

(2008) 03 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 835-SB of 1997

Jagir Singh and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 5, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 447
- Penal Code, 1860 (IPC) - Section 323, 324, 326, 34, 447

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Dheeraj Jain, for the Appellant; Maherdeep Singh, Assistant Advocate General, Punjab, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Present criminal appeal has been preferred by Jagir Singh son of Phuman Singh, Sukhdev Singh and Harnek Singh, both sons of Jagir Singh. They were convicted and sentenced by the Court of Additional Sessions Judge, Ferozepur vide his judgment and order dated 28th August, 1997 to undergo RI for three months u/s 447 IPC. Sukhdev Singh was substantively sentenced u/s 324 IPC whereas others with the aid of Section 34 IPC to undergo RI for 1 = years and a fine of Rs.500/- each, in default of payment of fine to undergo three months. Jagir Singh and Harnek Singh were substantively sentenced u/s 324 IPC whereas Sukhdev Singh with the aid of Section 34 IPC to 1 = years RI and a fine of Rs.500/- each, in default of payment of fine to three months RI. Harnek Singh was further sentenced u/s 323 IPC whereas Jagir Singh and Sukhdev Singh with the aid of Section 34 IPC to RI for six months each. They were nominated as accused in case FIR No. 145 dated 24th July, 1980 registered at Police Station Dharamkot u/s 326/324/323/447/34 IPC.

2. After investigation of the challan, report u/s 173 Cr.P.C. was submitted and they were committed by the Court of Sub Divisional Judicial Magistrate, Zira to the

Sessions Court for trial. On their appearance before the Court of Additional Sessions Judge, Ferozepur, they were charged for having committed criminal trespass in the fields of Mohinder Singh while ploughing their fields with the intent to cause injuries, for offence u/s 447. They were charged for causing injuries to Mohinder Singh. Sukhdev Singh was substantively charged for causing kirpan blow on the left leg of Mohinder Singh punishable u/s 326 IPC with the aid of Section 34 IPC. Jagir Singh and Harnek Singh were substantively charged u/s 324 IPC for causing sharp edge injuries to Mohinder Singh whereas Sukhdev Singh was charged with the aid of Section 34 IPC. Harnek Singh was substantively charged with offence for causing blunt weapon injuries to Mohinder Singh u/s 323 IPC whereas Jagir Singh and Sukhdev Singh were charged with the aid of Section 34 IPC.

3. Mohinder Singh (PW-2) son of Lehna Singh stated in statement Ex.PA before PW-4, ASI Fauja Singh at Civil Hospital Dharamkot that he is an agriculturist and he had purchased about 92 kanals of land and on the day of occurrence, at about 9.00 a.m. he was ploughing 33 kanals 19 marlas of land with tractor, which was on the name of Pritam Singh, Gurbhag Singh and Suba Singh. When Pritam Singh armed with Gandasa, Gurbhag Singh armed with single 12 bore gun and Lakha Singh armed with single 12 bore gun were sitting on the ridge of the field, then Jagir Singh armed with Kirpan, Sukhdev Singh armed with Kirpan and Kirpal Singh armed with Gandasa came at their tractor. After parking the tractor, all the three raised lalkara that they will teach lesson to complainant party for ploughing the land and all the three came in front of his tractor. Mohinder Singh stopped the tractor. Then Harnek Singh gave a Gandasa blow, which hit on his forehead. Jagir Singh gave a Kirpan blow, he raised his right arm and the same hit on his right arm. Sukhdev Singh gave a Kirpan blow on his left leg. Then Harnek Singh gave a Gandasa blow from the reverse side which hit on his left arm. Then Pritam Singh and Suba Singh came forward to separate them and caused injuries to Jagir Singh and Sukhdev Singh. It was further stated that he also used his Kirpan to save himself. It was further stated that Gurbhag Singh gave a blow from a fire arm. Then Gurbhag Singh and Lakhu Singh made a one fire shot, which hit Harnek Singh. Cause of grudge is said to be dispute over the land.

4. After the FIR was investigated, challan was submitted as stated earlier, case was committed and the charges were framed. Prosecution examined PW-1 Dr. Gian Singh, Medical Officer, Additional Primary Health Centre, Dharamkot. He found following injuries on the person of Mohinder Singh:

1. An incised wound 5.5 cm x 0.5 cm bone deep on the left side of fore-head. Start from upper part of fore-head towards head. Bleeding was freshly present on examination.
2. An incised wound 5.0 cm x 0.5 cm bone deep on the medial aspect of lower part of right fore-arm.

3. A swelling was present around the upper part of left fore-arm with centrally placed reddish abrasion 1 cm x 0.3 cm in size.

4. An incised wound 4 cm x 0.5 cm x bone deep on the front and upper part of left leg. Bleeding was freshly present on examination. Underlying bone showed corresponding superficial cut.

5. In the cross-examination, he stated that Sukhdev Singh appellant had also suffered injuries. Injuries suffered by Sukhdev Singh are reproduced below:

1. An incised wound 5 cm x 0.5 cm x bone deep on the upper part of fore-head. Just right side from middle part. Bleeding was freshly on examination. Direction was vertical.

2. A triangular lacerated wound 1.5 cm x 0.5 cm x bone deep on the right mandibular area, 3.5 cm from right ear. Bleeding was freshly present on examination.

3. A reddish contusion 8.5 cm x 1.5 cm on the back, and upper part of right chest area just below neck.

4. A reddish contusion 7.0 cm x 1.5 cm on the upper and back part of right chest just lateral to injury No.3.

5. A reddish contusion 9.5 cm x 2.5 cm on the right scapular region, middle part.

6. An incised wound 6 cm x 2.5 cm x bone deep on the lower part and medial aspect of left fore-arm. Bleeding was freshly present on examination. Underlying bone shows cut present i.e. medial bone cut through and through.

6. PW-1, Dr. Gian Singh also stated that Harnek Singh was also examined by him and following injuries were found on his person:

1. An incised wound 1.5 cm x 0.4 cm x muscle deep on the outer aspect of right eye brows. Bleeding was freshly present on examination.

2. A chopped wound 4.5 cm x 2.0 cm x muscle deep on the right cheek area, just below the eye. Outer aspect of cheek area. Bleeding was freshly present on examination. Margin was lacerated.

3. A lacerated wound 0.5 x 0.35 cm on the right cheek area, just near to nose below the right eye. 0.4 cm lower than lower eye lashes. Bleeding was freshly present on examination. Depth was not probed. Inverted margins.

4. A lacerated wound 0.3 cm in diameter on the back of left chest area. 4 cm from the vertebral column middle part of chest. Margins were inverted. Bleeding was freshly present on examination.

5. A lacerated wound 0.3 cm in diameter on the lower part of back of left chest area. 8.5 cm from vertebral column. Margins were inverted. Bleeding was freshly present

on examination.

6. A swelling was present on the upper half area of left fore-arm but there was no specific mark of injury.

7. PW-1, Dr. Gian Singh also found following injuries on the person of Jagir Singh:

1. A swelling 10 cm x 12 cm was present on the left parietal area with 1.5 cm x 0.25 cm, lacerated wound on the middle part of swelling. Bleeding was freshly present on examination. Wound was 9 cm from pinna and swelling 5 cm from pinna.

2. An incised wound 0.6 cm x 0.2 cm on the back and upper part of right fore-arm. Bleeding freshly present on examination. Depth was muscle deep.

3. An incised wound 0.4 cm x 0.15 cm on the front and upper part of right leg. Bleeding was freshly present on examination.

8. PW-2, injured Mohinder Singh reiterated the version given in the FIR. He was duly confronted with the improvements made. PW-3 Gurbhag Singh corroborated the version given by PW-2, Mohinder Singh. PW-4, Fauja Singh is the investigating officer. Thereafter, prosecution evidence was closed. Statements of accused appellant were recorded. They admitted the occurrence and pleaded that they caused injuries in self-defence. In defence, they tendered various documents to show that they were in possession of the land.

9. The learned Additional Sessions Judge, after examining the evidence and relying upon the finding of the civil Court held as under:

"It was further observed by the learned Addl. District Judge, Ferozepur as under:

"There is no escape from the conclusion that the suit land at present is in possession of the appellants and not in possession of the respondents."

The crux of the judgment is that the complainant party was in possession of the land in question over which the occurrence took place and the same was in possession the complainant party at the time of occurrence. The copy of the order Exh. PH/1 dated 17.7.1990 also reveals that the complainant party filed a suit for permanent injunction against the accused party and sought a temporary injunction in that suit from the Court of Sub Judge 1st Class, Zira. The Court of Sub Judge 1st Class, Zira vide his order dated 17.7.1990 restrained the accused party from interfering in possession of the applicants (Complainant party) over the suit land. This order has been passed on 17.7.1990. The occurrence took place on 24.7.1991. There is nothing on their record to show if this order is reversed or modified."

10. Mr.Dheeraj Jain appearing for the appellants has been unable to assail the finding of the learned trial Court. A perusal of documents and evidence show that it was rightly held by the Court below that the complainant party was in possession of the land.

11. Once the finding of the learned trial Court that the complainant party was in possession of land, has been affirmed by this Court, right of self-defence cannot be granted to the appellant and the fact that they have suffered the injuries in occurrence will not entitle them to acquittal. Learned trial Court also held that in the present case, no offence u/s 326 IPC is made out and observed as under:

"In the instant case Dr.Gian Singh (PW1) has described the injury No.4 to be a superficial cut. He has not given the depth or extent of the cut and the injury was also not x-rayed for a surer opinion therefore, accused Sukhdev Singh cannot be held guilty for an offence u/s 326 of the IPC."

12. The acquittal of the appellants u/s 326 IPC has not been challenged. Therefore, they were convicted u/s 324 IPC. In the present case, occurrence has taken place on 24th July, 1991. Appellants have already suffered a protracted trial for more than 16 years. Head note of the trial Court judgment reveals that Jagir Singh was aged 76 years whereas Sukhdev Singh and Harnek Singh were aged 35 years and 38 years respectively. Both Sukhdev Singh and Harnek Singh are now more than 50 years old. The appellants have also suffered head injuries in the occurrence. It has been stated by Mr.Dheeraj Jain that in the last about 16 years, there has been complete peace in the village and no untoward incident has taken place. It has been contended before me that sending the appellants in jail may disturb harmony and cordial relations prevailing in the village.

13. Taking into consideration the above noted submissions of the appellants, since the appellants have been convicted and sentenced u/s 324 IPC, ends of justice will be met in case appellants are released on probation. The sentence of fine is enhanced to Rs.10000/- qua each accused and the same shall be converted as cost of litigation. Learned Chief Judicial Magistrate, Ferozepur shall call upon the appellants to furnish bonds to his satisfaction to the effect that they shall maintain good conduct and peace for a period of one year and on deposit of cost of litigation, they will be allowed to remain in probation.

In case, the cost of litigation is not paid within a period of three months, the appellants shall undergo the sentence awarded by the trial Court.