

(1999) 05 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 415-SB of 1995

Azad Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Citation : (1999) 2 RCR(Criminal) 848

Hon'ble Judges : R.L.Anand, J

Advocate : K.D.S. Hooda, R.S. Cheema, Surinder Singh, Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. By this judgment, I dispose of Criminal Appeal 415SB of 1995 titled "Azad Singh v. The State of Haryana" and Crl. Revision 199 of 1996 titled "Sat Narain v. Azad Singh etc." as both these matters have arisen from the judgment and order dated 6.7.1995, passed by the court of Additional District and Sessions Judge, Sonapat, who convicted the appellants u/s 304 Part II, read with section 34, IPC for causing the death of Prem Singh and u/s 323, IPC, for causing simple hurts to Prem Singh, deceased, and Sat Narain, PW6. The appellants were directed to undergo RI for 7 years each u/s 304 Part II, r/w section 34, IPC and to pay a fine of Rs. 20,000/ each; in default of payment of fine, they were directed to undergo RI for a period of two years. The trial court also ordered that the amount of fine, if realised, shall go to Smt. Shanti Devi, widow of Prem Singh, deceased, by way of compensation. The appellants were further directed to undergo RI for six month each u/s 323, IPC. Further, both the sentences were ordered to run concurrently.

2. The facts of the case are that Sat Narain, PW6, is son of Prem Singh, deceased. Accused Azad Singh, Nahar Singh and Ram Kumar are real brothers and they are sons of Jage Ram. Deceased Prem Singh was son of Munshi Ram son of aforesaid Jage Ram. Dharambir, accused, and Prem Singh (deceased) are uterine brothers being from the same mother but from different fathers. On

28.6.1994, there was some dispute over the water course between the accused and the deceased, which was settled by Angrez Singh and Raj Singh. The story of the prosecution further proceeds that on the night intervening 29/30.6.1994, Sat Narain, PW, and Prem Singh, deceased, reached their fields at about 11.30 p.m. in order to irrigate the same as their turn of water was to start from 11.45 p.m. to 1.30 a.m. On reaching the spot, they saw that the water course was already dismantled. Prem Singh, deceased, started putting the same in order. Ram Kumar, appellant, was already present there. The remaining three appellants Azad Singh, Nahar Singh and Dharambir also joined there. Thereafter, all the four appellants started giving injuries with lathis on the person of Prem Singh. Dharambir opened the score and he inflicted a lathi blow on the head of Prem Singh. Thereafter, Azad Singh gave a lathi blow hitting on the right arm of Prem Singh. Then Ram Kumar gave lathi blows hitting on the left leg and on the chest of Prem Singh, deceased. Then, Nahar Singh gave injuries with the lathi on his person. When Sat Narain came forward in order to save his father, he was given a lathi blow on the right leg by Ram Kumar and on his left arm by Dharambir, appellant. On account of the said lathi blows, Prem Singh, deceased, fell on the ground while Sat Narain left the place of occurrence in order to save himself.

3. Sat Narain came to the village and he informed about this occurrence to his mother and, then, to Jai Bhagwan, covillager. Thereafter, Sat Narain and Jai Bhagwan came to the fields in a tractor and removed Prem Singh in an injured condition to the hospital at Ganaur from where Prem Singh was referred to General Hospital, Sonapat. At Sonapat, Sat Narain was admitted for treatment but the doctors referred Prem Singh, injured, to Safdarjung Hospital, Delhi, on account of his precarious condition. Jai Bhagwan took Prem Singh to Delhi in a Maruti Van but on the way Prem Singh succumbed to the injuries. Resultantly, Jai Bhagwan brought the dead body of Prem Singh to General Hospital, Sonapat.

4. Before the injured Prem Singh was referred to the Safdarjung Hospital, Delhi, Dr. B.D. Chaudhary, PW1, medically examined Prem Singh at General Hospital, Sonapat, and found the following five injuries on his person, as per M.L.R., Ex. P.A. :

"1. A lacerated wound 7 x 2 cms on scalp over the left fronto parietal area with fresh bleeding.

2. Complaint of pain in the left side of the chest with tenderness over the lower lateral chest wall. Positive surgical emphysema was present.

3. Tenderness and swelling over the right elbow region over the swelling and right arm. There are multiple reddish contusions of different sizes.

4. Incised wound 8 cms. x 1 cm and 2 cm x 0.5 cm on the middle of the left leg.

5. Complaint of pain in the right knee with no external mark of injury."

All these injuries were kept under observation. Injury No. 4 was found to have

been caused by a sharp edged weapon and the remaining injuries were caused by blunt weapon. Ex. PA is the correct carbon copy of the MLR of Prem Singh.

5. On the same day, at 4.50 a.m., Sat Narain, PW6, was also medically examined by this doctor and on his person, the following three injuries were found :

"1. A lacerated wound 2.5 x 1 cm on the middle 1/3rd of right leg anteriorly placed with fresh bleeding.

2. Tenderness and swelling in the lower 1/3rd of right forearm.

3. Tenderness and swelling on the middle of left arm. Movements were normal."

All these injuries were allegedly caused by a blunt weapon within a probable duration of six hours. Injuries No. 1 and 2 were kept under observation while injury No. 3 was declared as simple. Ex. PB is the correct carbon copy of the MLR of Sat Narain.

6. Dr. Chaudhary sent ruqa, Ex. PC, to the Incharge, Police Post, Civil Hospital, Sonapat, and gave intimation about the arrival of the injured Prem Singh and Sat Narain and the same was delivered to HC Ram Phal at 5.15 a.m.

7. On the arrival of the dead body of Prem Singh, another ruqa, Ex. PF, was sent by Dr. Labh Singh, to the Incharge, Police Post, Civil Hospital, Sonapat, which was received at the police post at 10.15 a.m.

8. Further, according to the prosecution case, on 30.6.1994, at about 10 a.m., SI Man Singh was present at Murthal Chowk in connection with the investigation of case FIR No. 113 of 1994. He received a wireless message from the Police Control Room, Sonapat, to the effect that Prem Singh was admitted in the Civil Hospital, Sonapat, in an injured condition. On this information, he reached the hospital and there he came to know that Prem Singh had already expired. He, then, recorded the statement, Ex. PG, of Sat Narain, injured, PW6 with regard to the occurrence at 12.30 p.m., which was forwarded by him for the registration of the case through a Constable, on the basis of which formal FIR No. 140 dated 30.6.1994, Ex. PG/2, was registered in the Police Station, Ganaur, u/s 302, r/w section 34, IPC, at 1.40 p.m. by ASI Dharam Pal.

9. SI Man Singh conducted the inquest proceedings on the dead body of Prem Singh and the postmortem was conducted by Dr. H.R. Singhal and Dr. Subhash Mathur on the same day. The board found the following four injuries on the dead body of Prem Singh :

"1. A stitched wound with six stitches. It was U shaped and transversely placed on the frontoparietal bone. Opening the stitches the wound was found 7 cms x 2 cms x bone deep. On the opening of the skull the underlying bone was found fractured and grey matter was lacerated and vessels were also found damaged. Blood was collected in the cavity.

2. A stitched wound 8 cms was present on the left leg almost in the middle. On

removal of the stitches fractures were noticed. Underlying bones were, however, normal.

3. On opening of chest well, the 4th rib of the left side was fractured, penetrating into the lung parent chyma.

4. A swelling 8 x 1 cm on the middle upper arm on the right side extending upto right elbow."

As per the opinion of the Board of Doctors, the injuries were sufficient to cause death in the normal course of life and were antemortem in nature. The time that elapsed between the injuries and death was of a few hours and between death and postmortem was within 24 hours. Ex. PD is the correct carbon copy of the post mortem report of Prem Singh.

10. SI Man Singh, then, proceeded to the place of occurrence and prepared the rough site plan, Ex. PJ, depicting the place of incident and recorded the statements of the witnesses. All the appellants were arrested on 3.7.1994.

11. The appellants Nahar Singh, Dharambir, Ram Kumar and Azad Singh were interrogated about their weapons of offence and they suffered disclosure statements Ex. PX to Ex. PN, respectively in the presence of Sunhera and Hari Singh, on the basis of which lathis, Ex. P1 to Ex. P4, respectively, were recovered on 5.7.1994, in the presence of the same set of witnesses and on the completion of the investigation of the case, all the appellants were challaned in the court of the Area Magistrate who vide commitment order dated 27.8.1994, committed them to the court of Sessions in order to face trial u/ss 302, 302/34, 323, IPC. for causing the death of Prem Singh and u/s 323/34 IPC, for causing simple hurt to Sat Narain. The charges were read over and explained to them to which they pleaded not guilty and claimed trial.

12. In order to prove the charges, the prosecution examined Dr. B.D. Chaudhary, PW1. This doctor proved Ex. PC, the ruqa sent to the Incharge, Police Post, Civil Hospital, Sonapat, regarding the arrival of the injured in the hospital. Dr. H.R. Singhal, PW2, conducted the postmortem examination on the dead body of Prem Singh and found the four injuries, described in the earlier portion of this judgment. In the opinion of this doctor, the cause of death was extensive haemorrhage and shock due to the injuries to large vessels and visceral organs. The injuries were sufficient to cause death in the normal course of nature. Ex. PD is the correct carbon copy of the postmortem report. PW3 ASI Dharam Pal, recorded the formal FIR, Ex. PG/1 on receipt of the statement, Ex. PG of Sat Narain. Constable Jagdish Rai, PW4, handed over the special report to the Area Magistrate at 4.45 p.m. on 30.6.1994. Budh Ram, Revenue Patwari, PW5, prepared the scale site plan, Ex. PH. Sat Narain, PW6, is the injured witness of this case who corroborated the allegations of the FIR, Ex. PG/1. I.O. Man Singh, appeared as PW7. The prosecution also tendered into evidence the affidavits of the formal witnesses.

13. On the closure of the prosecution evidence, the statements of the accused were recorded u/s 313, Cr.P.C. and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. Accused denied those circumstances and their plea was that they have been falsely implicated in this case and that there was no warabandi on that date and no such incident had taken place.

14. When called upon to enter defence, the accused did not lead any evidence and closed the case.

15. The learned trial court vide the impugned judgment, diluted the offence from section 302, IPC, to section 304, Part II, IPC, visavis all the appellants. It was further held that the offence u/s 323, IPC, visavis Sat Narain stands proved against each of the appellant. Resultantly, they convicted and sentenced in the manner as stated above and aggrieved by the said judgment and order, the present appeal and the revision, which I am disposing of with the assistance rendered by Mr. R.S. Cheema, Sr. Advocate, with Mr. K.D.S. Hooda, Advocate, appearing on behalf of the appellants, Mr. Ajai Lamba, Advocate, on behalf of the complainant and in support of the revision, who prays for the enhancement of the sentence against the appellants, and Mr. Surinder Singh, Advocate, on behalf of the State.

16. The first contention of the learned counsel for the appellants was that the trial court was not justified in applying the provisions of section 34, IPC, when it had already held that the accused are not guilty for the offence u/s 302, IPC. The counsel submitted that section 34 IPC, will go when the accused had shared a common intention but once the accused have been acquitted on account of the knowledge, section 34, IPC, will not go with section 304 Part II, IPC.

17. I find merit in the contention raised by the counsel for the appellants. Even otherwise, the story of the prosecution is that before the start of the occurrence, Ram Kumar was already present. Three persons Azad Singh, Nahar Singh and Dharambir arrived at the scene of crime subsequently. There is no indication in the FIR that there was any lalkara given by any of the appellants. In these circumstances, it can safely be said that the accused never shared the common intention or that the common intention ever existed prior in time before the start of the occurrence. In this view of the matter, each of the appellants shall be guilty for their individual acts.

18. It was, then, submitted by the learned counsel for the appellants that there is a discrepancy in the medical evidence and the ocular account with regard to Nahar Singh, appellant. The counsel submitted that as per the first version in the FIR, Nahar Singh allegedly gave injuries on the left hand of Prem Singh whereas as per the M.L.R. and the postmortem report of Prem Singh, there is no such injury on the person of Prem Singh. Moreover, it is not even certain from the statement of Sat Narain, injured PW6, that Nahar Singh had given any injury on the body of Prem Singh. In this regard, the learned counsel for the appellants

has drawn my attention to the examination in chief of Sat Narain, who deposed as follows :

"Nahar Singh also inflicted a lathi blow which I do not remember as to where the same hit."

19. In view of the fact that Nahar Singh is none else but the real brother of Azad Singh and Ram Kumar, the chances of his false implication cannot be ruled out, especially when the story of the prosecution does not stand corroborated from the medical evidence. Moreover, there are only four injuries on the person of Prem Singh and it can be said with reasonable certainty that these four injuries could be possibly caused by three assailants.

20. The counsel for the complainant has tried to meet this discrepancy by submitting that the statement of Sat Narain has been recorded somewhere in the year 1995 whereas the occurrence had taken place in the year 1994 and there might be an honest slip of tongue on his part when he could not say precisely as to on which part the alleged injury attributed to Nahar Singh has landed.

21. I am not in a position to accept the contention of the learned counsel for the complainant. Even if it is held that Sat Narain fumbled while describing the injuries inflicted by the assailants, the benefit of that omission has to go to the accused and not to the prosecution. Moreover, it is the specific case of the complainant in the FIR itself that Nahar Singh, allegedly gave injury on the left hand of Prem Singh. Since, there was no injury on the person of Prem Singh on that part of the body, for that reason Sat Narain had feigned ignorance in the trial court by stating that he did not remember as to where the alleged injury attributed to Nahar Singh landed on the person of Prem Singh. In this view of the matter, the presence of Prem Singh looks to be doubtful. The benefit of this medical discrepancy has to go to the accused and not to the prosecution (sic) be possibly caused by three assailants. Therefore, I extend the benefit of doubt to Nahar Singh as the story of the prosecution is not consistent and is not corroborated by the medical evidence and his appeal stands accepted as Nahar Singh did not cause any injury to Sat Narain, which is an additional circumstance to show that perhaps Nahar Singh was not there at the time of the alleged occurrence.

22. With regard to accused Azad Singh, Ram Kumar and Dharambir, all the three persons were armed with dangs. Sat Narain is an injured witness. Prem Singh is uterine brother of Dharambir, appellant. No doubt, Sat Narain is son of Prem Singh but mere relationship is no ground to reject the testimony of Sat Narain because he is a stamped witness and his statement stands on a higher pedestal irrespective of the fact that the case of the prosecution is not proved against Nahar Singh. Therefore, no benefit can be granted to Azad Singh, Ram Kumar and Dharambir as there is a consistent evidence given by Sat Narain regarding their participation into the occurrence. There was motive for this crime. One day earlier to that, there was a dispute between the parties over the water course.

The complainant and the accused party are relations inter se. We all know that agriculturists are very sensitive over the turn of water. They cannot afford to lose the water. It is the case of the prosecution that on that night, the turn of water of the complainant party was to start at 11.45 p.m. and Prem Singh and Sat Narain had gone to the fields in order to irrigate them. Sat Narain is an agriculturist. He must be present on the spot in order to assist his father Prem Singh. He has also suffered injuries on his person. Those injuries cannot be held to be fabricated. The duration of the injuries of Sat Narain tallies with the injuries of Prem Singh. Sat Narain had stood the test of cross-examination and no flaw has been found in his statement qua Azad Singh, Ram Kumar and Dharambir.

23. It was, then, submitted by Mr. Cheema that there is a discrepancy in the ocular account and medical evidence because injury No. 4 on the body of Prem Singh as per the M.L.R. is incised wounds 8 cms x 1 cm and 2 cms x 0.5 cm on the middle of the left leg but there is no sharp edged weapon attributed to any of the appellants.

24. This aspect of the case has also been considered by the trial court who had given the benefit to the prosecution by stating that since the occurrence had taken place during night and that it was a case of more than one accused, there can be an honest mistake on the part of Sat Narain in describing the weapon and the possibility cannot be ruled out that one of the accused might be having a sharp edged weapon.

25. I explain this injury in a different manner. Since the occurrence was during night, chances cannot be ruled out that one of the dangs being carried by the appellants might be fitted with some iron Patti and for that reason injury No. 4 might have been caused with a sharp edged weapon. Be that as it may, the fact remains that the presence of Sat Narain cannot be ruled out. He has suffered injuries in this occurrence. He would be the last man to implicate his own relations. Irrespective of the fact that the testimony of Sat Narain has not been believed qua Nahar Singh, it is bound to be believed against Azad Singh, Ram Kumar and Dharambir.

26. I have already held above that in this case section 34, IPC, will not come into play. Each person has to be liable for his individual act. Now, let us explore, who was allegedly responsible for the death of Prem Singh and to whom the knowledge can be imputed. Injury No. 1 as per the postmortem report of Prem Singh has been attributed to Dharambir. He was the person who opened the score. The exploration of the skull of the deceased showed the underlying bone was fractured and brain matter was lacerated and vessels were also damaged. Further the doctor found that blood was collected in the cavity. In this view of the matter, Dharambir has to be convicted under/ 304 Part II, IPC. Similarly, injury No. 3 has been attributed to Ram Kumar. The doctor at the time of the post mortem examination found on the opening of the chest wall that the 4th rib of the left side was fractured, penetrating into the lung parenchyma. In the opinion of the doctor, the cause of death was due to excessive haemorrhage and shock due to

the injuries to large vessels and visceral organs. Thus, Ram Kumar can also be safely convicted for the offence u/s 304 Part II, IPC. So far as Azad Singh is concerned, he stands convicted u/s 323, IPC, for causing simple hurts to Prem Singh. Ram Kumar and Dharambir are also convicted u/s 323, IPC.

27. The learned counsel for the appellants, then, submitted that the sentences which have been awarded to the appellants Ram Kumar and Dharambir u/s 304 Part II, IPC, are excessive and they should be visited with leniency in the matter of sentence after a lapse of 5 years. Moreover, there was hardly any intention on the part of these appellants to cause the death of their own kith and kin. Also, it was submitted that the motive in this case was not so strong.

28. On the contrary, the learned counsel for the complainant submits that the sentences which have been awarded to the appellants Ram Kumar and Dharambir cannot be held to be excessive or harsh.

29. After considering the rival contentions of the parties, I am of the opinion that the ends of justice would suffice if the substantive sentence of Ram Kumar and Dharambir, appellants, is reduced to five years each u/s 304 Part II, IPC. JUDGMENTed accordingly. Further, Azad Singh stands convicted u/s 323, IPC and he is directed to undergo RI for six months for causing simple hurts to Prem Singh. Ram Kumar and Dharambir further stand convicted u/s 323, IPC, for causing simple hurts to Sat Narain with a blunt weapon and they shall undergo RI for six months each. The substantive sentences of Ram Kumar and Dharambir shall run concurrently. So far as the imposition of fine is concerned, Ram Kumar and Dharambir shall pay a fine of Rs. 20,000/ each as already imposed upon them by the trial court; in default of payment of which, they shall further undergo RI for two years. The entire fine, if realised, shall go to the widow of Prem Singh by way of compensation.

30. The net result is that the appeal of Nahar Singh succeeds and he is acquitted of the charges framed against him. The appeal of Azad Singh succeeds partly. His conviction u/s 304 Part II, IPC, is set aside and he stands convicted u/s 323, IPC. The appeal of Ram Kumar and Dharambir succeeds partly, with regard to the sentence only. So far as the revision is concerned, the same is hereby dismissed.