
(1949) 05 P&H CK 0001
In the Punjab And Haryana At Chandigarh

Pakhar Singh and Others

APPELLANT

Vs

The Crown

RESPONDENT

Date of Decision : 19-05-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 392, 409, 411

Citation : AIR 1950 P&H 66 : (1950) CriLJ 581

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Judgement

Harnam Singh, J.—Pakhar Singh, aged 20 years, Naranjan Singh, aged 22 years, Pal Singh aged 25/30 years, and Nihal Singh, aged 21 years, have been convicted Under Sections 392 and 411, Penal Code and sentenced to seven years' rigorous imprisonment each u/s 392, Penal Code, and one year's rigorous imprisonment each u/s 411, Penal Code. The sentences passed Under Sections 392 and 411 of the Code have been ordered to run concurrently. Nihal Singh, Paghar Singh and Naranjan Singh appeal,

2. The facts, so far as material, are that Mehnga Singh P. W. 1 and Hardial Singh p. w. 7 left Ghall Ealan village at about 2 P. M. on 27th February 1948 for Gajjanwala village. On the way near a well in the area of Safuwala village they met four or five shikaris who informed them that some men were sitting under suspicious circumstances in the reeds near the khal and that they should proceed cautiously. Mehnga Singh and Hardial Singh, however, moved on and when they reached near a water channel running through a thick growth of reeds on both sides they saw four persons armed with guns coming out of the reeds. Mehnga Singh and Hardial Singh made an attempt to run away but the culprits fired at them from behind and stopped them. The four culprits then robbed Mehnga Singh of Rs. 69, one gold tawiz, one gold ring and one suit case. Hardial Singh P.W. 7 was also robbed of his belongings. Mehnga Singh and Hardial Singh were detained by the culprits at the spot till 8 P. M. when they were allowed to proceed to Gajjanwala village. Mehnga Singh reported the incident at the police

station at Mogo on 29th February 1948 at 10 A, M.

3. Now, on 30th March 1948, Mehnga Singh P.W. 1 was purchasing vegetables from a rehri-wala at Moga when he saw Pakhar Singh, convict going towards the railway crossing. He identified him as one of the culprits who had robbed him and Hardial Singh on 27th February. Seeing Mehnga Singh P.W. 1, Pakhar Singh convict tried to bolt away but Mehnga Singh caught hold of him and raised an alarm. Wazir Singh P.W. 11 and Sher Singh came to the rescue of Mehnga Singh and they secured Pakhar Singh convict and took him to the police station at Moga. Pakhar Singh was arrested by Sardar Harnam Singh, Station House Officer, Moga.

4. Acting on the information supplied by Pakhar Singh, Sardar Harnam Singh P.W. 14 went to Safuwala on 1st March 1948, accompanied by Assistant Sub-Inspector Obaman Lai P.W. 15 and Jogindar Singh P.W. 16. Pakhar Singh supplied information that a part of the stolen property was lying buried in the western corner of a Jcotha in his house under bhusa and led the police party to the Tcoiha where he pointed out the heap of bhusa. He then produced from the kotha suit case Ex. P. 1 containing Arts. P. 2 to P. 6. On the same date Sardar Harnam Singh searched the house of Naranjan Singh convict and found an iron trunk lying in his room. From the iron trunk Sardar Harnam Singh P.W. 14 recovered stolen articles Bxs. P. 7 to P. 15. Naranjan Singh was arrested on 1st March 1948 and on the following day Hardit Singh, father of Naranjan Singh, was arrested at Moga.

5. Chaman Lai was then deputed to go to Minia and Lapon. At Lapon Chaman Lai, Assistant Sub-Inspector P.W. 15 conducted the search of the house of Nihal Singh and recovered there, from Suit case P, SI containing articles p. S3 to F. 25. He then went to village Minia and there conducted "the search of the house of Pal Singh and recovered therefrom Arts. P. 13, p. 14, p. 16, P. 17, P. 18 and P. 19 tied in a rag P. 16 from a wooden box. Pal Singh and Nihal Singh were arrested on 1st April 1948.

6. The convicts were put up at an identification parade on 5th April 1948 supervised by Sardar Jaimal Singh P.W. 16. Hardial Singh P.W. 7 correctly identified all the convicts stating that they were the four culprits. Sampuran Singh P.W. 9 correctly identified Naranjan Singh, Pakhar Singh and Nihal Singh stating that they were amongst the culprits. Sardara Singh P.W. 8 correctly identified Nihal Singh convict only, Again Kanjit Singh identified Nihal Singh and Pal Singh convicts and Mehnga Singh P.W. 1 identified Naranjan Singh, Nihal Singh and Pal Singh. Pakhar Singh convict was excluded from the parade at which Mehnga Singh P.W. 1 was called for identification.

7. From the facts set out above it is obvious that the conviction of the appellants proceeds upon the evidence furnished by the recoveries and the result of the identification parades.

8. Counsel contends that it has not been established that Nihal Singh appellant

was in exclusive possession of any part of the stolen property. He points out that Jogindar Singh P.W. 12 has stated in examination-in-Chief that articles P. 21 to p. 85 were recovered from the house of Nihal Singh convict and his father Budh Singh. The memo of recovery Ex. p. D., reads:

In the presence of witnesses mentioned hereunder the articles P. 21 to P. 26 were recovered from a corner of the house of Budh Singh & son of Gurmukh Singh of village Lodon Police Station Nihalsinghwal.

9. Now, the name of Nihal Singh convict is nowhere mentioned in Ex. P. D. Again, Budh Singh father of Nihal Singh convict was put up for trial in this case. On these facts, I am clearly of the opinion that the contention raised by the defence counsel must prevail and the evidence of recovery of Arts. P. 21 to p. 25, cannot be used to connect Nihal Singh convict with the crime.

10. There remains the evidence of identification against Nihal Singh convict, as stated above, he has been identified by Mehnga Singh P.W. 1. Hardial Singh P.W. 7, Sampuran Singh P.W. 19, Sardara Singh P.W. 8 and Ranjit Singh P.W. 10, The objection raised as regards the evidence of identification is that though Hardit Singh father of Naranjan Singh convict and Budh Singh father of Nihal Singh were prosecuted in this case they were not put up at the identification parade,

11. Again, of the identifying witnesses Sardara Singh P.W. 8 identified Nihal Singh convict only at the parade and wrongly picked up three other persons. He is not mentioned in the first information report and was for the first time questioned by the police at Safuwala 3 or 4 days after the occurrence. On these facts I find that the evidence given by Sardara Singh does not advance the prosecution case.

12. Sampuran Singh P.W. 9 identified Nihal Singh at the parade. He stated that he had seen four persons armed with guns in the reeds by the side of the khal. According to Sampuran Singh the looters were sitting and their turbans alone were visible to him, but the witness added that they had stood up and stared at him and his companions before moving towards the reeds. He gave no description of the looters to the police. He is not mentioned in the first information report and joined the investigation some days after the incident. In my opinion it would not be safe to act on his evidence.

13. Again, the evidence of Banjit Singh, P.W. 10 suffers from the same defects which have been pointed out in the case of Sardara Singh P.W. 8, and Sampuran Singh p. w. 9.

14. Another consideration which adversely affects the evidence of Mehnga Singh P.W. 1, Hardial Singh P.W. 7, Sardara Singh P.W. 8, Sampuran Singh P.W. 9 and Ranjit Singh P.W. 10 is that on 5th April 1948 the witnesses went to the Police Station at 8 A. M, in the morning and they were with the police till 4 p. M. on that day when they accompanied Assistant Sub-Inspector Ohaman Lai P.W. is to the judicial lookup where the parade in question was held.

15. For all these reasons I am of the opinion that the evidence of the identification of Nihal Singh by prosecution witnesses is far from satisfactory.

16. The result is that I find that the case against Nihal Singh culprit is not free from doubt and giving him the benefit of the doubt I set aside his conviction and sentence and acquit him.

17. Next comes the case of Naranjan Singh, aged 22 years. The conviction of Naranjan Singh proceeds upon the recovery of p. 7 to p. 12 from his possession on 31 st of March 1948 and his identification at the identification parade by Mehnga Singh P.W. 1, Hardial Singh P.W. 7 and Sampuran Singh P.W. 9. The evidence of recovery suffers from the defect that Gurbachan Singh P.W. 2 stated at the trial that Hardit Singh, father of Naranjan Singh lived in the same house from where articles P. 2 to P. 7 were recovered, Hardit Singh was put up at the trial on the basis of the recovery of articles p. 7 to P. 12 from his house. For the reasons given in the case of Nihal Singh, I find that the recovery of articles P. 7 to P. 12 from the house of Hardit Singh does not connect Naranjan Singh with the crime.

18. Coming to the evidence of identification, we have in the case of Naranjan Singh the evidence of Mehnga Singh P.W. 1, Hardial Singh P.W. 7 and Sampuran Singh P.W. 9, Mehnga Singh P.W. 1 stated in the First Information Report that one of the accused who looked limping had tawny complexion, pressed nose, small eyes, round face and was aged 38/39 years. At the trial it was stated that Naranjan Singh convict was limping at the time of the incident, Now, Naranjan Singh is 32 years old and the description given in the first information report does not fit in with the description of Naranjan Singh. I have given detailed reasons for not acting upon the evidence of Mehnga Singh P.W. 1, Hardial Singh P.W. 7 and Sampuran Singh P.W. 9, so far as it related to the identification by them at the parade of Nihal Singh convict. For similar reasons I am of the opinion that it is not safe to act upon their testimony so far as it concerns Naranjan Singh.

19. In the result I allow the appeal of Naranjan Singh, set aside his conviction and sentence and direct that he may be set at liberty forthwith.

20. The case of Pakhar Singh, however, stands on a different footing. He was arrested on 30th March 1948 under the circumstances detailed above, At the time of his arrest he entreated Mehnga Singh P.W. 1. and Wazir Singh P.W. 11, not to take him to the Police Station promising that he would return the whole of the property provided he was not taken to the Police Station. The identification of Pakhar Singh by Mehnga Singh is free from any doubt. He was identified at the parade by Hardial Singh P.W. 7 and Sampuran Singh P.W. 9. The identification of Pakhar Singh convict by Hardial Singh P.W. 7 and Sampuran Singh P.W. 9, however, suffers from defects pointed out in the case of Nihal Singh convict. The circumstances under which Pakhar Singh was arrested and his identification by Mehnga Singh definitely connect him with the crime.

21. Another circumstance connecting Pakhar Singh with the crime is that it was on his information that the police party went to villages Safuwala Minian"andLoponand recovered from various places the stolen property. Again he gave information to the investigating officer that the stolen property lay buried in his house in bhusa nnd ftorn there he recovered the stolen property P. 1. to P. 6.

22. The identification of Pakhar Singh convict by Mehnga Singh P.W. 1, the recovery of Aits. P. 1 to p. 6 from his possession and the cir. Gumatanco that information supplied by him led to the recovery of stolen property as described above connect Pakhar Singh with the crime and I find that he has been rightly convicted undei 8. 898, Penal Code.

23. There remains the question whether the conviction of Pakhar Singh u/s 411, Penal Code is sustainable in law. Section 411, Penal Code reads:

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment either description for a term which may extend to three years, or with fine, or with both.

24. Now, the theft and taking and retention of stolen goods form one and the same offence and cannot be punished separately. Referenoe may be made to circular no. 16 from the Offioia-ting Registrar of the High Court of Judicature at Foit William in Bengal to the Criminal Autho-rities dated Calcutta, 20th August 1864. The relevant portion of the Circular as reproduced in Weekly Reporter Sutherland Vol. 1 at P. 2 reads:

The High Court are pleased to oiraulate for adoption the following Bules which lay down the method in which sentences, should be recorded... 2nd. For instance, when the chief offence charged and proved by the evidence is theft, the fact of the stolen property being found in the possession of the offender should be considered as a portion of the evidence by which the chief offence is proved ; and a verdict of "not guilty" should be entered upon the charge of dishonestly receiving or retaining such property.

25. The matter came up for consideration in Queen v. Sreemunt ddup, a w, B. or. 68. In that oase Glover J., said :

So likewise with regard to the conviction ol "knowingly retaining Btolen property. It has been frequently ruled by this Court that in cases like the present the theft and the retention of the stolen goods form one and the same offence, and cannot be punished separately.

Again, in the case of Queen v. Seeb Churn Haree, 11 w. B, or. 12, Norman J., said :

It appears to us clear that tha prisoners might have been found guilty either of daooity or of receiving. But there was nothing to show that they had been" guilty of more than one offence ; they have received what was really and substantially

a sentence for a single offence.

Jackson J., concurring with Norman J., added:

I have looked through the proceedings in this case, and see no sufficient ground for interference on the facts of the case but the conviction of the charge of receiving stolen property being contrary to the ruling of this Court as laid down in Circular Order No. 16 of August 1864, as pointed out by Norman J. In honour in reversing the conviction and sentence which he would reverse.

26. Again, Spankie J., in *The Queen v. Shunkar, a N. W. P. H. O. 812*, said:

A prisoner cannot be convicted u/s 411, Penal Code for dishonestly receiving or retaining stolen property in respect of property for which he himself has been convicted, u/s 409, Penal Code of having obtained possession by committing criminal breach of trust.

27. Now, considering the language of Section 411, Penal Code, I find that dishonest retention is contradistinguished in that section from dishonest reception. In the former offence dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with the act of acquisition. The act of dishonest removal within the meaning of Section 379 of the Code constitutes dishonest reception within Section 411 and that being so the thief does not commit; the offence of retaining stolen property merely by continuing to keep possession of the property he stole. In *Najibullah Khan v. Emperor* 18 P. E., 1884 Or., Plowden J. observed:

To constitute dishonest retention, there must have been a change in the mental element of possession, session always subsisting *animo et facto*, from an honest to a dishonest condition of the mind in relation to the thing possessed.

28. With very great respect I follow the rule laid down in the authorities cited above and get aside the conviction and sentence of Pahar Singh u/s 411 and acquit him of that offence.

29. Pal Singh has not appealed against his conviction and sentence to this Court but the record is before me. Now, the conviction of Pal Singh proceeds upon recovery of P. 13 to P. 19 and his identification at the parade by Hardilal Singh P.W. 7, Ranjit Singh P.W. 10 and Mehnga Singh P.W. 1. As regards the recovery it is in evidence that the father of Pal Singh is dead and his elder brother is undergoing a sentence of 50 years' rigorous imprisonment. The younger brother of Pal Singh is a minor of about 13 years. Articles P. 13 to P. 19 have, therefore, been traced to the exclusive possession of Pal Singh. The evidence of identification in his case does not suffer from the defects which have been pointed out in the case of the other appellants. That being so, while maintaining the conviction of Pal Singh u/s 392, Penal Code, I take action u/s 439, read with Section 435, Criminal P.C., and set aside his conviction and sentence u/s 411, Penal Code.

30. The question for decision is whether the sentences of seven years" rigorous imprisonment imposed upon Pakhar Singh and Pal Singh convicts u/s 392 are appropriate in the circumstances of the case. The trial Court has found :

P.W. 1 and P.W. 7 stated that they were fired at by the accused when they attempted to run away, but their evidence on this point has not been corroborated by P.W. 8, P.W. 9 and P.W. 10. These P.Ws., stated that they did not hear any report of gun-fire, though they were at a distance of about 50 or 60 yards from P.W. 1 or P.W. 7. The matter under these circumstances becomes doubtful.

No bodily harm has been caused by the culprits to Mehnga Singh P.W. 1 or Hardilal Singh P.W. 7 and the property stolen was not worth much.

31. For all these reasons, I am of the view that the sentence of seven years" rigorous imprisonment imposed on Pakhar Singh and Pal Singh convicts be so manifestly excessive as to call for interference in these proceedings. In my view the sentence of 30 months" rigorous imprisonment each in the case of each of Pakhar Singh and Pal Singh would meet the ends of justice.

32. For the foregoing reasons set aside the convictions of Naranjan Singh and Nihal Singh Under Section 392 and 411, Penal Code and acquit them. They shall be set at liberty forthwith. In the case of Pakhar Singh and Pal Singh I set aside their convictions and sentences u/s 392, Penal Code and while maintaining their convictions u/s 392, Penal Code, reduce the sentences of imprisonment imposed upon them from seven years rigorous imprisonment each to that for 30 months" rigorous imprisonment each. The appeal is allowed to the extent indicated above.