
(2010) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh

Randhir Singh and Others	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 307, 324, 325, 326

Citation : (2010) 03 P&H CK 0078

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—Accused-appellants Randhir Singh, Dharminder alias Guddu and Sidharath (herein referred as "the accused") were prosecuted for the offences u/s 307/324 read with Section 34 IPC for causing injuries to Gajraj Singh. Ultimately, vide judgment dated 7.10.1999 passed by the learned Additional Sessions Judge, Gurgaon, they were convicted u/s 326 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 2000/- each for the aforesaid offences.

2. Gajraj Singh complainant (herein referred as "the complainant") a resident of village Wazirpur had four brothers, who were younger to him. The fields of the accused Randhir Singh and the complainant adjoin each other. Randhir Singh accused had constructed a hotel and a residential house on its back in the field. Due to common boundary between the complainant and the accused, their relations had gone strained and the accused were keeping ill will against the complainant. On 6.5.1995, Janak Singh @ Leelu brother of the complainant was working in the field. At about 1/1.30 p.m. Leelu went to the hotel of the accused and laid on the cot lying there. At this, the accused felt annoyed. Dharminder @ Guddu came out of the hotel and abused Leelu exhorting that he would make him taste of the fruits for breaking the boundary. Hearing the ruckus, the complainant also went towards the accused. When he was at a little distance, he

saw that Dharminder came armed with kulhari and inflicted a blow on the head of Leelu which struck near his left ear. Sidharath and his father Randhir Singh also joined Dharminder. They were armed with lathies. Randhir Singh inflicted lathi blow to Leelu which hit on the left side of his head. Sidharath inflicted lathi blow on the right knee of Leelu. In the meanwhile, Dharminder inflicted two kulhari blows from its blunt side on the left leg below the knee joint. Sidharath inflicted lathi blow on the left eye of Leelu. Leelu cried "Mar ditta - mar ditta" which attracted Jai Pal and Partap who rushed to the spot and saved the complainant. They shifted Leelu to the General Hospital, Gurgaon from where he was referred to Safdarjang Hospital, New Delhi. On 6.5.1995, on receipt of medical ruqa regarding admission of Leelu, HC Ram Kumar reached the hospital and finding Leelu to be unfit to make statement, he recorded statement of Gajraj Singh complainant and sent the same to the police station, on the basis of which FIR was registered. Sumer Singh ASI, prepared the rough site plan of the place of occurrence; recorded statements of the witnesses; took blood stained earth into possession. Initially the case was registered u/s 324 read with Section 34 IPC, however, after obtaining opinion of the doctor offence u/s 307 IPC was also added. The accused were arrested, one Kuldeep Singh was also nominated as an accused of conspiracy and on completion of the investigation challan was presented in the court.

3. The accused were charged u/s 307/324 read with Section 34 IPC, to which they pleaded not guilty and claimed trial. Similarly, a charge u/s 120-B IPC was framed against Kuldeep Singh.

4. In order to substantiate the charges, the prosecution examined as many as ten witnesses. Mul Chand Punia Draftsman (PW1) prepared the scaled site plan of the place of occurrence. Raj Singh Inspector (PW2) had prepared the challan against the accused. ASI Kanwar Lal (PW3) is the author of the FIR. B.R. Batra (PW4) proved the medical record regarding treatment given to Leelu @ Janak Singh. Gajraj (PW5) is the complainant. Janak Singh (PW6) is the injured witness. Dr. Sanjay Narula (PW7) proved the medico-legal report of Leelu. On the basis of the record of Safdarjang Hospital, New Delhi he also opined that injury Nos. 1 and 2 on the person of Leelu were dangerous to life. Dr. R.S. Mohil (PW8) also deposed about the nature of treatment given to Leelu at Safdarjang Hospital. SI Sumer Singh (PW9) had proved the investigation conducted by him. HC Ram Kumar (PW10), had partly conducted the investigation. HC Mohan Lal and Krishan Kumar are the formal witnesses. After tendering report of the Forensic Science Laboratory, the prosecution closed its evidence.

5. When examined u/s 313 Cr.P.C. the accused Randhir Singh denied all the incriminating circumstances appearing against him and pleaded his false implication in the case. He further explained that he being the bank employee was present at the Branch of his Bank at Taj Nagar and he was on duty on the day of occurrence from 9.00 a.m to 5.00 p.m. Leelu had suffered injuries at some other place at the hands of some unknown persons and implicated them in

the false case after deliberations and consultations due to their enmity with them. Dharminder accused also took the plea of alibi. Accused Sidharath has also taken the identical pleas as taken by Dharminder.

6. In defence, they examined Bhiwani Ram Branch Manager of Gurgaon Central Cooperative Bank Limited Farrukh Nagar (DW1), Lal Singh (DW2) and Mir Singh (DW3).

7. On appreciation of evidence, the trial court while acquitting the accused u/s 307 IPC, convicted them u/s 326 read with Section 34 IPC.

8. The arguments as developed by the learned Counsel for the appellants are that there are serious contradictions in the statements of the witnesses with regard to the injuries. According to the complainant (PW5) Sidharath inflicted a blow with rod which had hit the right eye of his brother Leelu, whereas, Janak Singh @ Leelu (PW6) has stated that Sidharath inflicted injury on the left eye brow. According to the prosecution, Sidharath was armed with lathi, however, he is stated to have caused injury with rod. It has been further contended that Leelu alone was present in the hotel when he was assaulted by unidentified persons. Since he could not identify the assailants, therefore, due to enmity between the parties, he named the accused in order to settle the old scores between them. In this regard he has taken me through the statement of Dr. R.S. Mohil (PW8) wherein he has stated that Leelu was admitted with the alleged history of assault by unknown persons with axe at 11.30 a.m. on 6.5.1995, but the complainant party after due deliberations concocted the prosecution version. The next contention as set up by the learned Counsel for the appellants is that the injured Leelu was reported, by Dr. Sanjay Narula (PW7), to be smelling alcohol. Thus, the learned Counsel has urged that since the injured was under the influence of alcohol in the day time and this aspect does not fit in with the story set up by the prosecution. The complainant has nowhere stated that Leelu was under the influence of liquor, he has also taken me through the statement of the injured eye witness and got compared the description of injuries on the person of Leelu as per medical report. According to Leelu none of the injuries described by Dr. Sanjay satisfy the description of the injuries given by Dharminder. It is also urged that the occurrence took place during day time. The hotel is situated on the road and people are frequent visitors to the hotel and it is an open area, therefore, the testimony of the injured witness had required corroboration from any independent source. The other contention raised is that Kuldeep Singh who was also facing trial in this case was murdered during the pendency of the trial. While explaining the previous enmity it was urged that Leelu @ Janak Singh (PW6) admits that before the incident in question, another incident had taken place in the year 1992 in which Kuldeep Singh had sustained injuries and criminal case u/s 325 IPC was registered against Leelu and others, therefore, though Leelu suffered injuries at the hands of some unknown persons when he was under the influence of liquor, yet, due to previous enmity with the accused, he has nominated them as accused without knowing about the names of the real

culprits. While further pleading about the plea of alibi, it was urged that Randhir Singh being bank employee was on duty on that day, as proved by Bhawani Ram who deposed while appearing as DW-1 that Randhir Singh had deposited a sum of Rs. 11670/- with him on 6.5.1995 and Randhir Singh was present in its Branch up to 1.00 p.m. Similarly, Lal Singh (DW2) has deposed that Randhir Singh came to his village Joniawas and he had paid Rs. 5000/- to him (Randhir Singh) on that day. While proceeding further, learned Counsel has urged that since there was a previous enmity between the parties, as stated by Janak Singh alias Leelu (PW6), therefore, in the backdrop of the enmity Janak Singh could not be expected to have gone to the hotel of Dharminder. There is a delay in lodging the FIR, as such, the benefit should go to the accused.

9. Having heard the rival contentions and having perused the records of the case, as regards the delay in lodging the FIR, some delay appears to have been caused in registration of the case. The occurrence took place at about 1/1.30 p.m. on 6.5.1995. Immediately after the occurrence, the injured was brought by the complainant to the hospital from where he was shifted to Safdarjang Hospital, New Delhi. FIR was lodged in the case at about 8.00 p.m. No doubt in the ordinary cases such minor delay deserves to be ignored, but in the facts at the back drop of the present case that the parties were inimical and the witnesses without knowing about the names of the culprits got recorded the FIR involving whole of the family much involving Kuldeep Singh also, reveals the vindictiveness of the complainant party. As such, this delay of seven hours becomes fatal to the prosecution case, in the peculiar circumstances of the present case.

10. Besides three accused namely Randhir Singh, Dharminder and Sidharath, another accused Kuldeep Singh was also involved by the complainant being co-conspirator. The intention of the complainant while involving Kuldeep Singh seems to be not fair as nothing was recorded against Kuldeep Singh in the FIR. It has come in evidence that an incident took place in the year 1992 in which Kuldeep Singh had sustained injuries and the case was registered against the complainant and three others, therefore, obviously, accused also involved Kuldeep Singh in the present case. Though, no evidence has been led qua his participation in the commission of the crime, yet he was involved due to previous enmity between the parties. The complainant admits that the parties were at daggers drawn due to dispute over the common boundary. Similarly, in the murder of Kuldeep Singh, a case was registered against Janak Singh @ Leelu (injured in the present case), complainant and one Ajit Singh Madan. This enmity between the parties though could be treated as double edged weapon meaning thereby a motive for causing injuries to the complainant by the accused, the other for involving the accused in this case to have vengeance for naming the complainant and his brother as accused in the case of injuries caused to Kuldeep Singh. Since Leelu was named as accused in the murder case of Kuldeep Singh and Kuldeep Singh was close associate of the other accused and complainant party was inimical to the other accused due to the enmity between them on

account of the dispute over the boundary, as such, chances of involving the accused falsely in this case cannot be ruled out. Leelu could not be expected to go to the hotel of their enemies during the day and lay on the cot of their hotel. The medical evidence in this case is contradictory with the ocular version which also rules out the false implication of the accused. According to Dr. Sanjay Narula, Medical Officer, General Hospital, Gurgaon, before whom the injured was taken for the first time by the complainant recorded the history that Leelu suffered injuries at the hands of some unknown persons. The bed head ticket dated 6.5.1995, placed on record reveals as under:

The attendant of the patient alleged history of assault by unknown persons last night at 11.00 p.m. Patient is unconscious since then. There is no history of vomiting/convulsion/ENT bleeding.

11. This initial entry is in consonance with the history recorded in the records of Safdarjang Hospital, New Delhi (Ex.PW8/A) as proved by Mr. R.S. Mohil (PW8). This piece of evidence demolishes the entire prosecution version. It could not be said that these entries were ever concocted, manipulated or inserted later on at the instance of the complainant. According to the prosecution, the incident took place at about noon time, whereas, according to the statement of the complainant before the doctors, it took place at 11.00 p.m. in the night. Dr. Sanjay Narula (PW7) appears to have intentionally concealed the fact with regard to duration of the injuries while stating that the same were fresh and he did not give the exact duration of the injuries. However, he could not deny the fact during cross examination that the possibility of the injuries No. 4 and 5 having been caused by a fall on a hard or uneven surface, cannot be ruled out. The medical evidence is contradictory with the ocular version inasmuch as Dr. Sanjay Narula (PW7) states that the injured Leelu was smelling alcohol, whereas, Leelu while appearing in the witness box has denied if he had taken liquor during the day. According to Leelu the accused Dharminder gave a Farsa blow on his left ear. Farsa is known as sharp edged weapon. If we examine the M.L.R. Ex.PG, then it is found that there is only a lacerated wound on the left ear lobule and no injury allegedly caused by Farsa (i.e. sharp edged weapon) is found on the left ear. Again he has stated that Sidharath gave a rod blow on his left eye brow, but, there is no such injury caused with a blunt weapon over left eye brow. However, a sharp edged injury is shown over the left part of temporal region. He has stated that Randhir Singh caused a lathi blow on his head. He has not explained as to who caused the injury on the right leg. Similarly, the complainant has given contradictory statement to the medical evidence. He has not explained as to who caused the injuries No. 4 and 5 on the legs of Leelu. Jai Pal and Partap who were allegedly present at the place of occurrence could not be examined to support the prosecution version, as their examination was necessarily for existence of previous enmity between Gajraj and Leelu on one side and the accused on the other side. It is also surprising that one injury each was attributed to each accused. Gajraj Singh complainant has stated that Sidharath had caused the rod blow on the left leg of the injured, but injury on the left leg is described as

deformity of the left leg. All this goes to show that both the witnesses Gajraj Singh (PW5) and Janak Singh @ Leelu (PW6) are contradictory in their statements with regard to the injuries and the persons who had caused the injuries so as the medical evidence is contradictory with ocular version. The injured appear to have been under the influence of liquor when he suffered the injuries and did not make any statement regarding the assaults but the complainant doubting their enemies as perpetrators of the crime involved them in this case.

12. I, also stand impressed and persuaded by the plea of alibi as set up by the accused Randhir Singh which stands proved from the testimony of Bhiwani Ram, Branch Manager, Gurgaon Central Cooperative Bank Limited. Farrukh Nagar (DW1). He states that on the day of occurrence Randhir Singh accused who was posted in Mini Bank, The Taj Nagar Cooperative Credit and Service Society Limited, Taj Nagar as Branch Manager and he had gone to their branch at Farukh Nagar to deposit a sum of Rs. 11670/- and deposited the same vide voucher receipt No. 351649. He has proved the certificate Ex.P1 to the effect that Randhir Singh deposited the cash amount in their bank and remained present in the bank up to 1.00 p.m. Lal Singh (DW2) also supports the plea of alibi set up by the accused Randhir Singh. He has stated that on 6.5.1995, at about 2.30/3.00 p.m. Randhir Singh Branch Manager of Taj Nagar Cooperative Society had come to their village Joniawas for recovery of loan of Rs. 5000/- and he had recovered the same from him as loan vide receipt No. 265178 Ex.D3. Again Mir Singh (DW3) who was working as Sales Man in the Mini Bank, Taj Nagar has stated that on 6.5.1995 Randhir Singh had come to the bank at 9.15 a.m. and left for depositing the cash at 11.00 a.m. in Gurgaon Central Cooperative Bank Limited Farukh Nagar and thereafter he had come to their bank at 2.00 p.m. and thereafter left for the recovery of loan to village Joniawas.

13. Men may tell a lie but the documents do not. As such, this plea of alibi as supported by the documentary evidence, besides ocular version cannot be belied in any manner. However, the court has not taken into consideration the chances of false implication of the accused due to their previous enmity with the complainant party. It was also not noticed that all the three members of the family and fourth Kuldeep Singh were dragged into this case for five injuries about which complainant himself had reported that the injuries were suffered by the complainant at the hands of some unknown persons during night. The time of occurrence appears to have been changed by the complainant party. The court has also not noticed the plea of alibi supported by the documentary evidence and has brushed aside the arguments advanced by the learned Counsel for the appellants on the flimsy grounds. However, from the facts and circumstances of the case and on appreciation of the evidence this Court reaches the irresistible conclusion that the case as set up by the prosecution does not stand proved beyond reasonable doubt.

14. Resultantly, I accept the appeal, set aside the impugned judgment, acquit

the accused of the charges framed against them and direct that they be set at liberty forthwith. Their bail bonds and surety bonds stand discharged. Fine, if any deposited by them, be refunded.