
(2003) 08 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 277-SB of 1990

Dinesh Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2004) 1 AICLR 497 : (2004) 1 Cri.CC 750 : (2003) 4 RCR(Criminal) 771

Hon'ble Judges : Virender Singh, J

Advocate : Mr. J.S. Khaira, Advocate. Mr. G.S. Hooda, AAG, Punjab. For the Complainant, Mr. Ravinder Chopra, Senior Advocate with Mr. Vibore Bansal, Advocate., Advocates for appearing Parties

Judgement

Virender Singh, J.

1. Dinesh Kumar alias Baba and Kamal Kishore sons of Faqir Chand, the appellants herein, have been convicted under sections 326/323 read with Section 324 IPC and have been sentenced as under :

Under Section 326/34 IPC RI for three years and to pay a fine of Rs. 5000/ in default of payment of fine to further undergo RI for six months.

Under Section 32/34 IPC RI for six months and to pay a fine of Rs. 1000/ in default of payment of fine to further undergo RI for two months.

However, both the sentences were ordered to run concurrently.

It is worth mentioning here that, another two accused, namely, Deepak Kumar and Phool Chand were also booked with the present appellants but they stand acquitted. State has not preferred any appeal against their acquittal.

2. Briefly stated, the facts of the prosecution case are that Parveen Kumar used to supply milk to the dairy of Kamal Kishore appellant which is situated outside Hira Mandi and that on 7.7.1988 at about 7.30 P.M., Parveen Kumar came to the shop of his father Amrit Lal and told him that he had quarrelled with Kamal

Kishore regarding the money due to him on account of milk supplied by him and was given beating by Kamal Kishore. Upon this, Amrit Lal, his son Surinder Kumar and Paveen Kumar went to the dairy of Kamal Kishore appellant to show their protest and when they reached there, they found that Deepak Kumar and Phool Chand (since acquitted) were also sitting there. Amrit Lal enquired from Kamal Kishore appellant as to why he had quarrelled with his son Parveen Kumar, upon which Deepak Kumar (since acquitted) gave a hockey blow on the left side of Surinder Kumar. Thereafter, Surinder Kumar and Deepak Kumar started grappling with each other and during this time, Kashmir Singh and other persons had reached the spot. The case of the prosecution further is that at that time, Kamal Kishore appellant told Dinesh Kumar appellant as to what for he was waiting and should throw acid on Amrit Lal and his companions. Hearing this, Dinesh Kumar picked up a jug filled with acid and threw it upon Amrit Lal and Surinder Kumar. The case of the prosecution further is that in this process some drops of the acid had also fallen on Kamal Kishore and others. On these allegations, the present case was registered under Sections 307/323/34 IPC.

3. The present two appellants and their coaccused were charged under Sections 307/323/34 IPC. After appreciation of the entire evidence, they have been convicted and sentenced as indicated above. Hence, this appeal.

4. I have heard Mr. J.S. Khaira, learned counsel for the appellants and Mr. G.S. Hooda, learned Assistant Advocate General, Punjab assisted by Mr. Ravinder Chopra, counsel for the complainant. With their assistance I have also gone through the entire record.

5. Mr. J.S. Khaira, learned counsel for the appellants does not assail the impugned judgment on merits and instead has prayed for showing leniency towards quantum of sentence. In support of his contentions, Mr. Khaira has submitted that both the appellants had also received acid injuries in this case which are almost of the same nature and that according to the prosecution case itself the complainant party had come to the dairy of Kamal Kishore where this occurrence had taken place. It is then contended that in the statement under Section 313 Cr.P.C. the defence projected by both the appellants is that in fact the complainant party had gone to the dairy of Kamal Kishore and had thrown acid on Kamal Kishore and Deepak Kumar and in this process of grappling some acid had also fallen on Amrit Lal, Surinder Kumar and others. The learned counsel has taken me through the statement of Dr. Tirath Goel who was examined as PW1 by the prosecution. According to the statement of this doctor, Kamal Kishore appellant had received the following injuries :

"1. Swelling 3 cms x 3 cms on the right parietal region 5 cms above the right pinna. There was a lacerated wound 2.5 cms x 0.5 cms over lying it. Fresh bleeding was present and Xray was advised.

2. Superficial chemical burns on the left side of forehead, nose, left eye, left cheek, left pinna, right eye, outer and upper part of right upper arm, left upper

arm and part of left forearm, left knee joint, left thigh, part of right thigh. There was pungent smell coming out of the wounds and clothes. The clothes were also burnt at the time of burns."

6. Appellant Dinesh Kumar was also examined on the say (same ?) day at 10.35 PM by the same doctor who found the following injuries :

1. Superficial chemical burns on the front of right forearm and hand, outer part of right thigh and lower part of right leg. Pungent odour smell was present in the wounds and chaddar.

7. Mr. Khaira further contended that both the appellants have also remained in custody for about 45 days during trial.

8. In support of his submissions, the learned counsel for the appellants relies upon the judgment of this court rendered in *Om Parkash v. State of Haryana*, 2001(4) RCR(Criminal) 328 and prayed for reduction in quantum of sentence.

9. Controverting the arguments advanced by the learned counsel for the appellants, Mr. G.S. Hooda, learned Assistant Advocate General, Punjab contends that the appellants do not deserve any leniency as they had thrown acid on the complainant party which caused grievous injuries.

10. So far as merits of the present appeal is concerned, although the learned counsel for the appellants had not assailed the impugned judgment yet I have made an endeavour to rescan the entire evidence. I do not find any illegality or infirmity in the impugned judgment which is well reasoned one. The conviction of two appellants as recorded by the trial Court is thus maintained.

11. So far as the quantum of sentence is concerned, there in force in the submissions made by the learned counsel for the appellants.

12. Keeping in view the peculiar acts and circumstances of the present case, especially when both the appellants have also received injuries almost of the same nature in the present occurrence and that they have already suffered the agony of protracted trial of about 15 years, I feel that the ends of justice would be adequately met if the substantive sentence imposed upon the appellant by the trial Court is reduced to the period already undergone i.e. one nad half months. It is ordered accordingly.

13. However, the sentence of fine under Sections 326/34 IPC to the tune of Rs. 5,000/ each as imposed by the trial Court is hereby enhanced to Rs. 10,000/ each. The appellants shall deposit the fine before the trial Court within a period of one month from the date of receipt of a certified copy of this order. In default of payment of fine, they shall undergo RI for six months. In case the fine is deposited, the same shall be disbursed to the injured Amrit Lal and Surinder Kumar in equal shares. In case the fine imposed by the trial Court stands already deposited by the appellants, the same shall be deducted from the enhanced amount.

The present appeal consequently stands dismissed except in the modification in the quantum of sentence as indicated above.

Let intimation of the result be sent to the trial Court without any delay.