

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1869 of 2017

RAKESH & ANR.

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) This appeal arises out of judgment and order dated 4th March, 2015 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal-S No.2089 of 2003 whereby the High Court confirmed the conviction of the appellants under Section 307 I.P.C. read with Section 34 I.P.C. and affirmed the sentence of seven years imposed upon them. The High Court also confirmed the conviction of the appellants under Section 25 of the Arms Act and the sentence of imprisonment of two years imposed upon each of the appellants.

(2) The case in a nutshell is as follows. Jai Kishan son of complainant is alleged to have abducted Dolly, daughter of Rajinder and sister of the accused. It is alleged that, since then there has been enmity between the two families. On the date of occurrence i.e. 12th April, 2000 at about 05.30-5.45 a.m., when complainant's son Raj Kishan (PW-6) went to answer nature's call, Rakesh, the accused no.1 inflicted injuries on

the head of Raj Kishan with a "dang". The second accused/appellant, Dalbir, shot Raj Kishan on the neck. A case was registered and the law was set in motion.

(3) Upon consideration of the evidence, the Trial Court convicted both the accused-appellants under Sections 307/34 I.P.C. and sentenced them to seven years' rigorous imprisonment. They were further convicted under Section 324 I.P.C. and sentenced to two years rigorous imprisonment and also convicted under Section 323 I.P.C. and sentenced to one year rigorous imprisonment. The second appellant, Dalbir, was further convicted under Section 25 of the Arms Act and sentenced to two years rigorous imprisonment. In appeal, the High Court affirmed the conviction as well as the sentence of imprisonment of both the accused-appellants.

(4) Even though many grounds were raised in the appeal, at the time of the arguments Mr. Jayant Bhushan, learned senior counsel appearing for the accused-appellants, submitted that Dr. G.P. Aggrawal (PW-12) had opined that injury no.2 could have been caused by a blunt weapon. Therefore, conviction under Section 307 I.P.C. is not sustainable. Learned senior counsel prayed for modification of the conviction of the appellants from 307 I.P.C. to Section 325 I.P.C. Learned senior counsel further submitted that at the time of the occurrence, which was of the year 2000 the accused-appellants were only 26 and 24 years of age. He, therefore, prayed for further reduction of sentence of imprisonment.

(5) Dr. G.P. Aggrawal (PW-12) examined the injured Raj Kishan and noted the following injuries:

"(i) An incised wound of size 1-½ x ½" over right occipital parietal area of skull;

(ii) A small lacerated wound of size 1.5 x 1 cm over left sub-mandible area 2-½" from angle of left mandible 2 inches below the left jaw;

(iii) A lacerated wound on left arm lateral side 3" above the left elbow joint."

(6) Dr. G.P. Aggrawal (PW-12) has opined that injury No.2 was caused by fire arm. Dr. Aggrawal further deposed that injury No.2 was dangerous to life and the patient could have died if he had not been given proper treatment. The evidence of Dr. G.P. Aggrawal (PW-12) has to be examined in the light of the testimony of injured witness-Raj Kishan (PW-6). Even though use of fire through pistol was strongly refuted by the appellants, it is pointed out that the pistol was also recovered from the second appellant.

(7) Having regard to the testimony of injured witness-Raj Kishan (PW-6) and the nature of the injuries, in our view the conviction under Section 307 I.P.C. is justified and we do not find any reason to modify their conviction under Section 325 I.P.C. Insofar as the sentence for the conviction under Section 307 I.P.C. is concerned, the appellants were sentenced to undergo imprisonment for seven years. Since the occurrence was of the year 2000 and in the facts and circumstances of the present case and also considering the age of the appellants at

the time of the occurrence, the sentence of imprisonment imposed upon them is reduced to five years.

(8) The appeal is accordingly disposed of.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
OCTOBER 10, 2018.