
(1990) 07 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 276-SB of 1995

Charan Singh and ors.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Citation : (1990) 3 RCR(Criminal) 562

Hon'ble Judges : S.D.Bajaj, J

Advocate : R. S. Rai Mr. S. K. Hooda, Advocates for appearing Parties

Judgement

S. D. Bajaj, J.

1. PW 1 Jawahar Singh injured was going towards the house of Devi Sahai in village Deegh, Police Station Sadar Ballabgarh, District Faridabad for joining the feast arranged by him (Devi Sahai) to celebrate the birth of a grandson to himself. On the way Jawahar Singh wanted to cut short the distance by passing in front of the house of Charan Singh accused. On seeing him doing so Charan Singh told Jawahar Singh to go via the passage and not trespass through the vacant land in front of his house. Jawahar Singh insisted on doing so whereupon Charan Singh raised a Lalkara that the enemy had come, was within their reach and should therefore, be done away with. On hearing it his two sons named Jeet Ram and Ranjit came there. Jeet Ram was armed with a Pharsa and Ranjit carried a Lathi. Jeet Ram gave Jawahar Singh a Pharsa blow on his head and Ranjit gave him a lathi blow at his hand resulting in following injuries on his person :

1) an incised wound 9 cm x 1 cm. x full scalp depth, lying transversely 2 cm interior to occiput 3 cm. on the right parietal region 6 cm. on the left parietal region. Margins were clean cut and smooth with fresh bleeding. Xray was advised.

2) Swelling of 5 cm. x 4.5 cm. on first and second Phallanx of left hand with swelling of first inter phallangeel joint of little finger, with marks tenderness. Xray was advised.

3) Abrasion of 3 cm. x 1.5 cm. on left knee joint of lower end, red in colour.

2. Thereafter remaining three accused named Gir Raj, Budhi and Babu also arrived there and inflicted simple injuries on the two prosecution witnesses in Sumer and Kastoori with the weapons of offence carried by them. They were held liable for the commission of the offence under Section 323 of Indian Penal Code for the infliction of those injuries on the two witnesses aforesaid. Strangely enough the remaining four accused besides Jeet Ram and Ranjit were, also made vicariously liable under Sections 326/34 and 325/34 of Indian Penal Code for the injuries inflicted by Jeet Ram and Ranjit on the person of Jawahar Singh PW 1. The relevant observations read, "In view of the above discussion, it is held that the prosecution has been able to prove the case against the accused beyond reasonable doubt. The blows given by Jeetu and Ranjit were found to have caused grievous injuries on the person of Jawahar Singh. Accused shall, thus stand convicted under Section 326 Indian Penal Code for having caused the grievous injuries with a Pharsa on the head of Jawahar Singh. In so far as accused injuries Ranjeet is concerned, the statement of Jawahar PW 1 is that he gave him a lathi blow on his left hand. Accused Ranjeet shall, thus stand convicted under Section 325 Indian Penal Code. In so far as the other accused namely Charan Singh, Budhi, Giraj and Babu are concerned, they are vicariously liable for the above offences and all of them stand convicted under Sections 326/34 and 325/34 Indian Penal Code. As far as the accused (other than Jeetu) are concerned, they caused simple injuries to injured PWs. Accused Girraj caused injuries to Jawahar with a ballam using it as a lathi. All the said accused are thus, liable under Section 323 Indian Penal Code. For those injuries, accused Jeetu shall be vicariously liable under Section 323/34 I.P.C."

3. It is in evidence that Girraj, Budhi and Babu came afterwards, when Jeet Ram and Ranjit had already attacked Jawahar Singh with their respective weapons of offence, did not attack Jawahar Singh at all and caused simple injuries to prosecution witnesses in Sumer and Kastoori only. In similar circumstances it was held by the Supreme Court in *State of Bihar v. Amar Singh*, AIR 1955 SC. 287 and *Jaspal Singh and another v. State of Haryana*, AIR 1977 SC 1821, "It is essential for the application of Section 34 Indian Penal Code that the accused join in the actual doing of the act and not merely in planning its preparation. If the accused was not present at the actual commission of offence he cannot be convicted with the aid of Section 34. Appellant Jaspal Singh caused one grievous injury to Fateh Singh and two simple injuries to Jaswant Singh. Appellant Hoshiar Singh caused an injury to Balbir Singh after he had fallen down and that was an injury on Balbir Singh's finger. Hoshiar Singh also caused two simple injuries to Jaswant Singh. Considering the totality of circumstances it is difficult to hold that there was any preconcert between the appellant and the other to hold that there was any preconcert between the appellants and the other two accused to kill Balbir Singh. It is necessary to add that this conclusion does not rest on the mere circumstances that one of the appellants did not participate in and the other took a very insignificant part in the assault on Balbir Singh. The conviction of the

appellants under Section 325 Penal Code and Section 24, Cattle Trespass Act must, however, stand. They can each and individually be held guilty for the injuries caused by them."

4. Learned trial Court, therefore, erred in presuming that all three of them together or any one of them; three singly shared any common intention with Jeet Ram and Ranjit to inflict Injuries upon Jawahar Singh PW 1. None of them three could, therefore, be held liable for offences under Sections 326/34 or 325/34 of Indian Penal Code upon this Court. Their conviction as also the sentence of substantive imprisonment awarded to every one of them three on this score are both set aside. Charan Singh is attributed Lalkara only. He is also held liable for it only under Section 323/34 of the Indian Penal Code. Conviction of Charan Singh under Sections 326/34 and 325/34 Indian Penal Code and the sentence awarded to him on this score are also both set aside as aforesaid. Conviction of Jeet Ram under Section 326 Indian Penal Code is, however, maintained but the sentence awarded to him for it is reduced to ten months period already undergone because the injured stayed in the hospital for six days only. Like Ranjeet who was released on probation by the learned trial Court, remaining four accused in Charan Singh, Babu, Girraj and Budhi are also ordered to be released on their individually furnishing before the learned Chief Judicial Magistrate, Faridabad within three months from today a bond with one surety in the sum of Rs. 3,000/ each for a period of one year from the date of filing it, to appear and receive the sentence as and when called upon to do so during that period and in the meantime to keep the peace and be of good behaviour. Learned counsel for the accusedappellant undertakes to deposit the fine imposed upon them by the learned trial court within three months from today. The amount of fine when realised would be distributed between Jawahar Singh, Sumer and Kastoori the three injured in such a way that Jawahar Singh gets half of it and the remaining half is shared by Sumer and Kastoori in equa shares.

5. Both the criminal appeal as also criminal revision filed by Jawahar Singh for enhancement of the sentence awarded to accusedappellants shall stand disposed of accordingly.

JUDGMENT accordingly.