

(1980) 07 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 157 of 1978

Mithu Singh and another

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: July 18, 1980

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34

Hon'ble Judges: A.S. Bains, J

Bench: Single Bench

Advocate: T.S. Sangha, for the Appellant; Gurjit Singh, for the Respondent

Final Decision: Allowed

Judgement

A.S. Bains, J.

By an order dated 21st November, 1975 the Judicial Magistrate I class, Bhatinda convicted and sentenced the Petitioners to undergo rigorous imprisonment for one year and to pay a fine of Rs, 200/- or in default of payment of fine, to undergo for her rigorous imprisonment for two months each u/s 320(sic) read with Section 34, Indian Penal Code, and to undergo nine month's rigogos imprisonment each u/s 323 read with Section 34, Indian Penal Code On appeal, the learned 2nd Additional Sessions Judge, Bhatinda maintained the conviction and sentence. Hense the present revision petition.

2. The prosecution case as set up at the trial was as under:

On 11th April 1974, Mohan Lal P. W. was returning to his village Jaijal from Raman on cyle(sic) at about 9 A M. Both the Petitioners, namely Mithu Singh and Kats Singh each armed with a gandasa came near him from the village side it is alleged that Mithu Singh, Petitioner gave a gandasa blow from the sharp side on the left arm of Mohan Lal on which he fell dawn. Thereafter, Kata Singh, petitioner also gave a gandasa blow from the blunt side hitting him on the right shoulder and right thigh Mithu Petitioner also removed an amount of Rs. 5,800/ from the pocket of Mohan

Lal Munshi Ram and Jagan Nath PWs witnessed the occurrence and rescued the injured from the clutches of the accused Petitioners.

The injured Mohan Lal was removed to the house of Harnek Singh Sarpanch, to whom the matter was narrated and thereafter he was taken to Civil Hospital Raman, where he was medico legally examined by Dr. M.R. Bansal. The doctor found the following injuries on his person:

1-An incised wound 18 cm x 10 cm x bone deep on the left forearm starting from the middle of back of forearm going downwards and forward along the medial border and ending the middle of lower part of forearm. It is curved in direction. All the vessels, ulnar(sic) artery and nerves, tendons and muscles were cut Bleeding from vessels was present. He complained of numbness of the whole hand and finger. Sleeve of shirt was folded up to arm and so no cut was present on the shirt

2-Swelling and tenderness on the side of left iliac bone was present

3-Tenderness on the right axillary region was present-

The case was registered against the Petitioners in Police Station Raman on the statement of Mohan Lal, injured and they were convicted and sentenced as aforesaid.

At the trial the Petitioners took the stand of denial simpliciter and pleaded false implication

The prosecution story is supported by Mohan Lal (P. W. 2) who is a stamped witness, and Munshi Ram (P. W. 3) eye witness, and Harnek Singh Sarpanch, to whom the matter was narrated soon after the occurrence, by the injured they have supported the prosecution version as given in the earlier part of judgment.

3. Mr T.S. Sangha, learned Counsel for the Petitioners, canvassed that the offence u/s 326, Indian Penal Code, is not made out and the offence will fall within the ambit of Section 324, Indian Penal code I find merit in this contention Perusal of the description of the injuries would show that there is no bone cut or fracture of the bone. According to the doctor, all the vessels, ulnar, artery and nerves, tendons and muscles were cut in the wound path and "Periosteum" of the radius bone was also cut. "Periosteum" is described in Stedman's Medical Disctionary, 22nd Edition, as under:

Peri around; osteon bone. The thick fibrous membrane covering the entire surface(sic) of a bone except its articular cartilage(sic) In young bones it consists of two layers ; and inner which is osteogenic, forming new bone tissue, and an outer connective issue layer conveying the blood vessels and nerves supply the bone In older bones the osteogenic layer is reduced.

In the present case, periosteum of the bone was cut, which means the fibrous membrane around the bone was cut and not the bone itself. Hence the injury

cannot come within the mischief of clause "Seventhly" of Section 320. Indian Penal Code. The learned appellate Court has tried to bring it within the ambit of clause "Eightly" of Section 320, Indian Penal Code. But there no evidence on the record to bring it under clause "Eightly" of Section 320. Indian Penal Code. There is no evidence to show as to for how many days he remained in the hospital Moreover, the injury was on the left hand and the injury on the left hand will not deter a person to pursue his ordinary pursuits, Mohan Lal injured, is a shop keep and the injury is on his left hand. Even if his hand remained plastered for some time, it would not deter him to pursue his ordinary pursuits at the shop. He was not to do any physical labour. The doctor has only opined that he was not capable of doing laborious work. At the shop one is not to do that type of laborious work which a person does in the field or a factory. Accordingly I am of the considered view that the injury will not come under clause "Eightly" of Section 320, Indian Penal Code, also. Hence the conviction of the Petitioners u/s 326 read with Section 34, Indian Penal Code, is set aside In my view, the offence will fall u/s 324, Indian Penal Code.

4. Lastly, it was urged that Ksta Singh's participation in the occurrence is doubtful, that only one injury is caused to Mohan Lal and other two injuries are only a swelling and tend uness, which could also be caused by the same person. The main injuir (injury No 1) is attributed to Mithu Singh and Kata Singh is his real brother Substitution for the real accused is rare, but addition of person to the real culprit is very common in this par of the country the injuries suffered by Mohan Lal could be caused by Mithu Singh alone accordingly I am of the view that false impaction of Kata Singh, Petitioner, in the circumstances narrated above, cannot be ruled out Hence he is given the benefit of doubt and acquitted.

5. So far as Mithu Singh is concerned he is convicted u/s 324 Indian Penal Code, and has convicted u/s 323, Indian Penal Code, is also maintained. He has undergone about 31/2 months. There is nothing on the record to shew that be is a provions convict. The occurence took place en 13th April, 1974(sic). He is on bail. No useful purpose will be served to commit him to prison after a Lapse of six years. Accordingly I am of the view that the ends of justice will be amply met if he is sentenced under both counts to the sentence of rigorous imprisonment which be has already undergone and is further sentencd to pay a fine of Rs. 510/-(sic) u/s 324, Indian Penal Code in default for payment of fine, be is ordered to undergo further three months rigorous imprisonment Fine, if realized, shall be paid to Mohan Lal injured P W., who be informed.

4. Except for the alteration in the nature of offence and the sentence in the case of Mithu Singh, the appeal qua him falls and is dismissed.

The appeal qua Kata Singh is allowed.