

(2011) 02 P&H CK 0137

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No's. 20-SB and 314 of 2003

Sarbjit Singh and Others

APPELLANT

Vs

State of Punjab
 Dharam
Singh Vs Sarbjit Singh and
Others

RESPONDENT

Date of Decision: Feb. 17, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 307, 323, 324, 325, 34

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

By this common order, Crl. Appeal No. 20-SB of 2003 (preferred by Sarbjit Singh, Bhinder Singh, Darshan Singh and Jarnail Singh), and Crl. Revision No. 314 of 2003 (preferred by Dharam Singh - complainant), shall be decided together.

2. Sarbjit Singh, Bhinder Singh, Darshan Singh and Jarnail Singh were named as accused in case FIR No. 77 dated 12.8.2000 registered at Police Station Sherpur, under Sections 307, 452, 324, 325, 323 read with Section 34 IPC. The court of Additional Sessions Judge (Ad hoc), Fast Track, Sangrur vide judgment dated 13.12.2002 acquitted them of offence u/s 307 IPC but held them guilty of offences punishable under Sections 452, 325, 324, 323 read with Section 34 IPC and vide order of even date, sentenced them as under:

All the accused are sentenced to undergo RI for 2 years and a fine of Rs. 500/-each u/s 452 IPC. In default of payment of fine, the accused shall further undergo RI for 6 months. Accused Jarnail Singh @ Kaka is sentenced to undergo RI for one year and a fine of Rs. 500/-under Section 325 IPC. In default of payment of fine, he shall further

undergo RI for 3 months. Accused Sarbjit Singh, Darshan Singh & Bhinder Singh are sentenced to undergo RI for one year and a fine of Rs. 500/-under Section 325 read with Section 34 IPC. In default of payment of fine, they shall further undergo RI for three months. Darshan Singh accused is sentenced to undergo RI for 9 months u/s 324 IPC & Sarbjit Singh, Bhinder Singh & Jarnail Singh accused are sentenced to undergo RI for 9 months u/s 324 read with Section 34 IPC.

Accused Sarbjit Singh is sentenced to undergo RI for 6 months u/s 323 IPC while Darshan Singh, Bhinder Singh & Jarnail Singh are sentenced to undergo RI for six months u/s 323 read with Section 34 IPC.

Accused Bhinder Singh is sentenced to undergo RI for 6 months u/s 323 IPC and Darshan Singh, Sarbjit Singh and Jarnail Singh are sentenced to undergo RI for six months u/s 323 IPC read with Section 34 IPC.

All the sentences shall run concurrently.

3. Dharam Singh PW4 made statement Ex.PW4/A to ASI Jasbir Singh PW7 wherein he stated that he is resident of village Katron; they were three brothers. He was elder and all the three were residing jointly with parents. In the front of his residential house, there is one outer house. On 11.8.2000 at about 8 p.m., he was returning to the inner house after parking the tractor in the outer house. At that time, his father Joginder Singh came out to urinate in the courtyard. At that time, Sarbjit Singh, Darshan Singh both armed with gandasas, Kaka Singh and Bhinder Singh both armed with dangscame there. Sarbjit Singh raised a lalkara that a lesson be taught for raising the construction at Dharamshala. At this, Darshan Singh gave a gandasa blow from its sharp side on the head of Joginder Singh and Sarbjit Singh gave a gandasa blow from its blunt side on the right eye of Joginder Singh due to which Joginder Singh fell down. On hearing lalkararaised by Darshan Singh, Dharam Singh's brother Sukhdev Singh and niece Manjit Kaur also arrived at the spot. Kaka Singh gave a sotiblow on the right hand of Dharam Singh and Bhinder Singh gave a sotiblow on the right leg of Manjit Kaur. All the four accused being residents of the village were known to the complainant party. At that time, an electric bulb was emitting light in the courtyard of the outer house. On the raulabeing raised by the complainant, all the accused ran away with their respective weapons. The injured were brought in a Tata Sumo and were got admitted in the hospital for treatment. Joginder Singh father of the complainant was in unconscious state. Manjit Kaur was residing with the family of the complainant from the last 12/13 years. Cause of grudge stated to be was, that about two years ago, a Dharamshala was constructed in the village and the complainant was a Member of the Dharamshala Committee. Accused never wanted construction to be made at the Dharamshala. Due to this reason, they had caused injuries. The above stated FIR was investigated and report u/s 173 Cr.P.C was submitted.

4. PW1 Dr. Ramesh Kumar Sharma, on 11.8.2000, had medico-legally examined Joginder Singh and had found the following injuries on his person:

1. There was an incised wound 5 cm x 0.5 cm into bone deep on the scalp from the frontal bone to the parietal region antero posteriorly, lying on the sagittal suture with profuse bleeding, vomiting and vertigo were present. Patient was kept under observation.

2. There was a contusion mark with swelling of both right upper and lower eye lids. Eyes were not examined. Patient was kept under observation.

5. The complainant Dharam Singh was also examined by this witness and one injury was found on his right hand. The injury noticed by the doctor is reproduced below:

1. There was localised swelling on the dorsal aspect of right hand on metacarpal and MP-IP joint level with localised tenderness. It was reddish in colour. X-ray was advised. Injury was kept under observation and weapon used were blunt and time elapsed between injury and examination within six hours.

6. Manjit Kaur had also sustained one injury. The following injury was noticed on her person:

1. There was a reddish contusion 4 inch x 1 inch on the right calf region with localised tenderness. Injury was declared as simple. Weapon used was blunt.

7. Vide Ex.PN/1, this witness opined that there was fracture of proximal phalanx of index finger and the injury was declared as grievous. Injury on the person of Joginder Singh was declared as simple but it was opined that possibility of death cannot be ruled out if treatment was not given in time and further complications may occur. This opinion was exhibited as PQ/1.

8. PW2 Dr. B.D. Mittal, Radiologist, stated that there was a proximal phalanx fracture of the index finger. PW3 Dr. Paras Kumar Pandav proved the bed head ticket of Joginder Singh. This witness stated that Joginder Singh was admitted on 18.8.2000 and was discharged on 24.8.2000.

9. PW4 Dharam Singh reiterated as to what was stated in the statement Ex.PW4/A on the basis of which formal FIR was registered.

10. Manjit Kaur injured appeared as PW5 and supported the version given by PW4 Dharam Singh complainant. PW6 Makhan Lal Patwari, Katron proved Jamabandi Ex.PR regarding the outer house of Joginder Singh injured. PW7 ASI Jasbir Singh proved the statement Ex.PW4/A on the basis of which FIR was recorded and had conducted the investigation. This witness proved various facets of investigation.

11. PW8 Mohinder Singh stated that a Society was formed and the Dharamshala was constructed. Dharam Singh injured was member of the Society. HC Nirmal Singh PW9 and Constable Kulbir Singh PW10 tendered their affidavits Ex.PAB and Ex.PAC

to prove link evidence. PW11 Tarsem Chand Draftsman proved scaled site plan.

12. Thereafter, the statements of the accused were recorded u/s 313 Code of Criminal Procedure They denied all incriminating circumstances and pleaded innocence.

13. Shri Narinder Singh, Counsel appearing for Shri T.S. Sangha, Senior Advocate, for the Appellants, has stated that in the occurrence, four injuries have been suffered; two by Joginder Singh, one by Dharam Singh and one by Manjit Kaur. For the four injuries, four accused have been implicated. Counsel has stated that FIR in the present case was recorded on the next day of the occurrence. It is submitted that Manjit Kaur PW5 had only suffered injury on the right calf and the said injury was nothing but a reddish contusion. Therefore, she was fit to make statement but she has not made any effort to do so. Counsel states that no reliance can be placed upon the witnesses as due to consultation and deliberations, they have concocted a false version. It is further submitted that no independent witness has been examined and the witnesses are all relations and they are bound to depose against the accused-Appellants.

14. Shri J.S. Bhullar, Assistant Advocate General, Punjab, ably assisted by Shri S.K. Bawa, Counsel for the complainant/revision Petitioner, has stated that the testimony of Dharam Singh PW4 and Manjit Kaur PW5 is truthful.

15. I have given my thoughtful consideration to the rival submissions made by Counsel for the parties.

16. In the present case, occurrence has taken place at 8 p.m. in the month of August inside the house of Joginder Singh. All the witnesses are expected to be at their house. Manjit Kaur is the niece of the complainant residing in his house. Therefore, accused have entered into the house of complainant and had caused injuries. Joginder Singh, Manjit Kaur and Dharam Singh are stamped witnesses. They will be the last persons to absolve the actual accused and as such there is no possibility of substitution of the accused. Therefore, it cannot be said that the witnesses have substituted the accused. The trial court has already acquitted the accused of the offence u/s 307 IPC holding that there is no definite opinion regarding the injuries suffered by Joginder Singh and the opinion given by the doctor is vague.

17. In the occurrence, the only grievous injury caused is on the index finger of Dharam Singh, that too by blunt weapon falling within the ambit of Section 325 IPC.

18. Shri Narinder Singh has further stated that the Appellants have committed no offence before or after registration of this case and they are leading the life of an honest and a peaceful citizen.

19. Considering the fact that only one injury is attributed to each accused and they have not taken undue advantage and have been only convicted for offence under Sections 323, 324, 325, 452 IPC, this Court is of the view that an opportunity can be

provided to the accused to reform themselves and lead the path of rectitude.

20. Occurrence in the present case has taken place in the year 2000. A period of more than 10 years has elapsed. The Appellants have already suffered mental pain and agony of protracted trial. Considering all these circumstances as mitigating circumstances, the Appellants are ordered to be released on probation to maintain peace and be of good behaviour for a period of one year. They shall furnish the requisite bonds before the trial court within a period of three months from the date of receipt of a certified copy of this order along with the cost of litigation, which is assessed at Rs. 20,000/-, qua each accused. The amount, if so recovered, shall be proportionately paid by the trial court to the injured. In case the amount of cost is not paid, the Appellants shall serve the remainder of the sentence.

21. Since sentence of Appellants for offences, for which they have been convicted, has been upheld and they have been released on probation, no interference is warranted in the revision petition filed by complainant and the same is hereby dismissed.

22. With the above observations, the appeal is also disposed of.