Mulkh Raj and Another Vs State of Punjab

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 20, 2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 313#Penal Code, 1860 (IPC) â€" Section 302, 325, 34

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Judgement

A.N. Jindal, J.
This is an appeal against the judgment dated 27.01.2000, passed by Addl. Sessions Judge, Gurdaspur, convicting and

sentencing the appellants-accused (herein referred as "the accused") as under:

Mulkh Raj R.I. for a period of 10 years and to pay a

fine of Rs. 3,000/- u/s 304-II IPC.

Kashmir @ R.I. for a period of 10 years and to pay a

Sheera fine of Rs. 3,000/- u/s 304-II read

with Section 34 IPC.

2. Complainant Swaran Dass (now deceased)(herein referred as "the complainant") is the brother of the accused. One year prior to the

occurrence, he had taken a loan of Rs. 800/- from his brother Mulkh Raj but due to his inability to return the same, the accused Mulkh Raj was

not happy with him and had abused him on this account. On 22.11.1996, at about 7:00 p.m., when the complainant alongwith his wife and son

was sitting in the Courtyard of his house, both the accused, who are brothers of the complainant, came on the roof of their house abused him and

exhorted to teach him a lesson for not returning Rs. 800/- to Mulkh Raj. Accused Mulkh Raj started hurling brick bats and one of the brick bats

hit on the left eye of complainant whereas his wife and son rushed into verandah to save themselves whereas, both the accused went back.

Complainant was removed to Civil Hospital, Fatehgarh Churian where he was medico legally examined. On the ruqa sent by the doctor, ASI Ram

Singh reached the hospital, recorded the statement of complainant, on the basis of which case was registered and investigated. Complainant was

removed to Guru Nanak Dev Hospital, Amritsar where he expired on 30.11.1996.

3. The accused Mulkh Raj was charged u/s 302 IPC whereas accused Kashmir @ Sheera was charged u/s 302 read with Section 34 IPC.

4. In order to substantiate the charges, the prosecution examined 8 witnesses in all.

5. On closure of the prosecution evidence, the accused were examined u/s 313 Cr.P.C. wherein they denied all the incriminating circumstances

appearing against them and pleaded their false implication. Accused Mulkh Raj further explained that his father Gujjar Ram purchased 2Ã¯Â¿Â½ marlas

plot from one Narinder Ladi in the year 1993 through deceased Swaran Dass. In the year 1995, a dispute arose over the possession of land in

which Gujjar Ram received injuries for which Narinder Ladi, Uttam Singh and Surinder Singh are facing trial u/s 325 IPC at Batala. Swaran Dass

was supporting Narinder Ladi. On 22.01.1996, Kashmir Singh, his brother, appeared as witness in favour of his father. Swaran Dass complainant

remonstrated him in the village. Consequently, they grappled with each other. Resultantly, Swaran Dass fell on the bricks and received injuries.

Since Swaran Dass was pursuing the case in connection with the death of their father in favour of the accused and financing them whereas Mulkh

Raj was supporting his father, therefore, both of them had been falsely implicated in this case.

6. In their defence, the accused examined Jagdev Singh Ahlamd of the Court of Smt. Priya Sood, Civil Judge (Junior Division), Batala as DW1.

7. The trial ended in conviction. Arguments heard. Record perused.

8. The occurrence in this case took place on 22.11.1996 at 7:00 p.m. wherein the complainant suffered injuries on his eye. PW2 Dr. K.K.

Mahajan, Medical Officer, P.H.C., Fatehgarh Churian, who medico legally examined the complainant on the same day at 9:30 a.m., found the

following injuries:

There was lacerated wound cruciate in shape each limb of about 3cms length width of wound was 2cms. There was fragment of dust and brick in

the depth of wound. On removing these fragments underlying bones exposed. There was depressed fracture of the underlying skull bone. Wound

was situated about 1Ã¯Â¿Â½ cms above the middle of left eye brow on the fore-head.

9. Dr. K.K. Mahajan (PW2) declared the injury as grievous in nature. However, the complainant remained admitted in the hospital and unfit to

make the statement. Ultimately he died on 30.11.1996 and his postmortem was conducted by Dr. Ashok Chanana (PW7) on the same day at

4:20 p.m. Since it was a case lodged by the complainant against his own brothers, for the solitary injury and made the statement only when he

became conscious on 27.11.1996, therefore, the delay if any, cannot be said to be fatal. Even otherwise when the deceased was struggling for life,

the first anxiety of the wife and son was to save their kin, then to rush to the police station in order to lodge the report. Since the matter was

between the brothers, therefore, they may be reluctant to lodge the report for sometime and when the blow given by the accused proved fatal then

they lodged the report. Thus, taking the case from any angle, the delay in lodging the FIR cannot be said to be fatal.

10. As regards the culpability and complicity of the accused in the commission of crime, there are consistent testimonies of two witnesses namely

Jainti, widow of complainant Swaran Dass (PW3) and Sukhdev, son of the complainant (PW4). They have given minute details of the occurrence.

The accused are the brothers of the complainant-injured, therefore, no question of mistaken identity arises. The presence of the witnesses at the

place of occurrence i.e. in their own house is most probable.

11. Faced with the situation, learned Counsel for the appellants, without laying much stress regarding the conviction of accused Mulkh Raj, has

urged that the complicity of accused Kashmir Singh is doubtful in the case. The accused Kashmir Singh was empty handed and did not cause any

injury. Both the accused were not armed, therefore, hurling of the brick bats by Mulkh Raj does not indicate in any manner that Kashmir Singh had

shared common intention with Mulkh Raj.

12. Having given my thoughtful consideration to this contention, raised by the learned Counsel for the appellants, I find substance in the same. No

doubt, both the accused came on the roof top of the house of complainant and were empty handed. There is no evidence that they had taken brick

bats alongwith them. Only imputation against accused Kashmir @ Sheera is that he exhorted the accused Mulkh Raj for not returning the amount.

However, there is no evidence that he hurled any brick bat upon the complainant. Mere fact that he had supported his brother when he demanded

Rs. 800/- does not prove that he had any intention to cause injury to the complainant. Even after Mulkh Raj hurled brick which hit the complainant,

he did not cause any injury to the wife and son of the complainant by hurling brick bat. Therefore, in the given circumstances of the case, no

inference could be drawn that accused Kashmir Singh had shared the common intention with accused Mulkh Raj to cause injury to the

complainant, rather from the allegations as alleged in the FIR and the evidence on record, it appears that the prosecution exhorted the prosecution

version and arrayed Kashmir Singh as an accused falsely in the case, as such, the benefit of doubt could be extended to him.

13. As regards the next contention with regard to the fact that the wife of the complainant Jainti Devi has compromised with the accused. Though,

that may not be the ground for acquitting the accused but some concession could be given on the quantum of sentence.

14. It is observed that accused Mulkh Raj in all probabilities knowing fully well that the injury caused by him with brick bat may prove fatal,

attacked him as a result of which complainant died but keeping in view the fact that the accused Mulkh Raj had no such intention;, the accused and

the deceased are brothers; the quarrel took place on a petty matter; the accused had not gone pre-planned by taking arms; the accused did not

repeat the offence and a compromise has taken place between the heirs of the deceased and the accused, therefore, some concession in the

quantum of sentence could be awarded to them.

15. For the reasons, stated above, the appeal preferred by the accused-appellants is partly accepted. The accused Kashmir Singh is extended

benefit of doubt and is acquitted of the charges framed against him. Bail Bond/surety bond, furnished by him stand discharged and he is directed to

be set at liberty forthwith whereas the appeal of accused Mulkh Raj is dismissed with the modification in the sentence which is reduced to 7 years

without any alteration in the sentence of fine.

16. Copy of the judgment be sent to Chief Judicial Magistrate, Gurdaspur, for compliance.