The criticism levelled against the prosecution case is that the FIR was not recorded at the time at which it is stated to have been recorded. But, most probably, it could have been brought into existence a few hours later after deliberations. This criticism is based on the fact that according to PW-9, he had gone to police station to lodge the FIR whereas according to PW-8 when he was taken to the hospital his brother (PW-9) was in his company. This discrepancy, in our opinion, does not demolish the entire prosecution case. Having regard to the fact that the FIR was recorded at 12.15 PM, there was a possibility of PW-9 lodging the report after leaving his brother in the hospital at 11.45 AM. Thus, there was sufficient time gap of half an hour.

Learned counsel for the appellant mainly concentrated on the case of A-2 (Balbir). According to the evidence of PW-8 and PW-9, A-2 (the 2nd appellant) gave one lathi blow on the knee. If so, the injury found on the knee could have been more severe and not mere abrasion of 1/2" to 1/2". Moreover, as there was one blow, there could not have been any injury on the second knee also. According to the learned counsel for the appellants, these abrasions could have been caused on account of fall on the ground as stated by PW-6 (Dr.Malik). In any case, it is contended that the second appellant cannot be said to have common intention with the first appellant. If at all they can be convicted for the individual acts, we find force in the contention of the learned counsel for the appellant as regards the second appellant (A-2) is concerned. PW-5 did not find any injury at all on the knees. Maybe, that it was so minimal that it could have escaped the attention of PW-5. The other possibility is that this mild abrasion could be caused by reason of fall. In any case, the version of PW-8 that lathi blow was given with such a force that as a result of its impact, the victim fell to the ground cannot be accepted. That apart, even according to the prosecution case, attack took place suddenly in a public place when PW-8 and 9 were returning to their home from Palwal.

It is highly doubtful whether the appellant No.2 shared his common intention with appellant No.1 and both of them wanted to kill PW-8 (Sukhbir). The conviction and sentence of the second appellant (accused No.2) is, therefore, set aside and the appeal is allowed in so far as the second appellant is concerned. He shall be released forthwith from the jail if he is not required in any other case.

Coming to the case of the first appellant, we find that there is no ground to interfere with the finding of the trial court as affirmed by the High Court as there are no compelling grounds to discard the testimony of the injured eye witness who was brutally assaulted by A-1 with a dangerous weapon. We, therefore, affirm the conviction of appellant No.1. As regards the sentence, we would not have felt inclined to reduce the same but for the fact that the first appellant during the course of hearing has come forward to pay the compensation amount of Rs.1 lac awarded by the High Court and the learned counsel for the appellant has brought three Pay Orders of Punjab National Bank for a total sum of Rs.1 lac, we consider it just and proper to reduce the sentence to eight years rigorous imprisonment instead of ten years while confirming the conviction under Section 307 IPC.

The counsel for the intervenor who is the injured person is not present today in the Court. The Pay Orders shall be forwarded by the Registry to the Chief Judicial Magistrate, Faridabad (Haryana) for handing it over to the injured person Sukhbir (PW-8) son of Raj Pal after being satisfied about his identity.

The appeal is allowed in the aforesaid terms.

JUDIS