

(2003) 02 P&H CK 0261

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 137-SB of 1991

Baldev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 12, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 464
- Penal Code, 1860 (IPC) - Section 307, 324
- Punjab Excise Act, 1914 - Section 61(1)(a)

Citation: (2003) 6 CriminalCC 671 : (2003) 4 RCR(Criminal) 493

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Advocate: G.S. Bhatia, for the Appellant; G.P.S. Gill, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

S.S. Saron, J.

This criminal appeal has been filed by the appellant Baldev Singh against the judgment and order dated 2.4.1991, passed by the learned Additional Sessions Judge, Ferozepur, whereby the appellant has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in case of default to further undergo R.I. for four months for the offence u/s 324 of the Indian Penal Code (IPC for short). Besides, the appellant has also been ordered to undergo R.I. for one year and to pay a fine of Rs. 1,000/- and in case of default to undergo R.I. for two months for the offence u/s 61(1)(a) Punjab Excise Act, 1914.

2. The brief facts are that Head Constable Gurdev Singh along with Head Constable Harbhajan Singh and other constables, in plain clothes, were present at Gawal Mandi, Ferozepur. There they received secret information that the appellant who is in the habit of bringing and selling illicit liquor in Gawal Mandi would be coming along with bladder containing illicit liquor. The information inspired confidence and

Gurdev Singh Head Constable organised a barricade (Naka). After some time Baldev Singh appellant came there and he was carrying a bag (Jhola) in his right hand which contained the bladder of illicit liquor. An attempt was made to apprehend him with the other police officials. However, the accused threw the bag (Jhola) on the ground and took out a knife from the "dub" (end of a sheet worn round lower body and used as a pocket) and made a murderous assault on Harjit Singh constable. He gave knife blows in the stomach, chest and other parts of his body and Harjit Singh started bleeding. The injuries, it is alleged, were on the vital parts of the body and were dangerous to life. The appellant ran away from the spot along with his knife. However, the shoe of his right foot came off and remained at the spot. The bladder was taken into custody and sample containing 180 mis. was taken out and remaining liquor was put in 12 bottles of 750 mis. each and in this manner 9180 mis. illicit liquor was recovered.

3. After completion of investigation, the police filed the challan on 15.7.1988 against the appellant. The learned Additional Chief Judicial Magistrate, Ferozepur vide his order dated 24.11.1988 committed the case to the Court of Session as the offences attributed to the accused were triable by the Court of Session. The learned Additional Sessions Judge to whom the case was entrusted charged the appellant for the offence u/s 307 of the Indian Penal Code on 19.12.1988. Thereafter, on 17.11.1989, the learned Additional PP pointed out that specific charge for recovery of illicit liquor from the appellant had not been framed. The charge was accordingly modified on the said date and the accused was charge-sheeted for the offence u/s 307 of the Indian Penal Code as also Section 61(1)(a) Punjab Excise Act. The appellant pleaded not guilty and claimed trial.

4. The prosecution in support of its case, examined eight witnesses. Besides, documents were tendered in evidence which include the Chemical Examiner report Ex. PA and Serologist report Ex. PR and closed its evidence.

5. The statement of the appellant was recorded u/s 313 Cr. P.C. in which he pleaded that he was innocent and that the police party came to the village and raided their houses but no incriminating article was recovered. However, he was asked to accompany the police party to the Police-Station. At that time, in his village Kalu Ram Lambardar, Surjit Singh, Shingara Singh and his family members and some other respectables of the village were present. He was taken to the Police-Station from his village. At the Police-Station Lambardar Kalu Ram along with his father and mother used to come for about 11/12 days and after about 12/13 days he was falsely implicated in this case. On the assurance of the police that he would be let off soon his parents did not give any application to the higher authorities.

6. In his defence, the appellant examined Kalu Ram Lambardar and closed his evidence.

7. The learned Additional Sessions Judge, as already noticed above, after appreciating the facts and circumstances of the case convicted the appellant for the offence u/s 324 IPC and Section 61(1)(a) Punjab Excise Act.
8. It is this order which is assailed in the present appeal.
9. I have heard Shri G.S. Bhatia Advocate, learned counsel for the appellant and Shri G.P.S. Gill, Assistant Advocate General, Punjab for the State of Punjab and with their assistance gone through the records of the case.
10. The learned counsel for the appellant contended that the learned trial Court committed material irregularity inasmuch as by one order the appellant has been convicted for two offences under two different Acts. Both the offences are distinct in nature and were to be tried separately by registering a separate FIR for the offences attributed to the appellant. Therefore, it is contended that the trial as a whole is vitiated and that the learned Additional Sessions Judge exceeded his jurisdiction in framing charge twice on 19.12.1988 and then on 17.11.1989. It is also contended that there has been a misreading of evidence and the offences attributed to the appellant are not made out.
11. Learned counsel for the State, however, contended that the prosecution has proved its case in all respects and the finding of conviction and sentence recorded by the learned trial Court are correct and are liable to be sustained.
12. The prosecution has examined Shri Tirth Goel, Emergency Medical Officer, Civil Hospital, Bhatinda as PW-1 who stated that on 7.4.1988 while was posted at Ferozepur, he examined Harjit Singh constable i.e. the injured in the case and he found the following injuries on his person:-
1. Incised punctured wound 3 cm x 0.5 cm on the left side of the lower part of chest, 9 cm below the left nipple and 9 cm from the midline. Depth could not be ascertained. X-ray was advised. Fresh bleeding was present and there was corresponding hole in the shirt and Banian.
 2. Incised wound 0.25 cm x 0.25 cm on the left side of chest. It was superficial and 5.5 cm above the left nipple.
 3. Incised wound 1 cm x 0.1 cm on the left side of chest, 6 cm lateral to the nipple. There was corresponding hole in the shirt and Banian.
 4. Incised wound 2 cm long on the left side of chest. It was superficial and 5 cm below injury No.3. There was corresponding hole in the shirt and Baniyan.
 5. Incised wound 0.5 cm x 0.25 cm on the upper of abdomen, 4 cm from the mid line on the left side. There was corresponding hole in the shirt and Baniyan. Fresh bleeding was present.
- pr11:07 AM 2/7/2012esent.

13. Besides, Such Singh, DSP, Detective, Faridkot was examined as PW-6. He stated that he was posted as Inspector at Police-Station, Ferozepur Cantt and he received ruqa (Memo) Ex. PF sent by H.C. Gurdev Singh. He recorded formal first information report Ex.PF/1 at the spot for the investigation of the case. Besides, constable Harjit Singh the injured was examined as PW-7. Gurdev Singh ASI who had arranged the barricade (Nakabandi) along with his associates on 7.4.1988 appeared as PW-8. All the prosecution witnesses have supported the prosecution case in all respects and there is no material discrepancy in their statements from which the finding of conviction recorded by the trial Court could be assailed. Neither the learned counsel for the appellant during the course of argument has been able to point out any such material discrepancy in their statements.

14. The Chemical Examiner examined three items i.e. Kameej (shirt), Baniyan (vest) and Chaku (knife) and these found to contain human blood. The stains as indicated on the sketches that were drawn on the back of the Chemical Examiner's report, were tested and found to be blood. The pieces and scrapings therefrom were sent to Serologist Government of India.

15. The report of the Serologist Ex. PR shows that three items i.e. Kameej (shirt), Baniyan (vest) and Chakku (knife) were examined and all these were found to be stained with human blood.

16. The plea of the appellant that offence under different Acts could not be tried simultaneously, is without any basis inasmuch as there is no bar under the Excise Act for trial of offences under it along with the offences attributed to an accused under the IPC also. Besides an attempt was made to apprehend the appellant while he was coming with the illicit liquor which was being carried in a bag(Jhola) in his right hand. While the police was attempting to apprehend him, he took out a knife and caused injuries to Harjit Singh constable. Therefore, the acts done were in the course of same sequence of events and therefore, can be validly tried together. Even otherwise, in my view, no failure of justice has been occasioned to the appellant in the conduct of the trial which would vitiate the trial. In the absence of any irregularity in the proceedings and trial against the accused the sentence is not liable to be reversed keeping in view the provisions of Section 465 Cr. P.C.

17. The plea of the appellant with regard to the charges being framed twice on 19.12.1988 for the offence u/s 307 I.P.C. and then again on 17.11.1989 for the offence u/s 307 IPC and Section 61(1)(a) Punjab Excise Act is also without any merit, as no failure of justice is shown to have been caused to the appellant. Therefore, error if any in the framing of charge would not vitiate the trial, the order of conviction and sentence, in view of the provision of Section 464 Cr. P.C.

18. The learned counsel for the appellant at the end contended that the appellant has been undergoing travails of prosecution and trial since 1988 and that keeping in view the fact that the injuries attributed to Harjit Singh were only simple in nature

the question of releasing the appellant on probation may be considered. The learned trial Court in its order under appeal has convicted the appellant for the offence u/s 324 IPC as it was of the view that though the injuries are on the vital part of the injured Harjit Singh PVV-7 but the same were simple in nature which shows that the accused-appellant had not inflicted the injuries with great force. Dr. Tirth Goel, PW-1, did not opine that the effect of the injuries on the person of Harjit Singh were dangerous to life. Therefore, keeping the above circumstances in view and the long period of trial that the accused had suffered it could be just and expedient that the accused-appellant is ordered to be released on probation. Accordingly the accused-appellant is ordered to be released on probation for a period of two years provided he furnishes surety bonds in the sum of Rs.5,000/- with one surety of the like amount to the satisfaction of Chief Judicial Magistrate Ferozepur undertaking that during the period of two years, he shall not commit any offence and shall maintain peace and be of good behaviour. He shall appear before the Chief Judicial Magistrate to receive the sentence in case he violates the terms of the bonds.

19. With this modification in the matter of sentence, the appeal is partly allowed. The order of conviction, however, stands.