

(1993) 07 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 844 of 1986

Dhanna Singh and anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Citation : (1994) 1 AICLR 604 : (1993) 3 RCR(Criminal) 400

Hon'ble Judges : A.S.Nehra, J

Advocate : Deepak Sibal, S.C. Sibal, N.S. Boparia, Advocates for appearing Parties

Judgement

A.S. Nehra, J.

1. The petitioners were convicted and sentenced by the Subdivisional Judicial Magistrate, Rajpura, vide his judgment/order dated 15/11/1985, as follows :

Dhanna Singh petitioner

U/s 326 IPC Rigorous imprisonment for two years and a fine of Rs. 500/ and, in default of payment of fine, to undergo further rigorous imprisonment for six months.

U/ss 324/34 IPC Rigorous imprisonment for one year.

U/s 323 IPC Rigorous imprisonment for six months.

Hardial Singh petitioner :

U/s 326 IPC Rigorous imprisonment for two years and to pay a fine of Rs. 500/ and, in default of payment of fine, to undergo further rigorous imprisonment for six months.

U/s 324 IPC Rigorous imprisonment for one year.

U/s 323 IPC Rigorous imprisonment for six months.

2. On appeal, the learned Additional Sessions Judge, Patiala, vide his judgment

dated 571986, set aside the conviction of the petitioners under section 323/IPC but maintained their conviction on other counts and sentenced them as under :

Dhanna Singh petitioner :

U/s 326 IPC Rigorous imprisonment for 1 1/2 years and to pay a fine of Rs. 250/ and, in default of payment of fine, to undergo further rigorous imprisonment for three months.

U/s 326/34 IPC do

U/s 324/34 IPC Rigorous imprisonment for six months.

Hardial Singh petitioner :

U/s 326/34 IPC Rigorous imprisonment for 1 1/2 years and to pay a fine of Rs. 200/ and, in default of payment of fine, to undergo further rigorous imprisonment for 3 months.

U/s 326 IPC do

U/s 324 IPC Rigorous imprisonment for six months.

3. All the substantive sentences of each of the petitioners were ordered to run concurrently and, out of the amount of fine if realized, Rs. 500/ each were ordered to be paid to the injured persons, namely, Raghunath Singh and Jaimal Singh.

4. The prosecution case, in brief, is as under :

5. On 1471982 the marriage of Jaimal Singh son of Ishar Singh took place. On 1571982 at about 8.45 p.m. in their house at village Samgouli, Jaimal and his brother Raghunath Singh were sitting in the courtyard and talking to their relatives. In the meantime, Dhanna Singh and Hardial Singh and Hardial Singh, sons of Shadi Singh, came there and raised lalkara challenging Jaimal Singh and Raghunath Singh, PWs, to come out. Dhanna Singh was armed with a gandasi. Hardial Singh was armed with gandhali. Raghunath Singh and Jaimal Singh, PWs, came out in the street. Dhanna Singh gave gandasi blow to Raghunath Singh from its sharp side, which fell on the fingers of his right hand. Jaimal Singh stepped forward to save Raghunath Singh. Dhanna Singh gave a gandasi blow from its sharp side to jaimal Singh, which fell on his right upper arm. Hardial Singh gave a gandhasi blow to Jaimal Singh, which fell on the right side of his forehead. He gave another gandhali blow to Jaimal Singh, which fell on the back of his left shoulder. The occurrence was witnessed by Dharam Singh, Bant Singh and Raja Ram. Dharam Singh loaded them in a cart and took them to the Police Station, Dera Bassi. The matter was reported at Police Station, Dera Bassi by Raghunath Singh through daily diary report No. 26 dated 1671982. Raghunath Singh and Jaimal Singh, PWs, were medically examined at Civil Hospital, Dera Bassi, by Dr. (Mrs.) Sudharshan Kaur.

6. With a view to bring home to the accused the charge levelled against them the

prosecution examined Raghunath Singh DW1, Jaimal Singh PW2, Raja Ram PW3, Dr. Mrs. Sudarshan Kaur PW4, Dharam Singh PW5, Rakha Singh PW6, ASI Ved Parkash PW7, and constable Naib Singh PW8.

7. The accused, when examined under Section 313, Code of Criminal Procedure denied the imputations appearing in the prosecution evidence against them and stated that it is a false case; that they are innocent; that there was marriage in the family of Raghunath Singh and Jaimal Singh, PWs; and that there was a fight amongst themselves under the influence of liquor, resulting in injuries to Raghunath Singh and Jaimal Singh. In their defence the accused examined Nachhattar Singh DW1 and Lajja Singh DW2.

8. The ocular account has been given by Raghunath Singh, Jaimal Singh Raja Ram and Dharam Singh, PWs. The learned counsel for the petitioners submitted that Raghunath Singh and Jaimal Singh are real brothers; that Raja Ram PW is their collateral and Dharam Singh PW is their nephew (sister's son); that these PWs are thus related to each other and are interested witnesses; that there are houses in the neighbourhood of the house of Raghunath Singh and Jaimal; and that if any occurrence had taken place then the arrival of neighbours was a must. It was further submitted by the learned counsel for the petitioners that adjoining the house of Raghunath Singh is the house of Sant Ram and that of Lajja Ram; that there are houses all around the house of Raghunath Singh; that as per Raghunath Singh PW, the occurrence lasted for half an hour or so and that it is not believable that during that interval, none came from the neighbourhood. In these days, people avoid becoming witnesses for fear of reprisal. People do not jump into the fray where others are concerned. Raja Ram PW3 belongs to village Samgouli. He has stated that he was coming from his tubewell and going towards his house and that when he reached near the house of Dhanna Singh at about 9.00 p.m. he witnessed the occurrence. Raja Ram PW is a natural witness. He has his house two kothau away from the house of Raghunath. Dharam Singh PW5 is also a natural witness. He is the nephew of Raghunath Singh and Jaimal Singh. He, it appears, had come from his village to attend the marriage of Jaimal Singh. It is no ground to reject the testimony of eyewitnesses simply because they are related to each other. A relation can be a good witness if his presence at the spot is natural and probable.

9. It was next submitted by the learned counsel for the petitioners that the occurrence allegedly took place at 8.45 p.m., that the moon appeared in the sky at 12.05 a.m. on 1671982 and that, prior to that, it was dark night. In the first version exhibit PW7/A, Raghunath Singh had stated that they witnessed the occurrence and identified the assailants as there was light. It was further submitted by the learned counsel for the petitioner that in the roughsite plan, there is no point shown where there was electric bulb. Raghunath Singh and Jaimal Singh were sitting in their courtyard along with their relatives in connection with the marriage of Jaimal Singh. It is not believable that there was no provision of light when they were celebrating the marriage of Jaimal Singh.

10. It was next submitted by the learned counsel for the petitioners that the place of occurrence has not been correctly pin pointed by the PWs; that Raghunath Singh PW1 has stated that they were given injuries in the street outside the courtyard; that Jaimal Singh PW2 stated that the accused petitioner had entered their courtyard; that Dharam Singh PW5 stated that the occurrence took place in the courtyard of the house of Raghunath Singh; and that in the rough site plan Exhibit PW7/D, the occurrence is shown to have taken place in the street outside the courtyard Raghunath Singh. In my opinion, the PWs are not discrepant with each other as to the place of occurrence. Dhanna Singh and Hardial Singh, petitioners came in the street outside the courtyard of Raghunath Singh and raised lalkara. Raghunath Singh and Jaimal Singh, PWs, who were sitting in the courtyard adjoining the street, came in the street. There is hardly any distance between the street and the courtyard of the house of Raghunath Singh.

11. It was next submitted by the learned counsel for the petitioners that the injuries of Jaimal Singh and Raghunath Singh were not Xrayed and that therefore, it cannot be held that the injuries suffered by these PWs were of grievous nature. Mr. S.C. Sibal, Senior Advocate, learned counsel for the petitioners, in support of his argument has relied upon a Division Bench decision of this Court reported as *State of Punjab v. Manga Singh and another*, 1992(2) Recent Criminal Reports 144 , and *Balwant Singh and others v. State of Punjab*, 1979 PLR 37. Mr. Sibal has further contended that in order to justify conviction under Section 326, Indian Penal Code, injuries on the person of Jaimal Singh PW, and Raghunath Singh PW must satisfy the requirements of clause (7) or clause (8) of Section 320 IPC otherwise these injuries will be treated as simple injuries. Clause (7) and clause (8) of Section 320, Indian Penal Code, provide that an injury could only be designated as 'grievous' if it is:

- (i) a fracture or dislocation of a bone or tooth; or
- (ii) any hurt which endangers life or which cause the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Learned counsel for the petitioners has contended that none of the injuries which were inflicted on the person of Jaimal Singh PW, and Raghunath PW discloses that there is a fracture or dislocation of any bone. These injuries it is submitted, at the most show that the particular bones on which the injuries were inflicted were cut which, however, does not amount to a fracture. In support of his contention the learned counsel has relied upon *Maung Po Yi v. Ma E Tin*, AIR 1937 Rangoon 253, and *Mutukdhari Singh v. Emperor*, AIR 1942 Page 376.

12. *Maung Po Yi's* case (supra) and *Mutukdhari's* case (supra) were considered by the Supreme Court in *Hori Lal and another v. The State of U.P.*, 1970 CrL. LJ 1665, and it was held as under :

".....In our view, both these assumptions are misleading. It is not necessary that

a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of Cl. 7 of the Section 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.

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In injury No. 3 left humerus, in injury No. 4 radius, in injury No. 5 both the bones of the left forearm and in injury No. 6 the tibia bone shaft have been cut, which would show that they are fractures. Apart from that the doctor as noticed earlier has in his evidence said that these injuries are grievous."

13. Mr. Sibal has contended that the doctor has not disclosed the reasons why he thought that the injuries were grievous. The nature of the injuries, considered with the evidence of the doctor would undoubtedly establish that the injuries suffered by Jaimal Singh, PW and Raghunath Singh, PW were grievous.

14. The point in question does not require any lengthy discussion as it is squarely covered by the law laid down by the apex Court in Hori Lal's case (supra). The law laid down in Hori Lal's case (supra) was followed by a Division Bench of this court in State of Punjab v. Naib Singh, (1978)2 ILR Pb & Hr. 32, and by a Single Bench in Jagir Singh and ors. v. The State of Punjab, 1983(2) Recent CR 1 . The decision of the Division Bench of this court in Naib Singh case (supra) was affirmed by the apex court in Naib Singh v. Stat of Punjab AIR 1986 Supreme Court, 2192.

15. Recently this point was examined by a Division Bench of this Court in Narinder Singh v. Sukhbir Singh and others, 1993(1) Recent Criminal Reports 44 . In Narinder Singh's case (supra) counsel for the respondents contended before the Division Bench that burden of proving that the bone was cut and further to prove the extent of the cut was on the prosecution, and since no Xray was done qua injury No. 1, the material on the record at the most suggested that there was a partial cut of the bone, which did not amount to grievous injury as defined in Section 320 (seventhly) of the Indian Penal Code. It was held by the Division Bench in the said case;

"There can, therefore, be no manner of doubt that the settled law is that in order to constitute fracture of bone within the meaning of clause (seventhly) of Section 320, it is not necessary that a bone should be cut through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. The view to the contrary which was held in Maung Po Yi v. Ma E. Tin, AIR 1937 Rangoon 253, and followed in Mukutdhari Singh v. Emperor AIR 1942 Patna 376 : 1942(43) Cri. LJ 511, does not hold the field. It appears that the fact that the above decisions of Rangoon and Patna High Courts had been expressly over ruled in Hori Lal's case (1970 Cril LJ 1665) by the

Supreme Court, was not brought to the notice of the learned Single Judge who decided *Balwant Singh v. State of Punjab* (1979) 81 Punjab LR 37. For the foregoing reasons, the statement of law in *Balwant Singh v. State of Punjab*, is not a correct statement as it is based on decisions which had earlier been expressly overruled by the Supreme Court. It follows that *Balwant Singh's* case which has been expressly over ruled by the Supreme Court. It follows that *Balwant Singh's* case which has been relied on by *Shri Hundal* can be of no assistance to the accused."

16. After hearing the learned counsel for the parties, I hold that the Xray of the injuries suffered by *Jaimal Singh* and *Raghunath Singh*, PWs. was not necessary because *Dr. (Mrs.) Sudershan Kaur*, PW4, who conducted medico legal examination of *Raghunath Singh* PW has opined that injury No. 1 on the person of *Raghunath Singh* was grievous.

17. In view of the decisions of the Supreme Court in *Hori Lal and another v. State of U.P.*, *Naib Singh v. State of Punjab* (supra) and *D.B.* Decision of this court in *Narinder Singh's* (supra) the judgments cited by the learned counsel for the petitioners cannot be relied upon.

18. For the reasons given above, there is no merit in the revision petition and the same is dismissed.