
(1996) 02 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 953 of 1995

Ishwar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 17

Hon'ble Judges : K.K.Srivastava, J

Advocate : N.D. Bhinder, V.K. Jindal, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. Heard learned counsel for the revisionists and the learned District Attorney for the State of Haryana.

2. This Criminal Revision was pressed regarding the applicability of Section 34, Indian Penal Code (for short "the Code") to the main offence and sentence passed by the courts below.

3. The revisionists along with coaccused Lal Singh were tried in the Court of Judicial Magistrate Ist Class, Kaithal, under Sections 326/324/323/34 of the Code and Section 27 of the Arms Act in case F.I.R. No. 118, dated 15.4.1984 relating to Police Station Kalayat in district Kaithal. The learned Judicial Magistrate, after the trial, believed the prosecution evidence and convicted the accused on all the counts and sentenced them to various terms and ordered the sentences, so awarded, to run concurrently. The maximum sentence was awarded under Sections 326/34 of the Code, which was of three years" rigorous imprisonment. An appeal was filed against the judgment of the Judicial Magistrate Ist Class, which was heard and disposed of by the learned Additional Sessions Judge, Kaithal, by judgment dated 2.12.1995. The learned Additional Sessions Judge set aside the conviction of the revisionists and the coaccused under Section 27 of the Arms Act and modified the sentence awarded by the learned trial Court. The revisionists were sentenced to undergo three months" rigorous imprisonment

under Sections 323/34 of the Code. They were further sentenced to undergo six months" rigorous imprisonment under Section 324/34 of the Code. Coaccused Lal Singh, who is not a revisionist before this Court, was sentenced to three years" rigorous imprisonment with a fine of Rs. 2,000/ and in default to undergo further rigorous imprisonment for six months under Sections 326/34 of the Code. The present revisionists were, however, sentenced to undergo two years" rigorous imprisonment and to pay a fine of Rs. 2,000/ each and in default to further suffer six months" rigorous imprisonment under Sections 326/34 of the Code. The sentence, so awarded, was ordered to run concurrently. It is against the judgment of the learned Additional Sessions Judge, Kaithal, the present revision has been filed.

4. According to the prosecution case, the occurrence took place on 13.4.1984 at about 3 p.m. The revisionists and coaccused Lal Singh participated in the occurrence. The revisionist Ishwar was armed with a Gandasa and other revisionist Jai Singh was armed with brickbats and coaccused Lal Singh (nonrevisionist) was armed with a spear. Lal Singh is alleged to have given a Barcha blow which hit the injured Amru near his left shoulder. The brick bats thrown by revisionist Jai Singh hit Sinder alias Surinder below his left hand. The revisionist Ishwar gave a gandasa blow on the person of Pritam Singh complainant, which hit on the right side of his head near the ear. The accused persons, as aforesaid, took to their heels on seeing the witness reaching the place of occurrence. The injured of the occurrence were taken to the hospital where they were medically examined and injuries noted in the injury reports. The injury on the person of Amru caused fracture of left shaft humerus and was declared to be grievous in nature vide report Exhibit P.W. 6/A.

5. On the statement (Exhibit P.A) of complainant Pritam Singh, F.I.R. was registered under Sections 323/324/34 of the Code. Since the injury on the person of Amru was later on declared to be grievous in nature, the case was registered under Section 326 of the Code also.

6. The main contention of the learned counsel for the revisionists is that the evidence on record showed categorically that there was no sharing of the common intention of the revisionists with the coaccused Lal Singh for causing grievous injury regarding which the offence under Section 326 of the Code was registered. In this connection, he has referred to the judgment of the learned Additional Sessions Judge and particularly to paras 12 and 13 of the judgment.

7. After carefully perusing the judgment of the learned Additional Sessions Judge, I am of the considered view that the evidence on record was not held to be discrepant regarding the causing of injuries and the duration of the injuries. The learned Additional Sessions Judge has rightly observed in para 13 of his judgment as under :

"It has also been pointed out that as per the medical reports, injuries on the person of Sinder and Pritam were found having been caused within a period of

24 hours while the injuries on the person of Amru were found having been caused within a period of six hours. It may be pointed out that the occurrence in which these persons had received injuries, had taken place on 13.4.1984 at 8.30 p.m. The injured persons were examined on 14.4.1984 at 1.30 a.m. Thus, I do not find any discrepancy on this point because when the doctor said that injuries were caused within a period of 24 hours, it meant that the injury was caused during any period upto 24 hours. I do not find that any benefit can be extended to the accused on that account."

8. It cannot be said that the applicability of Section 34 of the Code is to be seen with reference to the offences that are ultimately committed by the accused in the occurrence. The sharing of the common intention is in respect of committing the occurrence and if during the occurrence offences are committed, then the accused are liable under Section 34 of the Code for the offences committed at the time of the occurrence. Resultantly, there is no substance in the contention of the learned counsel for the revisionists that Section 34 of the Code will not be applicable qua the revisionists in respect of the offence under Section 326 of the Code on the ground that coaccused Lal Singh alone had the intention of causing the grievous injury.

9. Lastly, the learned counsel for the revisionists contended that the sentence passed against the revisionists under Sections 326/34 of the Code, though slightly modified by the lower appellate Court, is still severe and deserves to be reduced. After carefully considering the submissions made by the learned counsel for the revisionists as also the learned District Attorney for the State of Haryana, I am of the considered opinion that the interest of justice would be adequately met if the sentence under Sections 326/34 of the Code awarded to the revisionists is reduced from two years" rigorous imprisonments to one and half years" rigorous imprisonment with the same amount of fine as imposed by the learned lower appellate Court.

10. Subject to the above modification in the sentence under Section 326/34 of the Code, the revision is dismissed.