
(2010) 03 P&H CK 0007
In the Punjab And Haryana At Chandigarh

Rajinder Kumar

APPELLANT

Vs

State (U.T. Administration)

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 320, 326

Citation : (2010) 03 P&H CK 0007

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Judgement

A.N. Jindal, J.—Amongst other injuries, an injury resulting into loss of the eye of Jiwan Lal, led to the prosecution of accused Rajinder Kumar u/s 307 IPC. He was tried and convicted vide judgment dated 04.02.1997, passed by Additional Sessions Judge, Chandigarh and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 500/-.

2. Both Jiwan Lal (herein referred as "the complainant") as well as Rajinder Kumar accused-appellant (herein referred as "the accused") are relatives. The sister of the complainant is married to Rajinder Kumar accused-appellant (herein referred as "the accused"). The accused had a grudge that Jiwan Lal did not disclose at the time of marriage that his sister Saroj was of loose character therefore, he caused him knife blows. On 05.12.1995, the complainant was admitted in PGI, Chandigarh. ASI Paramjit Singh visited PGI, Chandigarh, and after seeking the opinion of the doctor Ex.PJ/1 regarding his fitness to make the statement, recorded his statement wherein he disclosed that he is resident of SCF No. 40, Sector 28-C, Chandigarh. On 05.12.1995, at about 8:45 a.m., when he was cleaning his shop, the accused came there and remonstrated that his sister (wife of the accused) was of loose character and was a source of insult to whole of his family. Upon which, complainant stated that he was talking wrongly and they should go to make her understand. He further stated that he (the accused) must be at fault. At this, the accused enraged and after threatening the complainant to kill, attacked him and inflicted two knife blows, one in his left eye

and another on his right ear. He also inflicted another knife blow on his right ear. He further gave 2-3 more blows with the knife upon his face. On raising hue and cry, the accused ran away. The Investigating Officer completed the statement at 12:30 p.m. and sent the same to the police station, on the basis of which FIR Ex.P3/2 was registered on the same day at 1:00 p.m. against the accused. MLR of the complainant-injured was collected, statements of the witnesses were recorded and on completion of investigation, challan against the accused was presented in the Court.

3. In order to substantiate the charges, the prosecution examined Jaswant Singh, Draftsman (PW1), Head Constable Inder Pal Singh (PW2), Jiwan Lal (PW3), Narinder Pal (PW4), Head Constable Yash Pal (PW5), Dr. Rajiv Gupta (PW6), Constable Kaur Singh (PW7), Harbans Lal (PW8), Dr. Sabhaarpathy (PW9) and ASI Paramjit Singh (PW10). The prosecution while tendering into evidence the CFSL report Ex.PQ, closed the evidence.

4. When examined u/s 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against him and pleaded his innocence. He further explained that on 05.12.1995, he had gone to the shop of complainant at about 8:45 a.m. and explained about the ill-treatment being meted out to him at the hands of his wife Saroj (sister of the complainant) upon which complainant felt annoyed. He took a knife and caused him injuries on his right index finger and in that scuffle, complainant also suffered injuries with his own hands. However, the accused saved himself from the clutches of the complainant with great difficulty.

5. In defence, he examined Dr. Deepak Bakshi (DW1) who deposed that as per OPD register dated 05.12.1995 of General Hospital, Sector 16, Chandigarh, one Rajinder Kumar, Male, was treated by him in the OPD vide entry No. 34211 with injection of Tetanus Toxoid, injection Nuxfenac, Stitches, tablet proflox and ibugestic. However, he refused to identify the accused.

6. The trial Court, after appreciation of evidence and while observing that the case against the accused stood proved beyond reasonable doubt, convicted him u/s 307 IPC and sentenced him accordingly.

7. There is no denying a fact that complainant-injured in this case is brother in law (sala) of the accused. Saroj, sister of the complainant, is married to accused. It is also not in dispute that the injuries suffered by the complainant were the result of a knife. It is also not in controversy that the accused did not go to the shop of the complainant where the scuffle had taken place. The specific bold plea set up by the accused in this case is that having felt annoyed over the complaint made by him, regarding the sister of complainant, he attacked him with knife and in this scuffle complainant also received injuries with his own hand and with his own knife. But this plea stands unsupported by any evidence. Anyway, in order to substantiate the prosecution case, complainant, while appearing in the witness box, has narrated the entire version verbatim and described the injuries as suffered by him at the hands of the accused. He has stated that accused after

coming to his shop, having felt annoyed and tried to find fault with him, the accused inflicted knife blow in his left eye. Again he gave a knife blow on his right ear, third blow on his back and forth on his right hand. He further gave 7-8 knife blows on the different parts of the body and further threatened that he would go only after taking his life and while going he further murmured that he will go after finishing him and would finish his sister thereafter. The medical evidence, as regards the major injuries, fits in with the ocular version. Dr. Sabharpathy Parkash, who had medically examined the complainant, found the following injuries, as per MLR Ex.PK, on his body:

1. Incised wound extending from lateral half of upper eyelid of the left eye, curving around the lateral canthus and running parallel to lower eyelid margin 0.5 cm below it. The wound is seen extending into the left globe. Complete examination of the globe possible only under anesthesia.
2. Three incised wounds over the external ear (tragus) extending into external acoustic meatus with fresh bleeding
3. 5 x 0.5 cm incised wound over nose with bleeding from both nostrils
4. 3 x 1 cm incised wound over right hypo-thenareminense; 2 x 0.5 cm incised wound over right index finger (proximal phalax); 2 x 1 cm incised wound over left hypothelia eminence all three wounds oozing fresh blood
5. Visual equity of left eye PL negative, complete loss of vision.
8. The doctor further opined that all the injuries were the result of sharp edged weapon. Regarding the injury over the eye, PW6 Dr. Rajiv Gupta, Senior Resident, Department of Eye, PGI, Chandigarh, who had treated left eye of the injured, has stated there was perforating injury in the left eye. He also had hemorrhage in the left eye and prolapse of intraocular contents. His left eye was removed in the PGI on that very day. He had, thus, lost his left eye for all times to come. Besides this medical evidence, the prosecution examined Narinder Pal (PW4) son of Gobind Ram in order to support the prosecution version, who has deposed that he had seen the complainant lying down with the blood oozing out of the injuries on different parts of the body including eye and ear etc. He had also seen the accused, present in the Court, running out of the shop. Though, he was declared hostile qua some part of his statement yet keeping in view the fact that the accused as well as witness had admitted the occurrence that part is bound to be believed. As such, it cannot be said that the occurrence did not take place, the complainant did not suffer injuries and that injuries had been caused by some other person. Though, the accused has taken the plea that the injuries are self inflicted however, keeping in view the nature and seats of the injuries, circumstances in which these were caused and the motive behind the same, it cannot be said that the same could be self inflicted. PW9 Dr. Sabhapathy Prakash has also not suggested such plea and has also nowhere stated that the injuries could be self inflicted. The defence plea, set up by the accused, thus cannot be sustained as it stands unsupported by any evidence much less ocular version.

The only testimony of DW1 Dr. Deepak Bakshi, Medical Officer, General Hospital, Sector 16, Chandigarh is not of any consequence. The minor injuries, as disclosed by DW1 Dr. Deepak Bakshi, on the person of the accused could hardly be said to be sufficient to give handle to the accused to cause such serious injuries which resulted into loss of his eye sight. Rajinder Kumar accused was a case of minor injuries and was treated only in the OPD with injection of Tetanus Toxoid, injection Nuxfenac, Stitches, tablet proflox and ibugestic but the doctor has not described the nature, depth and type of injuries and the place where he had suffered the injuries. He has not proved any MLR which he may have recorded at the time of his examination. It was mandatory on the part of the doctor to prepare the Medico Legal Report at the time of his examination. Non-recording of the injuries would lead to only one inference that the injuries were minor or so superficial in nature that doctor did not deem it necessary to prepare the medico legal report. Since the accused was discharged only after treating him in the OPD, therefore, obviously, the doctor might not have witnessed any injury worth recording in the report. It may further be observed that the minor or superficial injuries suffered by the accused need not essentially be explained by the complainant and non-explanation of such injuries in any way is not fatal to the prosecution case rather authenticate the occurrence qua the aspects that the accused went with the knife at the shop of the complainant grappled with him and caused him injuries. Learned Counsel for the appellant has also not urged if the injuries suffered by the complainant were accidental in nature. DW1 Dr. Deepak Bakshi has stated that the accused received injuries on his right hand, which goes a long way to prove that he may have suffered the minor injuries while handling the knife in his hand.

9. Now coming to the last argument that the offence does not fall with the purview of Section 307 IPC. In this regard I need to retrace myself to find out the necessary "mensrea" of the accused and the result of the injuries. For this, I need to go back to the facts. The accused had no direct enmity with the complainant but had a grudge on account of concealment of material facts regarding the character of Saroj at the time of marriage, who ultimately, was found to be characterless as per the accused. He did not attack Saroj at all for this purpose. It has come in evidence only that he murmured after causing the injuries that he will not spare him and would kill him and Saroj. This aspect of evidence, after the incident was over, to my mind is not sufficient to make verdict of guilt u/s 307 IPC against the accused. Intent justification state of mind can never be precisely proved by direct evidence as a fact; it can only be reduced for inferred from other facts. Some relevant consideration are (1) nature of weapon (2) the place where the injuries were inflicted (3) the nature of injuries caused (4) the opportunity available which the accused gets. When the accused despite having a dangerous weapon in his hand, inflicted minor injuries, there was no intention to murder. The evidence when does not show intention of murder and the injuries inflicted are not dangerous to life conviction u/s 307 is again not proper. In the instant case, as I have discussed above, intention to

commit murder of accused could not be inferred. Had he reached to the shop of the complainant after causing injuries to Saroj and would have attacked him also then the requisite intention to kill could be inferred. The inference with regard to knowledge of the injuries to be dangerous to life could be drawn from the nature of the injuries. The doctor, who examined the injured nowhere observed that the injury caused by the accused in the eye (the sole grievous injury) was dangerous to life. As such, certainly, the Court could conclude that the accused caused injury which was not dangerous in nature. Section 307 IPC clearly contemplates an act which is done with the intention of causing death but it fails to bring about the intended consequence on account of the intervention of a cause operating independently of the violation of the agent to determine whether an act falls within the ambit of Section 307 IPC. On the wording of this Section, three considerations appear to be essential (1) nature of the act done (2) intention and knowledge of the act (3) the circumstances under which the act is done.

10. The accused having pre-planned, armed with knife, had gone to the shop of accused with a grudge in his mind that he was married to a girl of loose character but it appears that he had no necessary intention to kill the injured. He did not choose the vital part like chest or head to cause the injuries but injury was caused in the eye. No doubt, without losing any sympathy with the injured whose one eye has been lost on account of the attack made by the accused, it would be suffice to say that in the absence of any opinion by the doctor, this only stab injury on the vital part of the body, not accompanied by necessary intention, cannot be termed as dangerous to life and the same falls within the purview of Clause Second of Section 320 IPC punishable u/s 326 IPC. This was the solitary injury caused in the eye and no further grievous injury was given by the accused that also shows the lack of intention to cause murder.

11. Now coming to the quantum of sentence, learned Counsel for the appellant has prayed that this loss to the eye of the injured on account of his obnoxious act could be compensated with money, therefore, the sentence could be reduced to that of already undergone. I do not feel persuaded by this contention raised by the learned Counsel for the appellant. It would be a mockery of justice to permit the accused to escape the penalty as provided u/s 326 IPC and the same cannot be substituted simply by awarding compensation. This cruel act of the accused incapacitated the injured Jiwan Lal for throughout his life, thus, to give lesser punishment to the accused would amount to render the justicing system of the country suspect, negatory and useless. The common man would lose faith in Courts and the criminals would start thinking that any sentence was purchasable. The deterrent effect of sentence would vanish. Resultantly, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal, etc. Vs. State of Tamil*

Nadu, .

12. The Apex Court in case Sahdev v. Jaibar @ Jai Dev and Ors. 2009 (2) RCR (Criminal) 599 observed as under:

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

After giving due consideration to the facts and circumstances of each case for deciding just and appropriate sentence, the Court should pass the order in such a manner that the sentence should commensurate the gravity of the offence so that the public may not be deterred to see if the accused of the heinous crime have been set free for a symbolical sentence. As such, keeping in view the nature of injuries and the circumstances under which it was caused, it would be in the fitness of things if the sentence of 4 years and a fine of Rs. 5,000/- is awarded against the accused.

13. In the result, I hereby partly accept the appeal and set aside the impugned judgment with the modification that the accused is acquitted of the charges u/s 307 IPC, however, while convicting him u/s 326 IPC, he is sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months. It is further ordered that the accused would pay a sum of Rs. 30,000/- on account of compensation to the complainant-injured Jiwan Lal for playing with his life.

14. Copy of the judgment be sent to Chief Judicial Magistrate, Chandigarh, for compliance.