Rajender Datt Vs The State of Haryana

Criminal Appeal No. 315-SB of 1986

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 31, 1992

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 360#Penal Code, 1860 (IPC) â€" Section 323, 325, 333, 353, 506

Citation: (1993) CriLJ 1025 : (1993) 1 RCR(Criminal) 236

Hon'ble Judges: Jai Singh Sekhon, J

Bench: Single Bench

Advocate: Sanjay Majithia, for the Appellant; S.S. Gouripuria, AAG, for the Respondent

Judgement

Jai Singh Sekhon, J.
Rajinder Dutt appellant was convicted by the learned Addl. Sessions Judge, Faridabad on a charge for offence

punishable under Sections 333/506/353 IPC and was awarded two years'' RI and fine of Rs. 500/- or in default of payment thereof, to further

undergo one month''s RI on the first count. He was awarded one year''s RI on the second count. No separate sentence was awarded for offence

u/s 353 IPC, in view of awarding the sentence u/s 333 IPC. Both the substantive sentences were ordered to run concurrently. Feeling aggrieved

against the orders of conviction and sentence, the appellant has come up in appeal.

2. In brief, the facts of the prosecution case are that injured Bhagwan Dass Sharma PW4 was posted as Shift Engineer in 15 M. W. Plant of

Thermal Power House, Faridabad. Rajinder Dutt accused was previously employed as Shift Attendant on this plant under the injured but was

transferred from there to Coal Handling Plant. The accused suspected the injured to be instrumental in his transfer. On 3-10-1985 Bhagwan Dass

Sharma had to resume his duties from 2 P.M. to 10 P.M. He arrived on the premises of Thermal Power House at about 1.45 p.m. and was

proceeding towards the power house after parking his Moped at the stand, when he reached beyond the Chief Engineer''s office, the accused

arrived there and threatened to kill him due to transfer. Mr. Sharma retraced his steps and tried to escape towards the office of the Chief Engineer.

However, the accused over took and gave him two blows on his left shoulder with hockey stick. Ashok Kashyap, Assistant Engineer had also

seen the occurrence. The accused managed to escape along with hockey stick. Bhagwan Dass Sharma rushed to the office of Chief Engineer and

apprised him of this matter. The Chief Engineer in turn sent report Ex. P.C. to the Station House Officer/ in charge of Police Station, Mujesar,

Faridabad about this incident on the basis of which formal F.I.R. Ex. PD was registered by S I Udey Singh on the same day at 3.50 P.M. A case

u/s 323/506 IPC was registered against the accused. He also got the injured medically examined from Dr. A. K. Saxena PW 1, who found two

contusions on the left shoulder of the injured. Injury No. 1 was kept under observation subject to X-ray examination while injury No. 2 was

declared simple.

3. Sub-Inspector Udey Singh also visited the spot and prepared rough site plan Ex. PU. On X-ray examination, Dr. D.B. Chakarwarti PW 2

found the fracture of acromion process of the left shoulder. Injury No. 1 was declared grievous in nature. The offence was converted to one under

Sections 333/506/353 IPC. After completion of investigation, the accused was arraigned for trial on such like allegations.

4. Before the trial Court, in order to prove its above-referred case, the prosecution examined seven witnesses. Bhagwan Dass Sharma injured and

Ashok Kashyap supported the above referred ocular version.

5. The version of the accused before the trial Court in his statement recorded u/s 313 of the Code of Criminal Procedure was that of innocence

and false implication contending that the injured was not competent to transfer him as only Superintending Engineer could have done so. The

accused-appellant, however, led no evidence in defence despite being called upon to do so.

6. The trial Court believing the prosecution version convicted and sentenced the appellant, as referred above.

7. I have heard the learned counsel for the parties besides perusing the record.

8. There is considerable force in the contention of Mr. Majithia, learned counsel for the appellant that the appellant has not committed any offence

punishable u/s 353 IPC and that the provisions of Section 333 IPC are not attracted in this case as admittedly, Mr. Bhagwan Dass Sharma PW 4

has yet to resume his duties as Engineer at Thermal Plant at 2 PM whereas the occurrence took place at 1.45 P.M. while he was on his way to

Thermal Plant. The provisions of Section 353 IPC read as under:-

353 Assault or criminal force to deter public servant from discharge of his duty:

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to

prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such

person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine, or with both.

A bare glance through the same leaves no doubt that the assault or intimidation to the public servant must be with an intent to prevent or deter that

person from discharging his duty as such public servant. In the case in hand, Mr. Sharma was simply proceeding to Thermal Plant for resuming his

duty and thus, it cannot be said that Rajinder Dutt accused had assaulted him during the execution of his duty. The observations of Kerala High

Court in Richard Saldana and Others Vs. State, can be referred with advantage in this regard. In that case, a Co-operative Extension Officer while

proceeding to his headquarters after attending a meeting of a Co-operative Society was assaulted at a bus stop. Under these circumstances, it was

held that he was not assaulted during the discharge of his duties.

9. The Gauhati High Court in Suresh Narayan Roy v. State of Arunachal Pradesh 1978 CLJ 1514 had also taken a similar view by holding that the

assault committed on a public servant due to personal grudge would not be covered by the provisions of Section 353 IPC.

10. The observations of the Apex Court in Manumiya Vs. State of Gujarat, are not attracted to the facts of the case in hand as therein the bus

driver was assaulted while standing beside the bus and under these circumstances it was held that he was discharging his duties when assaulted.

11. Consequently, the appellant is acquitted of the charge u/s 353/333 IPC but he would certainly be guilty of the offence of having voluntarily

caused grievous hurt to Bhagwan Dass Sharma punishable u/s 325 IPC as the evidence of Dr. D.B. Chakarwarti PW2 reveals that on x-ray

examination, acromion of the left shoulder was found fractured. The non-framing of the charge u/s 325 IPC would be of no consequence as it is

minor offence of the same kind for which deterent sentence is provided u/s 333 IPC.

12. The conviction of the appellant for offence u/s 506 IPC is also not maintainable as the alleged threats to kill the injured are not borne out by the

conduct of the appellant in causing both the injuries on his left shoulder and that too with blunt weapon like hockey stick. Consequently, the mere

outburst of the petitioner at the time of assault that he will kill Mr. Sharma is not sufficient to hold that it would fall within the mischief of Section

506 IPC as it cannot be said that he indulged in criminal intimidation of the injured to cause the death or grievous hurt. The substantive sentence of

causing grievous hurt has been awarded to the appellant. There is no question of indicating him u/s 506 IPC on mere threats to cause grievous

injury. Thus, the appellant also stands acquitted of the charge u/s 506 IPC.

13. The question then arises whether it is a fit case where the appellant should be given the benefit of Probation of Offenders Act or of the

provisions of Section 360 Cr P.C. in view of the reformatory trend of criminal penalogy, In this regard, it is noteworthy that the appellant had

indulged in causing grievous hurt to his superior officer serving in the same department on the misconceived notion that the latter was instrumental in

his transfer. Consequently, it is not a fit case for releasing the appellant on probation. He is, therefore, ordered to undergo sentence of one year''s

RI and fine of Rs. 500/- or in default of payment thereof, to further undergo one month''s RI for offence punishable u/s 325 IPC. The appeal filed

by the appellant stands partly accepted to the extent referred to above. The appellant is directed to surrender for undergoing the remaining period

of sentence.