

A. Aggarwal

Before S.P. Bangarh, J.

GAJRAJ AND OTHERS—Appellants

versus

STATE OF HARYANA—Respondent

CRA No. S-1103-SB of 1999

December 20, 2012

Indian Penal Code 1908 - Ss. 341, 325, 506 & 34 - Appeal against conviction - Complainant beaten up by appellants - Medical examination done - Order of conviction was passed for offences punishable U/S 341/325/506/307/34 IPC - Held, no offence under S.307 is made out as there is no previous enmity - No motive for attempt to kill as no weapon was being carried - Addition of charge under S.323 - Appellants sentenced to the period already undergone - Appeal allowed, partly.

Held, that no injury has independently been declared dangerous to life of the injured-Ganeshi Lal. There is no evidence that the injured-Ganeshi Lal had to be hospitalized for treatment of injuries. So, when there was no enmity and no weapon was used in the occurrence and then, it was not required of the learned trial Court to hold the appellants guilty for commission of offence punishable under Section 307 IPC,

(Para 28)

Further held, that conviction of appellants under Sections 325/506/341 IPC read with Section 34 IPC is maintained. In addition, they are also convicted for commission of offence punishable under Section 323 read with Section 34 IPC.

(Para 34)

Tapan K. Yadav, Advocate, *for the appellants*.

G.S. Sandhu, AAG, Haryana, *for the respondent*.

S.P. BANGARH, J.

(1) The appellants have assailed the judgment of conviction dated 11.11.1999 and order of sentence dated 13.11.1999, passed by the learned Additional Sessions Judge, Faridabad, in Sessions Case No. 43 dated 03.07.1996, emanating from FIR No. 65 dated 19.03.1996, under Sections 341/325/506/307/34 of the Indian Penal Code (for short - 'IPC), Police Station Chhainsa, whereby, they were convicted for commission of offences punishable under Sections 341/325/506/307 IPC read with Section 34 IPC and sentenced to pay fine of Rs.100/- each for commission of offence punishable under Section 341 IPC; to undergo rigorous imprisonment for three years each and to pay fine of Rs.200/- each for commission of offence punishable under Section 325 IPC; to undergo rigorous imprisonment for six months each for commission of offence punishable under Section 506 IPC; to undergo rigorous imprisonment for a period of 5 years each and to pay fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months each for commission of offence punishable under Section 307 IPC read with Section 34 IPC.

(2) It is the case of the prosecution that on 19.03.1996, Ganeshi Lal complainant/injured at about 7.30 am was returning from Delhi after attending his duty. When, he reached near the well of Tej Singh in the area

of village Gharkhera, he was encircled by the appellants, Ranbirappellant caught hold his arms from the back, Gajraj-appellant gave fist blow on his face, Raju and Babu (appellants) also gave fist blow on his person. In the meantime, his son Prem Pal reached at the spot and rescued Ganeshi Lal-injured from the clutches of the appellants. This incident was also witnessed by Attar Singh and Faqir Chand. Ganeshi Lal- Injured made statement Ex.PE before the police stating, therein, the aforementioned allegations. On the basis of this statement, formal FIR Ex.PE/1 was registered in the police station.

(3) During investigation, Investigating Officer inspected the spot, prepared the site plan, as also, recorded the statements of the witnesses under Section 161 Cr.P.C. Ganeshi Lal-injured was also got medically examined and x-rayed. The appellants were arrested in this case. As per medical evidence of Dr. S.S. Yadav (PW-4), there were eight injuries on the person of Ganeshi Lal-injured. Injuries Nos.2, 3, 5, 6 and 7 were kept under observation and the injured was referred to B.K. Hospital, Faridabad.

(4) According, to him, injuries Nos.2 and 3 were referred to Dental Surgeon. Injury No.6 showing the fracture of the 8th rib of the injured-Ganesh Lal was declared grievous in nature. The other injuries were declared simple in nature. However, it was observed by Dr. S.S. Yadav (PW-4) that there was possibility of injuries being dangerous to life as collectively having profused bleeding from the gums and respiratory distress due to fracture of 8th rib of chest, had the said injuries been not treated well in time.

(5) After completion of investigation, Station House Officer of Police Station Chhainsa instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C-for short) against the appellants before the learned Illaqa Magistrate to the effect that it appeared that they had committed offences punishable under Sections 341/325/506/307 IPC read with Section 34 IPC.

(6) On presentation of police report, copies of documents as required under Section 207 Cr.P.C. were furnished to the appellants, the case was later committed to the Court of Session which was entrusted to learned trial Court, where charge under Sections 341/325/506/307 read with Section 34 was framed against the appellants, whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence, was summoned.

(7) At the trial, the prosecution examined Dr. V.K. Aggarwal as PW-1, Anoj Kumar as PW-2, Parkash Chand HC as PW-3, Dr. S. S. Yadav as PW-4, Kartar Singh HC as PW-5, Sadhu Ram SI as PW-6, Ganesh Lal injured/ complainant as PW-7, Prem Pal as PW-8 and Faqir Chand as PW-9 and closed the prosecution evidence, later.

(8) After the closure of prosecution evidence, appellants were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in this case.

(9) Appellants were called upon to enter in defence, but they closed the same without examining any witness in their defence.

(10) After hearing both the sides, the learned trial Court vide impugned judgment of conviction and order of sentence, convicted and sentenced the appellants, as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court have come up in this appeal with prayer for acceptance, thereof, and for their acquittal of the charge framed against them for the commission of offences punishable under Sections 341/325/506/307 IPC read with Section 34 IPC.

(11) Learned counsel for the appellants and learned Assistant Advocate General for the respondent have been heard and record of the learned trial Court perused with their assistance.

(12) PW-1 Dr. V.K. Aggarwal deposed that on 20.03.1996, he conducted x-ray on the person of Ganeshi Lal-injured and found fracture of 8th rib on the left side of chest vide report Ex.PA. He proved skiagrams Ex.PA/1 to Ex.PA/4.

(13) PW-2 Anoj Kumar Constable proved site plan Ex.PB.

(14) PW-3 Parkash Chand HC arrested Gajraj and Babu Lal (appellants)

(15) PW-4 Dr. S.S. Yadav, testified that on 19.03.1996 at about 10.20 pm, he medico legally examined the injured-Ganeshi Lal and found the following injuries on his person:

1. A lacerated wound .25 x .5 cm on the inner aspect of middle of upper lip with a surrounding abrasion of 2 cm x 2 cm size. Fresh bleeding was oozing out.

2. First upper right lateral and 1st and second left upper incisors were missing from the socket. There was laceration on the gum, fresh profuse bleeding was present from the three sockets. Referred to Dental Surgeon.
3. There was reddish abrasion 2 cm x 3 cm on the inner aspect of middle of lower lip. Complained of pain in the lower front teeth. Fresh bleeding was oozing out from the gums. Referred to Dental Surgeon.
4. A reddish abrasion 0.5 cm x 0.5 cm on the outer aspect of right side of lower lip.
5. A reddish abrasion 0.5 cm x 1 cm on the bridge of nose with a diffused swelling around it. Bleeding per nostris was present. Tenderness was present. X-ray nasal bone was advised.
6. There was a diffused swelling 2 cm x 3 cm on the back of middle of left chest. Tenderness was breathing. X-ray was advised.
7. Complaint of pain all over the back of chest. Tenderness was present. X-ray was advised of chest AP view.
8. Complaint of pain all over the body.

(16) He further testified that all the injuries were caused within a probable duration of 6 hours by blunt weapon. He, further testified that injuries No.2, 3, 5, 6 and 7 were kept under observation and the injured was referred to B.K. Hospital, Faridabad. He, further testified that injuries No.2 and 3 were referred to Dental Surgeon. He, further testified, he gave opinion Ex.PD/1 to the effect that injury No.6, showing the fracture of 8th rib was grievous in nature. He, further testified that there was possibility of the injuries being dangerous to life, as collectively having profused bleeding from the gums and respiratory distress, due to fracture of 8th rib of chest, had the said injuries been not treated well in time.

(17) PW-5 Kartar Singh HC proved the FIR Ex.PE/1, which was registered on the receipt of report Ex.PE.

(18) PW-6 Sadhu Ram SI prepared the police report under Section 173 Cr.P.C., after the completion of investigation.

(19) PW-7 Ganesh Lal-injured/complainant is the injured witness, who testified that on 19.03.1996 at around 7.30 p.m., he was accosted by the appellants while he was returning from his duty in the area of village Gharkhera and was given injuries by fist blows by the appellants. He also testified that Babu Lal (appellant) kicked him from his back as a result he fell down.

(20) PW-8 Prem Pal testified likewise and corroborated the testimony of PW-7 Ganesh Lal-injured.

(21) PW-9 Fakir Chand also testified likewise and corroborated the testimonies of PW-7 Ganesh Lal-injured and PW-8 Prem Pal.

(22) On the basis of testimonies of PW-7, PW-8 and PW-9 corroborated as it is by the medical evidence of Dr. S.S. Yadav (PW-4), learned Assistant Advocate General, Haryana for the respondent, contended that the appellants were rightly convicted and sentenced by the learned trial Court vide impugned judgment and order of sentence for the commission of offences punishable under Sections 341, 325, 506, 307 IPC read with Section 34 IPC, therefore, these may be upheld and affirmed.

(23) On the other hand, learned counsel for the appellants rightly contended that no offence under Section 307 IPC is made out against the appellants, as they are not alleged to have any previous enmity against the injured-Ganesh Lal and that being so, there was no motive for them to make an attempt to kill him. Even, they were not carrying any weapon. So, they had no knowledge and intention that the injuries, which they allegedly caused could result into the death of the injured-Ganesh Lal.

(24) Even, PW-4 Dr. S.S. Yadav did not testify, candidly, as to which injury was dangerous to life, of the injured-Ganesh Lal. If, all the injuries would have been caused with some sharp edged weapon and all those would have been grievous in nature, having been caused on the vital parts of the body of the injured-Ganesh Lal. In that, event, it could be held that the injuries could prove fatal to the injured-Ganesh Lal resulting into his death.

(25) In the case in hand, no weapon was being carried by the appellants. Only fist blows and kick blows were given. If, the appellants had an intention to kill the injured-Ganesh Lal, then, in that event, they would

have come prepared with the weapons to cause injuries to the injured-Ganeshi Lal. So, the learned trial Court wrongly formulated the opinion that the appellants made an attempt to kill the injured-Ganeshi Lal. Injury No.6 has been declared grievous in nature having been caused with blunt weapon. This injury also could come within the mischief of Section 307 IPC, only, if it would have been caused with sharp edged weapon and it would have been declared dangerous in nature.

(26) This Court in "*Nand Singh versus State of Punjab (1)*", held that, to bring an offence under Section 307 IPC, the prosecution is required to prove that the accused had an intention to commit murder of injured. This intention could be gathered either from the act of the accused or from the impact of the injuries. In this case, accused had inflicted 17 injuries on person of victim with dagger. According to doctor, 9 injuries were dangerous to life, but he did not describe any of those 9 injuries to be sufficient to cause death in the ordinary course of nature. It was held that the necessary ingredients required for bringing the offence under Section 307 IPC were lacking. It was held that the offence would fall under Section 326 IPC and not under Section 307 IPC. Conviction under Section 307 IPC was set aside.

(27) This Court in "*Pritam Singh and another versus State of Punjab (2)*", also held that the words "dangerous to life" are equivalent to "endangering life" and such acts squarely covered within the ambit of clause 8 of Section 320 IPC, which is punishable under Section 326 IPC.

(28) The case of the appellants is on better footing than the cases covered in the judgments (supra), because, no injury has independently been declared dangerous to life of the injured-Ganeshi Lal. There is no evidence that the injured-Ganeshi Lal had to be hospitalized for treatment of injuries. So, when there was no enmity and no weapon was used in the occurrence and then, it was not required of the learned trial Court to hold the appellants guilty for commission of offence punishable under Section 307 IPC, simply on the opinion of Dr. S.S Yadav (PW-4) that all the injuries collectively, could possibly be dangerous to life of the injured-Ganesh Lal (PW-7).

(1) 2007 (1) RCR (CrI.) 801

(2) 2010 (3) RCR (CrI.) 395

(29) Indeed, it was required of PW-4 Dr. S.S. Yadav to declare the nature of every injury, independently, and he did so. It is arduous to concur with his opinion that the injuries could be dangerous to life of the injured- Ganeshi Lal. This opinion could be upheld and affirmed, if the appellants had used any weapon in this occurrence and if the injuries would have been on the vital parts of the body of the injured-Ganeshi Lal. So, the learned trial Court wrongly fastened the appellants with the liability of commission of offence punishable under Section 307 IPC realising little that no weapon was used in the occurrence and 7 injuries were simple in nature and only one injury i.e. injury No.6 being fracture of 8th rib of the chest, was declared grievous in nature, which is on the non-vital part of the body.

(30) So, commission of offence punishable under Section 307 IPC is not disclosed against the appellants and, therefore, they are acquitted of this charge framed against them by the learned trial Court.

(31) Regarding other offences, learned counsel for the appellants did not seriously assail the findings of the learned trial Court. PW-7, PW-8 and PW-9 in candid words testified that the appellants after forming common intention caused injuries to Ganeshi Lal-PW-7 (injured). These witnesses were subjected to searching cross-examination by the learned counsel for the appellants before the learned trial Court, but the long cross-examination failed to elicit anything worth the name which could possibly cause any dent in the testimonies of PW-7, PW-8 and PW-9. No motive can be ascribed to them to testify falsely in this case.

(32) Ocular evidence of PW-7, PW-8 and PW-9 has been corroborated by medical evidence of Dr. S.S. Yadav (PW-4), who found 8 injuries on the person of the injured-Ganeshi Lal. As already held, injury No.6 was declared grievous, while others were not declared grievous in nature. There was no other fracture except this fracture of 8th rib. So, these injuries were simple in nature.

(33) On the contrary, the presence of injuries No.1 to 5 and 7 and 8 disclosed commission of offence punishable under Section 323 IPC. Regarding injury No. 6, the offence under Section 325 IPC is disclosed against the appellants, in the view of the testimonies of PW-4, PW-7, PW-8 and PW-9

(34) Therefore, conviction of appellants under Sections 325/506/341 IPC read with Section 34 IPC is maintained. In addition, they are also convicted for commission of offence punishable under Section 323 read with Section 34 IPC. As per custody certificates, Raj Pal-appellant has undergone actual sentence for a period of 2 months and 3 days as on 02.10.2012, Gajraj-appellant for a period of 01 month and 27 days as on 02.10.2012, Ranbir-appellant for a period of 2 months and 3 days, as on 02.10.2012 and Babu Lal-appellant for a period of 2 months and 8 days as on 02.10.2012. All the appellants are not previous convicts. Only Gajrajappellant had allegedly suffered conviction under Section 61 of the Punjab Excise Act. They have suffered the agony and pain of the litigation since 1996. Facing of this prolonged litigation would have brought tremendous mutation in their behaviour towards their fellowmen in the society including the injured. So, lenient view regarding imposition of sentence can be taken.

(35) Therefore, the appellants are sentenced to the period already undergone by them in the jail and in addition, they are directed to pay '5,000/- each as compensation to the injured-Ganeshi Lal. This amount shall be in addition to the fine already imposed upon them by the learned trial Court in the impugned order of sentence. Period of detention already undergone by appellant in Jail shall run concurrently for all the offences.

(36) Resultantly, the appeal is allowed, partly.

A. Aggarwal