

(1994) 01 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 537-SB of 1986

Wachittar Singh and
Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Jan. 27, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 313
- Penal Code, 1860 (IPC) - Section 308, 323, 324, 325, 34

Citation: (1995) CriLJ 1614

Hon'ble Judges: Jai Singh Sekhon, J

Bench: Single Bench

Advocate: Lakhinder Singh, for the Appellant; G.S. Nahar, AAG, for the Respondent

Final Decision: Dismissed

Judgement

Jai Singh Sekhon, J.

Nazar Singh-appellant was convicted on the charge for offences punishable under Sections 324 and 325/34 of the Indian Penal Code for the injuries on the person of Joginder Singh (P.W. 3) while Bachittar Singh, Sucha Singh and Sandhu Singh appellants were found guilty of these offences with the aid of Section 34, Indian Penal Code. The later set of appellants was released on probation by the learned Additional Sessions Judge, Amritsar, for a period of three years besides awarding compensation to the injured to the tune of Rs. 1,500/- from each of these appellants while Nazar Singh appellant was awarded two years" rigorous imprisonment and fine of Rs. 2,000/- or in default of payment thereof to undergo further six months" rigorous imprisonment for offence u/s 324, IPC. He was also awarded sentence of one year"s rigorous imprisonment and fine of Rs. 1,000/- or three months" rigorous imprisonment in default of payment thereof for the offence u/s 325/34, Indian Penal Code. Both the substantive sentences were ordered to run concurrently. Out of the total amount of fine and compensation, Rs. 6,000/- were ordered to be paid as

compensation to Joginder Singh-injured and Rs. 1,500/- to Jagtar Singh-injured. Feeling aggrieved against their convictions and sentences, the appellants have come up in appeal.

2. In brief, the facts of the prosecution case are that there was a land dispute between Nazar Singh and Sadhu Singh accused and Mohinder Singh, brother and Gurmej Singh, father of Joginder Singh-injured. Civil litigation was going on between these parties during those days. Joginder Singh (P.W. 3) was enlisted in the Army and had come on leave to his village Padhri Khurd.

3. On November 25, 1984, at about 10 a.m. the aforesaid Joginder Singh injured along with Jagtar Singh injured (P.W.2) had gone to the tubewell and were busy in disconnecting the electric motor when Nazar Singh accused armed with a kulhari along with Bachittar Singh, Sadhu Singh and Sucha Singh carrying dangs arrived there. Nazar Singh accused, after exhorting that Joginder Singh be not allowed to escape, dealt a kulhari blow on his head which resulted in his fall. Nazar Singh then secured the injured from his long head hair. The remaining three accused gave dang blows on the arms, legs and other parts of his body. Jagtar Singh tried to rescue Joginder Singh, but he was given injuries by Sucha Singh and Bachhitar Singh on the left shoulder, right wrist, cheeks and legs. On the alarm raised by these witnesses, Jagir Singh and Kulwant Singh witnesses were attracted to the spot and on their approach the accused fled away from the spot with their respective weapons.

4. Jagir Singh and Kulwant Singh brought both the injured in a taxi-car to Primary Health Centre, Jhabal, where Dr. Sarwan Singh (P.W. 1) admitted them in the hospital at 12-10 p.m. Joginder Singh was medically examined at 12-20 p.m. by this doctor and twelve injuries were found on his person, out of which injury No. 1 was an incised wound while injury No. 7 was an incised punctured wound and the rest were caused with blunt weapon. Injuries No. 1 and 2 were declared simple in nature while injuries No. 3, 4 and 8 were kept under observation. The rest of the injuries were found grievous.

5. On medical examination of Jagtar Singh, Dr. Sarwan Singh (P.W. 1) found five blunt weapon simple injuries on his person.

6. Jagtar Singh (P.W.2) happened to meet Assistant Sub-Inspector Joginder Singh (P.W. 8) at Bus Stand, Jhabal, where his statement (Exhibit P.D.) was concluded at 1 -30 pm. and on its basis formal first Information Report (Exhibit P. D/2) was got registered at the Police Station for the offences under Sections 325/324/323/34, Indian Penal Code at 1-35 p.m. Thereafter, this police officer went to the hospital in order to record the statement of Joginder Singh-injured, but the doctor declared the injured unfit to make a statement. The injuries of Joginder Singh were, however, declared dangerous to life by the doctor and the offence was got converted to the one u/s 308, IPC. The investigator then arrived at the spot and during

spot-inspection seized blood-stained earth after putting it in a sealed parcel. He also drafted visual site plan (Exhibit P.L.) of the spot besides recording the statements of the witnesses.

7. All the accused were arrested on November 29, 1984. Nazar Singh accused, got recovered kulhari (Exhibit P-I) in pursuance of his disclosure statement from the heap of parali. Bachittar Singh accused also got recovered three dangs from rick of straw installed in front of his residential house. All these articles were taken into possession after putting them in separate sealed parcels.

8. Joginder Singh injured was first treated for his injuries at Military Hospital, Amritsar, and thereafter shifted to Military Hospital, Jalandhar, where Lt. Col. Dr. D. S. Sohal (P.W. 7) examined him and on X-ray examination found both the bones of the left leg and tibial bone of the right leg having suffered comminuted fractures vide his report Exhibit P.K/1. Joginder Singh was discharged from the hospital on December 28, 1985. Thereafter, he was re-admitted for reviewing the progress of the fractured bones.

9. The sealed parcels of the blood-stained earth and weapons of offence were sent to the Chemical Examiner, who found blood thereon and sent the same to the Serologist for determining the origin of the blood.

10. After completion of investigation, all the accused were arraigned for trial on such like allegations by submitting the charge sheet before the Committing Magistrate, who committed the case to the Court of Sessions.

11. Before the trial Court, in order to prove its above-referred case, the prosecution examined eight witnesses besides tendering in evidence the affidavit of Ajit Singh as P.W. 9 and report (Exhibit P.O.) of the Chemical Examiner. Jagtar Singh and Joginder Singh-injured and Jagir Singh, eye-witness supported the above-referred version of the prosecution while the other Eye-witness Kulwant Singh was given up as having been won over by the accused.

12. The version of all the appellants before the trial Court was that of denial and false implication. in order to grab their land. When called upon to enter on their defence, the accused recalled Joginder Singh-injured (P.W. 3) is defence in order to prove that he had not named his assailants specifically before Lt. Col. Dr. D. S. Sohal (P.W. 7). The certified copy of the judgment of the Civil Court (Exhibit D. X) and certified copy of the order of Executive Magistrate in proceedings u/s 145 of the Code of Criminal Procedure (Exhibit Dy.) were also produced in evidence.

13. The trial Court, after believing the evidence of the prosecution, acquitted all the accused of the charge u/s 308 and 308/34, IPC but convicted and sentenced them for offences under Sections 325, 324/34. IPC, as detailed above.

14. Mr. Lakhinder Singh, learned counsel for the appellants, contends that due to land dispute, all the three sons of Baghel Singh, namely, Bachittar Singh, Sucha

Singh and Nazar Singh had been implicated. It was also maintained that Sadhu Singh appellant was also implicated falsely as he was co-sharer of the land in dispute. He has referred to the certified copy of the judgment (Exhibit D.X) of the Civil Court as well as the order (Exhibit D.Y.) of the Executive Magistrate in this regard.

15. No doubt, the perusal of the certified copy (Exhibit D.X) reveals that Nazar Singh and Sadhu Singh appellants had filed a suit on January 17, 1984, for permanent injunction against Gurmej Singh, the father of Joginder Singh injured and Mohinder Singh, the brother of this injured, and it was decreed on January 11, 1985 restraining the defendants from interfering in the possession of the plaintiffs over the suit land except the land forming part of khasra No. 17/2 of Rectangle No. 32 measuring 3 Kanals 9 Maras and the perusal of the certified copy (Exhibit D.Y) of the order of the Executive Magistrate dated April 1, 1985 shows that on the basis of the judgment of the Civil Court these proceedings were decided in favour of Nazar Singh accused, the first party; but the above-referred decisions of the Civil Court or Executive Magistrate are of no help to the appellants as they had not set up a case of defence of property. On the other hand, they had denied their participation in this occurrence. The suggestion to the witnesses in this regard by their learned counsel, which had not been owned by the accused appellants in their respective statements u/s 313 of the Code of Criminal Procedure, cannot be treated as evidence especially when there is no circumstance figuring in the evidence of the prosecution to support this plea.

16. The medical evidence of Dr. Sarwan Singh (P.W. 1) reveals that he had found the following twelve injuries on the person of Joginder Singh (P.W. 3) :-

"1. Incised wound 8 cms x 2 cms over front parietal region of skull, on right side situated sagittally just behind the frontal hair line; and 4 cms right to mid line; deep upto bone; profuse bleeding present from the wound.

2. Reddish contusion 7 cms x 3 cms with an abrasion 2 cms x 2 cms in middle of it, situated 3 cms behind the outer angle of right eye;

3. Reddish contusion 10 cms x 4 cms situated over outer and back aspect of upper third of right forearm;

4. Contusion 10 cms x 4 cms over front and outer aspect of upper third of left leg just below the knee.

5. 2 lacerated wounds 1 cm x 0.5 cm each situated 2 cms apart from each other over the lower third of outer aspect of left leg; wounds were bleeding profusely; and these were deep upto bone.

6. Lacerated wound 1 cm x 0.5 cm situated 4 cms in front of lateral malleolus.

7. Incised punctured wound 2 cms x 0.5 cm over front aspect of left ankle joint; deep upto bone; bleeding was present.
8. Contusion 10 cms x 4 cms on inner aspect of upper third of right leg.
9. Lacerated wound 1.5 cm x 1.5 cm over inner aspect of middle third of right leg; deep upto bone; bleeding was present.
10. Lacerated wound 1.5 cm x 0.5 cm situated -in front of injury No. 9 deep upto bone.
11. Lacerated punctured wound 3 cms x 1 cm on front aspect of lower third of right leg.
12. Lacerated wound 1 cm x 1 cm on front aspect of lower third of right leg; deep upto bone.

This doctor also found the following five injuries on the person of Jagtar Singh (P.W.2):-

- "1. Faint reddish contusion 5 cms x 5 cms on top of right shoulder;
2. Faint reddish contusion 6 cms x 4 cms across the middle of left clavicle.
3. Swelling of the lower jaw on right side size 1 cm x 1 cm just in front of ankle.
4. Swelling 2 cms x 2 cms just below the styloid process of right ulna.
5. Swelling 4 cms x 4 cms over inner aspect of left knee.

17. The opinion of this doctor that all the injuries (except injuries Nos. 1 and 2) on the person of Joginder Singh were either kept under observation or grievous in nature is supported from the evidence of Lt. Col. Dr. D. S. Sohal (P. W. 7), who after X-ray examination vide his report (Exhibit P.K/1) had detected comminuted fractures of both the bones of the left leg and of tibial bone of right leg. Simply because injury No. 7 on the person of Joginder Singh has been described as incised punctured wound by Dr. Sarwan Singh (P.W. 1), it cannot be said that the medical evidence belies the ocular version as injury with blunt weapon on a portion of the body supported by a bone would some time give the impression that it was caused with a sharp-edged weapon. Injury No. 7 is located on the left ankle joint and was found bone deep. Consequently, it cannot be said that the medical evidence belies the ocular version. On the other hand, it supports the ipse dixit of both the injured witnesses, namely, Jagtar Singh (P.W. 2) and Joginder Singh (P.W. 3). The large number of injuries also render due corroboration to the participation of all these appellants in this occurrence.

18. The next contention of Mr. Lakhinder Singh pertains to ante timing the statement of Jagtar Singh (Exhibit P.D) by Assistant Sub-Inspector Joginder Singh (P.W. 8) as it was purported to have been concluded at 1-30 p.m. on November 25,

1984 while according to Jagtar Singh and Dr. Sarwan Singh, the injured was medically examined at 2-30 p.m. on that day and after his arrival at 12-10 p.m. in the hospital, he remained there. This confusion regarding time of recording the statement (Exhibit P.D.) of Jagtar Singh appears to be the result of the disparity in the watches of the hospital and the one which was consulted by Assistant Sub-Inspector Joginder Singh. The occurrence took place at about 10 a.m. in the area of Village Padfiri Khurd which falls at a distance of 6 1/2 miles from Police Station, Jhabal. The injured were admitted in the hospital at 12-10 p.m. Even if the statement (Exhibit P.D.) of Jagtar Singh had been recorded after 2-30 p.m. it would be of no consequence to hold that he had magnified the number of assailants.

19. Lastly, Mr. Lakhinder Singh contends that the accused who gave grievous injuries on the legs of Joginder Singh have been released on probation by the trial Court, but Nazar Singh accused who had given simple injury with sharp-edged weapon on the head of Joginder Singh has been sentenced to the above-referred term of imprisonment which is not justifiable. There is considerable logic in this contention as Bachittar Singh, Sadhu Singh and Such a Singh, accused-appellants, who had given grievous injuries with blunt weapons on the legs of Joginder Singh, have been released on probation by the trial Court whereas Nazar Singh, who had been attributed a simple injury with sharp-edged weapon on the head of Joginder Singh, has not been extended this benefit. Although, underlie circumstances of the case, comminuted fractures having been detected on both the legs of Joginder Singh, it was not a fit case for giving the benefit of probation to the above-referred three accused-appellants, yet keeping in view that the incident relates to November, 1985 and the State has not preferred any appeal against the said order, there is no justification for suo motu taking cognizance of the matter at this belated stage. Under these circumstances, Nazar Singh appellant is also directed to be released on probation for a period of two years on furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Amritsar, undertaking to keep the peace and be of good behaviour and to appear for receiving sentence, if called upon to do so during this period.

20. Nazar Singh appellant has already deposited the fine of Rs. 2,000/- as well as Rs. 1,000/- awarded under Sections 324 and 325/34, IPC, respectively. This amount shall be treated as part of the compensation already directed to be released to Joginder Singh injured by the trial Court.

21. Except for the modification of the sentence of Nazar Singh appellant, the appeal fails and is hereby dismissed.