

(2003) 01 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 359 SB of 1989

Rattan Singh, Ajit Singh, Karnail Singh, Jarnail Singh and Harbhej Singh APPELLANT

Vs

The State of Punjab RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319
Penal Code, 1860 (IPC) — Section 148, 149, 307, 308, 324

Citation : (2003) 01 P&H CK 0134

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : H.S. Sandhu and Rajesh Verma, for the Appellant; Sukant Gupta, DAG., for the Respondent

Judgement

Satish Kumar Mittal, J.—This judgment shall disposed of Crl. Appeal No. 359-SB of 1989, filed by accused appellants against. their conviction and sentence and Crl. Revision No. 1057 of 1989 filed by complainant for enhancement of sentence.

2. Accused-appellants, namely Rattan Singh son of Bawa Singh, Ajit Singh son of Diwan Singh, Karnail Singh son or Dalip Singh, Jarnail Singh son of Banta Singh (now dead) and Harbhej Singh son of Banta Singh filed the appeal against the judgment and order dated 7.8.1989, passed by learned Additional Sessions Judge, Gurdaspur, vide which the appellants-accused have been convicted under Sections 148 and 307 read with Section 149 of the Indian Penal Code (hereinafter referred to as "the Code") for causing grievous hurts to the complainant Kashmir Singh, which were held to be dangerous to life, and were sentenced to undergo rigorous imprisonment for six months u/s 148 of the Code and to undergo rigorous imprisonment for three years with a fine of Rs. 1,000/- each u/s 307 read with Section 149 of the Code. In default of payment of fine, the defaulter appellant-accused was ordered to further undergo R.I for six months.

3. The prosecution against the aforesaid accused was launched on the statement made by Kashmir Singh, which was recorded by ASI Naginder Singh in Civil Hospital, Dera Baba Nanak at about 12.30 A.M. on 8.2.1984. The said Kashmir Singh made the following statement:

"On 7.2.1984 at 8/8.30 P.M. when I was going to my village, Ajit Singh Sarpanch, armed with a dater, Ratta son of Bawa Singh nephew of Ajit Singh armed with Kirpan, Karnail Singh son of Dalip Singh, Jat, armed with dater, Jaila son of Banta Singh armed with dang, Bheja son of Banta Singh, jat, armed with dang, residents of village Shikar, in furtherance of their common intention, caused me injuries with their respective weapons in adda shikar Machhian. They have caused me so many injuries on my head, arms, and legs with their respective weapons. A land dispute is pending with them. This occurrence has been witnessed by Sawaran Singh's son namely S. Jagtar Singh @ Kari, jat and Milkha Singh, jat residents of village Shikar."

4. On the basis of the aforesaid statement, the formal FIR was recorded by the police at 12.40 A.M. under Sections 308/148/149 of the Code. After investigation, the police filed challan only against Rattan Singh and Karnail Singh under Sections 307/326/325/324 read with Section 34 of the Code. The allegations against the other accused were found false during the course of investigation. The case was committed to the Sessions Court for their trial. The learned Additional Sessions Judge, after recording some prosecution evidence, summoned the remaining three accused in exercise of powers u/s 319 Cr.P.C.

5. In support of its case, the prosecution examined seven witnesses including Dr. Vijay Kumar Mahajan as PW.1, Jagtar Singh and Amar Singh, the alleged eye witnesses, as PW.4 and PW.5. and Kashmir Singh, the complainant/injured, as PW.7. When the appellants-accused were examined u/s 313 Cr.P.C., they denied the prosecution allegations. Accused Rattan Singh took the stand that on 7.2.1984, in the evening, he was present at bus stand Shikar Machian and Kashmir Singh PW reached there in drunkard condition and attacked him with a gandasi, giving injuries to him. he raised alarm and the persons present at the bus stand came to his rescue and beaten Kashmir Singh, where he suffered some injuries at the hands of those persons while rescuing him. The other accused denied their presence at the time of occurrence and alleged that they were falsely implicated on account of previous enmity between the parties.

6. After considering the prosecution evidence, learned trial court convicted and sentenced all he appellants-accused under Sections 148 and 307 read with Section 149 of the Code, as mentioned in the first paragraph of this judgment. Against this judgment and order, the present appeal and the revision petition have been filed.

7. During, the pendency of the appeal and the revision petition, appellant-accused No. 4, Jarnail Singh, has expired. This fact has not been disputed by learned Deputy Advocate General, appearing for the State of Punjab. In view of

this, appeal and the revision petition qua Jarnail Singh stand abated.

8. I have heard learned counsel for the appellants-accused No. 1 to 3 and 5 and learned Deputy Advocate General, Punjab and have perused the record.

9. Learned counsel for the appellants-accused has submitted that the complainant Kashmir Singh is a man of bad character and admittedly he is involved in number of cases. He was arrested from the premises of Golden Temple, Amritsar, in the Operation Blue Star and was detained in Jodhpur Jail. He further pointed out that there was enmity between the complainant and the accused party. Kashmir Singh complainant, while appearing as PW.7, in the cross-examination had admitted that number of cases were registered against him and further stated that those cases were planted upon him at the instance of Ajit Singh appellant-accused due to political motivation. Due to that grudge and enmity, Kashmir Singh made false statement regarding the occurrence and falsely implicated the appellants-accused in the present case. Learned counsel further pointed out that the statement made by Kashmir Singh before the Court is totally different from the statement made by him before the police, on the basis of which FIR in this case was registered. In his statement before the police, he did not specifically attribute any injury to any one, but in his statement before the Court, he has attributed specific injury to the specific accused. Learned counsel for the appellants-accused further pointed out that in the statement before the police, Kashmir Singh stated that the occurrence was witnessed by Jagtar Singh and Milkha Singh, but the prosecution has also introduced Amar Singh, who is father of Kashmir Singh, as an eye witness. Jagtar Singh has been examined, but he is first cousin of Kashmir Singh and is an interested witness. The prosecution did not examine the only independent witness Milkha Singh, who according to Kashmir Singh had got down from the bus and had witnessed the occurrence. Learned counsel for the appellants-accused submitted that on the basis of statements of Jagtar Singh, Kashmir Singh and Amar Singh, who are closely related, the appellants-accused cannot be convicted. Learned counsel further argued that though the injured Kashmir Singh was alleged to have suffered 41 injuries, but out of them only four injuries were found to be grievous and none of them is on the vital part of the body of Kashmir Singh. Therefore, in no circumstances, it can be held that these grievous injuries were dangerous to life and fall within the ambit of Section 307 of the Code. At the most, the alleged injuries disclose and offence under Sections 325 and 324 of the Code. Learned counsel pointed out that there is no evidence that the grievous injuries, which were four in number, are dangerous to life. The injured was discharged from the Hospital within one month of the date of occurrence. Therefore, he submitted that conviction of the appellants-accused u/s 307 of the Code by the learned trial court was not legal and justifiable. Learned counsel for the appellants-accused further submitted that appellants-accused Ajit Singh, Harbhej Singh and Jarnail Singh (now dead) were falsely implicated by the complainant Kashmir Singh in his statement due to the enmity between the parties. Even the police, during the course of investigation, found these accused as innocent and did not challan

them. They were summoned by the learned court only on the basis of statements of Jagtar Singh and Amar Singh, who are first cousin and father, respectively, of Kashmir Singh complainant. Learned counsel pointed out that admittedly Jagtar Singh appeared as a witness against the accused in the civil suit between the parties. Learned counsel for the appellants-accused further submitted that nine injuries were found on the body of appellant-accused Rattan Singh by Dr. Vijay Kumar Mahajan (PW.1), which have not been explained at all by the prosecution. These injuries clearly establish the defence version taken by Rattan Singh and falsify the prosecution version as alleged by the complainant Kashmir Singh.

10. Learned Deputy Advocate General, appearing for the State of Punjab, submitted that the prosecution has fully proved the allegations against all the appellants- accused beyond reasonable doubt and they were rightly convicted and sentenced by the learned trial court and the appeal filed by the appellant-accused is liable to be dismissed.

11. None has appeared on behalf of the complainant to support the petition filed by him for enhancement of the sentence.

12. I have considered the arguments raised by learned counsel for the parties. Admittedly, there is rivalry between the parties. The civil dispute was also pending between them at the time of the occurrence and Kashmir Singh complainant was involved in several criminal cases. However, according to him, all those cases were registered against him at the instance of accused Ajit Singh. Further, it is not disputed that the complainant Kashmir Singh was arrested from the premises of Golden Temple, Amritsar, at the time of Operation Blue Star and he was detained in Jodhpur Jail due to which the trial in this case could not progress and remained pending for more than five years. Admittedly, the alleged eye witnesses Jagtar Singh and Amar Singh are co-related to Kashmir Singh being his first cousin and father. It has also come in the statement of PW.4 Jagtar Singh that the appeared as a witness in the civil suit pending between the parties. It is also not disputed that initially the appellants-accused Ajit Singh, Harbhej Singh and Jarnail Singh (now dead) were found innocent during the course of police investigation and they were not challenged. Keeping in view these factors, possibility of false implication of appellants-accused Ajit Singh, Harbhej and Jarnail Singh (now dead) cannot be ruled out, particularly in view of statement of Kashmir Singh complainant himself, when he stated that he was falsely implicated at the instance of Ajit Singh in several cases. Now, in his turn, the possibility of false implication of these three appellants-accused by Kashmir Singh cannot be ruled out. In my opinion, these three appellants-accused deserve benefit of doubt, when they were found innocent by the police during the course of investigation. In reaching to the aforesaid conclusion, I have been convicted because of non-examination of the only independent witness Milkha Singh, who according to Kashmir Singh himself was boarding the bus along with him and got down from the bus at the bus stand Shikar Machhian. This independent witness was mentioned in the FIR but the prosecution did not

examine him. This also creates doubt in my mind that Kashmir Singh was not giving the correct version of the occurrence. Further, there is considerable improvements in the statement by Kashmir Singh complainant made before the Court. In his statement before the police, he did not attribute any specific injury to any person, but while appearing in the Court as PW.7, he attributed specific injury to each accused. This improvement further creates doubt in my mind about the genuineness of the version given by Kashmir Singh. Keeping in view all the factors, I am of the opinion that appellants-accused Ajit Singh, Harbhej Singh and Jarnail Singh (now dead) deserve the benefit of doubt. They are accordingly acquitted of the charges levelled against them.

13. Regarding the remaining two appellants-accused namely Rattan Singh and Karnail Singh, I find force in the contention of learned counsel for the appellants-accused that the four grievous injuries, as found by Dr. Vijay Kumar Mahajan (PW.1) on the body of Kashmir Singh, was not on the vital part of his body. Therefore, it cannot be said that these injuries inflicted on the person of injured Kashmir Singh by these two accused were dangerous to life. These four grievous injuries are on the arms and legs and not on the vital parts of the body. Learned trial court has held all the injuries inflicted on the person of Kashmir Singh as dangerous to human life as collectively as the condition of the injured was serious at the time when he was brought to the Hospital. Merely on the basis of this assumption, the injuries were held to be dangerous to life and the appellants-accused were convicted u/s 307 of the Code. I am of the opinion that the injuries inflicted on the person of the complainant/injured Kashmir Singh cannot be said to be dangerous to life and none of the alleged four grievous injuries was on the vital part of the body. Keeping in view this fact and the fact that the injured was discharged from the Hospital within one month from the date of occurrence. I set aside the conviction of appellants-accused Rattan Singh and Karnail Singh u/s 307 read with Section 149 of the Code and convict both of them u/s 325 read with Section 34 of the Code. Their conviction u/s 148 of the Code also stands set aside as the remaining three appellants-accused have been acquitted, as has been held above.

14. On the quantum of sentence, I have considered the revision petition filed by the complainant for enhancement of the sentence, particularly for enhancement of the compensation. In this case, the learned trial court has imposed a fine of Rs. 1,000/- only on each of the accused. Though no one is present in support of this petition, but after considering the facts of the case, particularly the injuries suffered by the complainant Kashmir Singh and the period of his admission in the Hospital, I find it appropriate to enhance the amount of fine to Rs. 25,000/- to be paid equally by Rattan Singh and Karnail Singh, appellants-accused No. 1 and 3. In case of default of payment of fine, the defaulter accused shall undergo rigorous imprisonment for six months. If the fine is not recovered, the same shall be reimbursed to the complainant-injured Kashmir Singh. However, so far as the sentence of imprisonment is concerned, since the aforesaid two accused are facing protected trial since 1984, therefore, I sentence them for the period which

they have already undergone.

15. In view of the aforesaid discussion, the Criminal Appeal and the Revision Petition are disposed of accordingly.