
(1989) 04 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 25 of 1986

Madan Lal	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 357
Penal Code, 1860 (IPC) — Section 307, 324, 325, 326

Citation : (1990) CriLJ 310 : (1989) 2 ShimLC 25

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.G. Chitkara and J.K. Verma, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Judgement

Bhawani Singh, J.—The appellant, Madan Lal, feels aggrieved by the judgment of learned Sessions Judge. Una, in Session Case No. 8 of 1985, Sessions Trial No. 6 of 1986. By this decision on 31-3-1986, the learned Sessions Judge convicted the appellant u/s 307 of the Penal Code to suffer rigorous imprisonment for a term of five years and to pay a fine of Rs. 500/- or in default of payment of fine to suffer rigorous imprisonment for additional term of six months.

2. The appellant challenges this judgment by way of this appeal.

3. Let the prosecution case be narrated briefly thus. The appellant was a private medical practitioner at Badoohi Chowk in Una. Shattar-Din, complainant (P.W. 2), was a vegetable seller at the same place, occupying a Khokha near a liquor vend and before leaving this place to his village, unsold vegetables used to be kept in this khokha by him. The appellant, the prosecution alleges, used to purchase vegetables from the complainant and on the day of the occurrence, the appellant owed Rs. 10.75 to the complainant towards the price of vegetable.

4. On February 19, 1985, the complainant came to open the shutter of the Khokha at about 7 p. m. The appellant was, at that time, standing before a liquor

vend. At this time, the complainant, Shatter-Din, asked the appellant to pay him the amount in question. This enraged the appellant. The appellant, the prosecution alleges, felt insulted and asserted that he would teach a lesson to the complainant for insulting him. At this time, Shri Bal Krishan, an employee of the liquor vend, was present. The appellant left the place and the complainant, after closing his business, left for his house situate in the area of village Badoohi but in a different mohalla than that of the appellant although, to some extent, the path was common.

5. The complainant was at a short distance from his village when the appellant met him and started giving him blows with a knife to teach the complainant a lesson for having demanded money in the open. A number of injuries were inflicted; the complainant sat there. On alarm, raised by the complainant, Kashmir Singh, Bishan Dass and Gharkum prosecution witnesses, appeared on the scene, witnessed the occurrence and rescued the complainant. Besides, followed by a few others. The appellant ran away from the scene and after sometime when the complainant was taken to bus adda at Badoohi to be removed to the hospital, the appellant was detected by the Alla Bux with the help of torch light while coming from nearby khud carrying an attachicase and a knife. He was chased, caught and brought to the place where the complainant was kept and both were taken to the hospital at Una. Investigation started at the instance of the doctor at Una and ultimately a challan was submitted against the appellant u/s 307 of the Penal Code which ended in the aforesaid conviction.

6. Before moving forward to discuss the arguments of the learned counsel for the parties, it is parinent to mention the defence of the appellant. The same can be seen from his examination u/s 313 of the Criminal P.C. and the trend of cross-examination of the prosecution witnesses.

7. The defence of the appellant is that the case against him is false and the witnesses are deposing falsely because he is an outsider in the village.

8. As a matter of fact, the complainant had illicit relations with Jaina-Bibi, whom the complainant used to bring to his residence for the purpose of treatment of her child and one day while, it is alleged the complainant and the child were going down from the staircase of his house, some public man started assaulting the complainant. He being there, those man started assaulting him as well. He escaped and came to his house and fell unconscious due to injuries suffered there. After regaining consciousness, he found himself in Una Hospital being examined by a doctor. His attachicase was brought to Una, by whom, he did not knew. His own wife was present in the house on the relevant night and that he was innocent.

9. He denies that he owed any money to the complainant. He further denies the incident in which the complainant was injured although he admits the ownership of the attachicase but admits only a few contents thereof (Shirt Ex. P. 7, Pant Ex. P. 8 and coat Ex. 9, in two pieces). All these articles were blood stained. He

admits having been examined by the doctor and issuance of medicolegal report Ex. PA qua injuries on his person on 19-2-1985. He denies the recovery of the knife Ex. P. 1 in pursuance of the statement Ex. PH from a place near the bushes by the side of a road leading from Badoohi Chowk to Amb and that his signatures on the disclosure statement Ex. PH as well as the recovery memo Ex. PK were obtained under duress by the police. He states that the clothes recovered from his attachicase (obviously those owned by him above) contained his blood.

10. The occurrence was intimated to the police station. Una, by Dr. S.P. Samnol (P.W. 1) on telephone. Shri Kulwant Singh, Assistant Sub-Inspector of Police, Una, (P.W. 9), received this information at 10.30 p.m. and came to the hospital. On being allowed to do so, by the doctor, the statement of Shatter-Din, u/s 154 of the Criminal P.C. (Ex. P.D.) was recorded. This report narrates the incident from the beginning as already extracted above but there is variation on certain aspects between this and the subsequent evidence led in the case. It mentions that when the complainant reached a place where the Katcha path starts, the appellant accosted him to stop and said that he would settle with him that day and suddenly attacked him with a knife at various places. The appellant, he says, said that he was from Punjab and is called Punjabi terrorist. Gharku Ram, according to him, was the first to come to rescue him followed by many others. People went to catch him from his house and he was carried to Badoohi Chowk where the appellant was caught while running across the Chowk with attachicase. Alla Bux, Raffi Mohammad and Sadqeeq Mohammad, who were also with him at that time, chased him and caught him with attachicase and both were brought to Una hospital for treatment.

11. The perusal of Annexure PD shows three things : Firstly, certain facts mentioned therein were intentionally inserted to highlight, aggravate and prejudice the issue against the appellant. Secondly, the meticulous details given by the complainant relating to the incident. Thirdly, the first man to arrive at the scene is Gharku Ram. These factors are essential not only to see the allegations and proof thereof in the proceedings but also deviations and improvements in the story as well as physical and the mental state of the complainant at that time to assess the seriousness of the injuries he received in the alleged attack by the appellant. I proceed to examine the evidence.

12. Dr. S.P. Samnol (P.W. 1) has examined the complainant as well as the appellant. The only difference appears to be that the complainant appears to have been admitted and examined on 19-2-1985 at 9.50 p.m. and the appellant on 19-2-1985 at 11.45 p.m. although it is in evidence that both were taken together to Una Hospital. It is in evidence that the appellant was produced before the police by the people. So he appears to have been taken to the hospital later in point of time by the police for his medical examination, so this difference in time. The result in that the police appears to have come to know about this incident earlier in point of time. The assertion of Shri Kulwant Singh, Assistant Sub-Inspector (P.W. 9) that he came to know about the occurrence on

information from the doctor appears to be wrong. However, both the complainant as well as the appellant were examined by the doctor and a number of injuries, as described under, were found :

Appellant :

- "1. Unscabbed abrasion 2 cm. X 1 cm. over left side of forehead, just above lateral half of eye-brows.
2. Swelling plus bluish colouration of left upper and lower eye-lids. Pupils were normal and reacting to light.
3. Swelling and slight discolouration of right lower eye-lid.
4. Multiple small reddish brupises, 1 cm. to 2 cm. in diameter over left side of back at the level of 10th thorasic vertebra to 12th thorasic vertebra just lateral to midline.
5. Reddish bruise 2 cm. X 1 cm. over lateral surface of left shoulder.
6. Swelling and tenderness of middle 1/3rd of right leg.
7. Unscabbed abrasion, 2 cm. X 1 cm. over medial side of left leg, about 14 cm. above ankle.
8. Raddish bruish 2 cm. X 3 cm. over lateral surface of left elbow.
9. Reddish bruise 5 cm. X 3 cm. over flexor surface of left forearm just above wrist crease."

Complainant:

- "1. A sharp wound 16 cm. X 3 cm. X 2 cm. over left side of face starting from left side of chin up to left ear lobule. A little part of lobule is having sharp cut. Wound was bleeding and having big clotts.
2. Sharp wound 4.5 cm. X 2 cm. over left side of face starting from a point just above angle of mouth to the middle of lower eye-lid. Underneath maxillary bone was cut through and through.
3. A sharp wound 4.5 cm. X 1 cm. over left fronto temporal region starting just above the middle of left eye-brow upwards and laterally, underneath wound was having a visible cut.
4. A sharp wound over left temporo parietal region starting from a point 5 cm. in front of tracus of left ear going upward posteriorally and again forward forming a C-loop with convexity upward and ending about 2 cm. behind the left pinna of the ear. Flap of scalp was everted and underneath wound was exposed and was containing clots of blood.
5. A scalp deep sharp wound 3 cm. X 5 cm. over middle of forehead starting just above nasion.

6. A sharp wound 2 cm. X 5 cm. over right side of forehead just above middle of right eye-brow.

7. A sharp wound 2 cm. X 1 cm. into .5 cm. over occipit. Underneath bone was exposed.

8. A sharp wound 2.5 cm. X .1 cm. X .2 cm. over middle phalynx of little finger, 2 cm. X .1 cm. X .2 cm. over middle phalynx of ring finger, 1.5 cm. X .1 cm. X .2 cm. over terminal phalynx of middle finger. All these wounds were on extensor surface and if joined together it make an oblique line.

9. An abrasion 5 cm. X .1 cm. over right side of face starting from lobule of right ear and extending medially and downward.

10. Left pupil dialated and it was not reacting to light."

13. All the injuries in the case of the appellant were found of simple nature whereas in the case of the complainant all, except injury No. 2, were also of simple nature. In his opinion, vide medical certificate dated 25-3-1985 (Ex. PB), injury No. 2 has been described as grievous caused by sharp weapon.

14. It is noticed that Shri Ghamanda Ram, Assistant Sub-Inspector of Police, Bangana (P.W. 11), submitted an application (Ex. PL) (appears to be by hand) to Dr. S.P. Samnol (P.W. 1) asking for his opinion on two points :

(1) whether the injuries were dangerous to the life on the person of Shri Sattar Din? and

(2) whether the injuries were sufficient in the ordinary course of nature to cause death found on the person of Shri Sittar-Din in case medical treatment of an early stage was not given to him? The doctor appears to have answered it there and then saying "answer to both the queries Nos. 1 & 2 is yes."

15. The doctor has given his opinion on 25-3-1985 in which only injury No. 2 was described as grievous. There was no necessity to ask the doctor, vide Ex. PL, to give his opinion again as suggested by the Investigating Officer. Points Nos. 1 and 2 in the query have different dimensions and repercussions so far as the nature of the offence is concerned. However, it can be safely said that the answer of the doctor to the same is incomplete, vague and indefinite. The opinion of the doctor, therefore, is of no assistance.

16. Taylor in his book "Principles and Practice of Medical Jurisprudence", 11th Edition, at page 230, stated as follows :

"The meaning of the words "dangerous to life" is left entirely to the professional knowledge of a witness. It is not sufficient that he should make a simple assertion that the wound was dangerous to life; he must be prepared to state to the Court satisfactory reasons for this opinion; and these reasons may be rigorously inquired into by counsel for the defence. Danger to life primarily depends upon haemorrhage, shock or damage to a vital organ; and secondly, on

the chance of complications such as infection leading to septicaemia, pneumonia, pleurisy, empyema, pericarditis, meningitis or peritonitis; or more remotely to the effects of scarring, causing stricture (of the urethra, oesophagus, etc.), paralysis, urinary infection, etc.

"As a general principle, the Court is likely to consider as dangerous to life in a legal sense only those words in which the danger is imminent. The law appears to contemplate the more immediate rather than the more, remote possible danger...."

17. Modi in his book "Medical Jurisprudence and Toxicology, 13th Edition, at page 238, states as follows:

"Danger to life should be imminent before the injuries are designated "dangerous to life", such injuries are extensive, and implicate important structures of organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a "large artery" or rupture of some internal organ, such as the spleen, should be considered dangerous to life. But the injuries which prove fatal remotely by intercurrent diseases, such as tetanus, erysipelas, etc. should not be considered as dangerous."

18. The opinion of these celebrated authors clearly reveals that danger to life from an injury should be imminent to constitute it as a dangerous one. Such injuries are of serious nature like haemorrhage, shock or injuries implicating important structure or organs causing imminent danger.

19. Therefore, it can be said that the injuries caused to the complainant were not imminently dangerous nor caused on the vital part of the body. At best, it can be said that there could be some remote chance of their becoming dangerous to life or becoming sufficient, in ordinary course of nature, to cause the death of the complainant, in case medical aid was not rendered. Intention or knowledge are alternative ingredients of this offence. Now, from the evidence discussed above as well as to be discussed hereinafter, it is not possible to conclude that the appellant intended to cause the death or intended to inflict injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all this probability cause the death or cause an injury as is likely to cause death. The burden to prove all this is upon the prosecution and, in my opinion, it has failed to discharge the same to the extent to record a finding of commission of an offence u/s 307 of the Penal Code.

20. An offence u/s 307 of the Penal Code is a very serious offence and it requires the same very factors to be proved as are needed to prove an offence u/s 302 of the Penal Code except that in this case the act falls short of the death of the deceased which is necessary u/s 302 of the Penal Code. Sometimes, it becomes very difficult to differentiate between an offence u/s 307 of the Penal Code and others like under Sections 324, 325, 326 etc. In both the cases, injuries may be

there. There may be existence of motive or intention or knowledge on the part of the wrong doer. Care has, therefore, to be taken that, in such cases there may not be wrong application of the evidence looking to the serious consequences following from such an error; as the penalty prescribed under them vary to a great extent. Let this matter be approached keeping in view these aspects of the matter.

21. Shri Shatter Din (P.W. 2) states that Kashmir Singh, Gharkhu and Vishnu came to the scene of occurrence on his alarm and rescued him. The appellant made good his escape towards the side of his house. In his complaint (Ex. PD), this witness names Gharkhu to have reached the spot first in point of time followed by others but here he states as already extracted above that Kashmir Singh, Gharkhu and Vishnu came to the scene of occurrence and again says that he told the police the next day of the occurrence about the coming of Vishnu and Kashmir Singh which fact he omitted to mention in his report Ex. PD. He denies his relationship with Jaina Bibi and the beatings by the inhabitants of the Mohalla of Jaina Bibi to him and the accused.

22. Shri Bishan Dass (P.W. 3) states that he along with Kashmir Singh (P.W. 4) came to the scene of occurrence on hearing the cries of the complainant and found the appellant inflicting injuries on the face of the complainant with a knife. He states that the accused proclaimed that they would also be dealt with similarly. Two or three blows, he states, were given in their presence and in the meantime Gharkhu came to the spot and the appellant ran away towards the side of his house. The appellant was identified in the light of stars. There are material contradictions in the statement of this witness. In the complaint (Ex. PD), Gharkhu was the first to come to the spot whereas this witness says that Gharkhu came to the spot after him and Kashmir Singh which indicates that none of them were present at the time of the actual incident; at the most, they appear to have visited the place subsequent to the incident and the incident was narrated to them by the complainant. One more fact excludes the visit by Kashmir Singh (P.W. 4) when he says that he left the place after the incident; instead of looking after the complainant. This conduct shows two things; one, he may not have seen the incident and, second, the incident was so minor that he did not consider to remain there. He also denied the suggestion of the appellant that the complainant and the appellant were beaten by the villagers on account of their intimacy with Jaina Bibi.

23. Shri Kashmir Singh (P.W.4) states that he along with Bishan Dass (P.W. 3) rushed to the scene on hearing the cries of the complainant and noticed the appellant inflicting injuries with a knife. When intervened, the appellant threatened them with dire consequences. He does not explain what dire consequences were intended by the appellant assaid by Bishan Dass (P.W. 3). He states further that Gharkhu came after them and were followed by some Mohammedan gujjars. The complainant was sitting at the spot and he proceeded towards the house of the Secretary. The appellant was identified because he was

known to him. He further states that Ram Singh, Zulfi Ram and Bhag Singh also came to the spot which fact no one has stated. He denies the suggestion of the appellant that he was not present at the time of the incident.

24. Shri Bhagat Ram (P.W. 5) states that this incident was narrated to him by one Alla Bux. He found the complainant smeared with blood and the complainant told him that the appellant had given knife injuries to him. He advised them to take the complainant to the hospital and in the meanwhile some person came from the side of the nearby Khud whereupon Alla Bux flashed the torch light towards that side and found that the appellant was running in that side. He was chased and over powered while carrying an attachicase. Both were removed to the hospital. It appears from the document mark "C" that the appellant was handed over to Kulwant Singh, Assistant Sub-Inspector of Police (P.W. 9) by this witness and the contents of the attachicase -- one pant, one shirt and coat, stained with blood and the coat in torn condition, were taken in possession by the police and sealed. The attachicase, he states, contained Babu sandles, two pairs, Ex. P. 10, and a lady shirt and mufflar Ex. P. 11. He also states that the knife was recovered as a consequence of the disclosure statement made by the appellant.

25. Rafiq Mohammad (P.W. 6) is the son of the complainant. He states that he rushed to the spot along with Raffi Mohammad on hearing the cries of his father and found his father lying flat on the road and various injuries on his face were bleeding. Kashmir Singh, Bishan Dass and Gharkhu were also present there followed by Alla Bux. He states that his father narrated the occurrence and said that he was assaulted by the appellant. He says that the appellant sustained injuries while running in between the bushes.

26. Kulwant Singh (P.W. 9) is the officer who was informed by the doctor and to whom complaint (Ex. PD) was presented but ultimately the investigation was carried on and concluded by Ghamanda Ram, ASI (P.W. 11).

27. On the basis of the evidence, it can be concluded that the complainant received injuries at the hands of the appellant but it is difficult to believe the statements of various witnesses, cited by the prosecution, to have seen the occurrence. Their statements are not consistent and convincing. Their conduct is strange, abnormal and unconvincing. They contradict each other on material aspects of the case and the only safe conclusion which can be drawn is that the incident took place and both the appellant and the complainant sustained injuries pointed out in the medical certificates by the doctor. The coat of the appellant was also torn in the process which indicates that there was scuffle between the parties. How, in what manner and for what reason, cannot be easily and exactly established on the basis of the evidence on record, although, in my opinion, the injuries were inflicted by the appellant with knife in question. It is difficult to infer as to how it arose as Shri Bal Krishan, employee of the vend has not been examined to prove the incident which is most important to prove the later part of the prosecution case that the appellant had motive or intention to kill the

complainant. After inflicting the injuries, he left the place to his village which indicates that the appellant had no intention to kill the complainant. It was at a time when the appellant was sitting there that Gharkhu Ram, Kashmir Singh and Vishnu came there and the incident was narrated to them by the complainant. The prosecution has not examined Gharkhu Ram who, according to the complaint (Ex. PD), came to the scene prior to others.

28. The injuries, although many in number, were simple in nature, except injury No. 2, which too is not on the vital part of the body. There was no imminent danger to his life due to these injuries. There is no evidence as for how many days the complainant remained in the hospital for treatment. However, it can be safely inferred from his narration of facts to all those who came to the scene of occurrence as well as in the complaint (Ex. PD) that he was not suffering from any serious pain--mental as well as physical. None of the vital parts of the body was affected by the assault bringing the case within the zone of those ailments described above entailing any imminent danger to his life.

29. In view of the conclusion drawn above, it is not necessary to describe and discuss the evidence relating to the recovery of the knife, the attachicase and the contents thereof being duly proved. In this state of evidence on the record, I hold that the prosecution has not established that the offence committed by the appellant falls squarely u/s 307 of the Penal Code. In my opinion, it amounts only to an offence u/s 324 of the Penal Code and I convict the appellant accordingly.

30. Adverting to the sentence part of the case, the learned counsel for the parties made their submissions. The learned counsel for the State prayed for jail sentence as well as fine whereas the learned counsel for the appellant prayed that the appellant is a medical practitioner. He has small children to support and with no past criminal record. Hence, the learned counsel prays, the appellant be given the benefit of the benevolent provisions of the Probation of Offenders Act. Looking the case from all angles, particularly, the fact that the appellant caused a number of injuries to the complainant on his face thereby causing permanent disfigurement. A doctor becomes an assailant; so infliction of punishment outweighs the considerations of releasing him under the provisions of the Probation of Offenders Act.

31. The result is that the appeal is allowed to the extent that the conviction and sentence imposed on the appellant u/s 307 of the Penal Code is set aside and the appellant is convicted u/s 324 of the Indian Penal Code and sentenced to pay a fine of Rupees 2000/-. In default of payment of fine, to undergo rigorous imprisonment for two years.

32. Further, it is a fit case where the appellant is called upon to pay compensation to the complainant u/s 357 of the Criminal P.C. and accordingly I order that the appellant will pay Rs. 5000/- by way of compensation to the complainant by depositing the same in the trial Court for payment to the

complainant within six months from today in the equal instalments. On failure to do so, he is directed to undergo further rigorous imprisonment for one Year, Hari Kishan Vs. Sukhbir Singh and Others, Consequential jail sentences to run concurrently.