
(2005) 04 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 328 of 1991

Khinder Singh and another	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2005) 3 RCR(Criminal) 952

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Jayender S. Chandail, Assistant Advocate General, Punjab, for the Respondent

Judgement

Amar Dutt, J.—Khinder Singh and Malkiat Singh have filed the present appeal to challenge the conviction and sentence recorded against them by the Additional Sessions Judge, Bathinda.

2. The facts, as brought out in the testimony of the witnesses, are that on 29.6.1989, Mohinder Singh P.W. 2 along with his wife Gurdev Kaur and son Boota Singh was returning to his village after sowing Narma crop. At about 11.00 A.M., when they reached near a Neem tree Khinder Singh armed with a Gandasa and Malkiat Singh armed with a dang came there. Boota Singh had enquired Khinder Singh as to why they had called him Lagara (idiot/rouge) whereupon Khinder Singh gave a Gandasa blow on the head of Boota Singh which had struck on his left cheek. Malkiat Singh had given two dang blows on the left shoulder of Boota Singh whereas Khinder Singh had given another Gandasa blow from its reverse side on the left side of his chest. On a raula being raised by Mohinder Singh and his wife, the accused had run away with their respective weapons. Boota Singh had been removed to Civil Hospital, Mansa, where he was medico-legally examined. The FIR was recorded on the statement of Mohinder Singh and on completion of the investigation, during the course whereof blood stained turban Ex.P1 worn by Boota Singh and his shirt Ex. P2 were taken into possession and

the Appellants were arrested when they were produced by Atma Singh, Ex-Sarpanch. Gandasa Ex.P3 was taken into possession from Khinder Singh and a challan was put in Court.

3. After commitment, the trial Court framed charges u/s 307 read with Sections 34 and 323 read with Section 34 of the Indian Penal Code against the Appellants and when the Appellants pleaded not guilty, the prosecution was called upon to lead its evidence.

4. In order to bring home the charge, the prosecution examined Dr. Nazar Singh P.W. 1, Mohinder Singh P.W. 2, Boota Singh P.W. 3 and SI Gurcharan Singh P.W. 4.

5. When examined u/s 313 of the Code of Criminal Procedure, the Appellants denied the prosecution allegations. Khinder Singh Appellant further stated as under:

I am innocent. I was not present at the spot; rather I was present at the bhog of Puran Singh and my son Malkiat Singh was in the field busy in sowing Narma crop along with Balwant Singh and Naurang Singh. Gurmel Singh s/o Harnek Singh had called me from the bhog of Puran Singh, where P.W. Mohinder Singh was already present. Boota Singh had suffered injuries while running seeing me coming from the bhog of Puran Singh and by falling on the ground on his left side and the Pari of Salangh struck his left cheek while the other injuries were due to fall on the pacca floor with the broken bricks which also pierced in his cheek. Boota Singh is already inimical towards me as my brother is claiming about Rs. 33,000/- civil litigation case in which he had got decree from the lower court and appeal is now pending in the Court of Shri N.D. Bhatara, Addl. District Judge, Bhatinda. Boota Singh injured himself is addicted to committing such crimes as has happened during the last one year on two occasions. The P Ws have planted this case by manipulating the same with the connivance of the police and the doctors. I am innocent.

The aforesaid statement of Khinder Singh Appellant was adopted by Malkiat Singh Appellant. Jaspal Kaur DW1, Balwant Singh DW2, Constable Purshotam Dutt DW3 were examined in defence.

6. The trial Court after hearing arguments convicted Khinder Singh Appellant u/s 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/-. In default of payment of fine he was ordered to undergo further rigorous imprisonment for two months, whereas Malkiat Singh Appellant was convicted u/s 323 of the Indian Penal Code and was released on probation of good conduct u/s 4(1) of the Probation of Offenders Act, 1958 on his furnishing bond in the sum of Rs. 5,000/- with one surety in the like amount for a period of two years.

7. No one has put in appearance on behalf of the Appellants. I have heard Mr. Jayender S. Chandail, Assistant Advocate General, Punjab, appearing on behalf of the State and with his assistance have gone through the record of the case.

8. From a perusal of the record, it is apparent that the Appellants in the present case were charged as under:

That on 29.6.89 in the area of village Talwandi Akalia, both of you in furtherance of your common intention, you Khinder Singh accused caused a grievous hurt to Butta Singh P.W. with a Gandasa on his cheek with such an intention or knowledge and under such circumstances that if by that Act you had caused the death of said Butta Singh, you would have been guilty of murder and thereby you Khinder Singh accused committed an offence punishable u/s 307 I.P.C. whereas you Malkiat Singh accused committed an offence punishable u/s 307 read with Section 34 I.P.C. and within my cognizance.

Secondly, on the said date, time and place you Khinder Singh and Malkiat Singh accused in furtherance of your common intention, you Malkiat Singh accused voluntarily caused simple hurt with dang to Butta Singh P.W. and thereby committed an offence punishable u/s 323 IPC whereas you Khinder Singh accused committed an offence punishable u/s 323 read with Section 34 IPC and within my cognizance.

9. A perusal of the above shows that while dealing with the case, the trial Court has not dealt with the question as to whether the Appellants were ever acting in pursuance of a common intention shared by each of them with the result that there is no finding in relation to Section 307 read with Section 34 of the Indian Penal Code with regard to Malkiat Singh and u/s 323 read with Section 34 of the Indian Penal Code with regard to Khinder Singh Appellant, which is an illegality, which apparently crept into the judgment of the trial Court due to oversight. The failure of the trial Court to deal with this aspect of the case, to my mind, necessitates the setting aside of the conviction and sentence recorded against both of the Appellants by the Court below. Though it may be permissible for this Court to modify the judgment while exercising the appellate jurisdiction yet since that may oust the right of having the view reappraised in appeal by the first appellate Court, I deem it appropriate to remand the case to the trial Court with a direction to rehear arguments and dispose of the case afresh as the error and illegality in the trial has been committed by it only while writing the judgment. Ordered accordingly.

10. The trial court is directed to summon the Appellants and proceed against them in accordance with law, as directed above.

11. The appeal is disposed of as indicated above.

Order accordingly.