
(2014) 05 DEL CK 0194
In the Delhi High Court
Case No : Criminal Appeal No. 616/2011

Randhir Singh

APPELLANT

Vs

Hari Chand

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 141, 147, 148, 149
Probation of Offenders Act, 1958 — Section 4

Citation : (2014) 2 Crimes 665

Hon'ble Judges : Sanjiv Khanna, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Manu Sharma and Mr. Abhir Datt, Advocate for the Appellant; Ashok Drall, Advocate for the Respondent

Judgement

Sanjiv Khanna, J.—Appellant-Randhir Singh has preferred this appeal against acquittal of Hari Chand, Sant Ram, Prem Kumar @ Praveen, Naveen, Satpal and Sukhchain, who have been acquitted by the impugned judgment dated 26th February, 2011. The said acquittal arises from Sessions Case No. 53/2009 arising out of FIR No. 73/2003, Police Station J.P. Kalan u/s 307/506/34 of the Indian Penal Code, 1860 (IPC, for short).

2. The aforesaid FIR was registered after Randhir Singh and late Kehar Singh had filed a private complaint before the Additional Chief Metropolitan Magistrate on 6th March, 2003, marked Exhibit PW-3/A, relating to the occurrence on 1st February, 2003. In the order dated 24th July, 2003 passed by the Metropolitan Magistrate it was recorded that FIR No. 73/2003 had been registered on the basis of the complaint and investigation was in progress. Before the said date, the complaint had remained pending consideration and in an earlier order dated 9th July, 2003 it was noticed that injuries had been inflicted on the present appellant and his group by members of the respondent group. Reference was made to the MLCs of Kehar Singh and Randhir Singh. It was also recorded that it was a cross case, as FIR No. 9/2003 was already registered against the

appellants herein and his group.

3. FIR No. 73/2003 (Exhibit PW-1/B) was registered on 19th July, 2003. Subsequently, upon completion of investigation, charge sheet was filed for commission of offences under Sections 147, 148, 149, 307, 323, 324, 326, 341, 506 and 120B IPC. The charge sheet was committed for trial before the Sessions court. One Anil who had died in the occurrence was arrayed as an accused but the proceedings against him never got initiated as he had died on 7th February, 2003, i.e., even before the private complaint dated 6th March, 2003 was filed.

4. It is an accepted and admitted position that the present proceedings arise out of a cross case and the accused/respondents herein are the aggrieved party in FIR No. 9/2003, Police Station J.P. Kalan and the appellant herein Randhir Singh was/is an accused/convict in the said FIR. Trial in the two charge sheets arising out of the cross cases were held by the same Sessions court but evidence was separately recorded. Arguments were addressed in both the cases and separate judgments have been pronounced. Legal position as elucidated by the Supreme Court in cross cases, mandates that evidence should be recorded separately in the cross cases, except to the extent that witnesses of the prosecution which were/are common can be examined in one case and their evidence be read as evidence in the other case. However, the cases should be disposed of simultaneously (see Harjinder Singh Vs. State of Punjab and Others,). Further, while pronouncing two separate judgments, care should be taken that judgment in one's case was/is not based upon evidence recorded in the other case (see Sudhir and Others etc. Vs. State of M.P. etc., and Kuldip Yadav and Others Vs. State of Bihar,). We have proceeded on the said basis.

5. The prosecution evidence in the present case relies upon ocular testimonies of Ajay Kumar (PW-2), Randhir Singh (PW-3), Kehar Singh (PW-5), Sube Singh (PW-6), Chattar Singh (PW-7) and Vinod Kumar (PW-8). One SI Sompal (Retd.) (PW-12) is also stated to be an eye witness. Presence of Ajay Kumar (PW-2), Randhir Singh (PW-3), Kehar Singh (PW-5) and Chattar Singh (PW-7) on the spot at the time of occurrence is de facto undisputed and cannot be challenged. They were accused in the cross case relating to the very same occurrence in which some of the respondent-accused had suffered injuries. On the question of motive and the cause of the fight between Sube Singh Group (the complainant in the FIR in question) and Ghisa Ram Group (the respondents in the present appeal), there is also no dispute or challenge. The cause was a small plot of land purchased by Ghisa Ram's Group from Azad Singh (PW-15) measuring 7.8 feet x 117 feet. Azad Singh belonged to the family of Sube Singh's Group and has deposed with regard to the said sale vide documents marked Exhibit PW-15/A. In cross-examination of the witnesses PWs-2, 3, 5 and 7, their presence at the spot as deposed in examination in chief has not been challenged. On the other hand, it has been suggested to each of the said witnesses that there was an earlier occurrence at 12.30 P.M. on 1st February, 2003, when brother/relative of one of the respondent accused, namely, Anil was coming from his house. It was alleged

that Chattar Singh had hit pharsa on Anil's head, while Randhir Singh and Kehar Singh had confronted and caught hold of Anil. It was also suggested that after the said injury to Anil, a telephone call was made by Vinod Kumar (PW-8) to the police and at about 12.45 P.M. PCR van reached the spot and enquired. This fact was also deposed by Vinod Kumar (PW-8), who had called the police from telephone landline No. 25022567 from the house of Kishan.

6. PWs-2, 3, 5 and 7 have deposed that Kehar Singh at about 1.15 P.M. had gone to the plot to unleash his buffaloes, when he was attacked by the respondent-accused and this had led to the fight.

7. We are inclined to and agree that there was one initial occurrence at about 12.30 P.M. after which Vinod Kumar (PW-8) had made a call and the PCR van reached the spot. We are not in the present case concerned with what had happened in the first occurrence as the same is not a subject matter of the charge sheet in the present case and the witnesses for the prosecution have not deposed on the said aspect. We are only concerned as to what had happened in the second occurrence at about 1.30 P.M.

8. SI Sompal (PW-12) was posted as ASI in charge PCR Zebra 89 and on receiving the aforesaid telephone call made by Vinod Kumar (PW-8) along with driver Head Constable Makhan Lal reached the spot at 1.10 P.M. where they met Sube Singh (PW-6). PW-12 has stated that he was informed about the dispute relating to plot but that time no quarrel or fighting was taking place. After some time, he heard a call given by the Sube Singh's Group that one of them had been held by the Ghisa Ram's Group. Thereupon, Kehar Singh, Ranbir and 8-10 persons of Sube Singh's Group, who were standing at the spot with Sube Singh went towards the place of occurrence/incident. PW-12 followed and saw that Sube Singh and Ghisa Ram Group were fighting with each other with lathis, pharsa etc. He intervened and with great difficulty quelled/stopped them. He had taken the injured Kehar Singh and Ranbir Singh in a PCR van to the hospital. Local police reached the spot after he had taken the injured to the hospital. PW-12 in his cross-examination accepted as correct that his statement was recorded by SI Bhup Singh in FIR No. 9/2003. The said SI Bhup Singh had appeared as PW-9 in the present case arising out of FIR No. 73/2003, though he had also appeared in the charge sheet arising out of FIR No. 9/2003. In his court deposition, Bhup Singh (PW-9) in the present charge sheet has testified about the quarrel between Ghisa Ram's Group and Sube Singh's Group but claimed that when he reached the spot no injured or eye witness could be found as they had been admitted to the hospital. He went to Agrasen Hospital, Punjabi Bagh where Anil (deceased) and Prem Kumar one of the respondents-accused in the present case were admitted. Thereupon, he had recorded statement of Prem Kumar and FIR No. 9/2003 was registered. Thereafter, he went to Rao Tula Ram Marg Hospital where Kehar Singh and Randhir Singh were admitted, but they refused to give statements. The FIR in question was investigated by Inspector B.P. Yadav (PW-16), who has stated that on 11.8.2003 he was posted at DIU,

South-West District and the investigation of this case was entrusted under the direction of the senior police officers of the unit. He had prepared the site plan (Exhibit PW-16/A) at the instance of Vinod Kumar (PW-8) and had conducted the investigation.

9. There cannot be any doubt or debate on the injuries suffered by Kehar Singh (PW-5) and Randhir Singh (PW-3). The said two persons were examined by Dr. Rajeev Kumar (PW-4), Rao Tula Ram Marg Hospital, Jaffar Pur at about 2.35 P.M. on 1st February, 2003. He has deposed that Randhir Singh had suffered the following injuries:-

1. Abrasion on ulnar side of left wrist.
2. Abrasion on dorsal side of right foot.
3. Abrasion on back of lower third (from knee) of left leg.
4. Swelling and tenderness of right knee.
5. Tenderness on back of neck.

X-ray of right leg revealed fracture of patella. The nature of injury was grievous and the kind of weapon for assault was blunt. The MLC was marked Exhibit PW-4/A.

10. The MLC of Kehar Singh was marked Exhibit PW-4/B. It was recorded at 2.35 P.M. and showed an alleged history of physical assault at 1.50 P.M. on the same day. Kehar Singh had the following injuries:-

1. Approximately 4 inch x 0.5 cm incised one on mid line of scalp just above forehead.
2. Abrasion on lateral side of upper part of right arm.
3. Tenderness of right shoulder.
4. Abrasion on lower part of posterior side of right leg.

11. PW-4 was cross-examined and had stated that they had not recorded measurement of trivial or small injuries and no measurements in respect of injury Nos. 1, 2, 3 and 5 was mentioned in MLC Exhibit PW-4/A. It was accepted that injuries No. 1, 2 and 3 could have been caused by rubbing of body part against a hard surface. Injury No. 1 could also be caused by a hit from any side.

12. The aforesaid admission of Kehar Singh and Randhir Singh is also proved by Head Constable Dharamvir (PW-14), who was posted as duty Head Constable at RTRM Hospital and had stated that two injured persons, namely, Kehar Singh and Randhir Singh were admitted to the hospital. He had admitted that SI Bhup Singh (PW-9) had come to the hospital subsequently and gave the rukka on which the FIR was registered.

13. This brings us to the so-called injuries suffered by Chattar Singh. Chattar

Singh (PW-7) was not taken to any Hospital by SI Sompal (PW-12). Chhattar Singh (PW-7) on 1st February, 2003 went to Army Hospital, R & R, Delhi Cant and his MLC (Exhibit PW-17/A) was recorded. As per the said MLC, Chhattar Singh had the following injuries:-

1. Contusion left mid forearm extensor aspect.
2. Contusion left leg just below tibial tubercle.
3. Abrasion left ulnar region.
4. Abrasion left upper forearm.

14. The aforesaid MLC was recorded at 1730 hours. As noted above, the occurrence in question had taken place at about 1.45 P.M. There is considerable delay in medical examination of Chhattar Singh. We have also noticed injuries recorded therein and do not agree with the contention of the appellant that the said injuries were grievous as opined by Colonel V.S. Gurunadh (PW-17), who had examined Chhattar Singh (PW-7). It is apparent that Chhattar Singh had suffered minor injuries. Colonel V.S. Gurunadh (PW-17) in his cross-examination accepted that he was not aware and did not know about the term "grievous injuries" as defined in Section 320 IPC. He also accepted that in the MLC measurements of injuries was not indicated but denied that the injuries were self inflicted. We note that Chhattar Singh (PW-7) was an accused in FIR No. 9/2003 and had absconded after being admitted in the hospital. The injuries suffered by Chhattar Singh (PW-7) were simple injuries and not grievous. However, injuries suffered by Randhir Singh (PW-3), i.e., fracture in patella was a grievous injury. We shall be dealing with the provision of the IPC under which the respondents should be convicted subsequently, but at this stage would like to examine the reasoning given by the trial court for acquitting the respondents.

15. The trial court has not acquitted the respondent-accused on the ground that they might not have been present or were entitled to benefit of doubt. The reason given by the trial court in the impugned judgment is that the respondent-accused had constructed a wall over a plot which they had purchased from Azad Singh, a family member of Sube Singh's Group. The trial court did not agree that the respondent-accused tried to grab any additional land, which was adjoining the land purchased from Azad Singh and this had resulted in the quarrel. It was further highlighted that the wall had already been constructed by Ghisa Ram's Group, but Kehar Singh (PW-5) had wrongly deposed as if the wall was under construction. Trial court has rejected the testimony of SI Sompal (PW-12) as unreliable and contradictory. Impugned judgment accepts the contention of the respondent-accused that injuries on Kehar Singh, Randhir Singh and Chhattar Singh did not get support or correspond to the twin sequence of events or violence as asserted. Injuries suffered by Randhir Singh was merely an abrasion and fracture of the knee having been caused by a blunt object, but not by a fork like object, i.e., zaili. It has been observed that it was not a case of free fight where the respondent accused were armed with deadly weapons and had

attacked the opposite side. There was no reason to select only Kehar Singh, Randhir Singh and Chattar Singh as victims and cause injuries to them and leave others, who remained unhurt.

16. In view of the evidence discussed above, it is not possible to agree with the findings recorded by the trial court. There is overwhelming evidence to show that the injuries were caused to Kehar Singh and Randhir Singh. Chattar Singh possibly had suffered only a few abrasions. Possibly he had gone to the Army Hospital in the evening and got himself admitted there in view of the injuries suffered by Anil who ultimately died. We, therefore, reject and do not take into consideration the injuries suffered by Chattar Singh, but as far as injuries suffered by Kehar Singh and Randhir Singh are concerned, there cannot be any doubt or debate on the same.

17. SI Sompal (PW-12) had seen the actual occurrence in which violence had taken place. He had taken Kehar Singh and Randhir Singh to the hospital. The said factual position has been affirmed by Head Constable Dharamvir (PW-14). The injuries suffered by Kehar Singh and Randhir Singh have been deposed to and highlighted by Dr. Rajeev Kumar (PW-4), Medical Officer, RRRM Hospital. We do not think these versions or statements can be doubted whatsoever.

18. The next and difficult question which arises for consideration is which of the appellants were responsible and who were present at the time of occurrence. We are inclined to grant benefit of doubt to Sant Ram and Prem Kumar. They had taken the deceased-Anil to the hospital and thus they were not present at the place of occurrence at 1.30 P.M. On the presence of Hari Chand and Naveen, there cannot be any doubt or debate, as they had received injuries during the said occurrence. On the question of involvement of Satpal and Sukhchain, we would accept the depositions of Ajay Kumar (PW-2), Randhir Singh (PW-3), Kehar Singh (PW-5) and Chhattar Singh (PW-7) keeping in view the fact that it is a case of group fight. The fact that several persons from Ghisa Ram Group were involved has been deposed to and affirmed by SI Sompal (PW-12) also. This rules out false implication of Satpal and Sukhchain of Ghisa Ram's Group on their presence, instead of some others, who belonged to Ghisa Ram's Group. Two would be an abnormal and unnaturally low number to accept, given the nature of fight and injuries inflicted on both sides. The presence of Satpal and Sukhchain is normal and natural being members of the Ghisa Ram's Group and living in the same village where the first occurrence had taken place at 12.30 P.M. resulting in head injury to Anil and the second occurrence was more in nature of retaliation.

19. The next question relates to the offences, which have been committed by Hari Chand, Naveen, Satpal and Sukhchain. We do not think Section 307 or 506 IPC can be invoked in the present case. Injuries suffered by Kehar Singh were simple and, therefore, would be covered by Section 323 read with Section 34 IPC and the injuries suffered by Randhir Singh, which include fracture would be covered by Section 325 IPC read with Section 34 IPC. Common intention of the

said respondents is clearly established and proved beyond doubt as the occurrence had taken place due to the inter se differences on plot of land etc. It was an intentional fight with both groups being armed and wanting to beat up and cause injuries to the members of the other group. We would not like to invoke Section 141 read with Sections 148 and 149 IPC. Number of convicted accused in the present case is 4 and it cannot be said with certainty that 5 or more persons were present, for more persons would have been implicated in case they were present. There is distinction between common intention and common object. The former denotes action in concert and necessarily postulates existence of a prearranged plan implying a prior meeting of minds, while the latter does not necessarily require proof of prior meeting of minds or pre concert. In spite of the aforesaid difference, the sections do overlap. Referring to the aforesaid provisions in *Mrinal Das and Others Vs. The State of Tripura*, it has been observed:-

74. There is no bar in convicting the accused under substantive section read with Section 34 if the evidence discloses commission of an offence in furtherance of the common intention of them all. It is also settled position that in order to convict a person vicariously liable u/s 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts in order to apply Section 34, apart from the fact that there should be two or more accused. Two facts must be established, namely, (a) common intention, (b) participation of accused in the commission of an offence. It requires a prearranged plan and presupposes prior concept. Therefore, there must be prior meeting of minds. It can also be developed on the spur of the moment but there must be prearrangement or premeditated concept.

75. x x x x x x x

76. We have already pointed out that in order to seek the aid of Section 34 IPC, it is not necessary that individual act of the accused persons has to be proved by the prosecution by direct evidence. Again, as mentioned above, common intention has to be inferred from proved facts and circumstances and once there exists common intention, mere presence of the accused persons among the assailants would be sufficient proof of their participation in the offence. We agree with the conclusion of the High Court that the trial court failed to explain or adduce sufficient reasons as to why the other part of the evidence that the accused persons named by the approver were found present in the place of occurrence could not be believed for the purpose of invoking Section 34 when two or more eyewitnesses corroborated the testimony of the approver (PW 6) specifically naming six accused persons including the two convicted appellants.

77. The existence of common intention amongst the participants in the crime is the essential element for application of Section 34 and it is not necessary that the acts of several persons charged with the commission of an offence jointly must be the same or identically similar. We have already pointed out from the evidence of eyewitnesses as well as the approver (PW 6) that one Uttam Shil

(A-8) was deployed at the place of meeting at Santinagar for the purpose of giving intimation to other accused persons about the movement of the deceased. It is also seen from the evidence that one more accused was stationed on the shore of the river near Bagan Bazar. It is also seen from the evidence that after the meeting, when the boat carrying Tapan Chakraborty and other eyewitnesses was about to reach Bagan Bazar shore, accused Anil Das (A-1) who was deployed there suddenly left towards Bagan Bazar and within few minutes 10 accused persons rushed to the boat from Bagan Bazar. Thereafter, the occurrence took place. From the materials placed by the prosecution, particularly, from the eyewitnesses, the common intention can be inferred among the accused persons including the six persons identified by the eyewitnesses.

20. In *Mano Dutt and Another Vs. State of U.P.*, the Supreme Court dealt with case of a group fight and the question involved application of Section 34 viz. Sections 148/149 IPC after examination of the case law, it was observed that plea of self defence cannot be raised. Applying Section 34 IPC to the facts of the said case, it was held:-

44. Even where there are less than five persons who are accused, but the facts and the evidence of the case is convincing as in the present case, where the accused had returned to the place of occurrence with complete preparedness and after giving lalkar had attacked the deceased there, they have to be held liable for commission of the crime. (Refer *Kartar Singh Vs. State of Punjab*,).

45. The learned counsel for the respondent State also relied upon the judgment in *Yunis @ Kariya etc. Vs. State of Madhya Pradesh*, to contend that an overt act on the part of one of the accused is immaterial when his presence, as part of the unlawful assembly, is established. This case was for an offence under Sections 302/149 IPC and, therefore, would not squarely apply to the present case as it has been held by the Court that the accused was not constituting an unlawful assembly of five or more persons. However, it cannot be ignored that the extent of participation, even in a case of common intention covered u/s 34 IPC would not depend on the extent of overt act. If all the accused have committed the offence with common intention and inflicted injuries upon the deceased in a preplanned manner, the provisions of Section 34 would be applicable to all.

21. The aforesaid decisions support the conclusion reached by us. Thus, the respondents Hari Chand, Naveen, Satpal and Sukhchain are convicted u/s 323 read with Section 34 IPC for injuries to Kehar Singh and u/s 325 read with Section 34 IPC for injuries suffered by Randhir Singh. Appeal against acquittal of Prem Kumar and Sant Ram is dismissed.

22. On the question of sentence, normally the respondents Hari Chand, Naveen, Satpal and Sukhchain should be directed to undergo rigorous imprisonment of some duration. However, there are factors which prompt and impel us to consider whether benefit of Probation of Offenders Act, 1958 should be granted. The order on the point of sentence will be pronounced subsequently, after

hearing both sides. In the meanwhile, report in terms of Section 4 of the Probation of Offenders Act, 1958 from Probation Officer in respect of Hari chand, Naveen, Satpal and Sukhchain be called.

List on 4th July, 2014 for arguments on the point of sentence, consideration of the report of the Probation Officer etc.