
(2007) 03 P&H CK 0182

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 389-SB of 1994

Binder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 22, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 313
- Penal Code, 1860 (IPC) - Section 304, 307, 324, 326

Citation: (2007) 2 RCR(Criminal) 622

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: None, for the Appellant; S.S. Chahal, Asstt. Advocate General, Punjab, for the Respondent

Judgement

T.P.S. Mann, J.

One day, Sita Singh complainant was tethering cattle under the shadow of neem tree of the accused. The latter protested to the same. This led to exchange of hot words between them.

2. About two months later, i.e. on 27.10.1992 at about 1.30 p.m., when the complainant along with Charna Singh PW was present in front of building of Panchayat Ghar and talking to each other, the accused reached there. He took out a kirch from the dub of his pajama and warned the complainant that he would be taught a lesson for tethering cattle under his tree and for abusing him. The accused wielded the said kirch, inflicting an injury on the right side of the chest of Sita Singh complainant. The accused gave three more blows to the complainant which landed on his right and left flanks and also below the left nipple. An alarm was raised by the complainant and Charna Singh. The accused decamped from the spot and in the process, carried the weapon with him.

3. After the occurrence Charna Singh arranged a jeep and removed the complainant in an injured condition to PHC Alamwala from where he was referred to Civil Hospital, Malout. As the condition of the injured was serious, the Medical Officer at Malout further referred him to Guru Gobind Singh Medical College and Hospital, Faridkot.

4. ASI Raj Singh received information Ex. PB from Dr. Sukhvinder Singh Malli PW-2 about the reference of the injured to Medical College and Hospital, Faridkot. Accordingly, ASI Raj Singh reached there and after obtaining an opinion about the fitness of the injured to make a statement, recorded his statement Ex. PC on 28.10.1992 at 4.45 p.m. The same was thereafter sent to the Police Station through PHG Malkiat Singh on the basis of which formal FIR Ex. PC-2 was recorded by ASI Gurdarshan Singh in Police Station Sadar, Malout on 28.10.1992 at 7.30 p.m.

5. ASI Raj Singh started investigation of the case by going to the spot and preparing site plan Ex. PL. He recorded the statements of the witnesses u/s 161 Code of Criminal Procedure. The accused was arrested on 16.11.1992. After the completion of the investigation, challan was presented against the accused by ASI Gurdarshan Singh vide his report Ex. PM.

6. On 3.3.1993, learned Judicial Magistrate Ist Class, Muktsar perused the report u/s 173 Code of Criminal Procedure and other documents available on the file, which according to him disclosed offence under Sections 307/326 and 324 IPC. The same being exclusively triable by the Court of Sessions, the case was committed.

7. After entrustment of the case, Additional Sessions Judge, Faridkot framed charge u/s 307 IPC against the accused on 31.3.1993, to which he pleaded not guilty and claimed trial.

8. In support of its case the prosecution examined Dr. Navkiran Kaur PW-1, who proved her report Ex. PA, as per which neither the X-ray of the chest showed evidence of fracture nor of free air under both the domes of diaphragm.

9. Dr. Sukhvinder Singh Malli PW-2 stated that the injured was brought to Civil Hospital, Malout on 27.1.1992 at 3.30 p.m. when he was profusely bleeding from the wounds and left side of chest, right sub-costal and right side sub-clavicular region with lung tissue coming out of the chest wound. As the condition of the patient was serious, he was referred to Medical College, Faridkot. Information Ex. PB was, accordingly, sent to SHO, Police Station Sadar, Malout.

10. Sita Singh injured appeared as PW-3 and stated on similar lines, as was his earlier version in his statement Ex. PC, before the police.

11. Charna Singh PW-4 apprised the Court about his being an eye-witness of the occurrence in which Sita Singh complainant received injuries at the hands of Binder Singh accused.

12. Dr. Manjit Singh Guliani PW-5 stated that he medico-legally examined the injured on 27.10.1992 at 7.20 p.m. in Guru Gobind Singh Medical College and Hospital, Faridkot. He found the following injuries on his person:

1. 2.5 cm x 1/2 cm incised wound going deep at the interior border of right clavicle 3 cms lateral from sternal notch. Bone deep transverse. X-ray advised.

2. 5 cms x 1-1/2 cm incised wound outer margin is 23 cms from the point of axilla on right side. It was bone deep and transverse. X-ray was advised.

3. 0.2 cm round wound going deep on left chest 7 cm below the left mammary gland. X-ray advised.

4. 5 cm x 2 cm incised wound transverse in direction on left side of the chest 14 cms below the posterior axillary line on left side. Lung tissue seen. Paradoxical breathing present. Lung tissue can be pushed inside. It was cavity deep. X-ray was advised.

13. Dr. D.R. Garg PW-6, who was posted as a Medical Officer in the Medical College and Hospital at Faridkot proved endorsement Ex. PG-1 made by him on police request Ex. PG on 28.10.1992 at 4.05 p.m., whereby he opined that the injured was fit to make a statement. After examining the injured and giving treatment to him from 27.10.1992 to 20.11.1992, he gave his report Ex. PJ, which he sent to Dr. Manjit Singh Guliani.

14. Suresh Kumar PW-7 proved scaled site plan Ex. PK, which was prepared by him at the instance of the injured.

15. ASI Raj Singh PW-8 was the Investigating Officer of the case and stated about the various steps taken by him from the time of recording of statement Ex. PC of the injured till the presentation of the challan.

16. When examined u/s 313 Cr.P.C., the accused pleaded innocence and stated that he had been falsely implicated in the case due to party faction in the village. Although at one point of time, the accused opted to lead evidence in defence but later on closed the defence evidence without producing any.

17. The trial Court believed the testimony of Sita Singh PW-3 and Charna Singh PW-4 regarding the actual occurrence. The medical evidence was found to be sufficient to make out an offence against the accused u/s 307 IPC. Accordingly, vide judgment and order dated 9.8.1994, learned Additional Sessions Judge, Faridkot convicted the Appellant u/s 307 IPC and sentenced him to undergo RI for five years and to pay a fine of Rs. 2,000/-. In default of payment of fine, the Appellant was directed to undergo further RI for six months. Out of the fine, to be realised from the Appellant, half of the fine was ordered to be paid to the injured.

18. Aggrieved by his conviction and sentence, the Appellant filed the present appeal.

19. The appeal was filed through Shri M.L. Merchea, Advocate. The same was admitted on 1.9.1994. Notice regarding bail was issued. On 12.9.1994, this Court suspended the sentence of the Appellant and ordered him to be released on bail.
20. The appeal was posted for final hearing. When it was taken up on 12.7.2006, the Court was informed that Shri M.L. Merchea, Advocate had since expired. Accordingly, notice was issued to the Appellant. The said notice, as per the office report, was served upon father of the Appellant. In spite of that neither the Appellant nor anyone on his behalf has put in appearance. Faced with such a situation, the Court took up the appeal for hearing without waiting any further for any representation on behalf of the Appellant. The entire evidence has been scanned minutely and so also the documents brought on record.
21. The Appellant is shown to have a neem tree which does provide good shade during day time. Sita Singh PW-3 tried to make best use of the said shadow by tethering his cattle under those neem tree. This thing was objected to by the Appellant. However, exchange of hot words ensued between the Appellant and the injured. This incident had taken place about two months before the unfortunate incident, which occurred on 27.10.1992 at 1.30 p.m. On that date, Sita Singh and Charna Singh were present near the Panchayat Ghar and were talking to each other. The Appellant also reached there. Immediately, he proclaimed that he would teach a lesson to Sita Singh for tethering his cattle under his neem tree. The Appellant was carrying a kirch with him by concealing it in the dub of his pajama. He took out the same and caused repeated blows in the chest and abdomen of the injured.
22. The testimonies of Sita Singh PW-3 and Charna Singh PW-4 are clear and consistent in so far as motive part of the occurrence and also actual incident of infliction of injuries by the Appellants is concerned. No fault can be found with the same.
23. Though the occurrence had taken place on 27.10.1992 at 1.30 p.m. but the statement Ex. PC of Sita Singh, PW-3 was recorded by ASI Raj Singh on 28.10.1992 at 4.45 p.m. at Guru Gobind Singh Medical College and Hospital, Faridkot. Initially Dr. Sukhvinder Singh Malli, who was posted in Civil Hospital, Malout had sent intimation Ex. PB to SHO, Police Station Sadar, Malout. In pursuance of the same, HC Kashmiri Lal went to Incharge, Guru Gobind Singh Medical College and Hospital, Faridkot and submitted an application Ex. PE for obtaining opinion about the fitness of the injured to make a statement. Dr. Manjit Singh Guliani PW-5 gave certificate Ex. PE-1 at 8.00 p.m. on 27.10.1992 that the patient was unfit to make a statement. On the following day i.e. 28.10.1992, ASI Raj Singh, who was incharge of Police Post, Panniwala falling within the jurisdiction of Police Station Sadar, Malout, went to Medical College and Hospital, Faridkot and submitted an application Ex. PE to find out as to whether the injured was fit to make a statement or not. Dr. D.R. Garg PW-6, vide endorsement Ex. PG-1, declared the injured fit to make a statement on 28.10.1992 at 4.05 p.m. After obtaining the said opinion, ASI Raj Singh started

recording statement Ex. PC of Sita Singh, which was concluded by him at 4.45 p.m. on 28.10.1992. The same was, thereafter, sent to Police Station Sadar Malout and FIR No. 118 dated 28.10.1992 came into existence at 7.30 p.m. Even otherwise, it was clear that Sita Singh injured had suffered four injuries on his person and that too on vital parts i.e. chest and abdomen. Perusal of injury No. 4 on the person of Sita Singh would show that lung tissue was seen through the wound. Apparently, the injured had suffered very serious injuries in the occurrence and could not be in a position earlier to 4.05 p.m. on 28.10.1992 to make a statement. Once he regained senses, he was declared fit to make a statement. Though, Charna Singh, who also claimed himself to be an eye-witness, could have lodged FIR regarding the incident earlier but said Charna Singh was also busy in removing the injured to one hospital and the other. He has been clearly mentioned as the one, who had brought Sita Singh injured in Medical College and Hospital, Faridkot on 27.10.1992 at 7.10 p.m. Thus, whatever delay occurred in the reporting of matter to the police, has been satisfactorily explained by the prosecution.

24. Merely because kirch was not recovered during the investigation of the case is no ground to dislodge the prosecution case. Dr. Manjit Singh Guliani PW-5 after perusing the X-ray report as well as the Surgeon's report, gave his opinion Ex. PF that injuries Nos. 1 and 3 were simple in nature, whereas injuries Nos. 2 and 4 were dangerous. The weapon used by the accused in inflicting the four injuries on the person of Sita Singh injured and that too on the most vital parts i.e. chest and abdomen, was a kirch. Though there was no deep-rooted enmity between the parties yet because of the earlier incident which had taken place about two months before the main incident, the accused attacked the injured on 27.10.1992 at 1.30 p.m. He caused as many as four blows which landed on the chest, left flank, right flank and below the left nipple of Sita Singh. All this shows that the accused had necessary intention and knowledge as envisaged by Section 307 IPC in causing such injuries that in case the victim had died, he would have been held guilty for the offence of murder.

25. In view of the above, there is no scope for interference in the conviction of the Appellant u/s 304 IPC.

26. Coming to the question of sentence, it may be noticed that the Appellant was arrested on 16.11.1992. On account of non-presentation of challan within the statutory period of three months, he was released on bail by learned Judicial Magistrate 1st Class on 3.3.1993. He was again taken into custody on 9.8.1994, when he was convicted and sentenced by the trial Court and released on bail by this Court vide order dated 12.9.1994. It is, thus, clear that the Appellant has served a period of about five month in jail. The occurrence had taken place in October, 1992. The Appellant had been facing the agony of criminal prosecution ever since then. He was noted to be 22 years of age when the charge was framed against him on 31.3.1993. By this time, he must be about 40 years of age of age and well settled with his

family. No useful purpose would be served by sending him behind the bars to serve unexpired period of sentence imposed upon him. Ends of justice would be amply met by reducing the sentence of imprisonment to that already undergone by him. At the same time, fine of Rs. 2,000/- imposed upon the Appellant by the trial Court can be enhanced so as to adequately compensate the injured.

27. Accordingly, the conviction of the Appellant u/s 307 IPC is maintained. His sentence of imprisonment is reduced to that already undergone by him. The fine of Rs. 2,000/- is enhanced to Rs. 20,000/-. In default of payment of fine the Appellant shall undergo RI for one year. The entire fine, on its realization, shall be paid to Sita Singh injured as compensation.

28. With the above modification in the sentence, the appeal is disposed of.