
(1996) 01 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 469-SB of 1993

Raj Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Citation : (1996) 1 RCR(Criminal) 703

Hon'ble Judges : V.S. Aggarwal, J

Advocate : R.S. Cheema, D.P. Singh, Sudhir Makkar, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. The prosecution case in brief set up has been that on 14.10.1988 at about 7.15 p.m. Hari Singh had made a complaint in the police station Jhajjar to the effect that he is an ExSarpanch. He resides in village Raiya and is an agriculturist. He also runs a brick kiln. Tek Chand resides in the adjacent village. Hari Singh and Tek Chand do not have good relations. There were elections for the Sarpanch. Wife of Bhoop Singh Lambardar was a candidate. Hari Singh supported the wife of Bhoop Singh and she was elected. Tek Chand and his family on that account were bearing grievance with him.

2. At about 5.00 p.m. on 14.10.1988 Tek Chand with his nephew Joginder were going to Jhajjar from Raiya on the motorcycle. Joginder was driving the said vehicle. They were at a distance of 3 kilometres from Jhajjar when a Maruti car was seen coming from the opposite direction i.e. from the side of village Kosli. Accused Raj son of Tek Chand was driving the car. Raj swerved the car towards the right side of the motorcycle and tried to hit it. It was avoided by Joginder who turned the motorcycle a little. When Tek Chand and Joginder were about 1 1/2 kilometres from Jhajjar, then the same car came from the opposite side and tried to hit them. Joginder stopped the motorcycle and parked the same. Accused Raj and Baghe @ Dilbag accompanied by three others came out and started abusing Tek Chand and Joginder in terms of their mother and sister. They

grappled with them. Raj and others slapped them. Raj aimed the pistol at Tek Chand and threatened him with dire consequences and threatened as to how he dared to come to their village. He further stated that election of Sarpanch would be held and they will see how Tek Chand opposes the said election or enters the village.

3. On the basis of this statement F.I.R. No. 215 dated 14.10.1988 with respect to offences punishable under sections 148/149/323 and 506 Indian Penal Code was recorded. The same was investigated by Assistant Sub Inspector Inder Singh.

4. After the trial and on appraisal of evidence, learned Judicial Magistrate, Jhajjar held the accused persons guilty of the offences punishable under Sections 148/323/506 read with Section 149 of the Indian Penal Code. Subsequently, by the order of sentence they were directed to undergo rigorous imprisonment for 3 months for the offence punishable under Section 148 Indian Penal Code, 6 months for the offence punishable under Section 323 Indian Penal Code, read with Section 149 Indian Penal Code and a fine of Rs. 300/ each and 6 months rigorous imprisonment for the offence punishable under Section 506 read with Section 149 Indian Penal Code. In default of payment of fine, they were to undergo rigorous imprisonment for 15 more days. The sentences of imprisonment were to run concurrently.

5. The accused persons preferred an appeal and the learned Additional Sessions Judge, Rohtak maintained the conviction with respect to offences punishable under Section 323 read with Section 149 Indian Penal Code but only Raj Kumar was held guilty for the offence punishable under Section 506 Indian Penal Code. However, the learned Additional Sessions Judge ordered the accused persons to be released on probation under Section 4 of the Probation of Offenders Act, 1958 read with Section 360 Code of Criminal Procedure on their each entering into bonds in the sum of Rs. 3,000/ each except Raj Kumar who was to submit a bond of Rs. 5,000/ with one surety for a period of one year. They were directed to keep peace and be of good behaviour in the meantime and to appear and receive the sentence as and when called by the Court to do so during this period. The fine deposited was directed to be converted towards the costs of the proceedings.

6. Aggrieved by the said order passed by the learned Additional Sessions Judge, the accused persons have preferred Criminal Appeal No. 469SB of 1993. Hari Singh has also challenged the said order in Criminal Revision No. 10 of 1994 seeking that the accused persons should not have been granted the benefit of Section 360 Cr.P.C. or the Probation of Offenders Act, 1958 and that they should be convicted at least for one year rigorous imprisonment.

7. Learned counsel for the accused appellants urged that there was no medical certificate that has been appended or proof and, therefore, the Courts below were in error in holding that evidence under Section 323 read with Section 149 Indian Penal Code would be attracted. But the said argument is simply to be

stated as rejected. It is not a sinequanon that in cases of simple hurt, a medical certificate must be forthcoming. The facts of each case have to be determined on their own merits. Herein fist blows and slaps are alleged to have been given. The fact as such stood proved qua certain accused appellants. In face of that fact it is not necessary that medical evidence must also be forthcoming. The medical evidence is corroborative and not substantive evidence. In the present case, it is established that the complainant as such had been assaulted and simple hurts caused. There is no ground to take a different view as against that of trial court and the argument so much thought of must fail.

8. In that event it was argued that in the First Information Report names of three accusedappellants namely Satish Kumar, Suresh and Kanwar Singh have not been given and that, therefore, their identity which was not subject matter of any test identification parade is not established.

9. The importance of the First Information Report cannot be over emphasized. It is the first statement that is made generally by the complainant. In the First Information Report that has been recorded not only the names of these three accused have not been given but even their descriptions are not forthcoming. It has simply and vaguely been recorded that he can identify those persons. To state that in the supplementary statement, these three appellants have been named, would not improve the matter. The supplementary statement had been recorded after 14 days of the incident. There was no reason as to how after a lapse of about two weeks he could name the appellants referred to above. In such like cases when identity of these persons was not sure, it is difficult to believe the statement of the witnesses that the said three persons namely Satish Kumar, Suresh and Kanwar Singh have been shown to be the persons or correctly identified. It creates a lurking suspicion in the mind of the Court as to whether the identifying witnesses in Court did so correctly or not. No prior test identification parade even was held. Consequently, when the identity of these three appellants is not established beyond all reasonable doubt, their involvement in the said crime is not proved. They are indeed entitled to the benefit of doubt.

10. As regards the other two appellants namely Raj Kumar and Dilbag alias Baghe, the evidence is consistent and unimpeachable in terms that there two appellants were present and committed the said offence. They have been named in the first information report. There are no reasons forthcoming as to why a view contrary to that of the trial court and the first appellate court should be taken. In face of the consistent evidence, they have rightly been held guilty.

11. The complainant's learned counsel urged that keeping in view the nature of the offence, the first appellate court was not justified in granting the benefit of Section 360 Cr.P.C. and the Probation of Offenders Act, 1958. But the said argument is totally unfounded and without any merit. The law has to keep its promise and if possible reform a misguided youth/person. The discretion has rightly been exercised because there are no other such antecedents that have

been pointed which may entail the two appellants not to be released on good conduct in terms of Section 360 Cr.P.C. and the Probation of Offenders Act, 1958. The findings of the learned Additional Sessions Judge call for no interference. It is a just exercise of judicial discretion.

12. For these reasons, Criminal Revision No. 10 of 1994 fails and is dismissed. Criminal Appeal No. 469SB of 1993 is partly allowed. The appeal of Satish Kumar, Suresh and Kanwar Singh is accepted. The judgment of the learned Additional Sessions Judge qua them is set aside and they are acquitted giving them the benefit of doubt. The appeal of Raj Kumar and Dalbagh @ Baghe fails and is dismissed.