
(2008) 05 P&H CK 0135
In the Punjab And Haryana At Chandigarh

Harnek Singh and Others etc.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 302, 304, 323, 325, 34

Citation : (2008) CriLJ 3997

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—This judgment shall dispose of Criminal Appeal No. 21-SB of 1998 filed by the accused-appellants and Criminal Revision No. 538 of 1998 filed by the complainant, having been arisen out of the judgment dated 20/22.12.1997 passed by the learned Additional Sessions Judge, Ambala, vide which, though accused appellants Harnek Singh, Malkiat Singh and Darbara Singh @ Dara were tried u/s 302 read with Section 34 IPC, but were convicted and sentenced u/s 323/325 read with Section 34, IPC as under:

Harnek Singh, Malkiat Singh and Darbara Singh @ Dara

Under Section 323/34, IPC : To undergo rigorous imprisonment for six months each. Under Section 325/34, IPC : To undergo rigorous imprisonment for two years and to pay fine of Rs. 500/- each. However, both the substantive sentences were ordered to run concurrently.

2. In nutshell, the prosecution story is that the land of Surinder Singh injured-complainant and that of Gurnam Singh and others adjoins each other, therefore there remained always a dispute over the turn of water. On 30.7.1992, at about 9.30 a.m. when Surinder Singh was on his way to the fields, Malkiat Singh and Darbara Singh alias Dara came armed with lathies, attacked Surinder Singh. Malkiat Singh inflicted a lathi blow on the head and left leg of Surinder Singh,

whereas, Darbara Singh alias Dara inflicted a lathi blow on his right arm. Surinder Singh fell down and thereafter, Harnek Singh accused came armed with lathi and inflicted numerous blows on the legs, ankle, foot, knee and forearm of Surinder Singh. On the intervention of Narinder Singh and Satwinder Singh PWs, the accused left the place. Surinder Singh was shifted to Civil Hospital, Ambala City.

3. On the basis of the aforesaid statement, a DDR No. 22 dated 30.7.1992 was recorded. Later on, due to the deteriorated condition of Surinder Singh, he was shifted to PGI, Chandigarh on 6.8.1992. PGI authorities sent ruqa to the Police Station Sadar, Ambala on 10.8.1992, regarding admission of Surinder Singh in the PGI, consequent upon which HC Sushil Kumar along with other police officials went to PGI, Chandigarh and enquired about the condition of the injured, but due to his unfitness to make the statement, his statement could not be recorded. Ultimately, on 12.8.1992, Surinder Singh succumbed to his injuries.

4. On 13.8.1992, on receipt of the ruqa regarding death of Surinder Singh, ASI Balbir Singh went to PGI, Chandigarh and completed the proceedings u/s 174, Cr.P.C. and after obtaining the opinion of the doctor, ASI Balbir Singh recorded FIR against the accused u/s 302/323/34, IPC and dispatched the special report which reached the Illaqa Magistrate through HC Jagdev Chand. He also recorded statements of the witnesses: visited the spot; got conducted the autopsy on the body from Dr. R.K. Chopra. On 14.8.1992, SI Surjit Singh went to the spot; prepared the rough site plan; and recorded statements of some of the witnesses. On 17.8.1992, Sarpanch of the village Mohra produced Harnek Singh, Malkiat Singh and Darbara Singh alias Dara, consequently, they were arrested. On 19.8.1992, all the aforesaid accused got recovered one stick each in the presence of ASI Narinder Kumar and Phool Singh Lumberdar, which were taken into possession. Ultimately, on completion of the investigation, challan against the accused was presented in the Court.

5. On commitment, all the accused were charged u/s 302/34, IPC to which they pleaded not guilty and opted to contest.

6. In order to substantiate the charges against the accused, the prosecution examined Dr. R.K. Chopra (PW1), Dr. Banarsi Dass (PW2), Dr. A.K. Garg (PW3), Dr. N.K. Bedi (PW4), ASI Balbir Singh (PW5), C. Mukesh Kumar (PW6), Hari Singh Patwari (PW7), Phool Singh (PW8), Sukhdev Ram (PW9), Dr. Gobind Makharia (PW10), Narinder Singh (PW11), Satwinder Singh (PW12), HC Sushil Kumar (PW13) and SI/SHO Surjit Singh (PW14).

7. When examined u/s 313, Cr.P.C. all the incriminating circumstances were put to them, but they denied the same and pleaded their false implication. In defence, they examined Ajaib Singh (DW1) and Gurcharan Singh (DW2).

8. Ultimately, the trial ended in conviction of all the three accused under Sections 323/34 and 325/34 and they were sentenced accordingly.

9. Arguments heard. Record perused.

10. The main plank of the argument advanced by the learned Counsel for the appellants is that since the presence of Narinder Singh (PW11) and Satwinder Singh (PW12) is doubtful, therefore, the prosecution story having been hit at its base stands falsified, therefore, the accused persons could not be convicted for the offence u/s 325/323 read with Section 34, IPC.

11. Having scrutinized their statements, nothing adverse was found to falsify the prosecution version and to support the defence. Both the witnesses are quite consistent in disclosing about the sequence of events in which the occurrence took place. Narinder Singh (PW11) while describing the scenario of the case testified that on 30.7.1992, at about 8.30/9.00 a.m. he was going to his tube-well in his field then he saw Surinder Singh also going towards his tube-well. When he had crossed the house of Jaspal Singh, he saw accused Malkiat Singh and Darbara Singh alias Dara armed with sticks. He further deposed that Malkiat Singh inflicted lathi blow on the head of Surinder Singh, whereas, accused Darbara Singh alias Dara inflicted lathi blow on his right leg, consequently, Surinder Singh fell down. In the meanwhile, Harnek Singh accused armed with stick also came there and all the three accused inflicted lathi blows simultaneously to Surinder Singh when he was lying on the ground. On raising hue and cry by Surinder Singh, Narinder Singh who was accompanied by Satwinder Singh came there and intervened, at this the accused fled away. His testimony stands corroborated by Satwinder Singh (PW12) and also DDR No. 22 dated 30.7.1992 Ex.PS recorded on the basis of the statement of Surinder Singh injured Ex. PR. Their testimonies also find corroboration from the medical evidence. Further recording of the DDR No. 22 on the same day i.e. 30.7.1992 containing statement of the deceased Surinder Singh, arrest of all the accused stand established by SI Surjit Singh (PW14). He had also recorded FIR u/s 302/323/34, IPC. Again the recovery of the Weapons from Malkiat Singh, Harnek Singh and Darbara Singh alias Dara has been proved by ASI Balbir Singh (PW5), Hari Singh Patwari (PW7) who prepared the scaled site plan of the place of occurrence has also lent corroboration to the prosecution version. Phool Singh (PW8) is also a witness to the recovery of the weapons. No doubt, Darbara Singh alias Dara accused came after the other two accused namely Harnek Singh and Malkiat Singh caused injuries but for this mere reason Darbara Singh alias Dara cannot be said to have not shared the common intention as even after Darbara Singh came armed with stick all the three accused inflicted injuries to Surinder Singh. Since accused Malkiat Singh has not been convicted by the trial for his fatal blow u/s 304 Part-I, therefore, it would be insignificant if case of Darbara Singh is segregated by recording that he had no common intention with Malkiat Singh and Harnek Singh. No plausible argument to gain some observation of this Court regarding innocence of the accused has been brought forward, therefore, I am unable to accept the argument from the defence that the accused are innocent.

12. Now coming to the motive, it is very much clear from the statement of Surinder Singh Ex. PR that the main grouse between the parties was regarding irrigation of the fields. It is often seen that the adjoining owners normally keep a fuss over the irrigation of their fields. The first information further transpires that on the day of occurrence, rainy water had collected in the field of Gurnam Singh father of the accused Malkiat Singh, as a result of which a quarrel had ensued, as a sequel of which all the accused voluntarily caused simple as well as grievous hurt, in furtherance of their common intention, on the person of Surinder Singh with their respective sticks.

13. Now coming to the offence, it may be observed that occurrence took place on 30.7.1992. According to Dr. A.K. Garg (PW3), Surinder Singh had left the hospital on 1.8.1992 at 11.45 a.m. of his own. He has further deposed that his condition was stable during the period of his stay in the emergency on 30.7.1992. He did not notice any injury or any complaint of pain in the chest or on the backside of the chest of Surinder Singh. Dr. Banarsi Dass (PW2) (a private medical practitioner) has stated that Surinder Singh came to him on 1.8.1992 carrying a bandage around his injury which was redressed by him on the same day. He has also stated that he had given gentamycin injection to him. It has also come in evidence that Surinder Singh himself had gone to Dr. Banarsi Dass (PW2). It was only on 6.8.1992 that the health of the injured Surinder Singh became deteriorated for any reason whatsoever.

14. Dr. Gobind Makharia, PGI Chandigarh while appearing as PW-10, who had treated Surinder Singh till his death, has stated that treatment of Surinder Singh was started on 6.8.1992 and he was suffering from Broncho-pneumonia and was also suffering from lungs infection and respiratory failure. He was put on antibiotics, I.V. fluid and ventilator. He being a senior doctor of PGI, Chandigarh could be believed to say that cause of his death was due to lungs infection and respiratory failure and might be contributed by head injury. The word "might be" cannot take place of "must be". He also opined that lungs infection led to septicemia which was the direct result of broncho-pneumonia in this case. He has also definitely stated that C.T. Scan of Surinder Singh did not show any subdural hemotoma. According to him, Neuro Surgeon also did not notice any dangerous effects of cerebral edema on 7.8.1992, rather Neuro Surgery Unit recommended discharge of Surinder Singh forthwith. According to Dr. Makharia, broncho-pneumonia is a deadly disease which caused death due to toxic effects of septicemia. Broncho-pneumonia could be due to several factors including viral infection or any other bacterial infection. So, after examining the evidence of Dr. Gobind Makharia (PW10), who treated the patient from 6.8.1992 till he died on 14.8.1992, the only safe conclusion which could be drawn is that injuries were not the direct or immediate cause of his death but the reasons for his death could be traced due to bronchopneumonia which led to lungs infection and septicemia.

15. The other reasons for not upsetting the conviction and sentence of the

accused u/s 325/323 read with Section 34, IPC, are that the occurrence took place in the heat of passion due to sudden quarrel. Nothing is traced from the statements of the witnesses Narinder Singh (PW11) and Satwinder Singh (PW12) that the accused ever intended or knew that by the injuries caused to him, he could die. Surinder Singh having suffered injuries on 30.7.1992 himself feeling not seriously effected by such injuries left the hospital on 1.8.1992 and remained in the village up to 6.8.1992. The possibility of having developed infection on the lungs leading to septicemia for his non care of the injuries or for any other reason cannot be ruled out. As such, the death of Surinder Singh could not be directly tagged with the injuries he had suffered at the hands of the accused. Except the one injury on the head, all the injuries were on the non vital parts of the body i.e. legs, arms and ankle. Had they really intended to kill him, then they would have caused more injuries on the vital parts of his body.

16. Consequently, it would be most appropriate to conclude that the trial Court has appreciated the evidence in right perspective and to deviate from the observations of the trial Court qua the occurrence and nature of the offence would not be safe.

For the foregoing reasons, finding no merit in the appeal, the same is dismissed. Consequently, the Criminal Revision No. 538 of 1998 filed by the complainant also stands dismissed.