
(1999) 11 RAJ CK 0002

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 462 of 1999

Hardev Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 324, 326, 34, 452

Citation : (2000) CriLJ 1900

Hon'ble Judges : S.C. Mital, J

Bench : Single Bench

Advocate : H.S. Sandhu, for the Appellant; Ramesh Purohit, Public Prosecutor, for the Respondent

Judgement

S.C. Mital, J.—This revision petition is directed against the judgment dated 1-7-99 of learned Addl. Sessions Judge No. 1, Sriganganagar whereby the appeal preferred by petitioners and co-accused Veeru alias Balveer Singh was partly accepted by setting aside the conviction of Veeru alias Balveer Singh u/s 452, 323 read with 34, 324 read with 34 and 326 read with 34, I.P.C. but the conviction and sentence of the petitioners for the said offences was confirmed on dismissal of their appeal. The petitioners and co-accused Veeru alias Balveer Singh had preferred the appeal against the judgment of conviction and sentence passed by learned Judicial Magistrate, Sadulshahar on 31-7-98.

2. The brief facts of the case are that the complainant Mela Singh, his mother Pyaro, brother Sarwan and other inmates of the house were sitting inside at about 9.45 p.m. on 7-6-97. The petitioners Ashu Singh, Hardeo Singh and other co-accused Veeru alias Balveer Singh, Surjeet Singh, Mela Singh, Joginder Singh and Kartar Singh trespassed into the house armed with lathis and gandasi and started beating Sarwan Singh. The petitioner Hardeo inflicted injuries on the head and left hand by gandasi. When the complainant Mela Singh tried to rescue his brother. Ashu Singh gave blow of gandasi on the head, right thumb and palm.

It is alleged that due to the blow, the thumb was cut down. Mother Pyaro Devi tried to intervene but she was also beaten by fist blows. It is further alleged that the petitioners and co-accused persons bear enmity with them. Mela Singh lodged the report on the same day and after submission of the chargesheet, the petitioners and co-accused Veeru alias Balveer Singh only were tried for the charges under Sections 452, 323 read with 34, 324 read with 34, and 326 read with 34, I.P.C. The trial ended in the conviction of the petitioners and co-accused Veeru alias Balveer Singh for the above stated offences and sentence of various terms of imprisonment and fine was passed against them by the learned Judicial Magistrate, Sadulsharar. As already stated, the appeal of the petitioners was dismissed. Now they have come up in this revision petition.

3. I have heard the learned counsel for the petitioners and learned Public Prosecutor. I have also gone through the evidence on record. The prosecution examined the complainant injured Mela Singh, PW/2, Sarwan Singh injured PW/3 brother of the complainant, Pyaro Devi injured PW/7 mother of the complainant and eye-witnesses Mohan Singh PW/4, Gurnam Singh PW/5 and Jagtar Singh PW/6. Dr. P.K. Bajaj proved the injuries on the person of Mela Singh, Sarwan Singh, Pyaro Devi and Jagtar Singh, injury reports marked as Ex. P9, Ex. P 11 and Ex. P12. X-Ray was also taken of the injury No. 1 of Mela Singh which showed fracture of Proximal Phalanx of left thumb and it was opined to be grievous injury. The petitioners denied the charges in their statements u/s 313, Cr.P.C. but did not take any specific plea. They did not examine any defence witness.

4. The learned Judicial Magistrate and the learned appellate Court came to the finding that the petitioners and co-accused Veeru alias Balveer Singh formed a common intention to cause injuries to the complainant, Sarwan and Pyaro Devi and other inmates of the house and in pursuance of that, armed with deadly weapon like gandasi entered in the house of the complainant and started giving beating to them. Both the Courts have after appreciation of the evidence on record held the petitioners guilty as stated above. I have also perused the statement of the witnesses. The injuries sustained by Mela Singh, Sarwan Singh and Pyaro Devi are duly supported by medical evidence. It is proved on the basis of the X-Ray report that injury on the left thumb of Mela Singh was of grievous nature. There is no material or any ground to disbelieve the prosecution witnesses. I am also of the view that the prosecution has proved beyond reasonable doubt that the petitioners and their associates Veeru alias Balveer Singh armed themselves with deadly weapon trespassed into the house of the complainant and caused injuries to them by sharp edged and blunt weapons.

5. The learned counsel for the petitioners raised the contention that the prosecution has not proved the injury on the left thumb of Mela Singh as grievous because it was not proved that there was any fracture of bone of the left thumb. Therefore, the conviction of petitioner No. 2 Ashu Singh u/s 326 and petitioner No. 1 Hardeo Singh u/s 326 read with 34, I.P.C. is not sustainable. I do

not find any force in this contention because the medical jurist PW/8 P.K. Bajaj has given the opinion that the injury No. i in Ex. P9 of Mela Singh was of grievous nature. It was a incised wound 9 cm. x .5 to 2 cm. bone deep. The prosecution has placed on record the X-Ray report and X-Ray plate. I see no cogent reason to discard the opinion of the medical jurist and the statement of injured Mela Singh.

6. It is vehemently argued that both the learned Courts below have wrongly applied the provision u/s 34, I.P.C. because it is not established that the petitioners shared common intention to cause grievous injury to the complainant Mela Singh. It cannot be also inferred or established from the facts and circumstances of the case and the evidence on record that the petitioners along with Veeru alias Balveer Singh formed any common intention. Therefore the petitioners could be held guilty only to the extent of the overt act committed by them and specified injuries alleged to have been caused by them. In view of this also it is contended that Hardev Singh could not be held guilty with the aid of Section 34 for the offences u/s 326, I.P.C. Hardeo Singh has not inflicted injury to Mela Singh to whom Ashu Singh is alleged to have caused grievous injury. In support of his contention, learned counsel for the petitioners placed reliance on Hare Krishna Singh and Others Vs. State of Bihar, Dharam Pal and others Vs. State of U.P., Both the above cases are distinguishable on facts and are inapplicable in the instant case. In Hare Krishna Singh v. State of Bihar (supra), two accused Hare Krishna and Paras Singh fired at the deceased. However, the complicity of Paras Singh could not be proved by the prosecution. In the case of other two appellants Ram Kumar Upadhyaya and Sheo Narain Sharma, no overt act was attributed against them. The eye-witnesses did not name the above persons regarding their participation in firing upon the deceased. Therefore, it was held in the above facts and circumstances that the evidence on record threw a great doubt as to their sharing of common intention. In the instant case, both the petitioners were armed with gandasi and their overt act has been specifically mentioned and proved by the evidence beyond reasonable doubt. In the second case Dharam Pal and others Vs. State of U.P., the sharing of common intention was not held proved because the injury attributed to Rajendra was not found on the deceased. At the most, it could be said that he inflicted lathi blows on PW/4 an eyewitness.

7. In the case in hand before us, the overt act of both the petitioners have been clearly established, Hardeo, petitioner inflicted injury by gandasi to Sarwan Singh on the head and repeated blow on the left elbow. Mela Singh was attacked when he tried to save his brother Sarwan Singh and Ashu Singh inflicted the grievous injury on the left thumb. This circumstance, in my view goes to prove beyond reasonable doubt that both the petitioners started common intention to give beating to Sarwan Singh and also Mela Singh. Both the petitioners came together armed with deadly weapon gandasi and caused injuries to Sarwan Singh and Mela Singh after having committed trespass in the house. In my view the acquittal of Veeru alias Balveer Singh by the appellate Court is of no

consequence for determining the question of common intention formed by the petitioners. In view of the above discussion, I have no cogent reason to differ from the concurrent findings given by learned trial Court and the appellate Court. The prosecution has proved its case beyond reasonable doubt and the petitioners have been rightly convicted for all the offences already stated above.

8. The learned counsel for the petitioners, then contended that the sentence passed against the petitioners is severe which requires to be reduced in the facts and circumstances of the case to the period already undergone. He referred to 1992 CLR 680 (Gurucharan v. State of Rajasthan) wherein the appellant remained in custody for six days in the case which related to an incident of 1988. The sentence was reduced to the undergone period by enhancement of fine of Rs. 3000/-. In another case Jagdish v. State of Rajasthan reported in (1990) 2 RLR 633, the accused had suffered in Jail for more than one month and a half, the sentence was reduced to the period already undergone though the sentence of fine was enhanced. In the above case, it was found that the incident had taken place in an impulsive moment and there was not premeditation. In 1989 RC 105 (Damodar Prasad v. State of Rajasthan) the sentence passed against the appellant, a teacher was reduced to already undergone with a fine of Rs. 1000/- because the incident took place in 1979. Lastly in 1990 CLR 485 (Chhitarlal v. State of Rajasthan) criminal proceeding were pending for 8 years, accused had remained in prison for one and half months. Therefore, the sentence was altered to already undergone with a fine of Rs. 1000/-.

9. The learned Public Prosecutor has vehemently opposed for taking any lenient view in the matter on the ground that the petitioners after forming common intention armed themselves with deadly weapon gandasi and with premeditation to commit the offence, trespassed into the house of the complainant who was sitting with the members of his family and attacked his brother Sarwan Singh, when complaint Mela Singh and mother Pyaro Devi tried to save him, the petitioners also caused injuries to them which clearly establishes the common intention and the premeditation even to cause injuries to the rescuers. The incidence in this case happened in the year 1997 only. Therefore, it is argued that the facts of the cases referred by the petitioner are fully distinguishable.

10. I have considered the rival submissions on the question of the sentence passed against the petitioner. All the substantive sentence have been ordered to run concurrently under Sections 452, 325 read with 34, 324 read with 34 and 326 read with 34, I.P.C. The maximum sentence has been passed for the offences under Sections 326 and 326 read with 34 which is two years rigorous imprisonment and a fine of Rs. 500/- in default to undergo three months simple imprisonment. Having considered the overall facts and circumstances of the case and the nature of the injuries, I deem it just and proper to alter the substantive sentence of two year rigorous to one year rigorous imprisonment and to enhance the fine to Rs. 2000/-. All the substantive sentences of imprisonment and fine deserve to be maintained.

11. In the result, this revision partly succeeds only on the point of sentence. The conviction of the petitioner Ashu Singh u/s 452, 326, 323 and 324 read with 34, I.P.C. is maintained. Similarly the conviction of the petitioner Hardeo Singh u/s 452, 326 read with 34, 323 and 324, I.P.C. is also maintained. The substantive sentence of imprisonment and fine, in default of payment of fine u/s 452, 323, 324 and 324 read with 34, I.P.C. passed against the petitioners are maintained. The substantive sentences of imprisonment of two years rigorous imprisonment u/s 326 and 326 read with 34, I.P.C. is reduced to one year rigorous imprisonment but the fine of Rs. 500 is enhanced to Rs. 2000 and in default to undergo simple imprisonment of three months against each petitioner. A compensation of Rs. 3000/- to the injured Mela Singh, Rs. 1000 to injured Sarwan Singh, Rs. 1000/- to injured Jagtar Singh and Rs. 200 to the injured Pyaro Devi shall be paid out of the amount of fine deposited by the petitioners. The trial Court shall serve notice to the above witness to receive the amount of compensation.