
(2010) 04 P&H CK 0086

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Harvinder Pal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 28, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 307

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Judgement

T.P.S. Mann, J.

By way of present appeal, the appellant is challenging his conviction and sentence u/s 307 IPC. Vide impugned judgment and order dated 16.1.1997, learned Additional Sessions Judge, Jalandhar had convicted the appellant u/s 307 IPC and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months.

2. According to the prosecution, the occurrence had taken place on 26.2.1994 at about 8.00 p.m. near the Gurudwara of Gopal Nagar, Jalandhar. The street light was on at that time. When Balbir Singh and his nephew Harbir Singh reached there, they found the appellant present there. The appellant raised a lalkara that he would teach a lesson to Balbir Singh for stopping him from coming to his shop. The appellant then gave a dagger blow in the stomach of Balbir Singh. The second blow given by the appellant landed on the forehead above left eye of Balbir Singh. Alarm raised by Harbir Singh attracted the residents of the Mohalla. Seeing them, the appellant ran away from the spot while carrying the dagger with him.

3. Injured Balbir Singh was medico legally examined by Dr. P.N. Datta, E.M.O., Civil Hospital, Jalandhar on 26.2.1994 at about 9.30 p.m., who found the following injuries

on his person:

1. Incised wound 6 cm. x 1 cm. bone deep extending from upper eye lid of left eye upwards and towards left side of forehead. Oblique. Fresh bleeding was present. X-ray and Surgeon's opinion was advised.

2. Incised wound 3 cm. x 1 cm. x depth under Surgeon's opinion, on right side of the abdomen 8 cm. above and right to umbilicus. Oblique. Fresh bleeding was present. X-ray and Surgeon's opinion was advised.

4. According to the doctor, the probable duration of the injuries was within four hours. They were caused by sharp edged weapon. Both the injuries were advised X-ray and Surgeon's opinion. Injured Balbir Singh was operated upon by Dr. J.S. Bath. The offence u/s 307 IPC was later on added to the FIR in view of the fact that injury No. 2 on the person of injured was declared as dangerous to life. Statement of injured Balbir Singh was also recorded after he was declared fit by the doctor to make statement. The appellant was arrested on 15.3.1994 and on the basis of the disclosure statement made by him, blood stained dagger was recovered. Upon completion of the investigation, final report u/s 173 Cr.P.C. was submitted by the police. The copies of the documents relied upon by the prosecution were supplied to the appellant. Finding that the offence u/s 307 IPC was exclusively triable by the Court of Sessions, the case was committed. Ultimately, charge u/s 307 IPC was framed against the appellant to which he pleaded not guilty and claimed trial.

5. In support of its case, the prosecution had examined PW1 Dr. P.N. Datta, PW2 Dr. J.S. Bath, PW3 Dr. Gurpal Kataria, PW4 HC Ranjit Singh, PW5 Constable Inder Mohan, PW6 Harbir Singh, PW7 Balbir Singh, PW8 Constable Gurdip Singh, PW9 Constable Nanak Singh, PW10 ASI Gurmej Singh and PW11 Dalip Singh, Draftsman. The prosecution also tendered in evidence reports of the Serologist and the Chemical Examiner.

6. When examined u/s 313 Cr.P.C., the appellant had denied the incriminating circumstances put to him. He pleaded false implication. According to him, he was supporting the Congress candidate in the election whereas the injured was helping the Akali candidate. He also stated that he alongwith Harbhajan Singh and Harjit Singh went to see injured Balbir Singh in Civil Hospital, Jalandhar where he stood admitted, who told them that he had met with an accident and received injuries. On 12.3.1994, the appellant received a message from his sister residing at Ropar that she had met with an accident. Accordingly, he alongwith his father, uncle and grand mother went to Ropar on 13.3.1994 from where he was arrested by ASI Satnam Singh of Police Station City Ropar and ASI Gurmej Singh, the Investigating Officer of the present case. He never made any disclosure statement nor got recovered the dagger. He also stated that the injured had twice come to meet him in Central Jail, Jalandhar on 24.4.1994 and 28.4.1994 and wanted to compromise with him. In support of his plea, the appellant had examined DW1 Kashmiri Lal, Clerk, Central

Jail, Jalandhar, DW2 Malkiat Singh, Assistant Superintendent, Central Jail, Jalandhar, DW3 Makhan Singh, DW4 Mohinder Singh and DW5 Harjinder Singh, Complaint Clerk.

7. After hearing learned Counsel for the parties and perusing the evidence brought on the record, the trial Court had believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

8. The occurrence in question had taken place on 26.2.1994 at about 8.00 p.m. Immediately after the occurrence, injured Balbir Singh was shifted to Civil Hospital, Jalandhar where he was medico legally examined by Dr. P.N. Datta at about 9.30 p.m. on the same evening. On receipt of ruqa from the doctor, ASI Gurmej Singh went to Civil Hospital, Jalandhar where he recorded the statement of Harbir Singh. On 27.2.1994 at about 2.15 a.m. The said statement was sent to Police Station Division No. 1, Jalandhar where formal FIR No. 15 was recorded on 27.2.1994 at 2.45 a.m. It is, thus, apparent that the FIR was lodged by Harbir Singh, an eye witness, with due promptness.

9. It was specifically stated by Harbir Singh in his statement Ex.PG forming the basis of the FIR that when he alongwith Balbir Singh reached near the Gurudwara of Gopal Nagar, Jalandhar, he found the appellant there. The street was well lit at that time. On seeing Balbir Singh, the appellant raised a lalkara to teach him a lesson for stopping him from coming to his shop. The appellant then gave two dagger blows to Balbir Singh, one of which landed in his stomach while the other on the forehead above the left eye. While deposing before the trial Court as PW6, Harbir Singh reiterated his version as stated by him in his statement Ex.PG before the police. Injured Balbir Singh, who was examined by the prosecution as PW7 corroborated the statement of PW6 Harbir Singh by stating that it was the appellant, who had given two dagger blows, one in his stomach and the other above left eye on his forehead. The statements of both Balbir Singh injured and Harbir Singh, eye witness, stand corroborated by the medical evidence.

10. Dr. J.S. Bath, Surgical Specialist, had operated Balbir Singh injured on 27.2.1994 at 3.00 a.m. On the basis of his opinion, Dr. P.N. Datta declared injury No. 2 on the person of Balbir Singh injured, as dangerous to life while injury No. 1 was simple in nature.

11. During investigation of the case, the appellant was arrested and he got recovered blood stained dagger. The dagger was sent to the Chemical Examiner, who found the blood stains present on the same. As per the report of the Assistant Serologist, the blood stains found on the dagger were of human blood. However, the blood group could not be ascertained as the stains were insufficient for conducting such a test.

12. Out of the five witnesses examined by the appellant in his defence, DW3 Makhan Singh is his father while DW4 Mohinder Singh is his uncle. Therefore, no implicit

reliance can be placed upon their testimonies when they stated that the appellant was arrested on 13.3.1994 at Ropar. As regards the statements of Kashmiri Lal DW1 and Malkiat Singh DW2, the appellant was apprehending danger to his family at the hands of Mohinder Singh son of Ghamund Singh, etc. Application Ex.DA was moved on 5.4.1994 whereas the occurrence in the present case had taken place on 26.2.1994. Therefore, the same had rightly been ruled out of consideration by the trial Court. According to the appellant, he was arrested on 13.3.1994 when he alongwith his father and uncle visited his sister at Ropar. Applications and telegrams against his false implication were sent to Senior Superintendent of Police, Jalandhar. However, no such application or telegram has been brought on record by the appellant. As per the testimony of Harjinder Singh, no such telegram dated 13.3.1994 was received from Makhan Singh, father of the appellant, regarding illegal detention of his son. No reliance can, thus, be placed upon the defence evidence.

13. In view of the above, no case is made out for any interference in the conviction of the appellant u/s 307 IPC.

14. The occurrence in question had taken place more than 16 years earlier. As per the custody certificate brought on record by learned State counsel in the Court today, the appellant remained in custody as an undertrial for three months and 29 days and later on as a convict for four months and 19 days. He has, thus, already undergone a period of eight months and 18 days out of the sentence of five years imposed upon him. The appellant has been facing the agony of criminal prosecution right from the time when the present criminal proceedings by way of registration of FIR were initiated against him. When the appellant was examined by the trial Court on the quantum of sentence, he had pleaded that he was a patient of polio. Taking into consideration the totality of the circumstances, the Court is of the view that no useful purpose would be served by sending the appellant behind the bars, once again, for undergoing the remainder of his sentence. Ends of justice would be amply met if the substantive sentence of imprisonment is reduced to that already undergone by him but at the same time enhancing the fine of Rs. 2,000/- as imposed by the trial Court to Rs. 20,000/- so that the enhanced fine may be paid to the injured as compensation.

15. Resultantly, the conviction of the appellant u/s 307 IPC is maintained. His substantive sentence of imprisonment is reduced to that already undergone by him. However, the amount of fine of Rs. 2,000/- is enhanced to Rs. 20,000/-, which be deposited by the appellant with the trial Court within three months from today, failing which he shall be required to undergo rigorous imprisonment for nine months. The enhanced fine, if deposited, be disbursed to Balbir Singh injured as compensation.

16. The appeal is, accordingly, disposed of.