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SURESH

v.

STATE OF HARYANA

(Criminal Appeal No. 16 of 2007)

FEBRUARY 27, 2009 B

[DR. ARIJIT PASYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – ss. 326 and 307 r/w s. 34 – Assault C
on three persons – Eye-witnesses to the incident including injured witnesses – As per medical evidence, injuries on the victims grievous in nature and sufficient to cause death in ordinary course of nature – Conviction by trial court – Confirmed by High Court – On appeal, held: In view of cogent D
and credible evidence of the injured witnesses and nature of injuries on the victims, conviction justified.

Seven accused, including the appellant-accused were prosecuted for having assaulted three persons. E
There were four eye-witnesses including two injured witnesses. Trial court convicted four accused and acquitted three. During pendency of appeal by the convicted accused one of them died and his appeal abated. High Court confirmed the conviction, but reduced F
the sentence from 10 years to 7 years. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1 In view of cogent and credible evidence G
of the injured witnesses there is no scope for interference in these appeals. Though false implication was pleaded, the same is without any foundation. Clearly, all persons

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A **who have suffered injuries would not shield the actual culprit and implicate an innocent person when false implication is pleaded. The foundation has to be laid on the same. In the instant case that has not been done. [Para 5] [554-A-B]**

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1.2 As per the evidence of the doctor who conducted medico-legal examination of the victims, all the injures were caused by sharp edged weapons. Injuries No.1 to 4 of one victim were declared as grievous in nature and C **the same could have been caused by sharp weapon. The injuries of the other two victims were sufficient to cause death in the ordinary course of nature. As per the opinion given by the doctor, there were multiple fractures and surgical emphysema was present. So, the injuries were** D **dangerous to life. [Para 4] [552-F-H; 553-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 16 of 2007.

From the Judgment & Order dated 4.1.06 of the High E Court of Punjab & Haryana at Chandigarh in Criminal No. 493-SB/1994.

WITH

F Crl.A.No. 404/2009

Sanjay Rathi, Kapil Kr. Dagar, Jamshed Bey, Parmanand Gaur and Prem Malhotra for the Appellants.

T.V. George for the Respondents.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted in S.L.P (Crl.) No.2007 of 2008.

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2. These appeals are directed against the judgment of the learned Single Judge of the Punjab and Haryana High Court upholding the conviction of the accused-appellants and two others for offence punishable under Sections 326 and 307 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). However, the sentence of 10 years rigorous imprisonment as awarded by learned Additional Sessions Judge, Rohtak, was reduced to 7 years while the sentence of 3 years in respect of offence punishable under Section 326 read with Section 34 IPC was upheld. Seven persons faced trial before the learned Additional Sessions Judge, Rohtak, out of which four accused were convicted and remaining three were acquitted. During the pendency of the appeal before the High Court, accused Ram Kumar expired on 17.4.1995 and, therefore, Criminal Appeal No.493-SB/94 was held to have abated so far as he is concerned.

3. Out of the seven persons who faced trial, Jaibir, Ram Kumar, Suresh and Raj Kumar were convicted while accused Jaibir, Rajmal and Surender were acquitted.

4. Prosecution case, in a nutshell, is as follows:

On 14.10.1991 (the date of occurrence), Ram Sarup and his two sons, namely, Nakul and Sehdav (injured in the present case) had boarded a three-wheeler/tempo of Dharambir from Meham for going to attend a peshi in the Court of S.D.M. On the way, some passengers including Sanjay (PW-11) boarded the said tempo from village Madina. At about 10 A.M. by which time the said tempo covered the distance of about 2/3 kolometres from village Madina, accused Suresh armed with an iron chain, Ram Kumar armed with a hockey stick, Jai Dev and Raj Kumar, both armed with gandasas, emerged on the road from one side and stood in front of the tempo. When the tempo was stopped by the driver, all the four persons

A started giving blows by their respective weapons to Ram Sarup, Sehdav and Nakul. On seeing the occurrence, the other passengers got down and ran away to the fields. After causing serious injuries to these three persons, the accused ran away from the spot along with their respective weapons. Thereafter, B Dharambir, driver of the tempo with the help of Sanjay (PW-11), took the injured to Medical College and Hospital, Rohtak, in a Haryana Roadways bus. Sanjay got down at Madina and went to village Mokhra for giving information to the family members of the injured. Dharambir got the injured admitted in C the Medical College and Hospital, Rohtak. The Medical Officer attended the injured and informed the police. A message was sent to the Police Station Meham. ASI Ishwar Singh came to Medical College and Hospital and recorded the statement (Ex. PN) of Dharambir on the basis of which the FIR (Ex. PN/2) D was registered.

On 14.11.1991, Dr. S.P. Chugh, Casualty Medical Officer, M.C.H., Rohtak (PW-9) conducted the medico-legal examination of injured Ram Sarup, Nakul and Sehdev and E found the following injuries on their person:-

The injuries pertaining to Ram Sarup, injured:

1. An incised wound 10x4x2 cm. deep over front of the neck just above the thyrod cartilage. The trachea F was cut and exposed. Advised E.N.T. Surgeon's opinion.

2. An incised wound 16x2 cm X bone deep over right side of the scalp extending from right eyebrow to G the parietal region up to the mid line. Advised Surgeon's opinion.

3. Incised wound 6 cm x 1 cm bone deep over left side of the scalp extending from the left eyebrow over

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the scalp. Advised Surgeon's opinion.

4. Incised wound 4x1x1 cm deep over the left side of the forehead 1 cm deep over the left side of the forehead 1 cm. of mild line.

5. Incised wound 4 x 1 x 1 cm. over the anterior aspect of left shoulder.

6. Crush injury 16 cm x 8 cm x bone deep over the right shoulder underlying bone muscles were exposed.

As per the witness, injuries No. 1 to 5 were caused by sharp edged weapon and injury No. 6 by blunt weapon.

The injuries pertaining to Nakul, injured:

1. An incised would 12 cm x 6 cm deep over the dorsal aspect of left shoulder.

2. An incised would 10 x 3 cm x bone deep over left side of the occipital region 1 cm from mid line. Advised Surgeon's opinion.

3. Incised would 4 cm x 2 cm x bone deep over right side of the occipital region of the scalp 1 cm of injury No.2. Advised X-ray skull.

4. An incised wound 6 x 4 x 1 cm over the right leg, 2 cm below the tibial tubrosity. Advisied Ortho Surgeon's opinion.

5. A crush injury over the palmer aspect of right hand. Advised Ortho Surgeon's opinion.

6. Incised wound 6 x 4 cm x bone deep over the lower part of the right leg.

A 7. Incised wound 3 x 2 cm x bone deep over the palmer aspect of left hand.

8. Incised wound 6 x 3 cm x bone deep over the paler aspect of left hand.

B 9. Incised wound 3 x 2 cm x bone deep over the left leg.

As per the witness injures No. 1 to 4 and 6 to 9 were caused by sharp edged weapon and injury No. 5 by blunt C weapon.

The injuries pertaining to Sehdev, injured:

1. An incised wound 4 x 1 x cm over the palmer aspect D of right hand. Bleeding was present. Advised Ortho Surgeon's opinion.

2. An incised wound 6 x 4 x 2 cm over the right side of the chest. Advised Surgeon's opinion.

E 3. In incised wound 3 x 1 x 1 cm over the ventral aspect of right arm just above the elbow.

4. Multiple incised wound of verging sizes present over the right side of the face. Whole of the face was flushed with F blood. Advised Surgeon's opinion.

As per the witness, all the injures were caused by sharp edged weapon.

Injuries No.1 to 4 of Sehdev were declared as grievous in G nature vide opinion Ex. PS/1 given by the said witness, and the injures on the person of the injured could have been caused by sharp weapons Ex. P1 and P2. The injuries of Nakul and Ram Sarup were sufficient cause of death in the ordinary course of nature. As per the opinion Ex. PR/1 given by the said witness,

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there were multiple fractures and surgical emphysema was present. So, the injures were dangerous to life. A

After investigation, charge sheet was filed in respect of offence relatable under Sections 148, 307/149, 326/149, 324/149 and 323/149 IPC. Since the accused persons pleaded innocence they were put on trial. 12 witnesses were examined including the alleged eye-witnesses PWs 5, 6, 8 and 9. The trial court directed convictions and imposed sentence as aforementioned. Before the High Court, the stand taken was that no offence under Sections 307, 326 read with Section 34 IPC has been made out and prosecution has failed to prove the specific injuries alleged to have been caused by the accused to the injured. On the other hand, the State supported the judgment. The High Court after referring to the evidence of the witnesses held the eye-witnesses' version that the accused persons were armed with chain, gandasa and hockey sticks and that they stopped the tempo and started causing injuries to the injured. Injuries on Ram Singh and his two sons namely Nakul and Sehdev have been clearly established. Accordingly, the conviction was maintained. The High Court noted that the injured persons were given large number of injuries with sharp edged weapons and blunt weapons like hockey sticks. They were mercilessly beaten and attack was also so severe that all the other passengers sitting on the tempo ran away from spot and none came forward to save the injured. It was also noticed that injuries caused on Nakul and Ram Swarup were definitely dangerous to life. Therefore, the conviction was maintained, but the sentence was reduced to 7 years. B C D E F

5. In support of the appeal, learned counsel for the appellant submitted that the witnesses have not specifically indicated about what acts attracted under Section 307, if any. The sentence in respect of Section 307 was also characterized to be heavy. Learned counsel for the respondent-State on the other hand submitted that the injury on Ram Singh was so G H

A severe that he lost his memory due to the injuries caused to him. The other injured witnesses PWs 6 and 8 who suffered serious injuries were examined. In view of cogent and credible evidence of the injured witnesses there is no scope for interference in these appeals. Though false implication was
B pleaded, the same is without any foundation. Clearly, all persons who have suffered injuries would not shield the actual culprit and implicate an innocent person when false implication is pleaded. The foundation has to be laid on the same. In the instant case that has not been done.

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6. The appeals are without merit and deserve dismissal which we direct.

K.K.T. Appeals dismissed.