
(2003) 02 P&H CK 0163
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 184-SB of 1991

Balbir Singh, Lashkar Singh and Malkiat Singh	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360, 4(1)
Penal Code, 1860 (IPC) — Section 149, 307, 323, 324, 325

Citation : (2003) CriLJ 3148

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Rajiv Kaswal, for the Appellant; Amol Rattan Sidhu, DAG, for the Respondent

Judgement

Swatanter Kumar, J.—In this criminal appeal challenge is to the judgment of conviction and order of sentence both dated 11.4.1991 vide which Balbir Singh appellant No. 1 was convicted for an offence u/s 324 IPC and was sentenced to undergo rigorous imprisonment for one year while Lashkar Singh and Malkiat Singh appellants No. 2 and 3 were convicted for commission of an offence u/s 325 IPC and were sentenced to undergo rigorous imprisonment for 1.5 years each and a fine of Rs. 500/- each. In default of payment of fine each one of them was ordered to undergo further rigorous imprisonment for six months.

2. Learned counsel for the appellants contended that there were some serious contradictions in the statements of prosecution witnesses and that has created a serious doubt in the entire case of the prosecution. He further contended that even if the appellants were guilty of the offences, they ought to have been granted the benefit of the provisions of Section 360 Cr.P.C. and Section 4(1) of the Probation of Offenders Act.

3. The case of the prosecution as has been noticed by the learned trial Court on the basis of the recorded evidence before it is an under:

"Briefly the facts of the case are that Sukhwinder Singh and Manjit Singh are two brothers. They are residing in village Gurmukh Singh Wala. On 4.5.1989 Amrik Singh got the possession regarding the land through the Revenue Authority. The land in dispute is adjacent to their land. On 23.5.1989 at about 12 in the night accused Balbir Singh, Lashkar Singh, Joginder Singh, Malkiat Singh and Jasvir Singh were cultivating the land with a ford Tractor, Sukhwinder Singh and Manjit Singh asked them not to cultivate the land but they did not stop. Joginder Singh armed with a dang, Balbir Singh armed with a Kirpan, Malkiat Singh was armed with dang, Lashkar Singh armed with a gandasi. Balbir Singh gave a Kirpan blow which hit on the right arm of Sukhwinder Singh, Malkiat Singh gave a dang blow which hit on the arm of Sukhwinder Singh when he raised his hand in order to ward off the blow. Lashkar Singh gave gandasi blow on the person of Manjit Singh which hit on his head. Amrik Singh who had come in their house, came there on hearing Raula. Dilbag Singh also came there. Sukhwinder Singh etc. were taken to the Civil Hospital Dhilwan where they were medically examined. It is alleged that the accused were aggrieved of this fact that why Amrik Singh etc. have taken the possession and started cultivation of the same. Police came in the hospital and recorded the statement of Sukhwinder Singh which was read over to him and Sukhwinder Singh signed the same after hearing and understanding the same to be correct on the basis of which F.I.R. Ex.PA/1 was recorded. Site plan Ex.PM was prepared. Accused were arrested. Accused Balwinder Singh was interrogated on 1.6.1989 in the presence of Joga Singh and Bhajan Singh and Balbir Singh gave a disclosure statement that he had kept concealed one sword in the earth near the wall of his house and can get the same recovered. His disclosure statement Ex.PN was recorded which was signed by Balbir Singh accused. After that Balbir Singh got recovered Kirpan in accordance with his disclosure statement. That was taken into possession by preparing memo Ex.PD. After that Malkiat Singh was interrogated who gave a disclosure statement that he had kept concealed a dang on the west of his house under the heap of fire wood and can get the same recovered. His disclosure statement Ex.PP was recorded and that the accused Malkiat Singh got recovered dang in accordance with his disclosure statement and that was taken into possession by preparing memo Ex.PO. After that Lashkar Singh was accused was interrogated. He gave a disclosure statement that he had kept concealed a gandasi under the earth near the western wall inside the Kotha and can get the same recovered. His disclosure statement Ex.PR was recorded which was signed by Lashkar Singh. After that Lashkar got recovered gandasi Ex.P3 in accordance with his disclosure statement which was taken into possession by preparing memo Ex.P5 Ex.PT, PU, PV site plans regarding the place of recovery were prepared. Statements of the witnesses were recorded. The case property was deposited with the MHC. After completing the investigation the accused were sent up for commitment purpose in the Court of Chief Judicial Magistrate, Kapurthala and Shri N.S. Saini, Chief Judicial Magistrate, Kapurthala vide his order dated 19-1-90 committed the case to the learned Sessions Judge, Kapurthala and he entrusted the case to this Court."

4. In order to prove its case under Sections 307 and 326 read with Section 149 of Indian Penal Code, the prosecution examined seven witnesses. The statements of the accused u/s 313 Cr.P.C. were recorded who denied the allegations and pleaded their false implication in the case.

5. I do not find any merit in the contention raised on behalf of the appellants that there is serious discrepancies or contradictions between the statements of the witnesses. Sukhwinder Singh and Manjit Singh both are injured and they were examined as PW 1 and PW 2. Their version is fully substantiated and corroborated by the medical evidence of Radiologist PW 3 as well as Dr. Surinder Pal Singh who appeared as PW 4. There is no reason for these two witnesses to falsely implicate the appellants. The occurrence in fact is hardly in dispute as both the parties have put their version before the Court blaming each other. There is no inordinate delay in lodging the F.I.R. and as such the possibility of false implication even prima-facie is ruled out. The injuries caused on the person of the injured were serious and injury No. 2 was declared by Dr. Surinder Pal to be grievous and was inflicted with a blunt weapon. The injury was a lacerated wound parallel to injury No. 1 measuring 1 cm x 4.5 cms and just 10.5 cms from the eye brow line. In fact the learned counsel for the appellants has not been able to point out any serious discrepancies between the statements of these two eye witnesses. Once the eye version is given particularly by the injured themselves, the Court would normally rely upon such version of the prosecution unless it suffers from serious infirmities or improvements.

6. For the reasons afore-stated, I find no merit in the contention raised on behalf of the appellants.

7. Coming to the question of quantum of sentence, in the facts and circumstances of the case and particularly the fact that there were cross versions and that the appellants have already undergone part of the sentence awarded, the appellants should be released on probation. Therefore, at this stage, instead of ordering the appellants to receive the remaining portion of the sentence awarded, they are ordered to be released on probation upon their furnishing personal bonds in the sum of Rs. 10,000/- each with one surety in the like amount each, to main peace and to keep of good conduct for a period of one year to the satisfaction of trial Court. In default thereof, or in the event of registration of any other case of serious nature against them during that period, they shall be produced before the Court to undergo remaining portion of sentence. The appeal is accordingly.