
(2009) 06 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Kulwant Singh and Another	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 506

Citation : (2009) 06 P&H CK 0008

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Present appeal has been filed by Kulwant Singh son of Chanan Singh and Jasbir Singh son of Gajjan Singh, both residents of village Dhakola, Police Station Mullana, District Ambala. They were tried by the Additional Sessions Judge (Fast Track), Ambala, who held them guilty for offences u/s 307, 324 IPC and sentenced them to undergo rigorous imprisonment for five years each for committing offence punishable u/s 307 IPC. They were also burdened with a fine of Rs. 10,000/- each, in default of payment of fine to further undergo rigorous imprisonment for one year. Appellants were also sentenced to undergo rigorous imprisonment for one year for committing offence punishable u/s 324 IPC and to pay fine of Rs. 2000/- each, in default of payment of fine to further undergo rigorous imprisonment for four months.

2. It was ordered that out of the fine recovered, half of the amount, i.e. Rs. 12,000/- be paid to the injured Ram Piari. The appellants were prosecuted in case FIR No. 136 dated 02.06.2005 registered at Police Station Mullana, District Ambala under Sections 323, 324, 307, 506 IPC.

3. On 2nd June, 2005, a telephonic message was received at Police Station Mullana that Smt. Ram Piari was admitted at Monga hospital, Ambala. After receipt of the message, Head Constable Daya Nand PW-12, in-charge Police Post, Saha went to the Monga hospital. An application Ex.P7 was submitted seeking opinion of the Doctor whether Ram Piari is fit to make statement or not. Vide

Ex.P8 on 2nd June, 2005 at 8.00 p.m., the Doctor declared Ram Piari to be unfit to make statement. At that time, Sucha Singh son of Ram Piari was present in the hospital and his statement Ex.P17 was recorded, on the basis of which formal FIR Ex.P20 was registered.

4. Sucha Singh stated that he was working in a Grover Transport Company. Opposite to his house, land of village panchayat Dakola is there. Regarding this land, there was a dispute between family of the complainant and their neighbourer Kulwant Singh, due to which Kulwant Singh and his family have been nursing a grudge. On 2nd June, 2005, complainant along with his mother Ram Piari, was sitting in front of their house at about 6.00 p.m., when Kulwant Singh and Jasbir Singh appellants started giving abuses. When Ram Piari restrained them from doing so, Kulwant Singh became angry and said today lesson should be taught. Saying so, Kulwant Singh gave a Kassi blow on the head of Ram Piari, mother of the complainant. Jasbir Singh also gave a Kassi blow in the abdomen of Ram Piari, due to which complainant and his mother raised noise, which attracted Gurmeet Kaur, wife of the complainant and many other persons. Seeing the public gathering at the place of occurrence, Kulwant Singh and Jasbir Singh decamped from the spot along with their weapons. For getting Ram Piari treated for the injuries suffered, she was brought to Monga Hospital, Mahesh Nagar, Ambala. Complainant prayed in the statement made to police that legal action be taken against Kulwant Singh and Jasbir Singh.

5. FIR was investigated. Report u/s 173 Cr.P.C. was submitted. The Court of Additional Sessions Judge, Ambala on 9th February, 2006 charged the appellants that both on 2nd June, 2005 at 6.00 p.m. in the area of village Dakola, Police Station Mullana, in furtherance of their common intention, caused injuries on the person of Ram Piari and thus, committed offence punishable u/s 307 IPC read with Section 34 IPC. They were also charged for offence punishable u/s 324 read with Section 34 IPC, Section 323 read with Section 34 IPC and Section 506 IPC. Appellants pleaded not guilty and claimed trial. Prosecution examined Gurmeet Kaur wife of Sucha Singh complainant as PW-1. She stated that her family own a residential house in village Dakola and opposite to their house, the houses of both the appellants are situated. In between the houses there is a shamlat land belonging to the village panchayat. On number of occasions , there was exchange of hot words between the accused and husband of the witness as accused intended to encroach upon the land. On 2nd June, 2005, at 6.00 p.m. when she was working inside the house, she heard noise raised by her husband Sucha Singh and her mother-in-law Ram Piari and she saw that both the accused appellants were armed with Kassis and Ram Piari was lying injured on the ground and blood was oozing from her wounds. Witness was not subjected to any meaningful cross-examination.

6. Dr. Tarsem Monga PW-2 examined Ram Piari and found following injuries on her person:

1. 20 cm x 1 cm bone deep wound over the parietal region. Fresh bleeding was

present. Margins of the wound were sharp. X-Ray skull and C.T. Scan skull was advised.

2. 4 cm x 8 cm lacerated wound over the upper part of right thigh. Fresh bleeding was present.

7. Injury No. 1 was declared to have been caused by sharp edge weapon and injury No. 2 by blunt weapon. X-Ray of the skull was conducted and it showed fracture of both parietal bones. Therefore, that injury was declared sufficient to cause death in the ordinary course of nature except for timely medical aid. Doctor further stated that he opined vide Ex.P16 that injuries can be caused by Kassi having wooden handle with iron blade.

8. Sucha Singh PW-3 complainant reiterated what was stated in the FIR. In cross-examination he denied the suggestion that head injury on the person of his mother was a result of fall on sharp surface. Ram Piari injured appeared as PW-4. She also deposed on the same lines as was stated in the FIR and by her son Sucha Singh in Court. She denied the suggestion that false story was concocted due to enmity with the accused to pressurize them.

9. Siha Singh, EHC appeared as PW-5. He stated that on 9th June, 2005 in his presence SI Janak Singh interrogated the accused Kulwant Singh. Kulwant Singh suffered disclosure statement, on the basis of which one Kassi was recovered from the cattle shed of Ajmer Singh. Constable Joginder Singh appeared as PW-6 and he stated that in his presence, Kassi Ex.PA, vide recovery memo Ex.P19, was recovered at the instance of appellant Kulwant Singh from the house of Ajmer Singh. Head Constable Om Parkash PW-7 stated that on 10th June, 2005, one sealed parcel containing Kassi was handed over to him as in-charge of Malkhana and he kept the same in safe custody. In cross-examination, he admitted that on 2nd July, 2005, Kassi was given to ASI Partap Singh at 9.00/9.30 a.m. PW-8 ASI Krishan Lal stated that ruqqa Ex.P7 was received from Constable Sukhbir Singh and on the basis of the same, formal FIR Ex.P20 was registered. PW-9 C1, Ram Saran constable, in his capacity as Draftsman, had prepared scaled site plan of the place of occurrence Ex.P22. SI Janak Singh appeared as PW-10 and stated that on 9th June, 2005, he had arrested Kulwant Singh appellant, who during interrogation, suffered disclosure statement Ex.P18. He also prepared report u/s 173 Cr.P.C. PW-11 ASI Partap Singh is regarding the recovery of Kassi Ex.PA. He also proved recovery memo Ex.P19 and various other facets of investigation. PW-12 Head Constable Daya Nand proved recording of statement of Sucha Singh PW-3, on the basis of which, FIR was registered. Thereafter, prosecution evidence was closed. All incriminating evidence was put to the accused and statements u/s 313 Cr.P.C. were recorded. Accused, in their statement u/s 313 Cr.P.C. stated that they are innocent and they have been falsely implicated as Jang Singh, husband of Ram Piari had filed a civil suit against them.

10. I have heard Mr. Ranjan Lakhanpal counsel for the appellant, Mr. S.S. Kharb, Assistant Advocate General Haryana and Mr. Ravinder Malik counsel for the

complainant.

11. Mr. Ranjan Lakhanpal has stated that no reliance can be placed upon the testimony of PW-1 Gurmeet Kaur, PW-3 Sucha Singh and PW-4 Ram Piari, as they belong to the same family and no independent witness has been examined. It was further submitted that there are material contradictions, improvements and discrepancies in the testimony of PW-1 Gurmeet Kaur, PW-3 Sucha Singh and PW-4 Ram Piari, therefore, their statements should be discarded and the appellants be acquitted.

12. Counsel for the State and the complainant has submitted that the testimony of the witnesses inspire confidence, hence, appellants have committed the offence.

13. Mr. Ranjan Lakhanpal has further submitted that in the present case, no offence u/s 307 IPC is made out. There are only two injuries and two accused have been nominated. Injury No. 2 is blunt and therefore same can also be caused by Kassi. Recovery of Kassi has been effected only from Kulwant Singh. There is a delay in lodging of the FIR. Prosecution has widened the net and for two injuries, have named two persons as the accused.

14. I have given my thoughtful consideration to rival submissions made by counsel for the parties. It is not disputed that parties are neighbours. There was a simmering dispute regarding shamlat land of village panchayat, which was abutting houses of the complainant and the accused. Appellant Kulwant Singh has admitted pendency of the civil suit filed by Jang Singh, husband of Ram Piari injured. Therefore, appellants had the motive to cause injuries.

15. Ram Piari will be the last person to falsely implicate anybody. She will not screen the real offender. She had suffered injury on her head, which is fracture of parietal bones, therefore, this Court is of the view that implicit reliance is to be placed upon the testimony of Ram Piari, her son and daughter-in-law, as being members of the family, they were expected to be present at the place of occurrence at 6.30 p.m. Their presence at the spot is natural, probable and convincing. Furthermore, immediately Ram Piari was taken to the hospital. Sucha Singh is found present in the hospital at 8.15 p.m. He has made a statement to PW-12 Head Constable Daya Nand at the earliest. Therefore, the FIR, being prompt, is free from blemish of consultations and deliberations. Therefore, appellants have been rightly held guilty by the trial Court. Furthermore, injury suffered by Ram Piari is fracture of parietal bones, therefore, offence u/s 307 IPC is made out. However, this Court is of the view that the parties are neighbours. Due to exchange of abuses, on the spur of the moment, occurrence has taken place, without any premeditation. Injuries have been caused by Kassi, which is an agricultural implement. Only one injury has been caused on the head. Other injury is blunt injury on the thigh, therefore, the appellants have not taken undue advantage. Thus, sentence of five years rigorous imprisonment awarded upon the appellants is excessive. This Court is of the view that ends of justice will

be fully met in case, sentence of five years rigorous imprisonment awarded upon the appellants is reduced to three years rigorous imprisonment. However, sentence of fine is maintained.

16. With these modifications in the sentence, present appeal is disposed off.