

2023 SCC OnLine P&H 591

In the High Court of Punjab and Haryana at Chandigarh

(BEFORE N.S. SHEKHAWAT, J.)

CRA-S-1134-SB-2008 (O&M)

Arjun and Others ... Appellants;

*Versus*

State of Haryana ... Respondent.

And

CRR-2263-2008 (O&M)

Chaman ... Petitioner;

*Versus*

State of Haryana and Others ... Respondents.

CRA-S-1134-SB-2008 (O&M) and CRR-2263-2008 (O&M)

Decided on June 7, 2023

Advocates who appeared in this case :

Ms. Aashima Narula, Advocate, for the appellants in CRA-S-1134-SB-2008 and for respondents No. 2 to 5.

Mr. Nayandeep Rana, Advocate/Amicus Curiae, for the petitioner in CRR-2263-2008.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

The Judgment of the Court was delivered by

N.S. SHEKHAWAT, J.:— This judgment shall dispose of above-said two cases bearing CRA-S-1134-SB-2008 and CRR-2263-2008 as the same have been filed against the common judgment of conviction and order of sentence dated 28.05.2008 passed by the learned Additional Sessions Judge, Rewari, whereby the appellants had been convicted and sentenced in the following manner:—

| Name of convicts                      | Offence under Section | Imprisonment (RI) | Fine       | Sentence in default of payment of fine |
|---------------------------------------|-----------------------|-------------------|------------|--|
| Arjun, Ganga, Ram, Munshi Ram, Sanjay | 323/34 IPC            | 6 months          | Rs. 500/-  | 15 days R.I.                           |
| Arjun,                                | 325/34 IPC            | 2 years           | Rs. 2500/- | 2 months                               |

|   |         |          |           |             |
|---|---------|----------|-----------|-------------|
| Ganga,<br>Ram,<br>Munshi<br>Ram,<br>Sanjay      |         |          |           | R.I.        |
| Arjun,<br>Ganga Ram<br>Munshi<br>Ram,<br>Sanjay | 506 IPC | 3 months | Rs. 200/- | 7 days R.I. |

2. Aggrieved against the above-said conviction and sentence, the accused-appellants have preferred CRA-S-1134-SB-2008, challenging the above-said judgment, while Criminal Revision No. 2263 of 2008 has been filed by the complainant for modification of the impugned judgment and order to the extent that all the four accused-respondents may also be convicted and sentenced under section 307/34 IPC as well.

3. Brief facts of the prosecution version are that the FIR in the present case was registered on the basis of the statement made by Chaman, complainant. She was married to Mohan S/o Nandu, resident of Alwar, Rajasthan. On 23.10.2006, she had come to her parental village Bikaner, District Rewari, Haryana on the occasion of 'Bhaiya Dooj'. Her parents owed some money towards Munshi Ram, accused, on account of supply of milk by him to the family of the complainant. On 26.10.2006, she along with her mother Rajwati, injured, were going to village Lisana to harvest the crop of rice. However, when they were crossing the 'Nohra' (courtyard) of Munshi Ram, accused, Munshi Ram saw them and started abusing her mother. Her mother Rajwati requested him not to abuse them as they would pay the entire outstanding money within a day or so. However, Munshi Ram, Ganga Ram, Sanjay and their father Arjun Singh, all accused, duly armed with *lathis* came out of the Nohra (courtyard) and Munshi Ram gave a *lathi* blow on the nose of her mother-Rajwati. Ganga Ram also gave a blow with *lathi* on the forehead of her mother and Sanjay also gave a *lathi* blow on the head of her mother. After that, Arjun gave a *lathi* blow on the abdomen of her mother. When she tried to rescue her mother, Munshi Ram, accused, gave a blow with *lathi* on the right side of her forehead and Ganga Ram also gave a blow with *lathi* on the back of her head. The complainant and her mother raised alarm to save them and on hearing the same, her brother Dharmender and Mahesh reached at the spot and rescued them from the clutches of the assailants. Thereafter, the appellants/accused again went to their Nohra (courtyard) and threatened to kill them, when they got a chance to do so. She further got her statement recorded that her mother had suffered serious injuries and had been shifted to Safdarjang Hospital,

Delhi and prayed for legal action against the accused.

4. During the course of investigation, the offence under Section 307 IPC was added and since the offence was triable exclusively by the Court of Sessions, the case was committed to the court of learned Sessions Judge, Rewari.

5. On finding a *prima facie* case against the present appellants, charges under sections 323, 307, 506 read with Section 34 IPC was ordered to be framed against the present appellants, who pleaded not guilty and claimed trial.

6. In support of the case of the prosecution, the prosecution examined 10 witnesses. The prosecution examined PW-1 Dr. J.K. Saini, who medico legally examined Smt. Rajwati on 26.10.2006 with history of physical assault on 26.10.2006 in village Bikaner by Arjun, Munshi, Ganga Ram, Sanjay and Kashmina and found the following injuries:—

- "1. A reddish bruise of size 1 cm × 1/4 cm present on the nose, Tenderness and swelling was present from nostril. X-ray and ENT surgeon opinion was advised.*
- 2. A swelling of size 1 cm × 1 cm was present on forehead. Tenderness was present. X-ray was advised*
- 3. Tenderness was present on the back left side of parieto temporal region of skull. X-ray was advised.*
- 4. Tenderness was present on whole of abdomen. X-ray & surgeon's opinion was advised."*

7. PW-1 Dr. J.K. Saini proved on record the MLRs of both the injured. He stated that injury No. 4 to Rajwati was dangerous to life and it could be possible with *lathi* also. In his cross-examination, he admitted that Rajwanti, injured, was examined by him and her BP and pulse rate was 130/80. Even the injured was fully conscious. PW-1 Dr. J.K. Saini also medico legally examined Munshi Ram, accused and found the following three injuries on his person:—

- "1. A lacerated wound of size 4 cm × 14 cm bone deep present on the left side of skull. Bleeding, tenderness and swelling were present. X-ray was advised.*
- 2. Complaining of pain in right forearm. No external mark of injury seen.*
- 3. Complaining of pain in back. No external mark of injury seen."*

8. On the same day, PW-1 Dr. J.K. Saini medico legally examined Ganga Ram s/o Arjun, accused and found the following injuries on his person:—

- "1. A lacerated wound of size 3 cm × 1 cm bone deep present on the forehead near hair line. Bleeding, tenderness and swelling were present. X-ray was advised.*
- 2. Reddish abrasion of size 2 cm × 14 cm present on the left wrist*

*joint. X-ray was advised*

*3. Complaining of pain in back."*

9. The prosecution further examined PW-2 Rajwanti, injured and she supported the case of the prosecution. The prosecution further examined PW-3 Dharmender, son of Rajwati and brother of the complainant and he also deposed on similar lines. The prosecution further examined

10. C. Dharampal, who had prepared a scaled site plan of the spot Ex.PF. SI Jai Singh, PW-5 had prepared the report under Section 173 Cr. P.C. and presented the same to the court. Another injured Chaman Devi was examined as PW-7 and she also supported the case of the prosecution. Dr. Jainender Arora, Senior Resident, Safdarjang Hospital, Delhi was examined as PW-8, who deposed as under:—

*"On 26.10.2006, I was posted as senior resident Dr. in Safdarjung Hospital, New Delhi. On that day patient Rajwati w/o Sunder Lal 42 years female, R/o village Bikaner was admitted with alleged history of blunt trauma. On examination her pulse was 84 per minute BP was 100/70, rest of the parameters were within normal limit. There was slight tenderness all over the abdomen and guarding was present. She was having hemoperitoneum on clinical basis. Exploratory laprotomy was done on 26.10.2006 on exploration there was a laceration over the hilum of the spleen and there was free intra peritoneal blood, splenectomy was done. She remained stable through out her stay in the hospital and was discharged on 29.10.2006 when she started taking orally with the advice to review in surgical OPD in Safdarjung Hospital. She was prescribed routine medicines for better healing of her abdominal wound. EX.PG (objected to) is the copy of discharge summary which bears my signatures...."*

11. In his cross-examination, he stated that he had not seen the original treatment file of the patient in the court on that day and had brought only photocopy of the record. The prosecution further examined Constable Pardeep Kumar as PW-9, who had been part of the investigation in the present case. ASI Hoshiar Singh, who was posted as Investigation Officer at Police Station Sadar, Rewari was examined as PW-10. He conducted the investigation in the present case.

12. After the closure of the prosecution evidence, the statements of the appellants were recorded under Section 313 Cr. P.C. Ganga Ram, appellant, stated that the complainant party had caused injuries to him as well as two others. Rajwati used to purchase milk from him and a sum of Rs. 3616/- was to be paid by her to him as the cost of milk. Sunder Lal, husband of Rajwati, came to know that she had purchased a colour TV from Ram Kumar and Smt. Rajwati had further disclosed before her husband that she had brought the colour TV without giving

any money to Ram Kumar. Sunder Lal enquired about this fact from Ram Kumar, who in turn disclosed that he had charged Rs. 2500/- from Rajwati as cost of the colour TV. Thereafter, Sunder Lal enquired from him as to whether Smt. Rajwati had paid Rs. 3616/- to him, upon which he told that she had not made the payment. Sunder Lal got angry with his wife Rajwati as to why she had purchased colour TV and why she did not make the payment to him and Sunder Lal had beaten up his wife Rajwati. Chaman etc. came to their house and exhorted as to how they dared to ask for the payment from them and abused him and his brother. Rajwati etc. caused injuries to them and on 26.10.2006, for this a DDR No. 9 was recorded at P.S. Sadar, Rewari and they were also medico legally examined by the police. The complainant party had suppressed the genesis of occurrence and they had been falsely implicated in the present case. Almost similar stand was taken by the remaining appellants also. In their defence, the appellants examined DW-1 Chiranji Lal, who supported the stand of the appellants, as taken by them in their statements under Section 313 Cr. P.C. He stated that he knew complainant party as well as Munshi Ram, appellant, both residents of village Bikaner. At about 9.00 am on 26.10.2006, Munishi Ram was dealing in milk and Rajwati used to purchase milk from Munshi Ram and Munshi Ram demanded a sum of Rs. 3616/- from Rajwati as an outstanding amount. Sunder Lal, her husband was with her upon which Rajwati and Sunder Lal exclaimed that they would settle the account on that day itself. Sunder Lal was armed with a hockey, whereas Rajwati was armed with a danda and they caused injuries to Ganga Ram and Munshi Ram. Himmat Singh S/o Amar Singh and he saved Ganga Ram and Munshi Ram from the clutches of Rajwati etc. Even DW-2 Himmat Singh deposed on similar lines and supported the stand of the accused.

13. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

14. First of all, this Court shall take up Criminal Revision No. 2263 of 2008 titled as '*Chaman v. State of Haryana*', whereby the petitioner/complainant had prayed that all the four accused may also be convicted under Section 307/34 IPC.

15. Learned counsel for the petitioner contended that in the present case, Arjun had given injuries to Smt. Rajwati PW-2 on her abdomen with a *lathi* and there was a clear medical opinion that the injury was dangerous to life. The learned trial Court failed to appreciate that Arjun had the intention to cause such bodily injury to PW-2 Rajwati with an intention to cause her death and even the said version was corroborated by the medical evidence. Thus, the findings recorded by the learned trial Court are totally perverse and liable to be set aside by this Court.

16. On the other hand, learned counsel for the State as well as accused/respondents submitted that the learned trial Court had considered the matter in detail as to whether the offence under Section 307 IPC was made out or not.

17. I have considered the rival submissions made by learned counsel for the parties and I am of the considered view that the findings recorded by learned trial Court are liable to be upheld by this Court. The learned trial Court had rightly recorded valid reasons to hold that the provision of Section 307 IPC was not attracted in the facts of the present case. From a perusal of the statement made by PW-2 Rajwati and PW-7 Smt. Chaman, it was clear that the vital parameters of PW-2 Rajwati were normal. Even Rajwati remained admitted in Sabdarjang Hospital from 26.10.2006 to 29.10.2006, but her condition was never serious or dangerous to her life and was stable throughout. Even there was no medical evidence to show that the injuries suffered by PW-2 Rajwati had put her life into perils. Even from the testimony of PW-8 Dr. Jainendra Arora, it is apparent that PW-2 Rajwati was conscious, when she was brought to the hospital. Consequently, from the prosecution evidence itself, it was established that at no point of time, the condition of PW-2 Rajwati was serious or there was any danger to her life. Apart from that, it was also apparent that there was no repetition of blows by Arjun on the abdomen of PW-2. If he had the intention to cause death of PW-2 Rajwati, he would have caused repeated blows on her abdomen. Apart from that, the prosecution could only lead evidence, which showed that PW-2 Rajwati had suffered grievous injuries and not such injuries which would be sufficient to cause death of PW-2 Rajwati in ordinary course of nature. Apart from that, the intention to cause death of PW-2 Rajwati was totally absent and the findings recorded by learned trial Court do not require any interference by this Court and CRR No. 2263 of 2003 titled as '*Chaman v. State of Haryana*' is, accordingly, dismissed.

18. Now this Court shall take up Criminal CRA-S-1134-SB-2008 titled as '*Arjun v. State of Haryana*', which has been filed by the appellants/accused to impugn the judgment of conviction and order of sentence dated 28.05.2008, whereby they have been convicted and sentenced by the learned trial Court as noticed above.

19. Learned counsel for the appellants vehemently argued that the statements of various prosecution witnesses were highly discrepant. Even, the statements of PW-2 Smt. Rajwati and PW-7 Smt. Chaman were contradictory to each other. Apart from that, there was delay in lodging the FIR, which was utilized in coining a false version. Learned counsel for the appellants further submitted that in the present case, the prosecution could not explain the injuries suffered by Ganga Ram and Munshi Ram, both accused. Even, both the said injured were also

examined by PW-1 Dr. J.K. Saini, who had medico legally examined both the accused as well. Thus, it is apparent that the prosecution had concealed the genesis of the occurrence and the appellants were liable to be acquitted by this Court.

20. The submissions made by learned counsel for the appellants have been vehemently opposed by the learned State counsel and he prayed for upholding the impugned judgment of conviction and order of sentence.

21. Having considered the rival submissions made by learned counsel for the parties and considering the evidence led by both the sides, it is apparent that PW-2 Rajwati had assigned specific roles to all the accused. Her statement has been duly corroborated by PW-3 Dharmender and PW-7 Chaman. No doubt, PW-3 Dharmender and PW-7 Chaman are closely related to PW-2 Rajwati, still their presence at the place of occurrence can never be doubted. In the present case, PW-2 Rajwati and PW-7 Chaman were both injured witnesses and this fact alone proves that both of them were present at the time of occurrence. Apart from that, PW-2 Smt. Rajwati had assigned specific roles to the appellants and the participation of all the accused in the occurrence was writ large. The testimonies of PW-2 Rajwati and PW-7 Smt. Chaman cannot be discarded only on the ground of certain minor inconsistencies. In fact, both of them were rustic villagers and such minor variations/contradictions are bound to occur in the testimonies of these witnesses. Even the learned trial Court has rightly observed that while describing the seat of injuries given by Sanjay and Ganga Ram (accused), PW-2 Rajwati had faltered a bit, but nonetheless, she spoke about the involvement of all the accused in causing injuries upon her person. The discrepancy as to the seat of injury should not be viewed against her. She was an illiterate lady and could never be expected to depose like a perfect witness. Thus, the findings recorded by learned trial Court are based on correct appreciation of law and facts and the impugned judgment does not suffer from any perversity or illegality and does not require any interference by this Court.

22. As a consequence, the impugned judgment of conviction dated 28.05.2008 passed by the learned Additional Sessions Judge, Rewari is ordered to be upheld by this Court.

23. Now, adverting to the order of sentence, this Court is conscious of the fact that the present appellants are facing the agony of trial/appeal since the year 2006 i.e. almost 17 years. Even all the four appellants belong to the same family, being father and his three sons and are residents of the same village. In fact, sending them behind bars after such a long period would further deteriorate their relations with the complainant side. Even the custody certificates show that appellant Arjun has undergone 01 month and 13 days of actual

sentence, while appellants Ganga Ram, Munshi Ram and Sanjay have undergone 15 days of actual sentence and they all are first offenders. Even the sentence imposed on the present appellants was ordered to be suspended on 01.07.2008 and in the last about 15 years they have not misused the concession of bail. However, it is apparent that PW-2 Rajwati had suffered pains at the hands of the appellants.

24. Reliance can be placed on the judgments of the Hon'ble Supreme Court in *Bishan Singh v. State*, (2007) 13 SCC 65; Criminal Appeal No. 1364 of 2011 (Mohamad Hanif @ Munno Hussainmiya Shaikh), decided on 31.01.2019 and *Manjappa v. State of Kerala*, (2007) 6 SCC 231 with regard to the issue of awarding of sentence to the accused in similar circumstances.

25. Taking into consideration the totality of the circumstances and considering the above-said judgments rendered by the Hon'ble Supreme Court, the substantive sentence of the appellants is reduced to the period already undergone by them. However, the amount of fine is enhanced to Rs. 25,000/- each, which shall be deposited by the appellants within a period of three months from today with the learned Chief Judicial Magistrate, concerned, failing which, the appeal shall stand dismissed. The said amount of the fine shall be ordered to be released in favour of PW-2 Rajwati wife of Sunder Lal as compensation.

26. With the above-said observations made above, CRR No. 2263 of 2008 is dismissed, being devoid of any merits, while CRA-S-1134-SB-2008 is disposed of to the extent of the period of sentence already undergone by the appellants with enhancement of fine of Rs. 25,000/- each. Pending application(s), if any, shall also stand disposed of.

27. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

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