

(2013) 08 P&H CK 0708

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 1777-SB of 2002

Labh Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 5, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 323, 325, 34, 459

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Vaneet Soni, for the Appellant; K.S. Aulakh, AAG and Mr. Vineet Chaudhary, for the Respondent

Judgement

Mehinder Singh Sullar, J.

The conspectus of the facts and evidence, unfolded during the course of trial, culminating in the commencement, relevant for disposal of the instant criminal appeal & emanating from the record, as claimed by the prosecution, is that complainant Shamsher Singh (since deceased) son of Ranjit Singh (for brevity "the complainant") was working as class IV employee, whereas appellant Labh Singh was working as Steno in Civil Hospital, Fatehgarh Sahib. They were residing in the adjoining houses. On 24.12.1995, as soon as, the complainant and his son Surinder Singh reached their house, in the meantime, appellants Labh Singh and his son Jaspal Singh attacked him with iron rod and dang. Appellant Labh Singh inflicted an iron rod, which landed on the left eye, whereas appellant Jaspal Singh gave a dang blow, which hit on the left arm of the complainant. The incident was witnessed by PWs Pritam Singh Nagra and Baljit Singh, who separated them. Thereafter, the appellants decamped from the spot with their respective weapons. Narrating the sequence of events, in all, the prosecution claimed that on 24.12.1995, the appellants have caused injuries on the left eye and left arm of the complainant with their respective weapons. In the background of these allegations and in the wake of

statement (Ex. P3) of the complainant, the present case was registered against the appellants, by virtue of FIR No. 2 dated 8.1.1996 (Ex. P4/B), on accusation of having committed the offences punishable u/ss. 325 and 323 read with section 34 IPC (the offence punishable u/s. 459 IPC was later on added) by the police of Police Station Sirhind, District Fatehgarh Sahib in the manner depicted here-in-above.

2. After completion of the investigation, the final police report (challan) was submitted against the appellants by the police to face the trial for the indicated offences.

3. Having completed all the codal formalities, the appellants were charge-sheeted for the commission of offences punishable u/ss. 459, 325 and 323 read with section 34 IPC by the trial Judge. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution.

4. The prosecution, in order to substantiate the charges framed against the appellants, examined PW1 Dr. Nachhattar Singh, who has conducted the x-ray examinations of skull and left forearm of the complainant and found the fracture of lateral epicondyle. Injury No. 1 was later on declared as grievous in nature and there was a fracture of forearm elbow joint. PW7 Dr. S.S. Ratta has proved x-ray report (Ex. P10). PW2 Dr. Mann Singh Bhatia has given his opinion (Ex. P1/A) on police application (Ex. P1) that on 26.12.1995, the complainant was fit to make statement. He has also proved the attested copy of his MLR (Ex. P2). PW5 Dr. Balwinder Singh has medico legally examined the complainant on 24.12.1995 at 10.50 P.M. and found the following injuries on his person:-

1. A lacerated wound "Y" shaped whose running length measured 4.5 cm x 0.25 cm on left eye brow. It was bleeding profusely, left eye ball protruding out of eye socket. Conjunctiva was found suffered markedly and was hanging down. Eye surgeons opinion was required and x-ray skull AP and lateral view was advised.

2. A diffused swelling on left lower arm in its upper 1/3rd. Patient complained of pain on movement. X-ray of left forearm including left elbow joint was advised.

He performed the eye surgery of left eye of complainant, vide report dated 26.12.1995.

5. Sequelly, PW3 HC Ram Pal has proved the report (Ex. P4). PW8 ASI Ram Kishan, Investigating Officer has testified his investigation.

6. Likewise, PW4 complainant Shamsher Singh and PW6 Pritam Singh Nagra, eye witnesses, have toed the line of initial version contained in the statement (Ex. P3) of the complainant and maintained that the appellants have caused injuries on his person (PW4) with their respective weapons, as projected by the prosecution. It has also placed reliance on endorsement (Ex. P3/A), challan (Ex. P4), endorsement (Ex. P4/A), copy of MLR (Ex. P5), diagram (Ex. P5/A), information (Ex. P6) given by the doctor, police request (Ex. P7), opinion (Ex. P7/A) of doctor, application (Ex. P8) of

SMO, opinion (Ex. P8/A) regarding nature of injury No. 1, Police request (Ex. PW8/A), opinion (Ex. PW8/B) of the doctor, police request (Ex. PW8/C), opinion (Ex. PW8/D) of doctor and rough site plan (Ex. PW8/E) in documentary evidence.

7. After the close of the prosecution evidence, the statements of the appellants were recorded. The entire incriminating material/evidence was put to enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.PC. However, appellant Labh Singh has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:-

I was working in Civil Hospital, Fatehgarh Sahib. Complainant Shamsher Singh (since deceased) was also working as class IV employee in the same hospital. Complainant had some dispute with Pritam Singh Nagra who was also working in CH, Fatehgarh Sahib due to daughter of the complainant and being neighbour all of us were feeling irritated due to the dispute. Objections were also raised by neighbours. Due to this reason complainant nursed a grudge and implicated us in false case. Injury which was shown to be on the eye of the complainant was received by him in a road side accident which occurred in the hospital jeep. There is no entry to the court-yard of the house where the occurrence was said to be happened and it is covered by high walls. Rather complainant and his sons caused injuries to Jaspal Singh and that complaint is pending before Mrs. Neelam Arora, CJM Fatehgarh Sahib.

8. Similarly, the other appellant has adopted the same line of defence. In order to prove their defence, the appellants have examined DW1 Dr. Bhupinder Singh, who has stated that Labh Singh was admitted in Emergency Ward with following multiple injuries:-

1. Contusion was present 4 cm x 2 cm below the right eye.

2. Wound was present in first web space of right hand. Advised orthopaedic opinion of Dr. Jatinder.

9. He proved the OPD slips (Ex. D1 to Ex. D5) of appellant Jaspal Singh and information (Ex. D6) regarding his admission in emergency ward. DW2 Nachhattar Singh, Radiographer conducted his x-ray. This is all the oral as well as documentary evidence brought on record by the parties.

10. Taking into consideration the entire evidence on record, the appellants were acquitted u/s. 459 IPC. At the same time, appellant Labh Singh was substantively convicted & sentenced to undergo rigorous imprisonment (for brevity "RI") for a period of two years, to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo RI for a period of one month for the commission of an offence u/s 325 IPC and to undergo RI for a period of six months u/s. 323/ 34 IPC. Appellant Jaspal Singh was vicariously convicted and sentenced to undergo RI for a period of two years, to pay a fine of Rs. 500/- and in default of payment of fine, to further

undergo RI for a period of one month u/s. 325/ 34 IPC and to undergo RI for a period of six months u/s. 323 IPC. However, all the sentences were ordered to run concurrently, by means of impugned judgment of conviction and order of sentence dated 26.10.2002 by the trial Court.

11. The appellant-convicts did not feel satisfied and preferred the present criminal appeal, to challenge the impugned judgment of conviction and order of sentence of the trial Court. That is how, I am seized of the matter.

12. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant appeal, as regards the conviction of appellant-convicts is concerned.

13. During the pendency of the appeal, the main complainant had died as per certificate (Annexure A1), his son Amritpal Singh had also expired, as per medical certificate (Annexure A2) and his another son Surinder Singh also died as per certificate (Annexure A3). Amarjit Singh, his sole and surviving son/LR, has entered into a compromise with the appellants, by way of compromise deed (Annexure A4).

14. At the very outset, the celebrated argument of learned counsel for appellants that the evidence brought on record by the prosecution falls short as is required to prove a criminal charge, is not only devoid of merit but misplaced as well.

15. As is evident from the record that the prosecution has examined the complainant as PW4, who has set the police machinery into motion and made his statement (Ex. P3) in this regard, which formed the basis of FIR (Ex. P4/B). Not only that, his statement was corroborated by Pritam Singh Nagra, eye witnesses (PW6). Instead of reproducing their entire evidence and in order to avoid repetition, suffice it to say that they have fully corroborated the prosecution version on all participatory aspects and proved the complicity of the appellants. They were cross-examined at length, but no substantial material could be elicited in their cross examination to dislodge their testimony and impeach their credibility. No motive could possibly be attributed to the injured/eye witnesses as to why they would falsely implicate the appellants in this case. They gave a vivid, consistent and cogent version of the occurrence and supported the prosecution story on all vital counts. The ocular version is duly supported by medical evidence. The investigating officer has duly testified his investigation. That means, the prosecution has produced sufficient evidence on record to prove the guilt of the appellants and contrary arguments of their counsel "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

16. Faced with the situation, the learned counsel has fairly acknowledged that in view of the pointed cogent evidence on record, he will not be in a position to contest the conviction of the appellant-convicts any more. He has no other argument/material/ground, much less cogent, to assail the prosecution version. In

this manner, as no other legal infirmity has been pointed out by him, therefore, the impugned judgment of conviction and order of sentence of fine are hereby maintained as such.

17. However, the contention of learned counsel that the appellant-convicts are first offenders and the trial Court did not record any cogent reasons to negate their plea to release them on probation has considerable force. Thus, he prayed that they are entitled to the benefit of probation. In support of his contention, he has placed reliance on the judgment of this Court in case CRA No. 971-SB of 2000 titled as "Amar Singh & Ors. Vs. State of Punjab" decided on 19.11.2012.

18. The learned State counsel has acknowledged the legal position, factual matrix and factum of compromise (Annexure A4) between the parties.

19. Having regard to the nature, manner of the crime, age of offenders, antecedents and other following relatable factors, to me, it would be expedient in the interest and justice would be sub-served, if the benefit of probation is granted to the appellant-convicts, *inter alia* on the following grounds:

- i) What cannot possibly be disputed here is that the occurrence in this case is stated to be of 24.12.1995. In this manner, appellant-convicts have already faced the pangs and suffered the agony of protracted trial & appeal for the last more than 171/2 years.
- ii) The sole survival legal representative of complainant (since deceased) have amicably settled the matter with the appellants, by virtue of compromise deed (Annexure A4).
- iii) They are first offenders and there is no history of their previous conviction.
- iv) The antecedent and credentials of the appellant-convicts are such that they have not been found involved in any other case.
- v) They are ready to pay the adequate compensation to the LRs. of complainant Shamsher Singh (since deceased).
- vi) They belong to the same institution.
- vii) There is no legal impediment to release them on probation.
- viii) Even the modern trend of penology also leans towards the reformation of the offenders, so as to make them a useful citizen of the society. No useful purpose was going to be achieved by again sending the appellant-convicts to jail.

20. Therefore, taking into consideration the period of agony of protracted trial & appeal, antecedents of appellant-convicts, nature of offences, totality of the facts & circumstances emanating from the record, as discussed here-in-above, to my mind, no useful purpose would be served in again sending them to jail to serve out the remaining period of sentence and instead of sending them to prison, they be

released on probation under the present set of circumstances. Consequently, it is directed that appellant-convicts be released on probation on their furnishing personal bonds (within two months) in the sum of Rs. 25,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that they would keep the peace and be of good behaviour, for a period of two years from the date of passing of this order. At the same time, the appellant-convicts are also directed to pay a sum of Rs. 1 lac as compensation to the LRs of complainant Shamsher Singh (since deceased) within a period of two months. Needless to mention that in case, they are found to be indulged in any illegal activities and did not pay the compensation, the sentence awarded to them by the trial Court would be deemed to have been automatically revived. The remaining sentence of fine imposed on the appellant-convicts by the trial Court is hereby maintained as well.

21. In the light of aforesaid reasons, the instant appeal is hereby dismissed on merits and the impugned judgment of conviction & order of sentence of fine are maintained. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above. Needless to mention that natural consequences & compliance will follow accordingly.