

(2005) 01 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1480-SB of 2001

Harbhagwant Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 148, 149, 307, 323, 332

Citation : (2005) 12 CriminalCC 757

Hon'ble Judges : V.K. Bali, J;Nirmal Singh, J

Bench : Division Bench

Advocate : H.S. Sandhu, with Mr. R.S. Sandhu and Ms. Tanu Bedi, for the Appellant; S.S. Randhawa, D.A.G., Punjab, for the Respondent

Judgement

Nirmal Singh, J.—The abovesaid three appeals have been filed by the appellants, against the judgment and order dated 3/7.12.2001 passed by Additional Sessions Judge, Jalandhar, vide which they were convicted and sentenced as under:-

HarbhagwantSingh,Gulzar Singh, Dalwinder Singh, Satnam Singh, Jamail Singh (in CrI.A.No. 1480-SB of 2001)

U/s 307/149 IPC

to undergo R1 for a period of seven years each and to pay a fine of Rs.2,000/-. In default of payment of fine, the defaulter shall further undergo RI for one year.

LakhbirSingh,Sulakhan Singh, Balwinder Singh, Avtar Singh, Joginder Singh son of Dalip Singh, Jasbir Singh, Ranjit Singh, Joginder Singh son of Niranjana Singh, Mohan Singh, Santokh Singh, Jaswinder Singh and Avtar Singh (in CrI.A. No.1481 SB of 2001)

U/s 332/149 IPC

to undergo RI for a period of two years each and to pay a fine of Rs. 1,000/-. In default of payment of fine, the defaulter shall further undergo RI for six months.

Lali Ram(in Crl.A.No.34SB of 2002)

Us/353/149 IPC

to undergo RI for a period of one year each and to pay a fine of Rs.500/-. In default of payment of fine, the defaulter shall further undergo RI for three months.

All the appellants, U/s 148 IPC, to undergo RI for one year each.

Joginder Singh, U/s 27 of the Arms Act, to undergo RI for a period of three years and to pay a fine of Rs.1,000/-. In default of payment of fine, the defaulter shall further undergo RI for six months.

2. However, all the sentences were ordered to run concurrently.

3. The persecution story, in brief, is that there was a truck union at Phillaur, in which Mohinder Singh, complainant used to ply his two truck Nos.PJQ-6445 and PAT-6531. In that truck union, no president was elected since 1976 and the affairs thereof were being managed by five members committee consisting of Pritam Singh Nayyar, Sohan Singh, Mohinder Singh of village Nangla, Piara Singh and Gurmail Singh.

4. On 17.4.1991, Bhag Singh created faction in this union and became the President of his own faction, due to which, the office of the union was locked and notice was sent to the A.D.C. and D.T.O. Jalandhar, and it was brought to their notices that Bhag Singh wanted to occupy the office of the Union forcibly. On 4.5.1991, the DTO came to Phillaur. Bhag Singh and Pritam Lal Nayyar appeared before him as head of both the factions. It was suggested by Pritam Lal Nayyar that two members be nominated by each of the faction and fifth member be elected by both the factions unanimously and that affairs of the union run by that committee consisting of those five members. The DTO wanted that the election be held. In order to consult the other members of the union, Pritam Lal Nayyar came to the Police Station and in his absence Bhag Singh got constituted a committee consisting of the members of his faction; namely Gurmail Singh, Santokh Singh, Gurdial Singh, Mohinder Singh and Satnam Singh. Against that decision of the DTO, the members of the other faction appeared before the ADC, who advised them to continue with the functioning of the union with their own president.

5. On 22.5.1991, about 30-35 members of the union, apprehending danger at the hands of other faction, went along with truck Nos.PJQ-8945, PJX-9171, PAT-7896 and PUM-3656 to the Rameshwar Rice & General Mill situated on the G.T.Road owned by Dharampal, for loading the rice. They were loading the bags of rice in the trucks, when Bhag Singh accompanied by 25 other persons came there armed with guns, kirpans and dangs. They parked their trucks at the gate

of the said mill in order to prevent them to proceed with their trucks, in which the bags of rice were being loaded. When they tried to come out of the mill with loaded trucks, Bhag Singh exhorted the other persons to catch hold of them and not to allow them to go alive. The party of Bhag Singh attacked the complainant-Mohinder Singh and his companions with their respective weapons. All of them fired from their firms arms in die air in their self defence. The accused party caused injuries to the complainant party and damaged their trucks, which were loaded with bags of rice. Raghbir Singh SHO along with other police officials was patrolling at Phillaur City, when he heard the firing. He came to the Rice Sheller of Dharampal and found members of both the factions of union facing each other exchanging the brickbats. He ordered the members of both the factions not to indulge in rioting but to no effect. Even Pritpal Singh, DSP, who was called to the spot, could not stop them. In the meanwhile SDM came to the spot. However, when he came out of the jeep, Bhag Singh gave a slap on his face. Some of the persons, who were indulging in rioting, were arrested while using minimum force. In this occurrence, some of the members of the police force also received the injuries. Mohinder Singh made a statement, Ex.PF, about the occurrence, on the basis of which formal FIR Ex.PF/2 was recorded.

6. After completion of the investigation, challan was presented in the Court of Judicial Magistrate 1st Class, Phillaur, who committed the case to the court of Sessions.

7. During the course of trial, Bhag Singh, Gurjinder Singh, Sampuran Singh, Satnam Singh, Pavittar Singh, Nirmal Singh, Gurdial Singh and Gurmail Singh absented themselves and they could not be arrested inspite of issuance of warrants against them. They were, therefore, declared proclaimed offenders by the Court.

8. To prove its case, the prosecution examined Jagjit Singh SI-P.W.1, Mohinder Singh P.W.2, Shangara Singh P.W.3, Major Singh P.W.4, Amarjit Singh P.W.5, Niranjana Singh P.W.6, Sukhdev Singh P.W.7, Ashwani Kumar ASI-P.W.8, Amrik Singh, Constable P.W.10, Pritam Singh P.W.11, Dr.J.P.Singh P.W.12, G.R.Bansal, Addl.Secretary Co-operation P.W.13, Raghbir Singh SP-P.W. 14, Pritpal Singh, Assistant Commandant, IRB- P.W.15.

9. The accused were examined u/s 313 Cr.P.C. to explain the incriminating circumstance appearing in the prosecution evidence. Accused Harbhagwant Singh took the plea as under:-

I am innocent. I have falsely implicated in the present case. I was not present at the time of alleged occurrence. I have filed complaints against Sh.G.R.Bansal addressed to Governor Punjab along with an affidavit that he had not paid his dues for having taken liquor from my liquor vend on credit, with copies to Chief Secretary and others before the present occurrence. My father Bhag Singh had also filed similar complaints. Charan Singh son of Shingara Singh had filed FIR No.13 dated 14.2.1991 against Sh.G.R.Bansal the then S.D.M. Phillaur having

demanded illegal gratification and Sh.G.R.Bansal made representation to State Government that my father was at the back of Charan Singh on account of enmity.

10. The learned trial Court, after hearing the defence counsel and learned PP for the State found the appellants guilty and convicted and sentenced them as stated in Paragraph 1 of the judgment, aggrieved by which the abovesaid three separate appeals have been filed by the accused. The appeals are being disposed of by this common judgment as the same have arisen out of the same judgment and order of conviction and sentence passed by learned trial Court.

11. The appellants have not denied the occurrence, rather, they have admitted the same but in a different fashion by pleading that on 22.5.1991, Nayyar party i.e. the complainant party consisting of 40-50 persons took their trucks for loading the rice to the Rameshwar Rice Mills against the established conventions and procedure of the Union. The members of the Executive Committee approached these persons and requested them to abide by the rules of the union and to load the trucks according to the turns of the members of the Union. Nayyar party was armed with rifles, guns, kirpans, gandasies, lathis etc. Ajmer Singh, Raghbir Singh were carrying a .315 bore rifle each, Mohinder Singh of Nangal and Mohinder Singh of Phillaur and Shingara Singh were armed with .12 bore guns and Sanjeev Kumar had a kirpan and their companions were also armed with deadly weapons. Mohinder Singh of Nangal instigated his companions and Ajmer Singh fired from .315 bore rifle, hitting Mohinder Singh brother of Joginder Singh. The other appellants also caused injuries to Joginder Singh and his companions and about 17 members of their side were injured. Consequently, once the occurrence is admitted by both the parties and even injuries were sustained by both the factions, it is to be seen that which party was the aggressor.

11. From the admitted facts, it is established that the appellants went to Rameshwar Rice Sheller duly armed with deadly weapons including fire arms where the complainant party was loading the rice in their trucks. The appellants, on reaching the rice sheller, asked the complainant party not to come out from the rice sheller. However, they did not agree to the proposal due to which altercation took place and both the parties started firing on each other. From the above facts, it is clear that it is not the case of the appellants that firstly the complainant party started firing upon them with the intention to cause death. When it is established from the evidence on record that both the parties had received the injuries in a free fight, then the accused are not vicariously liable for the acts of the others but they can be held liable for their individual acts, as it has been laid down in Lalji and Others Vs. The State of U.P., and Ishwar Singh Vs. State of U.P., . In the instant case, from the perusal of the evidence, it is clear that it was a case of free fight as both the parties had gone to the place of occurrence duly armed with deadly weapons with the intention to fight to show their supremacy and to control the business.

12. The FIR, Ex.PF/2, in this case, was registered on the statement, Ex.PF, of Mohinder Singh. However, in his statement, Mohinder Singh, complainant, has not attributed any specific part to any of the appellants. Even the learned trial Court has given specific finding in this regard in para 32 of the judgment, after appreciating the evidence, the relevant portion whereof reads as under:-

32. From the evidence produced by the prosecution it is not possible to conclude as to which particular accused fired at which particular member of the complainant party with an intention of causing such bodily injuries as was likely to cause death. It has been proved on the record that there were number of persons on the accused side and all these accused were also present at the spot.

13. The learned trial Court has erroneously placed reliance on the law laid down by the Hon'ble Supreme Court in State of Haryana Vs. Tek Singh and Others, . In that case, the accused party was the aggressor as they went to the house of the deceased duly armed with deadly weapons and caused injuries to one Tek Chand by giving Gandasa blow. However, in the case in hand, it is not established that which party was the aggressor. From the evidence, it is clear that it was a case of free fight and in such cases, each individual, who has participated in the occurrence, is responsible for his individual act and not vicariously. Therefore, since Mohinder Singh, complainant, did not specifically attribute the individual role of the appellants, they cannot be held liable vicariously for the acts of others. The learned trial Court has erroneously held guilty all the appellants under Sections 307,323,353/149 and 148 IPC.

14. In view of the above discussion, all the three appeals are accepted and the appellants are acquitted of the charges levelled against them by giving benefit of doubt. If they are in custody, they be set free forthwith.