
(2005) 04 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 726-DB of 2002

Nahar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 325

Citation : (2005) 3 RCR(Criminal) 471

Hon'ble Judges : Mehtab S. Gill, J;Kiran Anand Lall, J

Bench : Division Bench

Advocate : T.S. Sangha and Mr. Naginder Singh, for the Appellant; S.S. Randhawa, D.A.G., Punjab Assisted by Mr. Paramjit Singh Brar, for the Respondent

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—This is an appeal against the judgment dated 8.8.2002 passed by Additional Sessions Judge, Bathinda, whereby, he convicted Appellant Nahar Singh, accused Chhinder Singh and Manjit Singh. Appellant Nahar Singh was convicted under Sections 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for six months. He was further convicted u/s 325 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for two months. Accused Chhinder Singh and Manjit Singh were convicted u/s 323 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for six months each and to pay a fine of Rs. 500/- each. In default of payment of fine, they were directed to undergo rigorous imprisonment for 15 days each. They have not filed an appeal against the order. Nazar Singh, who was arraigned as an accused with Appellant Nahar Singh, was acquitted of the charge by the trial Court.

2. The story of the prosecution is unfolded by the statement of Pappa Singh son

of Dhanna Singh. He stated in his statement given at Mandi Goniana to Assistant Sub-Inspector Ranjit Singh (P.W.-6), whereby he stated that he is a resident of Nahian Wala. They are four brothers, namely, Chhinder Singh, Nachhattar Singh, Balbir Singh and himself. The houses of Balbir Singh and Chhinder Singh are situated on one side and the house of the complainant and Nachhattar Singh deceased are situated on the other side. In front of the houses of Balbir Singh and Chhinder Singh, there is a site for dumping of cow dung, which belonged to the entire family. On 25.11.1998 in the evening, Pappa Singh along with his brother Nachhattar Singh also started throwing cow dung along with some debris in the aforesaid site. His brother Balbir Singh asked Chhinder Singh to remove the cow dung from the extra site to leave the site belonging to the share of others. Chhinder Singh refused to do so. On 26.11.1998 at 8.00 A.M. when Pappa Singh and his brother Nachhattar Singh were going to the house of Balbir Singh, Nazar Singh son of Bakhataur Singh came out of the house of Chhinder Singh and raised an alarm that brother had come, catch hold of him. In the meanwhile, Manjit Singh armed with a stick and his brother Chhinder Singh armed with a gandasa came out of their houses. Manjit Singh gave a dang blow on his brother Balbir Singh, which hit on his left wrist and Chhinder Singh gave a gandasa blow from its reverse side, which hit his brother Balbir Singh on the lower part of his left leg. Complainant and Nachhattar Singh raised on alarm. On hearing alarm, his sister-in-law (Bhbahi) Paramjit Kaur wife of Nachhattar Singh and Pappa Singh's father Dhanna Singh came out. In the meantime, Nahar Singh, the son-in-law of the complainant's uncle Maghar Singh armed with a gandasa also came out from the house of Chhinder Singh. He gave a gandasa blow with its sharp side on the head of Nachhattar Singh with an intention of kill him. Grievous injuries were caused on the head of Nachhattar Singh and he fell down. Appellant Nahar Singh gave another gandasa blow with its reverse side, which hit on the left elbow of the complainant. Manjit Singh gave a dang blow on the right leg of the complainant. Complainant ran away, as he apprehended that he would also be killed. Balbir Singh and Nachhattar Singh were taken to Civil Hospital Mandi Goniana by the complainant's father Dhanna Singh and sister-in-law (Bhabhi) Paramjit Kaur. Complainant also reached Mandi Goniana.

3. Appellant Nahar Singh was residing in the village for the last 5 years. Harnam Kaur, his Bua (sister of complainant's father) had got the land decreed in favour of his brother Nachhattar Singh. Appellant Nahar Singh was claiming his right on that land and a civil suit was pending in this regard. It was due to this grudge that Appellant Nahar Singh had raised a dispute amongst his brothers and caused injuries to them with the connivance of Nazar Singh, Chhinder Singh and Manjit Singh.

4. Deceased Nachhattar Singh was referred to Civil Hospital, Bathinda, as injuries caused to him were serious. Formal FIR, Exhibit PJ/2 was recorded on 26.11.1998 at 11.25 A.M. Special Report was sent to the Ilqa Magistrate on 26.11.1998 at 1.40 P.M.

5. Prosecution, to prove its case, brought into the witness box P.W.-1 Dr. Jagjit Singh, P.W.-2 Dr. Suneh Lata, P.W.-3 Pappa Singh, the brother of the deceased, P.W.-4 Dr. Jasbir Singh, P.W.-5 Balbir Singh, another brother of the deceased, P.W.-6 Assistant Sub-Inspector Ranjit Singh, P.W.-7 Sub-Inspector Darshan Singh, P.W.-8 Constable Kulwant Singh, P.W.-9 Head Constable Jagjit Singh and P.W.-10 Constable Gurmit Singh.

6. For the convenience of the Court, learned Counsel for the Appellant supplied a copy of the pedigree-table of the parties.

7. Dhanna Singh and Maghar Singh are real brothers. Dhanna Singh has four sons, namely, Pappa Singh (P.W.-3), Nachhattar Singh deceased, Balbir Singh (P.W.-5), Chhinder Singh accused. Chhinder Singh has a son Manjit Singh accused. Maghar Singh had one daughter Sukhpal Kaur, who was married to Nahar Singh Appellant.

8. Learned Counsel for the Appellant has stated that all the brothers had cordial relations. Pappa Singh complainant was going to the house of his brother Balbir Singh. Trouble started in front of the house of Chhinder Singh. As per the site plan (Exhibit PN/5), houses of Balbir Singh and Chhinder Singh are adjacent to each other. Both the parties received injuries, as their dispute was of throwing of cow dung on a common piece of land belonging to all the brothers. It was a sudden affair and a sudden fight. Appellant-party did not have any intention to create trouble. Occurrence had taken place at the spur of the moment. Appellant Nahar Singh is residing in the village for the last 07 years peacefully. No dispute has arisen between the parties. In fact, Appellant Nahar Singh is married to Sukhpal Kaur the first cousin of the complainant. Sukhpal Kaur is the daughter of Maghar Singh, the real brother of Dhanna Singh, father of the deceased and the two witnesses Pappa Singh (P.W.-3) and Balbir Singh (P.W.-5). Learned Counsel has further stated that the case of the Appellant fell within Exception 4 of Section 300 of the Indian Penal Code. Appellant Nahar Singh did not go with the intention or that he would be attacked and he would have to give a blow to Nachhattar Singh to save himself. He, being the son-in-law of the family, had gone to stop the brothers from fighting with each other. But when he was attacked, he apprehended that he would also be killed and then he in order to protect himself, in his right of private defence, injured deceased Nachhattar Singh. The learned trial Court had rightly held that he may have exceeded his right of private defence. There is no motive for the Appellant to injure Nachhattar Singh deceased.

9. Learned Counsel for the State has stated that the case of the Appellant does not fall within Exception 4 of Section 300 of the Indian Penal Code. Appellant took undue advantage when he saw that the four brothers were fighting with each other. Appellant lived about 50 yards away from the place of occurrence. There was no need for him to come forward and intervene when the father of four brothers Dhanna Singh was present. In fact, he came with a gandasa with an intention to inflict injury on deceased Nachhattar Singh. Sketch of gandasa is

Exhibit PN/9. Though the gandasa was not brought in the Court, but the sketch of the gandasa, Exhibit PQ/3, shows that it had blood stains. Report of the Chemical Examiner, Exhibit P.W., points out that there was blood on the gandasa at two points. Appellant has taken undue advantage of the situation. He should be convicted u/s 302 of the Indian Penal Code and not u/s 304 Part II.

10. We have heard the learned Counsel for the parties and perused the record with their assistance. Pappa Singh, complaint, (P.W.-3) has, in his testimony, stated that Balbir Singh and Chhinder Singh reside on one side of the village whereas, himself and Nachhattar Singh reside on the other side but in the same lane and almost opposite to each other. All the brothers had a common manure pit. Chhinder Singh and Balbir Singh had occupied more area of the pits than their shares. Complainant along with Nachhattar Singh deceased and Balbir Singh had asked Chhinder Singh, a day earlier, that as he had occupied more share of the pit, he should not do so. At the time of occurrence, his father Dhanna Singh was also present. He along with deceased Nachhattar Singh, his sister-in-law (Bhabhi) Paramjit Kaur were going towards the house of his brother Balbir Singh. They saw Balbir Singh coming towards them. On reaching the house of Chhinder Singh, who is also the real brother of the complainant and the deceased, Chhinder Singh raised a lalkara. Manjit Singh, the son of Chhinder Singh, armed with a dang and Chhinder Singh armed with a gandasa, attacked Balbir Singh. Till this time Appellant Nahar Singh was no-where on the scene. The four real brothers, i.e., Pappa Singh (P.W.-3), Nachhattar Singh deceased, Balbir Singh (P.W.-5), Chhinder Singh's son Manjit Singh were in the midst of a fight. Dhanna Singh, the father of the four real brothers along with Paramjit Kaur, the wife of deceased, was also present.

11. Dr. Jagjit Singh (P.W.-11) examined Balbir Singh (P.W.-5) on 26.11.1998 at 8.55 A.M. and found 5 injuries on his person. He opined these injuries to be caused by a blunt weapon. They had been caused within six hours. Pappa Singh was examined on 26.11.1998 at 9.00 A.M. The doctor found 4 injuries on the person of complainant Papa Singh. Injuries 2 to 4 were simple, while injury No. 1 was declared to be grievous in nature. Accused Manjit Singh son of Chhinder Singh was admitted in the hospital and was examined at 9.05 A.M. on 26.11.1998. Three injuries were found on his person. Injuries 2 and 3 were declared simple. Injury No. 1 was stitched and was kept under observation.

12. Dr. Suneh Lata (P.W.-2) medico-legally examined Nachhattar Singh on 26.11.1998 and found 02 injuries on his person. Both the injuries were caused with a sharp edged weapon. Patient was serious. He was referred to C.M.C., Hospital, Ludhiana at 11.15 A.M. Dr. Jasbir Singh (P.W.-4), who conducted the postmortem on the dead body of Nachhattar Singh, opined that the cause of death of Nachhattar Singh was the result of injury No. 1. It was a head injury, which was sufficient to cause death in the ordinary course of nature.

13. From the injuries suffered, it is clear that Pappa Singh, Nachhattar Singh, Balbir Singh and Chhinder Singh, the four brothers, all sons of Dhanna Singh and

Manjit Singh son of Chhinder Singh were fighting a pitched battle. It is at this time that Appellant Nahar Singh, who lived 50 yards away in a different lane to that of Chhinder Singh and Balbir Singh, on hearing their shouts and lalkaras came to stop the real brothers from fighting. Dhanna Singh, the father of the four brothers was already present, but he did not have the courage to intervene and to stop his sons from fighting with each other.

14. Appellant Nahar Singh was married to Sukhpal Kaur, the daughter of Maghar Singh, who was the real brother of Dhanna Singh. In other words, he was the son-in-law of the family as a whole. Nahar Singh Appellant was staying in the village for the last 7 years. Maghar Singh did not have any son.

15. Darshan Singh, Sub-Inspector, the Investigating Officer (P.W.-7) in his testimony, has stated that he recorded the statement of Manjit Singh on 28.11.1998 at 9.20 A.M. at Civil Hospital, Goniana. He recorded the statement after taking the opinion of the doctor about his fitness to make a statement. He sent the statement through Punjab Home Guard Jagjit Singh to Police Station Nahianwala for taking necessary action. On the basis of the statement, DDR No. 6 dated 28.11.1998 was recorded. He has stated that while presenting the challan before the Court, this statement, i.e., of Manjit Singh was not attached with the challan. He did not charge-sheet the complainant party. Reasons for not attaching the statement of Manjit Singh accused or a copy of the DDR have not been spelt out by the Investigating Officer. It seems, he wanted to help the complainant-party. It is a case of dereliction of duty on his part. He was bound to attach the statement of Manjit Singh accused and DDR No. 6 dated 28.11.1998 with the challan when he presented it to the Court. He has further stated that it is correct that the injuries on the person of Appellant Nahar Singh were present at that time when he arrested him and it is thereafter that he got him medico-legally examined.

16. It is clear from the evidence that Nahar Singh Appellant did not know that a fight is going to take place. All he wanted to do was to intervene at that moment and stop the fight among the brothers. In his statement recorded u/s 313 of the Code of Criminal Procedure, he has stated that he is innocent. On the alleged date of occurrence i.e. 26.11.1998 at 7.30 A.M. Pappa Singh (P.W.-3), Nachhattar Singh deceased, Balbir Singh (P.W.-5), Chhinder Singh accused and Manjit Singh accused started fighting with each other. He was going to his field carrying a kasia. As the place of occurrence falls on his way while going to his field, he tried to pacify the brothers, as they all were having common relations. Nachhattar Singh deceased instead of getting pacified, attacked him and caused him injuries. In the exercise of his right of private defence, he (Appellant Nahar Singh) gave a kasia blow, which hit on the head of Nachhattar Singh. He did not have any intention to cause any serious injury to the deceased.

17. Learned Counsel for the State has laid much stress on this aspect that Appellant Nahar Singh was not carrying a kasia but a gandasa. Injury caused on the person of the deceased was caused with an intention to injure the deceased

so seriously that he was killed. This argument of the State counsel does not cut much ice. Vide disclosure statement, Exhibit PQ, a gandasā was recovered. Sketch of the gandasā, Exhibit P.W.-3, was prepared. Chemical Examiner's report, Exhibit P.W., states that the gandasā was blood-stained. The sketch of the gandasā is on the back side of the report of the chemical examiner's report Exhibit P.W.. The blood shown is in the middle of both sides of the gandasā. No blood is shown on the blade. From the sketch, what can be made out is that some blood in the middle of the gandasā on its left and right side at two points was put, but the investigating officer forgot to put blood in the blade of the gandasā. This part (blade) would have been the first part to be covered with blood if it was used. Gandasā was recovered on the disclosure statement made by Nahar Singh. It was not produced by the prosecution in the Court, so that it could be exhibited. A safe presumption could be made that no gandasā was recovered from the Appellant, but a gandasā with some blood was implemented on him.

18. The trial Court in its judgment has dealt with the occurrence. It has stated that it is a case where there is nothing in the FIR that there was pre-concert and pre-planning or agreement amongst the accused for causing the death of a member of the complainant-party. There is nothing on record to show that there was pre-planning amongst the co-accused for the commission of the offence and further that they did not attack the complainant party together. Had there been any intention of the accused party to cause injuries or murder of Nachhattar Singh, they would have attacked the complainant party and would not have suffered injuries. Manjit Singh accused suffered injuries including the one on the head. Appellant Nahar Singh also sustained injuries. Dr. Jagjit Singh examined Appellant Nahar Singh on 4.12.1998 at 1.35 P.M. and found 04 injuries on his person. He opined that the duration of the injuries was more than 72 hours. There was no intention on the part of the accused to inflict injuries on the complainant party. The trial Court has rightly held that the prosecution has suppressed the genesis of the occurrence by not explaining the injuries on the person of Appellant Nahar Singh, Manjit Singh and Chhinder Singh (accused).

19. Learned Counsel for the Appellant has relied upon a judgment of the Hon'ble Supreme Court rendered in the case of Resham Singh and Anr. v. State of Punjab, 2004 SCC (Cri) 452, wherein it has been held by the Hon'ble Apex Court in that case that there was no satisfactory evidence as to which party was the aggressor and the prosecution case was not clear as to which side exchanged attack and counter-attack. Both the sides sustained injuries. It was held that the case is covered by Exception 4 of Section 300 of the Indian Penal Code. Sentence in that case was altered from Section 302 of the Indian Penal Code to Section 304 Part II.

20. In the case in hand, Appellant Nahar Singh had no intention to inflict injury on the person of the deceased. He, being a common relative, intervened amongst the four brothers to stop the fight, but in the process, when he was

attacked by deceased Nachhattar Singh, he (Nahar Singh Appellant) gave a Kasia blow on the head of Nachhattar Singh to save himself. Appellant's case falls under Exception 4 of Section 300 of the Indian Penal Code.

21. In view of the foregoing discussion, appeal is partly allowed. Sentence of the Appellant is altered from Section 302 of the Indian Penal Code to Section 304 Part II. Sentence of the Appellant is reduced from life imprisonment to 10 years rigorous imprisonment. fine shall remain intact.

22. Since the sentence awarded to Appellant Nahar Singh is on just and reasonable side, we do not find any substance in the Criminal Revision No. 206 of 2003 filed by Pappa Singh complainant for enhancement of the sentence and it is dismissed.

Appeal partly allowed.