

(2009) 04 P&H CK 0367

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 30-SB of 1995

Jagir Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: April 16, 2009

Acts Referred:

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

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Puran Singh Hundal, with Mr. Dinesh Trehan, for the Appellant; Jaspreet Singh, Assistant Advocate General, Punjab, for the Respondent

Judgement

Sham Sunder, J.

This appeal is directed against the judgement of conviction and the order of sentence, dated 10.01.1995, rendered by the Court of Additional Sessions Judge, Amritsar, vide which, it convicted the accused (now appellants), and sentenced them, as under :-

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

(a) Tarsem Singh

(i) u/s 326 of the Indian Penal Code.

To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500## in default thereof## to further undergo rigorous imprisonment for a period of six months. To undergo rigorous imprisonment for a period of six months and to pay fine of Rs. 200/-## in default thereof## to further undergo rigorous imprisonment for a period of two months.

(ii) u/s 324 read with Section 34 of the Indian Penal Code.

To undergo rigorous imprisonment for a period of four months.

(iii) u/s 323 read with Section 34 of the Indian Penal Code.

To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/-## in default thereof## to further undergo rigorous imprisonment for a period of four months.

(iv) u/s 326 read with Section 34 of the Indian Penal Code.

To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/-## in default thereof## to further undergo rigorous imprisonment for a period of six months.

(b) Kabal Singh

(v) u/s 324 read with Section 34 of the Indian Penal Code.

To undergo rigorous imprisonment for a period of six months and to pay fine of Rs. 200/-## in default thereof## to further undergo rigorous imprisonment for a period of two months.

| | | |
|-----------------|--|--|
| | (vi) u/s 323 of the Indian Penal Code. | To undergo rigorous imprisonment for a period of four months. |
| (c) Jagir Singh | (vii) u/s 326 read with Section 34 of the Indian Penal Code. | To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/-## in default thereof## to further undergo rigorous imprisonment for a period of six months. |
| | (viii) u/s 324 of the Indian Penal Code. | To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 200/-## in default thereof## to further undergo rigorous imprisonment for a period of two months. |
| | (ix) u/s 323 read with Section 34 of the Indian Penal Code. | To undergo rigorous imprisonment for a period of four months. |

All the substantive sentences were ordered to run concurrently.

2. The facts, in brief, are that on 05.10.1991, Kashmir Singh loaded his paddy crop, in a vehicle, and took it to the commission agent shop of Satpal. Lakhwinder Singh and his father stopped Kashmir Singh not to take paddy crop to the shop of Satpal. On account of this reason, there was some dispute between them. On 06.10.1991, at about 9.00 AM, when Lakhwinder Singh reached, in front of the house of Mukha Singh Rai Sikh, to take milk, Tarsem Singh, armed with barchhi, Kabal Singh, armed with dang, Kala @ Jagir Singh, armed with datar, and Vir Singh, empty handed, came there. Vir Singh, raised an exhortation to catch hold of Lakhwinder Singh and teach him a lesson for restraining his father from taking paddy crop to the shop of Satpal. In the meanwhile, Kabal Singh gave a dang blow, which hit the back of Lakhwinder Singh, who fell down. Thereafter, Tarsem Singh, gave a barchhi blow, which hit the

right side of the chest near the shoulder of Lakhwinder Singh. Kala aimed a datar blow, which Lakhwinder Singh, warded off, by raising his hand, and the same hit the middle finger of his left hand. In the meanwhile, Gudip Singh father of Lakhwinder Singh and Ajit Singh son of Balwant Singh reached there, who had come to village Khussupur, to take trolley of Ajit Singh. They witnessed the occurrence. Lakhwinder Singh raised an alarm, as a result whereof, the accused ran away, with their respective weapons. After arranging a vehicle, Lakhwinder Singh, was taken to Civil Hospital, Lopoke, by his father, where he was given first aid. He was referred to Guru Nanak Dev Hospital, Amritsar. He was got admitted there. On the basis of the statement PA of Lakhwinder Singh, recorded by the Police, first information report, was registered.

3. Assistant Sub-Inspector Surjit Singh, visited the spot and prepared rough site plan PM of the place of occurrence, at the instance of Gurdip Singh. Gurdip Singh produced blood stained shirt of Lakhwinder Singh, before Assistant Sub Inspector Surjit Singh, who converted it into a parcel, and sealed the same. The parcel was taken into possession, vide memo PB, which was attested by Gurdip Singh and Santokh Singh. The accused were arrested on 10.10.1991.

4. Kabal Singh and Jagir Singh, were interrogated on 12.10.1991. Jagir Singh, made a disclosure statement that he had concealed a datar, in his house, under the heap of chaff, of which, he only knew, and could get the same recovered, by pointing out. His disclosure statement PC was recorded, which was signed by him, and attested by Baldev Singh and Santokh Singh. Thereafter Kabal Singh, accused, made a disclosure statement that he had concealed the dang at the back side of his house, in the heap of dhinjan, of which, he only knew, and could get the same recovered, by pointing out. His disclosure statement PF, was also reduced into writing, which was thumb marked by him, and attested by Baldev Singh and Santokh Singh. Thereafter, in pursuance of their disclosure statements, they got recovered datar and dang, respectively, which were taken into possession. 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, 326, 324 and 323 read with Section 34 of the Indian Penal Code, was framed against the accused, which was read-over and explained to them, to which they pleaded not guilty, and claimed judicial trial.

6. The prosecution, in support of its case, examined Lakhwinder Singh, injured (PW1), Gurdip Singh, an eyewitness (PW2), Ajit Singh (PW3), Dr. S.P. Singh (PW4), who medico-legally examined Lakhwinder Singh, and found the following injuries, on his person :-

(i) An incised stab wound 2-1/4 cm x 3/4 cm on the front of the chest in its upper most part of its right arm 3-1/2 cm below the lateral end of the right clavical. Fresh bleeding was present and depth not probed.

(ii) An incised wound 3 cm x 1 cm, on the dorsum of left hand and in its medial part and in its middle placed obliquely. Fresh bleeding was present. The bone underneath was partially cut.

(iii) A reddish contusion 17 cm x 3 cm on the back of the abdomen placed obliquely across the midline. He declared injury No. 2 grievous in nature and injury No. 3 simple in nature. Injury No. 1 was ultimately described as dangerous to life. Injuries No. 1 and 2, were caused by sharp edged weapon, and injury No. 3, was caused by blunt weapon.

7. Baldev Singh, Constable, was examined as (PW5), whereas Surjit Singh, Sub Inspector, the Investigating Officer, was examined as (PW6).

8. Rishi Ram, draftsman, was examined as (PW7), and Dr. Balcharanjit Singh Bhatia as (PW8). Thereafter, the Additional 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. It was stated by them, that some unidentified persons caused injuries, on the person of Lakhwinder Singh, in the early hours of 05.10.1991. It was further stated by them, that on account of enmity, they were involved, in the instant case. They also examined Dara Singh (DW1), in their defence. Thereafter, the accused closed their defence evidence.

10. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused (now appellants), as stated above, but acquitted Vir Singh, one of the accused.

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

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

13. The Counsel for the appellants, at the very outset, submitted that the trial Court, was right, in holding that injury No. 2, on the person of Lakhwinder Singh, was not grievous, in nature, but on the other hand, simple in nature, falling within the purview of offence, punishable u/s 324 of the Indian Penal Code. He further submitted that the trial Court was also correct, in coming to the conclusion, that injury No. 1, caused on the person of Lakhwinder Singh, was not dangerous to life. He further submitted that the trial Court, was, however, wrong, in coming to the conclusion, that injury No. 1, was grievous in nature, falling within the purview of the offence, punishable u/s 326 of the Indian Penal Code. The submission of the

Counsel for the appellants, in this regard, appears to be correct. Dr. Navraj Singh, and Dr. Anjana, who conducted the operation, in relation to injury No. 1 of Lakhwinder Singh, were not examined. Only Dr. Balcharanjit Singh Bhatia, PW8, was examined. He did not conduct operation, in relation to injury No. 1, on the person of Lakhwinder Singh. He never gave the operation notes, contained in PS. During the course of cross-examination, it was stated by him, that he had not brought the hospital record, in the Court. Since, Dr. Navraj Singh and Dr. Anjana, who conducted operation, in relation to injury No. 1, on the person of Lakhwinder Singh, and who could be said to be the best witnesses, to find out, as to whether, the said injury was grievous or dangerous to life, had not been examined, the evidence of Dr. Balcharanjit Singh Bhatia, PW8, could not be relied upon, to come to the conclusion, that injury No. 1, on the person of Lakhwinder Singh, was grievous, in nature. Had Dr. Navraj Singh, and Dr. Anjana, been examined, and they had given an opinion, that injury No. 1, on the person of Lakhwinder Singh, injured, was grievous, in nature, the matter would have been different. In this view of the matter, the conclusion, by the trial Court, that since it was not proved that injury No. 1, on the person of Lakhwinder Singh, was dangerous to life, the offence, stood altered to 326 of the Indian Penal Code, was arrived at, without any material or data, on the record. In fact, injury No. 1, on the person of Lakhwinder Singh, was simple, in nature, falling within the purview of offence, punishable u/s 324 of the Indian Penal Code. The findings of the trial Court, to the extent, that the offence, punishable u/s 326 of the Indian Penal Code, was made out, being incorrect, are reversed. The submission of the Counsel for the appellants, that injury No. 1, only constituted the offence, punishable u/s 324 of the Indian Penal Code, being correct, is accepted.

14. The Counsel for the appellants further submitted that since the appellants have been facing the protracted criminal proceedings since 07.10.1991, when the first information report, was registered, against them, i.e. for the last more than 17 years, they be granted the concession of the provisions of Section 4 of the Probation of Offenders Act, 1958. The submission of the Counsel for the appellants, in this regard, appears to be correct. The appellants have been facing the protracted criminal proceedings, for the last more than 17 years. They must have undergone a lot of physical pain, and mental agony, during all these years. There is nothing, on the record, that the appellants are previous convicts. There is also nothing, on the record, that they committed any offence, of the like nature, after the conviction, was recorded by the trial Court. Keeping in view the facts and circumstances of the case, the nature of offences, the age of the appellants, and that they are not previous convicts, they are entitled to be released on probation of good conduct. The submission of the Counsel for the appellants, to this extent, is accepted.

15. The conviction of the accused (now appellants), recorded and sentence awarded by the trial Court, for the offences, punishable under Sections 326 and 326 read with Section 34 of the Indian Penal Code, are liable to be set aside and instead Jagir Singh and Tarsem Singh, are convicted for the offence, punishable u/s 324 of the Indian

Penal Code, whereas Kabal Singh, is convicted for the offence, punishable u/s 324 read with Section 34 of the Indian Penal Code. The conviction of the accused (now appellants), for the offences, punishable under Sections 323 and 323 read with Section 34 of the Indian Penal Code, is however, maintained. The substantive sentence, awarded to the appellants, for these offences, is liable to be set-aside.

16. For the reasons recorded above, the appeal, is partly accepted, and the appellants, are acquitted of the charge under Sections 326 and 326 read with Section 34 of the Indian Penal Code. The judgement of conviction, for the offences, punishable under Sections 324, 324 read with Section 34 of the Indian Penal Code, 323 and 323 read with Section 34 of the Indian Penal Code, as per the modification, referred to above, is upheld. The substantive sentence, awarded to the accused (now appellants), by the trial Court, is set-aside. Instead the appellants, are ordered to be released on probation of good conduct, for a period of two years each, on their furnishing personal bonds, in the sum of Rs. 5,000/- each, with one surety, in the like amount each, to appear and receive sentence, as and when, called upon, during this period, and, in the meantime, to keep the peace and be of good behaviour. The appellants shall also furnish an undertaking that they shall not commit any offence of the like nature, during the probation period. The appellants shall also pay costs of the proceedings, to the tune of Rs. 5,000/- each. The fine, if already paid by them, shall be adjusted, against the costs imposed. The probation bonds, and the undertaking, shall be furnished and the costs shall be deposited, within a period of 2 months, from today, in the Court of the Chief Judicial Magistrate, Amritsar. In case, the probation bonds and the undertaking, are not furnished and the costs are not deposited, within the period stipulated, then the Chief Judicial Magistrate, Amritsar, shall be at liberty to proceed, in accordance with the provisions of law.