

**(2007) 03 P&H CK 0177**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 82-SB of 1994

Maha Singh and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** March 28, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 313
- Penal Code, 1860 (IPC) - Section 304, 307, 324, 34

**Citation:** (2007) 3 RCR(Criminal) 423

**Hon'ble Judges:** Tej Pratap Singh Mann, J

**Bench:** Single Bench

**Advocate:** Anju Sharma, Amicus Curiae, for the Appellant; Y.P. Malik, A.A.G., Haryana, for the Respondent

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**Judgement**

T.P.S. Mann, J.

The Appellants were tried by Additional Sessions Judge, Panipat. Vide judgment and order dated 25.1.1994, the trial Court convicted Maha Singh, Appellant u/s 307 IPC and Ram Niwas alias Baba Appellant u/s 307/34 IPC. Both of them were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- each for the said offences. In default of payment of fine, the defaulting Appellant was directed to undergo further rigorous imprisonment for three months. Out of the fine, to be recovered from the Appellants, an amount of Rs. 1,000/- was ordered to be paid to Ajmer Singh, PW as compensation.

2. As per the case of the prosecution, the occurrence in question had taken place on 9.8.1991 at about 6.30 p.m. wherein, Ajmer Singh was attacked by Maha Singh, Appellant with a knife, causing injury on the right side of his abdomen. At that time, Ram Niwas alias Baba, Appellant had caught hold of the victim.

3. The injured was taken to Civil Hospital, Panipat, where he was medico- legally examined by Dr. Arun Sehgal, PW-3, who found the following injuries on his person:

"1. An incised wound was present on the antero lateral aspect of the chest on the right side in its lower part just above the lower costal margin. It was vertically placed and was 19 cm from the mid line. It was 7 cm x 3 cm into bone deep (by blunt probe). Fresh bleeding was present. X-ray and surgical opinion was advised.

2. A red abrasion oval in shape was present on the back of left forearm. It was 2.5 cm x 2 cm."

4. After the receipt of ruqa, Exhibit PC-2 regarding the admission of Ajmer Singh, PW in the Hospital, ASI, Hari Singh reached the Hospital and recorded the statement Exhibit PB-1 of Ajmer Singh on the same day at 10,00 p.m. on the basis of which, formal FIR No. 613 dated 9.8.1991 came to be recorded in Police Station, City Panipat at 10.10 p.m.

5. Investigation of the case was taken over by ASI Hari Singh who recorded the statements of witnesses u/s 161 Code of Criminal Procedure He prepared the rough site plan Exhibit PG. The accused were arrested on 16.8.1991. On the basis of disclosure statement made by Maha Singh, accused, knife Exhibit P1 was recovered which was taken into possession vide recovery memo Exhibit PE. After the completion of the investigation, final report u/s 173 Code of Criminal Procedure was presented by Inspector Chandgi Ram in the Court.

6. The accused were charged for the different offences to which they pleaded not guilty and claimed trial.

7. In support of its case, the prosecution examined Dr. N.K. Banerjee, PW-1. He had operated upon Ajmer Singh, injured on 10.8.1991 and found an injury on his liver which was 10 cms. long and on the antero lateral aspect of the liver. The injury was penetrating in nature caused with a sharp cutting instrument. The injury was declared dangerous to life.

8. Sub-Inspector Raj Singh, PW-2 proved formal FIR Exhibit PB which was recorded by him on the basis of statement Exhibit PB-1.

9. Dr. Arun Sehgal, PW-3 had conducted medico-legal examination of the injured. The injuries found on the injured have already been referred to above.

10. Ajmer Singh, PW-4 deposed about the incident in which he was caused an injury by Maha Singh after being caught hold of by Ram Niwas alias Baba.

11. Randhir Singh, PW-5 and Joginder Singh, PW-6, who were also projected as eye-witnesses of the occurrence deposed on the similar lines as was done by Ajmer Singh, PW.

12. Nafe Singh, PW-7 was a witness of the disclosure statement Exhibit PD made by Maha Singh and also to recovery memo Exhibit PE relating to taking into possession of Chhuri, Exhibit P-1.

13. ASI Hari Singh, PW-8 was the Investigating Officer of the case.

14. When examined u/s 313 Cr.P.C., both the accused denied the correctness of the prosecution version and pleaded false implication. Accused Ram Niwas also claimed that he was illegally detained in Police Post Sabzi Mandi, Panipat on 9.8.1991 and Maha Singh, accused moved an application in the Court of Chief Judicial Magistrate, Panipat for his release.

15. In defence, the accused examined Suresh Kumar, DW-1 who was posted as an Ahlmad in the Court of Chief Judicial Magistrate, Panipat. He proved the applications Exhibits D-1 and D-2 moved by the accused.

16. The trial Court believed the prosecution version regarding infliction of an injury by Maha Singh, accused to Ajmer Singh, PW-4 after the latter had been caught hold of by Ram Niwas alias Baba, accused. Accordingly, offences under Sections 307, 307/34 IPC were found to have been made out. However, the accused were acquitted under Sections 324/34 IPC as the prosecution failed to prove that the accused inflicted any other injury except injury No. 1 on the person of Ajmer Singh, PW-4. It was held that injury No. 2 was not the result of any attack but had been received by the victim on account of fall on the road.

17. Aggrieved by their conviction and sentences, the Appellants filed the present appeal.

18. The appeal had been filed through Sh. B.S. Gupta and Shri Rajinder Sharma, Advocates. However, none of them put in appearance, inspite of the fact that notices were issued to the said counsel. Even bailable warrants were issued against the Appellant on 15.2.2006, yet the same were not received back. Realising that, no useful purpose would be served by issuing fresh warrants against the Appellants, this Court, vide order dated 21.2.2007 appointed Ms. Anju Sharma, Advocate as an amicus curiae for defending the Appellants in the present appeal.

19. With the able assistance rendered by learned Counsel for the parties, I have gone through the evidence recorded by the trial Court.

20. From the bare reading of the testimonies of Ajmer Singh, PW-4, Randhir Singh, PW-5 and Joginder Singh, PW-6, it has been established on the record that at the relevant time when the incident had taken place, the injured, who used to play an Auto Rickshaw at Panipat, reached near the chowk of Sabzi Mandi. At the time, accused Ram Niwas alias Baba who was under the influence of liquor, came and stood in front of Auto Rickshaw and started abusing Ajmer Singh. The latter refrained him from doing so and an altercation ensued. Meanwhile, Maha Singh, accused who happened to be uncle of Ram Niwas alias Baba reached there. Said Maha Singh was also under the influence of liquor. At that time, Ram Niwas alias Baba caught hold Ajmer Singh, PW-4 while Maha Singh, accused who was holding a knife, used the same for inflicting an injury on the right side of abdomen of the

victim. On receiving the injury, Ajmer Singh fell down on the ground. Randhir Singh, PW-5 and Joginder Singh, PW-6 who were at that time, present in the Auto Rickshaw of Ajmer Singh as passengers, intervened and saved the victim from the accused. The accused managed to decamp from the spot while carrying the knife with them.

21. Nothing has come on the record as to why Ajmer Singh who was a stamp witness of the occurrence should depose falsely against the accused though the defence suggested that Mohinder, brother of Ajmer Singh had quarrelled with Maha Singh, accused earlier, yet the same was vehemently denied by Ajmer Singh. According to the accused, in the incident between Mohinder and Maha Singh, injuries were inflicted to Maha Singh, accused and the matter also reported to the police. No proof has been brought on the record about the injuries alleged to have been received by Maha Singh at the hands of Mohinder. Similarly, no such report to the police, as alleged by the defence, was produced in the Court. It appears that the suggestion was given to Ajmer Singh, PW-4 without there being any basis for the same. As stated above, the suggestion was denied by Ajmer Singh, PW-4.

22. Randhir Singh and Joginder Singh were independent witnesses though both of them belonged to Village Ugra Kheri to which village Ajmer Singh, PW-4 belonged, yet they were not related to said Ajmer Singh. Randhir Singh did say towards the end of cross-examination that Ajmer Singh, PW was his nephew in the village but he went on to state further that he was not his real nephew. Similarly, Joginder Singh, PW-6 was also not closely related to Ajmer Singh, PW. He stated that the victim was his cousin in the brotherhood. This apart, both Randhir Singh, PW-5 and Joginder Singh, PW-6 were not shown to be inimically disposed towards the accused so that it could be said that they had reasons of their own to falsely implicate them in the present case.

23. The medical evidence fully corroborated the prosecution version. After being caught hold by Ram Niwas alias Baba, the victim was attacked by Maha Singh who give him a knife blow on the right side of his abdomen. Perusal of the statement of Dr. Arun Sehgal, PW-3 shows that on account of the infliction of the injury, it resulted in an incised wound on the anterio lateral aspect of the chest on the right side on its lower part just above the lower costal margin. Dr. N.K. Banerjee, PW-1 who had operated upon the victim, noticed an injury which was penetrating in nature and 10 cms. long on the anterio lateral aspect of the liver. The injury had affected the liver. The injured was finally discharged on 25.8.1991. The said injury was declared dangerous to life.

24. There was no delay whatsoever in the lodging of the FIR. Statement Exhibit PB-1 of Ajmer Singh, PW-4 was recorded by ASI Hari Singh at 10.00 p.m. on 9.8.1991. Before recording the statement, ASI Hari Singh had submitted an application (Exhibit PF) to the Medical Officer; General Hospital, Panipat about the fitness of the injured to make a statement. Through endorsement Exhibit PF-1, Dr. R.K. Tandon declared the victim fit to make a statement. Though Dr. R.K. Tandon has not been

examined as PW as he had been given up as unnecessary yet ASI Hari Singh proved the opinion Exhibit PF-1 after identifying the signatures of Dr. R.K. Tandon. The statement Exhibit PB-1 was then sent by ASI Hari Singh to the Police Station after making endorsement Exhibit PB-2 for registration of a case. At 10.10 p.m., formal FIR Exhibit PB came into existence u/s 324/34 IPC. After the receipt of opinion Exhibit PC-4 vide which Dr. Arun Sehgal, PW-3 declared injury No. 1 on the person of Ajmer Singh to be dangerous to life, offence u/s 307 IPC was added to the heading of the FIR.

25. Recovery of knife Exhibit P-1 at the instance of Maha Singh, accused also proves the case of the prosecution. Dr. Arun Sehgal, vide his opinion Exhibit PC-5 declared that injury No. 1 on the person of Ajmer Singh was possible with the said knife.

26. The injury was caused on a vital part of the body. It resulted into an internal injury which was caused on the anterio lateral aspect of the liver. The injury was caused by a sharp cutting instrument. It affected the liver. The victim remained admitted in the hospital upto 25.8.1991. This injury was declared dangerous to life.

27. In view of the above, there is no escape but to conclude that Injury No. 1 caused by Maha Singh, Appellant fell within the ambit of Section 304 IPC while Ram Niwas alias Baba accused was found to have shared the common intention with Maha Singh, accused by catching hold the victim and facilitating the attack on him.

28. Accordingly, convictions of Maha Singh u/s 307 IPC and Ram Niwas alias Baba u/s 307/34 IPC are well merited and do not call for any interference.

29. Coming to the question of sentence, it may be noticed that initially the offence was u/s 324/34 IPC. The offence being bailable, both the accused were arrested and released on bail immediately. When the offence u/s 307 IPC was added, both the accused were again formally arrested and, thereafter, released on bail. It was only on 25.1.1994 when they were convicted and sentenced that they were taken into custody. They were, thereafter, ordered to be released on bail. It was only on 25.1.1994 when they were convicted and sentenced that they were taken into custody. They were, thereafter, ordered to be released on bail by this Court on 3.3.1994.

30. The incident, in question, had taken place in the year 1991. There was no mention of any previous ill will or enmity between the parties. Before catching hold of the victim by Ram Niwas alias Baba and infliction of injury by Maha Singh, some altercation did take place. They had been facing the agony of criminal prosecution for the last about 16 years. Apart from that, both the Appellants remained in jail as convicts for about 1-1/2 month each. No useful purpose would be served by sending them behind the bars once again to serve the un-expired portion of their sentences. Under these circumstances, ends of justice would be amply met by reducing the sentences of imprisonment of the Appellants to that already undergone by them. The fine of Rs. 1,000/- imposed upon them can be suitably enhanced to Rs. 10,000/-

each so as to provide adequate compensation to the injured.

Resultantly, the conviction of Maha Singh, Appellant u/s 307 IPC and of Ram Niwas alias Baba u/s 307/34 IPC are maintained. Their sentences of imprisonment are reduced to that already undergone by them. The fine of Rs. 1,000/- imposed by the trial Court on each of them is enhanced to Rs. 10,000/-. In default of payment of fine, the Appellants shall further undergo rigorous imprisonment for one year each. The entire amount of fine, on its recovery is directed to be paid to Ajmer Singh, PW as compensation.

The appeal is, accordingly, disposed of.