
(2009) 04 SHI CK 0063
In the High Court Of Himachal Pradesh

Sant Ram and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 320, 323, 325, 34

Citation : (2009) 04 SHI CK 0063

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—In the present appeal, the appellants have challenged their conviction and sentence passed by the learned trial court in Sessions Trial No. 3-S/7 of 1998, decided on 26.3.202.

2. The appellants herein along with one Ganga Ram were put on trial, for the offences punishable under Sections 307, 506 read with Section 34 of the Indian Penal Code. At the end of the trial, Ganga Ram was acquitted, whereas, the appellants were convicted and sentenced by the learned Additional Sessions Judge, vide his judgment

3. Whether reporters of the Local papers are allowed to see the judgment? . Yes. passed in detail, on 26.03.2002, whereby each of them were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2,000/-under Section 307 read with Section 34 of the Indian Penal Code, which has been assailed in this appeal.

4. Precisely, the facts giving rise to the present appeal are that PW2 Suresh Kumar was a driver of HRTC Bus bearing registration No. HIS-1437 and PW3 Babu Ram a local person was its conductor. It is alleged that on 16.12.1996, at about 7.30 p.m., the said bus reached village Nahol, at its last terminal point. The driver parked his bus at the bus- stop. The conductor went to his house nearby.

5. In the meantime, the appellants along with Ganga Ram approached driver of

the Bus and requested him to carry their timber to a sawmill at village Cheog. He told them that he would carry the timber in his bus, provided that they have a valid permit for its transportation. They did not produce permit and the driver was not ready to move, thus, some heated exchanges took place and the driver totally refused to take the timber to the required destination. The said Accused persons started quarreling but they were separated. When the driver was in the process of putting the stone beneath the tyre of the bus, Bhagat Ram appellant appeared on the scene with a danda in his hand and inflicted a blow on the head of the driver. On sustaining the injuries on the head, the driver fell down and danda Ex.P2 was broken into pieces. PW3 Babu Ram, conductor got attracted by the cries of the driver, he rushed to the spot and noticed that the appellants were scuffling with driver Suresh Kumar, who later became unconscious. The mother of Babu Ram Smt. Subdha also reached the spot. The accused persons fled away from the scene of occurrence.

6. Babu Ram informed the police telephonically. Police reached the spot in a vehicle and took Suresh Kumar to civil hospital Theog. On the statement of Ex.PW3/A of Babu Ram, a formal FIR Ex.PW8/A was registered in Police Station Theog.

7. PW10 Dr. S.C.Rokha examined Suresh Kumar. At that time, the injured was not answering any question put to him. His speech was not clear. There was a mark of swelling on the left eye and both eye-lids had turned black. The injured was complaining pain in his arm. The doctor did not find any visible injury but the injured was kept under observation. Seeing that there was no improvement in the condition of the injured, he was referred to IGMC Shimla, where he remained under treatment and was attended upon and treated by PW1 Dr. Kashmir Singh. The injured was referred to Neuro- Surgery department and remained admitted there. The case summary of the injured is Ex.PW1/A and police obtained his MLC Ex.PW10/A. Further on exploring the injuries on the head, the doctor found that there was a swelling on the left temporo-parietofrontal area with black left eye monoparesis right upper limb had occurred. On X-ray of the skull, a linear fracture of left side fronto-temporal region was detected which was also confirmed by CT Scan with contusion of parietal-lobe with mild ipsi-lateral ventricular compression without mid-line shift. The injured was treated conservatively and improved thus discharged on 29.12.1996, but still he had monoparesis of right-upper limb with motor aphasia. His discharge certificate is Ex.PW1/B.

8. After collecting the medical history and treatment record of the injured and also recording the statements of the witnesses, the challan was presented in the court for the trial of the appellants.

9. The appellants took up the defence that they were falsely implicated in the case as PW3 Babu Ram nourished enmity against them because earlier to the above incident that they had cooperated the investigation of a case with respect to theft of resin in which brother of Babu Ram named Shyam Lal was one of the

accused.

10. This defence did not find favour with the learned trial court as such, at the end of the trial, as stated above, Ganga Ram was acquitted and the appellants were convicted and sentenced, as aforesaid.

11. Shri Vinay Thakur, learned Counsel for the appellants has vehemently argued that the learned trial court did not apply the relevant law to the facts and circumstances of the case and the facts, no case u/s 307 read with Section 34 of the Indian Penal Code is made out against any of the appellants. He further ventilated that it was only Bhagat Ram, who is alleged to have inflicted the injury on the head of the driver and as per the case of the prosecution even he was not properly identified, thus the benefit of reasonable doubt should have been given to him.

12. Contra, Shri J.S. Guleria, learned Assistant Advocate General has forcefully argued that the role played by each of the appellant is clearly spelt out by the prosecution witnesses who had committed the offence in furtherance of their common intention and caused grievous injury on the head of the Suresh Kumar driver. It is also argued that in case the present case does not fall u/s 307 of the Indian Penal Code. It is a fit case where the conviction and sentence can be altered to Section 325 of the Indian Penal Code. He led me through the evidence on record and submitted that each of the appellants were clearly identified by the prosecution witnesses who were local residents and defence raised could not be probablised.

13. I have given my thoughtful consideration to the rival contentions of the parties and reappraised the evidence on record.

14. PW2 Suresh Kumar is an injured witness. He has corroborated the prosecution story and testified on oath that appellants Kewal Ram and Sant Ram had approached him to carry their timber to village Cheog and on having asked about the permit, they could not produce, as such he referred to cooperate. According to him, at that time conductor Babu Ram had gone to his house nearby along with some luggage. On his refusal to take timber, the said accused persons started quarreling with him. When he was placing stone beneath the tyre of his bus, Bhagat Ram appellant came with a "danda" in his hand and hit him on his head. He sustained the injury on the backside of the head and the second blow hit him on the left side of his head. Thereafter he fell unconscious. He categorically stated that the appellants Sant Ram and Kewal Ram had initially assaulted him with the kick and fist blows when he refused to transport the timber. He also deposed that Babu Ram (PW3) and his mother along with two other villagers had come to the spot. After sometime, police came there and he was removed to the hospital where he remained and admitted for 15-16 days. He identified "danda" ExP2 during the trial of the case with which Bhagat Ram is stated to have assaulted him. This story has been fully corroborated by PW4 Het Ram, a co-villager of the appellants. He deposed that the appellant Kewal Ram

and Sant Ram had picked up a quarrel with the bus driver. When the quarrel was over because of the intervention of some persons, in the meanwhile the appellant Bhagat Ram assaulted the driver with a danda. The driver Suresh Kumar fell down and became unconscious, the appellants fled from the spot. The police arrived at the spot during the night and took the injured to the hospital. The broken pieces of the danda Ex.P2 were taken into possession vide memo Ex.PW3/B and he identified Kewal Ram and Bhagat Ram during the trial of the accused. According to him they had assaulted the driver in his presence and stated that the other accused Ganga Ram was not seen by him when he reached there.

15. PW3 Babu Ram, the bus conductor stated that when he came back to the place of occurrence, he found Kewal Ram and Sant Ram along with accused Ganga Ram scuffling with the driver of the bus and Bhagat Ram appellant came there and assaulted Suresh Kumar driver with a "danda" on his head, with the result, he fell down and became unconscious. The "danda" broke into two pieces. He further stated that his mother Subdha was also present there and he came after her. He also admitted the presence of PW4 Het Ram on the spot. He offered a material corroboration to the version of PW4.

16. All these witnesses were meticulously cross-examined and the learned Counsel for the appellants banked upon few contradictions with respect to the cross-examination of PW4 Het Ram that in his cross-examination, he deposed that he did not see Bhagat Ram while assaulting the injured, whereas if his statement is seen as a whole he has clearly stated that when the driver was attacked by Bhagat Ram, he was on the spot and he had also seen the other appellants scuffling with the driver and so much so the conductor of the bus also made the similar statement. In my opinion, these are minor contradictions, while viewing the entire spectrum of the case, the testimony of the injured and witnesses of the occurrence are worth putting reliance. The allegations made by the accused persons that testimony of PW3 Babu Ram cannot be relied up on account of previous enmity, as his brother was an accused in the resin theft case wherein they had assisted the police during the investigation is a cock and bull story. Thus, in my considered opinion, I am of the firm view that it was Bhagat Ram and Bhagat Ram only, who had inflicted the blow on the head of PW2 Suresh Kumar with the help of Danda Ex.P2. He stands identified during the trial of the case.

17. Further keeping in view the prosecution story proved during the trial of this case, I find that there are two separate incidents, first, is with respect to the quarrel picked up by the appellant Kewal Ram and Sant Ram with the driver of the bus for not transporting their timber to Village Cheog, on his refusal, they started fisticuffing with him, it is in evidence that due to intervention of the persons present there, they were separated and when the driver of the bus was putting stone beneath the tyre, thereafter Bhagat Ram came there and gave danda blow on his head which was an unexpected intervention and injury on the

head of Suresh Kumar is direct cause of crime by Bhagat Ram, which have an effect on the degree or gravity of culpability of the other appellants in the above circumstances, thus the offence committed by Bhagat Ram individually cannot be attributed to the other appellants by pressing into service Section 34 of the Penal Code as they did not share the common intention. Therefore, the appellants Kewal Ram and Sant Ram are held guilty of the offence u/s 323 read with Section 34 of the Indian Penal Code, whereas the offence committed by Bhagat Ram is u/s 325 of the Indian Penal Code because in cross-examination, PW1 Kashmir Singh had clearly admitted that the injuries for which he had given the treatment to the injured, Suresh Kumar could not have caused his death in ordinary course. No other witness has stated that the appellant Bhagat Ram had an intention to cause murder of Suresh Kumar nor there was any previous enmity which could have prompted him to do away with his life.

18. To convict the accused u/s 307 of the Indian Penal Code, the court is obliged to see, whether the act irrespective of its result was done with the intention or knowledge, under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempt to murder. u/s 307 of the Indian Penal Code, the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

19. In the instant case, as stated above, the prosecution could not establish any previous enmity of appellant with the injured nor there was such intention preceding the assault attributed to the appellant, because when the altercation took place with Kewal Ram and Sant Ram, no witness has stated about the presence of Bhagat Ram. He subsequently came when the matter was conciled between Kewal Ram and Sant Ram on one part and gave him "danda" blow. In view of the statement of PW1 Dr. Kashmir Singh, the ingredients of the offence are not fully satisfied nor the prosecution could prove any intervening circumstance. Even the doctor has nowhere stated in the court that the injuries in question either endangered life or were imminently dangerous to life, but for timely medical treatment.

20. Thus, the injury in question sustained to the injured Suresh Kumar falls under the definition of grievous hurt as defined u/s 320 seventhly, of the Indian Penal Code, as the injuries caused by the appellants to PW2 Suresh Kumar is grievous in nature. Therefore, the conviction passed upon the appellant Bhagat Ram u/s 307 of the Indian Penal Code is converted into Section 325 of the Indian Penal Code, whereas, the appellants Kewal Ram and Sant Ram are convicted for the offence punishable u/s 323 read with Section 34 of the Indian Penal Code. Ordered accordingly.

21. Let the appellants be produced to hear them on the point of sentence on 16.4.2009.