
(2010) 12 P&H CK 0195

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1305-SB of 2001

Shamshad @ Sadardin and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 325, 34

Citation : (2011) 1 RCR(Criminal) 826

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Judgement

Jitendra Chauhan, J.—The present appeal is directed against the judgment and order dated 7.11.2001 passed by the learned Additional Sessions Judge, Sangrur, whereby the accused/Appellants have been convicted for the offence and sentenced as under:

Sentence Accused/appellant Sentence

307 IPC Dilshad R.I. for seven years and to pay a fine of Rs. 1000/- or in default of payment of fine, to further RI for a period of three months.

307/34 IPC Shamshad, Butaand Sarabdin R.I. for seven years each and to pay a fine of Rs. 1000/- each or in default of payment of fine, to further RI for a period of three months each.

304 IPC Dilshad R.I. for two years and to pay a fine of Rs. 500/- and in default of payment of fine, to further R.I. for a period of three months.

304/34 IPC Shamshad, Buta and Sarabdin R.I. for two years each and to pay a fine of Rs. 500/-each and in default of payment of fine, to further R.I. for a period of three months.

324 IPC Sarabdin R.I. for two years and to pay a fine of Rs. 500/- and in default of payment of fine, to further RI for three months.

324/34 IPC Dilshad, Shamshad and Buta R.I. for two years each and d to pay a fine of Rs. 500/-each and in default of payment of fine, to further RI for three months each.

323 IPC Buta R.I. for six months.

323/34 IPC Sarabdin, Dilshad and Shamshad R.I. for six months each.

323 IPC Shamshad, Dilshad and Buta R.I. for six months each

323/34 IPC Sarabdin R.I. for six months.

2. Brief facts of the prosecution case are that on receipt of information on 15.1.1990 regarding admission of injured Abdul Shakoor, Mohd. Slim and Rafiqan in Civil Hospital, Malerkotla, HC Joga Singh and other police officials went there. HC Joga Singh moved an application to get opinion of the concerned doctor regarding fitness of injured to make a statement. However, the concerned doctor declared all the injured unfit to make statements on that day. On the next day i.e. 16.1.1990, the concerned doctor declared all the injured fit to make a statement and HC Joga Singh recorded the statement, Exhibit PA, of injured Abdul Shakoor, herein "the complainant". As per the statement of complainant, on 15.1.1990 at 5.00 p.m., he, his younger brother Slim and his mother Rafiqan had been working in their fields. The accused/Appellants Buta Dilshad and Shamshad sons of Sarabdin were also working in their own fields. In the meantime, accused Sarabdin brought cart from the side of the village and parked cart in front of the fields of the complainant. Then accused Sarabdin pushed the cart of the complainant aside. On the asking of Sarabdin, the complainant, his brother and mother went close to him. The accused Sarabdin started abusing them and raised lalkara and exhorted his sons that they should not be spared. Accused Buta Singh armed with Dang, Dilshad armed with Takaua, Shamshad armed with Soti and accused Sarabdin armed with Kahi, came there, and all these persons attacked upon them. Accused Dilshad inflicted Takaua blow, while accused Sarabdin gave kahi blow, which hit on the head and right hand finger of the complainant, respectively. The accused Dilshad gave another Takaua blow, which hit on the right hand finger of complainant. As a result, the complainant fell down. Then accused Buta and Shamshad gave dang blows on the person of complainant, which hit on his left arm and back. Accused also caused injuries to his brother and mother. On raising alarm, Kala son of Mohd. Din rescued the complainant as well as other injured and removed them to the Civil Hospital, Malerkotla. The complainant also got recorded in his statement that in self-defence, they also caused injuries to Buta and Dilshad.

3. On the basis of statement, Ex. PA, DDR was recorded. The police also recorded the statements of other injured. It is worthwhile to mention here that in this incident both the parties had received injuries and regarding one incident single FIR No. 6 dated 15.1.1990 was registered at Police Station Malerkotla, in which version of both the parties was probed and two different challans were presented in Court against each other.

4. On completion of all the formalities of investigation, challan was presented before the Magistrate, who committed the case to the Court of Sessions for trial.
5. The accused/Appellants were charge-sheeted for the offence punishable under Sections 307, 324, 323 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.
6. In order to prove its case, the prosecution examined as many as six witnesses.
7. PW-1 Dr. Charanjit Singh, SMO, Civil Hospital, Malerkotla, deposed that on 15.1.1990, he medico-legally examined Mohd. Salim, PW3. He further deposed that injuries No. 1, 2, 3,4,9 and 10 were subjected to Xray report, whereas others injuries were simple. Dr. Charanjit Singh, PW1, further examined Abdul Sakur, PW2, on the same day and deposed that injuries No. 1,2,4,6 and 7 were subjected to x-ray and others were simple in nature. He also examined Rafiqan, PW4, on the same day and deposed that injury No. 3 on her person was subjected to x-ray report and others were simple in nature. In cross-examination, Dr. Charanjit Singh admitted that none of the injuries in ML Rs, Exhibits P1, P3 and P5 were dangerous to life. He has not given any opinion in ML Rs that these injuries are dangerous to life individually or collectively.
8. PW-2 Abdul Sakur reiterated the version recorded in the FIR.
9. PW3-Mohd. Salim (brother of the complainant) and PW4- Rafiqan (mother of the complainant) reiterated the same version given by PW2.
10. PW5-Ram Dass Patwari is a formal witness.
11. PW-6 ASI Joga Singh deposed that on 15.1.1990, he received ML Rs of injured persons and went to the Civil Hospital, Malerkotla. He recorded the statements of the injured persons including statement of Abdul Sakoor, Exhibit PA.
12. After completion of prosecution witnesses, the accused Appellant were examined u/s 313 of the Code of Criminal Procedure in which they denied all other incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent.
13. After hearing both the parties, the trial Court convicted the accused/Appellants under Sections 307, 307/34, 324, 324/34, 323 and 323/34 of IPC and sentenced them as the term noticed at the outset of para 1 of this judgment.
14. Learned Counsel has submitted that from the medical evidence, it is not established that the injuries suffered by the complainant party were dangerous to life. He has referred to the statement of Dr. Charanjit Singh, PW1, who medico-legally examined the injured persons and admitted in his cross-examination that injuries caused on the persons of injured, cannot be dangerous to life. Therefore, learned Counsel has argued that in view of the opinion rendered by the doctor, it is not established that the injured suffered dangerous injuries.

15. Learned Counsel has further argued that there was no previous enmity between the parties. The dispute arose on account of parking of the cart when both the parties were present in their respective fields. Since the Appellants were not carrying any deadly weapon, therefore, it can be said that they had no common intention or motive to commit crime.

16. Learned Counsel submits that in the circumstances, only a case under Sections 324 and 325 IPC is made out. He also submits that sending of the Appellants to incarceration to suffer their remaining part of sentence may not be in the interest of justice as it would promote further hostilities between the parties.

17. On the other hand, learned State counsel has argued that as per the statement of the complainant, who is an eye-witness, the case of prosecution is proved beyond reasonable doubt. Therefore, the learned Counsel has submitted that the impugned judgment and order be maintained.

18. I have heard the learned Counsel for the parties and perused the record with their able assistance.

19. The occurrence took place on account of parking of the cart in the common path when the accused Sarbdin brought his cart and stopped the same in front of the fields of complainant. On objection raised by the complainant, he was given beatings by all the accused/Appellants. Accused/Appellant Dilshad gave Takaua blow, while accused Sarabdin gave kahi blow, which hit on the head and right hand finger of the complainant, respectively. The accused Dilshad also gave another Takaua blow, which hit on the right hand finger of complainant. The accused Buta and Shamshad also gave dang blows on the person of complainant, which hit on his left arm and back. When his brother and mother intervened to rescue him, the accused also caused injuries on their persons.

20. As per statement of Dr. Charanjit Singh, PW1, it is not established that the injuries were in fact dangerous to life. In the instant case, no operation or X-ray was conducted on the injured, therefore, by no stretch of imagination, the injury could be described as dangerous to life. I am unable to accept as to whether this was a deliberate omission or an oversight but whatsoever it may be, the benefit must accrue to the Appellants. However, it is proved on record that the injuries were caused by the Appellants.

21. The injuries were caused by the Appellants on the injured persons in a sudden fight in which both the parties suffered injuries. If the Appellants had any intention to commit the crime, they would come prepared with some deadly weapons. Thus, it appears that the Appellants had no intention or knowledge to commit the crime. In the instant case, the injuries were caused on the persons of injured by the agricultural implements. The parties were present in their fields, when the quarrel took place on petty issue of parking the cart in a narrow path used by them since long time.

22. However, the fact remains that some altercation took place between the parties and both the parties suffered injuries at the hands, of each other. From the statement of Dr. Charanjit Singh, PW1, it is clear that all the injuries on the person of the injured was simple in nature. There is no positive opinion on record to show that the injuries were dangerous to life. There was no intention of the accused to cause such injury as would have caused death or endangered life. The result of the X-ray examination is not proved on record. It is difficult to ascertain as to which party has opened the attack. In the circumstances, the case u/s 307 IPC is not made out. Accordingly, the conviction of accused/Appellant(s) u/s 307 IPC is set aside. However, a case under Sections 324, 323 read with Section 34 is made out against the Appellants and accordingly, their conviction under Sections 324, 323 read with Section 34 IPC is maintained.

23. In the instant case both the parties are closed relations. The occurrence took place on 15.1.1990. The Appellants have undergone RI about one month of actual sentence and have also faced the agony of protracted trial for more than 20 years. Sending the Appellants to jail once again at this juncture, in my view, would be a hard step. There is nothing on the record that the Appellants are previous convicts. Keeping in view the above facts, I feel that Appellants are entitled to be released on probation of good conduct.

24. For the reasons recorded above, the appeal, is partly accepted and the Appellants are acquitted of the charge under Sections 307/34 IPC. The accused/Appellants Shamshad @ Sada, Buta Mohd, Dilshad and Sarabdin are convicted under Sections 324, 323 read with Section 34 IPC. The Appellants are ordered to be released on probation of good conduct, for a period of two years, on their furnishing personal bonds, in the sum of Rs. 5,000/- each, with one surety, in the like amount each, to appear and receive sentence, as and when called upon during this period, and, in the meantime to keep the peace and be of good behaviour. The Appellants shall also furnish an undertaking that they shall not commit any offence of the like nature, during the probation period. The Appellants shall also pay costs of the proceedings, to the tune of Rs. 5,000/- each. The requisite bonds shall be furnished and the costs shall be deposited, within a period of two months, from today, in the Court of Chief Judicial Magistrate, Sangrur. In case, the requisite bond is not furnished and the litigation expenses are not deposited, within the period stipulated, this appeal shall be deemed to be dismissed. The Chief Judicial Magistrate, Sangrur, shall be at liberty to proceed, in accordance with the provisions of law.

25. With this modification in conviction and sentence, this appeal stands disposed of.