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(2009) 07 P&H CK 0255

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 360-SB of 1997

Mohinder Singh		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: July 13, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 326, 34

Citation: (2010) 1 RCR(Criminal) 963

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: J.S. Khaira, for the Appellant; Manjari Nehru Kaul, D.A.G., Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.
This appeal, is directed, against the judgment of conviction, and the order of sentence dated 02.05.1997, rendered by the Court of Sessions Judge, Ferozepur, vide which, it convicted the accused/appellants, and sentenced them, as under :-

Names of the accused (now appellants)	Offence for which convicted	Sentence awarded
1	2	3

(i) Mohinder Singh	(a) u/s 326 of the Indian Penal Code.	To undergo rigorous imprisonment, for a period of three eyars, and to pay a fine of Rs. 2000/-, and in default thereof, to further undergo rigorous imprisonment for a perid of six months
	(b) u/s 323 read with Section 34 of the Indian Penal Code.	To undergo rigorous imprisonment, for a period of six months.
(ii) Darshan Singh	(c) u/s 326 read with Section 34 of the Indian Penal Code.	To undergo rigorous imprisonment, for a period of three years, and to pay a fine of Rs. 2000/-, and in default thereof, to further undergo rigorous imprisonment for a period of six months.
	(d) u/s 323 of the Indian Penal Code.	To undergo rigorous imprisonment, for a period of six months.

Both the substantive sentences, were however, ordered to run concurrently.

2. Shorn of unnecessary details, the story of prosecution proceeded, in the manner that, on 26.08.1996, at about 2.00 P.M., Malkiat Singh, injured/complainant, was going towards his village, on scooter, bearing registration No. PIC 4172, and was carrying feed for the cattle. On the way, near the Golf ground, Ranjit Singh, his sister''s son, was grazing the cattle. Malkiat Singh, after stopping the scooter, went to Ranjit Singh. In the meanwhile, Mohinder Singh, accused, armed with a takua, and Darshan Singh, accused, armed with a dang, came there, who were also grazing the cattle nearby. Mohinder Singh, accused, challenged Malkiat Singh, that he would be taught a lesson, for demanding money from him. Thereafter, Mohinder Singh, accused, gave a takua blow, on his (Malkiat Singh''s) forehead, and Darshan Singh, accused, aimed a dang blow, on the person of Malkiat Singh. When Malkiat Singh, in order to ward off the dang blow, raised his right hand, the same fell, at its thumb. Thereafter, Mohinder Singh, accused, gave another takua blow, hitting above the left shoulder of Malkiat Singh, and Darshan Singh, accused, gave two more dang blows, hitting the front part, and middle of the head of

Malkiat Singh. In order to save himself, Malkiat Singh, snatched soti, from Ranjit Singh, and caused minor injuries on the person of Mohinder Singh. On the alarm, having been raised by the complainant party, the accused decamped from the spot, with their respective weapons. Ranjit Singh called Major Singh brother of Malkiat Singh, to the spot, and he (Major Singh), removed Malkiat Singh, to Civil Hospital, Ferozepur, on the same scooter, where he was medico-legally examined.

3. As per the complainant''s version, the motive for the aforesaid occurrence, was that, he had to take money from Mohinder Singh, accused, and, on that account, there was a brawl, between them, about 3-4 months, prior to the occurrence.

4. On 26.08.1996, Baljit Singh, Assistant Sub-Inspector, alongwith other Police Officials, went to Civil Hospital, Ferozepur, and moved an application P3, before the doctor, to seek his opinion, whether Malkiat Singh was fit to make statement. The doctor, vide his endorsement P3/A, declared him fit, to make statement. Thereafter, Baljit Singh, Assistant Sub-Inspector, recorded the statement P5, of Malkiat Singh, injured, made endorsement P5/A thereon, and sent it to the Police Station, on the basis whereof, formal first information report P5/B, was recorded. In the hospital, Baljit Singh, Assistant Sub-Inspector, also took into possession the clothes of Malkiat Singh, vide memo P7. Thereafter, Baljit Singh, Assistant Sub-Inspector, went to the place of occurrence, but owing to darkness, the investigation, could not be carried out. On the next day, Baljit Singh, Assistant Sub-Inspector, prepared site plan P8, with correct marginal notes. On 02.09.1996, Darshan Singh, accused, was produced before Baljit Singh, Assistant Sub-Inspector, by Harpal Singh, and Jasbir Singh, who produced dang MO/4, which was taken into possession, vide memo P9. On 08.09.1996, Mohinder Singh, accused, was arrested, by Baljit Singh, Assistant Sub-Inspector, and on interrogation, he suffered disclosure statement P10, regarding the concealment of takua, in pursuance whereof, he got recovered the same, which is MO/5. Baljit Singh, Assistant Sub Inspector, prepared rough sketch P11 of the takua, and the same was taken into possession, vide memo P12. He also prepared rough site plan P13, of the place of recovery. After the completion of investigation, the accused were challaned.

5. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Sections 307, and 323 read with Section 34 of the Indian Penal Code, was framed, against the accused, which was readover and explained to them, to which they pleaded not guilty, and claimed judicial trial.

6. The prosecution, in support of its case, examined Dr. Ramesh Kumar (PW1), who medico-legally examined Malkiat Singh, injured, and found the following injuries, on his person :-

i. An incised wound 4 cms x 0.5 cm into bone deep on midline of forehead, longitudinally placed, close to anterior hair line, underlying bone was fractured and fresh bleeding was present.

ii. Lacerated wound 4 cms x.5 cm into scalp deep on mid-line of head, 3 cms from anterior hair line. Fresh bleeding was present.

iii. An incised wound 2 cms x 0.25 cm x.25 cm on top of left shoulder joint. Fresh bleeding was present.

iv. Tender diffused swelling 4 x 4 cms on mid-line of the head.18 cms from the posterior hair line.

v. Complained of pain on base of right thumb.

Injury No. 1, was declared grievous, and the remaining injuries, were declared simple, in nature. According to him, injuries, Nos. 1 and 3, were caused by sharp-edged weapon, and the other injuries, were caused, by blunt weapon. The probable duration of all the injuries, was within six hours. He declared injury No. 1, as dangerous to life, on Police application P4, vide his endorsement P4/A.

7. Malkiat Singh (PW2), is the injured/complainant, in this case. He deposed, in terms of the prosecution version, as stated above. Ranjit Singh (PW3), an eye-witness, also supported his statement.

8. Baljit Singh, Assistant Sub-Inspector (PW4), is the Investigating Officer. He investigated the case and proved various documents. Thereafter, the Public Prosecutor, for the State, closed the prosecution evidence.

9. The statements of the accused u/s 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Mohinder Singh, accused, in his statement, u/s 313 of the Code of Criminal Procedure, took up the following plea :-

I am innocent. Malkiat Singh, approached me several times, for employing my son Darshan Singh, but I was refusing him. On the day of incident, he met me in the village and again asked me for my son to work with him and I told him that I am not going to allow my son to work for you for which Malkiat Singh abused me in the name of my mother. When I asked him not to abuse he started causing injuries to me and I in self-defence caused injuries to Malkiat Singh. My son Darshan Singh was not present there.

10. Darshan Singh, accused, in his statement, u/s 313 of the Code of Criminal Procedure, stated that, he was not present, at the spot. The accused, however, did not lead, any evidence, in defence.

11. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated above.

12. Feeling aggrieved, the instant appeal, was filed by the appellants.

13. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

14. The Counsel for the appellants, submitted that the presence of Darshan Singh, accused, at the time of the alleged occurrence, was not at all proved, but the trial Court, was wrong, in recording conviction, and awarding sentence to him. Malkiat Singh, PW2, is the complainant-cum-injured, in this case. According to him, on the date of occurrence, at about 2.00 PM, he was returning to his home, from Ferozepur Cantt, on his scooter bearing registration No. PIC 4172, and when reached, near the Central School, in the area of Ferozepur Cantt, his sister''s son Ranjit Singh, who was grazing cattle, met him. He stopped the scooter. The accused, were also grazing cattle, at that time. He further stated that Mohinder Singh, was armed with a takua, and Darshan Singh, was armed with a dang. He further stated that Mohinder Singh, gave a takua blow, from sharp side, hitting his forehead, whereas Darshan Singh, aimed a dang blow, and when he tried to ward off the same, by raising his right hand, the dang landed on his right thumb. Mohinder Singh, gave another blow, with takua, from sharp side, hitting his left shoulder. Darshan Singh, gave two more dang blows, hitting his head. He further stated that, he took a small stick, which was, in the hand of Ranjit Singh, his nephew, and in order to save him, caused minor injuries, on the person of Mohinder Singh. The statement of Malkiat Singh, injured, was duly corroborated by Ranjit Singh, eye-witness, PW3, in all material particulars. From the evidence of both these witnesses, it was proved that Darshan Singh, accused, was very much present, at the time of occurrence. He actually participated, in the occurrence, and caused a number of injuries, on vital and non-vital parts of the body of Malkiat Singh. There is nothing, on record, to prove that he was not present, at the time of occurrence. There was no reason, on the part of the complainant, to falsely implicate Darshan Singh, in the instant case, had he not participated, in the occurrence, and not caused injuries, on his person. Darshan Singh is the son of Mohinder Singh accused. The trial Court rightly relied upon the statements of Malkiat Singh and Ranjit Singh, to come to the conclusion that Darshan Singh was an active participant, in the commission of crime, and he caused a number of injuries, on the person of Malkiat Singh. The submission of the Counsel for the appellants, that the presence of Darshan Singh, was not proved, therefore, being without merit, must fail, and the same stands rejected.

15. It was next submitted by the Counsel for the appellants, that no offence, punishable u/s 326 of the Indian Penal Code, was made out, from the evidence, produced by the prosecution, but the trial Court, was wrong, in recording conviction of the accused, for the said offence. The submission of the Counsel for the appellants, in this regard, also does not appear to be correct. Injury No. 1, which was found, on the person of Malkiat Singh, was incised wound 4 cm x 5 cm, bone deep, on the mid-line of forehead, longitudinally

placed, close to anterior hair line, underlying bone was fractured, and fresh bleeding was present. It was this injury, which was declared grievous by Dr. Ramesh Kumar, PW1. There was no necessity of subjecting this injury, to radiological examination, as the fracture of the underlying bone, was visible, during the course of the medical examination of Malkiat Singh. This injury, therefore, certainly fell, within the purview of Section 320 of the Indian Penal Code, constituting the offence, punishable u/s 326 of the Indian Penal Code. In this view of the matter, the submission of the Counsel for the appellants, that no offence, punishable u/s 326 of the Indian Penal Code, was made out, being devoid of merit, must fail, and the same stands rejected.

16. It was next submitted by the Counsel for the appellants, that both Malkiat Singh, complainant, and Mohinder Singh, accused, sustained injuries, in the same occurrence, and it was not ascertainable, from the evidence, as to which party was the aggressor, and which party was the aggressive. He further submitted that, it was a case of free fight. The submission of the Counsel for the appellants, in this regard, also does not appear to be correct. The injuries, which were caused on the person of Malkiat Singh, have been depicted above. Dr. Ramesh Kumar, PW1, who conducted medical-examination of Mohinder Singh, accused, at 6.10 PM, on 26.08.1996, found the following injuries, on his person :-

i) Lacerated wound 2.5 cms x 0.5 cm x scalp deep on right side of head, 4 cms from mid-line, 12 cms from anterior hair line. Fresh bleeding was present. X-ray was advised.

ii) Lacerated wound 1.5 cms x 0.25 cm x 0.25 cm on right eyebrow. Fresh bleeding was present. X-ray was advised.

iii) Tender diffused swelling 6 cms x 4 cms on back of right leg, on its upper part. X-ray was advised.

iv) Patient complained of pain on front and middle of right fore arm, back of left leg, on its upper part, and front of left wrist joint.

All the injuries were caused by blunt weapon, and the probable duration, was within six hours. The factors, which are required to be taken into consideration, for determining as to which party was the aggressor and which party was the aggressive, are the number and nature of injuries, sustained by the members of the parties; the weapons of offence, being wielded by the members of both the parties; which party lodged the report first, in point of time; the injured of which party, was taken to the hospital first, in point of time, as also the motive, for the occurrence. Injury No. 1, on the person of Malkiat Singh, injured, was caused, on the mid-line of forehead, longitudinally placed, close to anterior hair line, and the underlying bone was fractured. This injury was declared grievous, in nature. Injury No. 2, as discussed above, was also, on the mid-line of head of Malkiat Singh,which was a lacerated wound, whereas injury No. 3, was incised wound, on the left shoulder, and injury No. 4, was tender diffused swelling, on the mid-line of the head of

Malkiat Singh. On the other hand, all the injuries, on the person of Malkiat Singh, were declared simple, in nature, caused by blunt weapon. Injury No. 1, on the person of Mohinder Singh, was a lacerated wound, on the right side of head, and injury No. 2, was a lacerated wound, on the right eyebrow, whereas the remaining injuries, were on the non-vital parts of the body. The nature of injuries, on the person of Malkiat Singh, was more serious, than the nature of injuries, on the person of Mohinder Singh, accused. Mohinder Singh, accused, was wielding takua, which was a deadly weapon, whereas, the injuries, on the person of Mohinder Singh were caused with a stick. Malkiat Singh was taken to the hospital and his medico-legal examination, was conducted on 26.08.1996, at 3.45 PM, whereas Mohinder Singh, went to the hospital, on 26.08.1996, at 6.00 PM, i.e. about more than two hours of the arrival of Malkiat Singh, in the hospital. It was, on the statement of Malkiat Singh, that the first information report, was registered, against Mohinder Singh, and Darshan Singh, accused. Mohinder Singh, stated that, he caused the injuries, on the person of Malkiat Singh, in self-defence. Had the version, given by Mohinder Singh, been correct, he would have certainly approached the higher Police officials, for the registration of a criminal case, narrating the true facts therein. However, he did not make any complaint, at any point of time, to the Police. It means that, Mohinder Singh, never approached the Police, for the registration of a case, against Malkiat Singh, which shows that, he knew that he was aggressor and Malkiat Singh, caused injuries, on his person in self-defence. From the aforesaid factors, it was, thus, duly proved that, Mohinder Singh, and Darshan Singh, accused, were the aggressors, whereas, Malkiat Singh, complainant, was the aggressive. It was not a case of free fight. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

17. No other point was urged by the Counsel for the parties.

18. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference. The same are liable to be upheld.

19. For the reasons recorded above, the appeal, being devoid of merit, is dismissed. The judgment of conviction and the order of sentence, rendered by the trial Court, are upheld. If the appellants are on bail, their bail bonds shall stand cancelled.

20. The Chief Judicial Magistrate, shall take necessary steps to comply with the judgment with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit compliance report, within 2 months.

21. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent within the time frame, to this Court.

22. The Registry is directed to keep track that the directions are complied with, within the stipulated time. The papers be put up within 10 days, of the expiry of the time frame, whether the report is received or not, for further action.