

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.335 OF 2016
[Arising out of S.L.P.(Crl.)No.2393 of 2016]

Ramesh Kumar @ Babla

.....Appellant

Versus

State of Punjab

.....Respondent

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. By the judgment and order under appeal dated 19.10.2015 the High Court of Punjab & Haryana at Chandigarh dismissed criminal appeal bearing No.CRA S 1003 - SB of 2002 and confirmed the conviction of appellant under Section 307 of the IPC by the Additional Sessions Judge, Adhoc, Patiala for which appellant has been ordered to undergo rigorous imprisonment for three years and also to pay a fine of Rs.2000/-.

2. The limited issue strenuously canvassed before us in this appeal is to the effect that appellant should have been convicted under Section 324 or 326 and not under Section 307 of the IPC and ought to have been inflicted with a lesser punishment.

3. Keeping in view the aforesaid issue and the submissions, a close analysis of the prosecution case reveals that the appellant along with other six named accused and 3-4 unknown persons allegedly first assaulted one Rakesh Kumar. The specific allegation against the appellant is that he was armed with a sword and he gave a blow which hit Rakesh Kumar on his head. The companions of Rakesh Kumar, namely complainant Ramesh Kumar and one Sanjay ran away on their scooter but they were stopped at some distance by parents of the appellant and there when they had fallen on the ground, another co-accused gave sword blow hitting near the eye of the complainant whereas the appellant gave a sword blow on the head of the complainant. Other co-accused also allegedly caused several injuries to the complainant. Thereafter the accused persons ran away and the injured were taken to hospital.

4. From the narration of the case it further appears that there was clash between two groups which resulted in injuries on both parties. All the seven accused pleaded not guilty to the charge under Section 307 read with Section 149 of the IPC. The prosecution examined six witnesses including a doctor PW-2 and the Investigating Officer PW-6. On considering the entire evidence the trial court acquitted the remaining six accused persons but convicted only the appellant, as noted already. The trial court, thus appears to have accepted only a part of assault and injury confined to the complainant.

5. The submission on behalf of the appellant for converting the conviction to one under Section 326 IPC though adverted to, has not been properly dealt with by the High Court. Only two injuries out of seven on the person of the

complainant were caused by sharp weapon and the rest were by blunt weapon. The two injuries by sharp weapon are shown to be incised wounds with the following dimensions :

- (1) 2.5 cm x 0.25 cm on the left parietal region of the head.
- (2) 1.5 cm x 0.25 cm x 0.25 cm nearly perpendicular to injury no.1.

In his evidence PW-2, the doctor has declared injury no.1 and injury no.7 caused by a blunt weapon to be grievous by describing them as dangerous to life. But in cross-examination he has opined that possibility of injury no.1 by fall cannot be ruled out. As already noticed, as per initial version of the occurrence a sword blow near the eye of the complainant Ramesh Kumar was allegedly caused by another co-accused Raj Kumar Chawla whereas appellant is alleged to have given a sword blow on the head. It is not clear from the evidence or the discussion as to which of the two incised injuries was caused by the appellant. Injury no.1 and 2 both are on the head and by sharp weapon. Only one of them, injury no.1 is opined to be grievous but it is accepted by the doctor that it may be possible by fall, obviously because doctor has not found any depth in the said injury. In such a situation the appellant is entitled to be treated as the author of only the injury no.2 on the head which is said to be a simple injury but caused by a sword which is a dangerous weapon.

6. In view of aforesaid discussion, it will not be proper to hold the appellant guilty of causing grievous hurt to the complainant and hence for having voluntarily caused hurt by a dangerous weapon, he deserves to be convicted

only for offence under Section 324 IPC which is punishable with imprisonment which may extend to three years and/or with fine. Since the other co-accused who allegedly caused some other injuries have been acquitted and the appellant did not cause any other injury to the complainant, no case is made out under Section 307 IPC, especially when the genesis as well as motive for the alleged occurrence remain obscure and under haze.

7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the Code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1(one) year when called upon to do so and in the meantime

to keep the peace and be of good behaviour.

9. With the aforesaid modification in conviction and sentence the appeal is allowed in part.

.....**J.**
[DIPAK MISRA]

.....**J.**
[SHIVA KIRTI SINGH]

New Delhi.
April 22, 2016.

ITEM NO.1A
(For Judgment)

IN COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.335/2016

RAMESH KUMAR @ BABLA

Appellant(s)

VERSUS

STATE OF PUNJAB

Respondent(s)

Date : 22/04/2016 This appeal was called on for pronouncement of Judgment today.

For Appellant(s)

Mr. Yash Pal Dhingra, AOR

For Respondent(s)

Mr. Kuldip Singh, AOR

Hon'ble Mr. Shiva Kirti Singh pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Dipak Misra and His Lordship.

The appeal is allowed in terms of the signed reportable judgment.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)