
(2009) 06 SHI CK 0030
In the High Court Of Himachal Pradesh

Bhoom Bahadur alias Rajan Thapa

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 307, 320, 326

Citation : (2009) CriLJ 4520 : (2010) 7 RCR(Criminal) 361

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The respondent was tried and convicted for the offence punishable u/s 307 of the Indian Penal Code for attempting to commit the murder of P.W. 1 Hari Singh, by giving a blow on his abdomen with a knife, thus he was sentenced to undergo the rigorous imprisonment for a period of eight years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. The benefit of Section 428 of the Code of Criminal Procedure was also given to the appellant.

2. The conviction and sentence has been assailed by the appellant in this appeal.

3. The facts in brief, giving rise in the present appeal can be stated thus. On 27-6-1998, there was a "Shoolini fair" at Thodo ground, Solan, where many people had assembled to see and celebrate the function. Hari Singh (Injured) was also strolling in the fair. Around 3.30 p.m. he took beer and thereafter had a round of the Mela-ground along with his friend Mannu (P.W. 3).

4. At about 8.00 p.m. the accused-appellant met them along with his 2-3 companions in the backside of the rain shelter. The appellant asked P.W. 3 aforesaid as to why he did not do his work and ran away on that night. On this, he replied that he had to leave because his father had arrived there. Thereafter the appellant gave him slaps. Hari Singh requested the appellant not to beat him (P.W. 3). On this the appellant got infuriated and asked Hari Singh as to who was he to intervene. Thereafter, the appellant hit Hari Singh on his neck with some

object. Then he caught P.W. 3 Divesh Kumar alias Mannu from his shirt and took him towards Kunj Villa School. They were followed by Hari Singh, who ultimately intervened and separated Mannu from the clutches of the appellant, in which process his shirt was torn. When Mannu relieved himself he fled away from the spot. Thereafter, the appellant turned towards Hari Singh and questioned him as to why he saved Mannu and inflicted a blow of knife on his stomach. Consequently, he sustained the injury on his belly, omen tun came out and he fell down and became semi-conscious.

5. The police present in the Mela ground came to know about this incident. Immediately, they lifted the injured and took him to the hospital, from where, he was shifted to Indira Gandhi Medical College, Shimla.

6. On 30-6-1998, at about 3 p.m. he was found fit to give the statement, as such his statement u/s 154 of the Code of Criminal Procedure (Ex. P.W. 1/A) was recorded by the police, on the basis of which FIR Ex. P.W.7/A was formally registered under Sections 147, 148, 143 and 307 of the Indian Penal Code. The appellant was arrested on 26-8-1998 and police also arrested another accused Rajesh Kumar alias Raju on 31-8-1998.

7. Hari Singh was operated upon for the management of the said injury. He remained hospitalized till 10-7-1998 for the treatment of the injury.

8. During the investigation of this case, the police took into possession MLC Ex. P.W. 5/A and blood stained shirt of the injured vide memo Ex. P.W. 1/B. The appellant got recovered the knife Ex. P1 pursuant to his statement Ex. P.W. 6/A made u/s 27 of the Indian Evidence Act. The sketch map of the knife Ex. P.W. 10/A was prepared and thereafter it was sealed.

9. Site plan Ex. P.W. 8/A was prepared and the medical case summary Ex. P.W. 5/B was also taken into possession by the police.

10. The police recorded the statements of the witnesses u/s 161 of the Code of Criminal Procedure and on conclusion of the investigation, it prima facie established a case only against the appellant u/s 307 of the Indian Penal Code and not against Rajesh Kumar alias Raju, as such the challan was presented against the appellant above in the Court for his trial for attempt to cause murder of Hari Singh.

11. Finding a prima facie case u/s 307 of the Indian Penal Code against the appellant, he was charge-sheeted. Appellant pleaded not guilty and claimed trial.

12. To prove its case, prosecution examined its witnesses and the appellant was also examined u/s 313 of the Code of Criminal Procedure. His case was that of denial simpliciter and alleged the false implication, but the trend of the cross-examination and also the statements of D.Ws. revealed that he had taken the defence that P.W. 3 Divesh Kumar alias Mannu had attacked the appellant with the knife, but the blow escaped and it hit Hari Singh on his stomach.

13. The learned trial Court disbelieved the defence version and relied upon the statements of the prosecution witnesses, thus convicted and sentenced the appellant as aforesaid, which has been challenged in this appeal.

14. Shri Virender Thakur, learned Counsel for the appellant has argued with vehemence that the learned trial Court wrongly brushed aside the defence version and misapplied the provisions of law. He further contended that the evidence of the prosecution is full of contradiction and replete which makes the case of the prosecution a suspect.

15. In response, Shri Vikas Rathore, learned Deputy Advocate General while supporting the impugned judgment of conviction and sentence has forcefully argued that P.W. 1 Hari Singh and P.W. 3 Divesh alias Mannu have prove the attack and medical evidence has fully established the charge against the appellant, thus, the impugned judgment of the conviction and sentence requires no interference.

16. In the instant case, the statement of the injured witness P.W. 1 Hari Singh is of utmost importance, which requires to be critically examined and appreciated in the light of the defence raised.

17. The identity of the accused-appellant stands fully established and it is also proved on record that P.W. 1 Hari Singh was accompanying P.W. 3 Divesh Kumar alias Mannu in "Shoolini fair". Both of them were on a spree in the Mela and it this process, they reached near the "rain shelter". Appellant Bhoom Bahadur with his 2-3 companions was found standing there and held P.W. 3 Divesh Kumar from the collar of his shirt and enquired from him as to why he did not do his work and asked him why he fled away on that night. Mannu (P.W. 3) told him that he did so because of the arrival of his father, thereafter he was given beatings by the appellant. P.W. 1 testified this fact on oath that he has requested the appellant not to slap Mannu. The appellant retorted and questioned his authority, who was he to intervene. Thereafter the appellant hit Hari Singh on his neck with some object. Then he caught hold Mannu from his shirt and took him towards Kunj Villa School. Hari Singh followed them, intervened and separated Mannu from the clutches of the appellant. When Mannu got relieved from the clutches of the appellant, he ran away. Thereafter, the appellant asked Hari Singh as to why he saved Mannu, thereafter the appellant gave a knife blow on his stomach, as a result of which blood came out from the said injury and he put his hand above the injury on his stomach. He fell down on the ground in semi-conscious condition. Later on the police lifted him from the spot and brought him to the Solan hospital from where he was shifted to the Indira Gandhi Medical College, Shimla. He further testified on oath that at that time, he was not in a position to talk. On 30th June, 1998, his statement Ex. P.W. 1/A was recorded in IGM, Shimla. This fact stands corroborated by the statement of P.W. 10 ASI Krishan Kumar, who had partly investigated the case. According to him. he got the victim Hari Singh examined in IGM, Shimla. He had moved an application Ex. P.W. 10/A to the Medical Officer on 28-6-1998 whether he was fit to make

the statement. As per the endorsement of the doctor on the said application, the injured was not found fit to give his statement. Another application Ex. P.W. 10/B was moved by him on 30th June, 1998 on which date, the Doctor opined that he was fit to make the statement and it was thereafter his statement Ex. P.W. 1/A was recorded by the police.

18. P.W. 1 further stated that his blood stained shirt Ex. P1 was also taken into possession vide memo Ex. P.W. 1/B. During the trial he also identified the knife Ex. P2 with which the appellant inflicted the injury to him.

19. The injured was subjected to the detailed cross-examination. He denied the defence raised that P.W. 3 Mannu had tried to stab the appellant, which struck against the stomach of Hari Singh. He also denied that knife Ex. P2 belonged to Mannu. The perusal of cross-examination clearly shows that nothing material could be extracted from him, which can cause a dent to the prosecution case in any manner.

20. P.W. 2 Amit afforded the corroboration to the statement of the injured to the extent that he had seen the appellant holding Mannu from the shirt in front of his chest and took him towards a school and Hari Singh P.W. 1 subsequently went after them to save Mannu. He himself did not go behind them because he apprehended a quarrel might ensue but on the next day, he came to know that Hari Singh was stabbed by the appellant.

21. P.W. 3 Divesh Kumar alias Mannu has also made a similar version as that of P.W. 1 Hari Singh. He categorically denied in his cross-examination that he inflicted a knife blow to the appellant, which struck against Hari Singh.

22. In his statement recorded u/s 313 of the Code of Criminal Procedure, the defence alleged in the cross-examination was not explained by him, but he simply alleged his false implication and maintained his innocence. When called upon to enter into his defence, he examined D.W. 1 Sunil Kumar and D.W. 2 Parkash Singh.

23. They stated that the appellant was warned by Mannu, not to be associated with one girl called Nisha and Divesh gave a knife blow to the accused, he escaped and finally it struck against Hari Singh. In cross-examination, P.W. 1 stated that he saw this incident from a distance of 300 feet and did not go to intervene and in between there were numerous persons on the site. Further he materially contradicted himself by saying that he did not know as to how Hari Singh received the knife injury. He admitted that he has been implicated in three criminal cases of this nature by the police and this fact has also been admitted by D.W. 2 Parkash Singh that he along with D.W. 1 Sunil Kumar both were facing trial u/s 307 of the Indian Penal Code.

24. Significantly, the names of both the witnesses were not suggested to any of the eye-witness nor their presence was stated by the appellant in his statement u/s 313, Cr. P.C. The very nature of their statement which is self contradictory

and their antecedents, make them of doubtful integrity, they are brought up witnesses by the appellant. Thus, in my opinion, the defence raised by the appellant could not be probalised. From the evidence of the prosecution, recorded during the trial of this case it is amply and clearly proved that it was the appellant alone who had inflicted the knife blow on the abdomen of P.W. 1 Hari Singh.

25. Once this conclusion is reached, it has to be seen what offence was committed by the appellant. On the same day, Hari Singh (P.W. 1) was examined by P.W. 5 Dr. B. K. Bhardwaj and the following injuries were noticed:

1. There was an incised wound over the anterior abdominal wall left side (sized 3.5 cm x 2 cm) broad in centre and narrow at margin and 3 cm from the lateral margin of umbilicus and lower most part of the wound was at the level of upper margin of umbilicus. It was obliquely placed spindle shape i.e. it was broad in the centre and tapering at margins. The omentum was coming out of this wound. The margins of the wound were clear cut and for this injury he had advised X-ray of abdomen while standing.

2. There were multiple reddish bruises in an area of 5 cm x 4 cm the left chest on the back in the scapular and infra-scapular region.

26. According to P.W. 5, the injured was admitted in the hospital for observation and investigation. On 28-8-1998, he received the report (treatment summary) of the patient issued by Dr. Sanjeev Parsad of IGMCH, Shimla which contained the following details:

An emergency operation was done on 28-6-98 at 6.30 a.m. and it revealed perforation of small gut and injury to the mesenteric vessel. He was discharged on 10-7-98. The duration of the injury preceding the examination of the victim by him was within two hours. He proved the MLC Ex.P.W. 5/A of Hari Singh (P.W. 1).

27. The police also obtained the final opinion of the doctor, which he gave on the reverse side of Ex. P.W. 5/B. In his opinion, the injury No. 1 aforesaid was grievous in nature and could be life threatening, which could be caused by knife Ex. P2.

28. In cross-examination, nothing was explored in defence by the accused with respect to the nature of seriousness of the injury. I wonder, why the defence thought no necessity to ask the doctor about the impact of the injury, more specifically, when there was no intervening circumstance alleged by the prosecution. The injury No. 1, which is stated to be dangerous to life has different dimension and repercussion so far as the nature of the offence is concerned. Even otherwise while scrutinizing the statement of the doctor itself it appears to me that it is incomplete, vague and indefinite. I do not find from where the learned trial Court in para 37 of its judgment came to the conclusion that a little delay in conducting the operation would have resulted into his death,

in absence of such a statement of the doctor to conclude it an offence falling under the provisions of Section 307 of the Indian Penal Code.

29 Madan Lal Vs. State of Himachal Pradesh, Hon'ble single Judge Mr. Justice Bhawani Singh of this Court, as he then was, was confronted almost with a similar proposition relied upon the authoritative work of celebrated authors on Medical Jurisprudence and held that "danger to life" from an injury should be "imminently dangerous" one. Such injuries are of serious-nature like haemorrhage, shock or injuries "implicating important structure or organs causing immediate danger. For that Taylor in his book "Principles and practice of Medical Jurisprudence", 11th Edition, at page 230 can be referred which state as follows:

The meaning of the words "dangerous to Life" is left entirely to the professional knowledge of a witness. It is not sufficient that he should make a simple assertion that the wound was dangerous to life, he must be prepared to state to the Court satisfactory reasons for this opinion, and these reasons may be rigorously inquired into by counsel for the defence. Danger to life primarily depends upon haemorrhage, shock or damage to a vital organ; and secondly, on the chance of complications such as infection leading to septicemia, pyaemia, tetanus or gas gangrene and of infection of particular parts or tissues-pneumonia, pleurisy, empyema, pericarditis, meningitis or peritonitis; or more remotely to the effects of scarring, causing stricture (of the urethra, oesophagus, gut, etc.) paralysis, urinary infection, etc.

As a general principle, the Court is likely to consider as dangerous to life in a legal sense only those words in which the danger is imminent. The law appears to contemplate the more immediate rather than the more remote possible dangers...

Modi in his book "Medical Jurisprudence and Toxicology, 13th Edition, at page 238, states as follows:

Danger to life should be imminent before the injuries are designated "dangerous to life" such injuries are extensive, and implicate important structures to organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a large artery, or rupture of some internal organ. Such as the spleen, should be considered dangerous to life. But the injuries which prove fatal remotely by intercurrent diseases, such as tetanus, erysipelas, etc. should not be considered as dangerous.

30. In the instant case, in the background of the aforesaid oral as well as medical evidence, it can be said that the injury caused to the complainant P.W. 1 Hari Singh was not imminently dangerous nor caused on the vital part of the body. At best, it can be said that cause of the impact of the injury in absence of the intervening circumstance, there could be some remote chance of it becoming dangerous to life or becoming sufficient, in ordinary course of nature, to cause the death of the complainant Hari Singh, in case medical aid was not rendered. Intention or

knowledge are alternative ingredients of the offence charged against the appellant. From the evidence discussed above, it is not possible to conclude that the appellant intended to cause the death or intended to inflict injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all this probability cause the death or cause an injury as is likely to cause death.

31. The burden to prove all this is upon the prosecution, and in my opinion, it has failed to discharge the same to the extent to record a finding of commission of an offence u/s 307 of the Indian Penal Code.

32. As already stated above, an offence u/s 307 of the Indian Penal Code is a very serious offence and it required the same very factors to be proved as are needed to prove an offence u/s 302 of the Indian Penal Code except that in this case the act falls short of the death of the deceased which is necessary u/s 302 of the Indian Penal Code.

33. In view of the conclusion drawn above, in my opinion, the prosecution has not been able to prove the case against the appellant u/s 307 of the Indian Penal Code, but the injury caused to the appellant in view of the statement of the doctor is of "grievous", in nature falling u/s 320 of the Penal Code, endangering to his life which fact stands proved by the fact that immediately after the injury, he was taken to the district hospital. Solan from where he was referred to IGMC, Shimla for its management, thereafter operated upon and he had to remain in the hospital till 10-7-1998, for post operative case.

34. Therefore, in the instant case, the hurt caused to P.W. 1 Hart Singh was endangering his life, but not imminently dangerous to his life, and the important organs of the body were not implicated in the instant case, therefore the offence committed by the appellant falls within the ambit of Section 326 of the Indian Penal Code and not Section 307, IPC.

35. The contention of the learned Counsel for the appellant that there was delay in lodging the FIR and the recovery of the weapon of offence was made after two months is of no consequence in the light of the above discussion. The recovery affords corroborative evidence and delay in the case is not fatal and it stands properly explained. Therefore, these arguments are worth rejecting.

36. Thus, for the foregoing reasons, the appellant is held guilty for offence punishable u/s 326, IPC and not u/s 307, IPC and is accordingly convicted, therefore, the appeal is partly allowed. In so far as the sentence part is concerned, the ends of justice will be met, if the substantial sentence is reduced from eight years to five years, without disturbing the fine imposed by the learned trial Court. Thus, ordered accordingly. The appellant is given the benefit of Section 428 of the Code of Criminal Procedure. The matter stands disposed of.

37. The learned trial Court is hereby directed to issue an amended warrant in conformity with this judgment to the Superintendent, Jail concerned.

Send down the records.