

(2000) 09 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 463-DBA of 1992

State of Haryana

APPELLANT

Vs

Hardeep

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2001) 1 RCR(Criminal) 91

Hon'ble Judges : H.S. Bedi, J;A.S. Garg, J

Bench : Division Bench

Advocate : Mr. Rajesh Bhardwaj, AAG, Haryana, for the Appellant; Mr. T.P.S. Mann, for the Respondent

Judgement

Harjit Singh Bedi, J.—This appeal arises out of the following facts :-

On 28th February, 1991, Hardeep accused and Rajinder Singh (since deceased) were playing Holi when Rajinder Singli asked Hardeep to repay the amount of Rs. 250/- that he had borrowed from him. As Hardeep refused to refund the money, there was a quarrel between the two. Hardeep, thereafter, left the place telling Rajinder Singh that he would clear his accounts with him within 3 or 4 days. Rajinder Singh, thereafter, made a complaint about what had happened to his brother Baljit Singh (PW3) and the latter approached accused Maha Singh son of Sardara Singh. father of Hardeep, to intervene in the matter so that the amount could be repaid to Rajinder Singh. Maha Singh, however, sided with his son and refused to intercede with him. On 4th March, 1991. at about 8.30 a.m. Baljit Singh (PW3) was returning to his Bethak after answering the call of nature and as he reached near the house of Maha Singh son of Amar Singh. he saw his brother Rajinder Singh near the house of Gopi in the street going towards the Johar (pond). He also saw both the accused emerging, from the cattle shed and catching hold of Rajinder Singh. On seeing this. Baljit Singh ran towards that side to save his brother and also raised an alarm which attracted Bijender Singh

(PW5) and Azad Singh (PW6) to the spot and as these witnesses reached close by, they saw that Maha Singh accused had embraced Rajinder Singh in his grip from behind and Hardeep accused giving knife blows on the left side flank of Rajinder Singh. Both the accused then ran away from the spot. On going closer, the witnesses found that Rajinder Singh had died almost instantaneously. Leaving Bijender Singh and Azad Singh aforesaid at the spot. Baljit Singh left for Police Station. Gohana to lodge the report. I le, however, met ASI Kali Ram (PW 10) near village Mehmoodpur and made a statement E\\.PB to him at about 10.30 a.m. The statement with the endorsement E\\.PB/I was sent to the Police Station. Gohana, where the formal F.I.R. was registered at about 10.45 a.m. After the recording of the F.I.R. ASI Kali Ram accompanied by other police officials and Baljit Singh (PW3) reached the place of incident and (bund Bijender Singh (PW5) and Azad Singh (PW6) by the side of the dead body. The police officer also made the necessary investigation at the spot and sent the dead body for its post mortem examination. The accused were arrested on 22nd March, 1991 by SI Dilbagh Singh (PVV11) after they had been produced before him by Karan Singh and Narinder PWs. A disclosure statement was made by Hardeep accused in the presence of these two witnesses and a spring actuated knife was recovered for which, a case under the Arms Act was also registered against him. On the completion of the investigation, Hardeep accused was charged substantively for the offence punishable u/s 302 of the I.P.C. and u/s 25 of the Arms Act, whereas Maha Singh accused was charged under Sections 302/34 of the I.P.C. and as they pleaded not guilty, they were brought to trial.

2. The prosecution examined, inter alia, Baljit Singh (PW3) and Bijender Singh (PWS), the two eye-witnesses, and also tendered for cross examination, the third eye witness Azad Singh (PW6); Dr. C.D. Sharma (PW4), who had conducted the post mortem examination on the dead body and had opined that injury No. 1 was sufficient to cause death within five to 10 minutes in the normal course of nature; ASI Inder Singh (PW7) who had recorded the F.I.R. in the Police Station; Shamsher Singh (PWS) a witness regarding the quarrel that had taken place between Rajinder Singh deceased and Hardeep accused on the occasion of Holi; Constable Om Parkash (PW9), who had delivered the special report to the Ilqa Magistrate and the two Investigating Officers ASI Kali Ram (PW10) and SI Dilbagh Singh (PW11).

3. The prosecution case was then put to the accused in their statements recorded u/s 313 of the Cr.P.C. and they pleaded false implication in the case. Hardeep accused took up the following plea :-

"I am innocent, Rajinder Singh aforesaid was addicted to liquor. He was also a pickpocket and member of Gang of cheats. To my knowledge, there used to remain quarrel of the members of the Gang of cheats and pick pockets on the distribution of booty. Rajinder Singh had no other source of income because he had sold away his land.

He was married in a village of Uttar Pradesh in July, 1990 and after about two

months of marriage, he had sold his wife to some person in Uttar Pradesh, without the knowledge of her parents. As and when her parents used to come to Rajinder Singh and enquired about their daughter, he used to quarrel with them.

Rajinder Singh had beaten Balraj alias Gunga son of Mahavir 3 or 4 days prior to the alleged crime. He had also fought with the son of Maiya, once at Gohana and secondly in the village 3 or 4 months prior to the present occurrence and the son of Maiya had thrown a challenge to Rajinder Singh. He had also developed illicit relations with the daughter of Ratnu Balmiki of our village and the members of the family of Ratnu had attacked him at his house 5 or 6 months prior to the present occurrence.

Baljit Singh PW used to suspect my illicit relations with Kumari Meena daughter of his ream, Tan on account of which he had quarrelled with me a number of times and we had exchanged blows.

Keeping in view all this and our strained relations with Baljit Singh, we have been involved falsely in this case by Baljit Singh when he found the dead body of Rajinder Singh lying in the street in the morning after consultation and deliberations with the police and introducing false witnesses.

I have passed my matriculation examination only this year and my date of birth is 6.7.1974.

My father Maha Singh has been involved in this case falsely so that he could not pursue my case in Court to save me."

4. This plea was also taken by Maha Singh accused. Hardeep also produced on record certain documents in support of his defence.

5. The trial Court held that the eye witness account given by Baljit Singh, Bijender Singh and Azad Singh was liable to be believed and the fact that they were close relatives of the deceased, was no reason to discard their testimony. The Court also observed that the motive for the crime, i.e. the quarrel on the day of "Holi. stood proved by the evidence of Shamsheer Singh (PW8). The Court, however, found that Maha Singh accused had absolutely no motive to join Hardeep in the attack on Rajinder Singh as he had not been involved in the quarrel on the day of Holi. The Court also observed that if Maha Singh had caught hold of Rajinder Singh in his grip, there was a serious possibility that he too would have been injured in the attack made on Rajinder Singh. The Court also held that there appeared to be some delay in the lodging of the F.I.R. and the explanation given by Constable Om Parkash who had delivered the special report at 2.25 p.m. to the Illaqa Magistrate in Gohana itself, was not credible, but this was a fact which only required that the evidence be scrutinised with more than ordinary care and was not a factor which could be fatal to the prosecution case. The Court, however, observed that the involvement of Maha Singh was suspect. The Court also held that as Hardeep accused had inflicted only one blow on the person of Rajinder Singh with the intention to cause a bodily injury which

was likely to cause death, he was guilty of having committed an offence punishable u/s 304(1) of the I.P.C. He was accordingly sentenced to undergo R.I. for three years and to pay a fine of Rs. 200/- and in default of payment of fine to further undergo R.I. for two months.

6. Crl. Appeal No. 277-SB of 1992 has been filed by Hardeep accused challenging his conviction u/s 304(1) of the I.P.C. whereas Crl. Appeal No. 463-DBA of 1992 has been filed by the State of Haryana against the outright acquittal of Maha Singh and acquittal of Hardeep accused for the offence punishable u/s 302 of the I.P.C. and Crl. Revision No. 680 of 1992 has been filed by Baljit Singh PW challenging the judgment of the trial Court. All the three matters are being disposed of by this judgment.

7. Mr. Rajesh Bhardwaj, the learned Assistant Advocate General, Haryana appearing for the State of Haryana in Crl. Appeal No. 463-DBA of 1992, has argued that the acquittal of Maha Singh was bad in law for the reason that it was but natural for him to side with his son Hardeep co-accused in the circumstances of the case and as such the eye witnesses, account given by the three witnesses was liable to be believed. He has also urged that the acquittal of Hardeep accused for the offence punishable u/s 302 of the I.P.C. was wholly uncalled for and even the sentence imposed on him for the offence punishable u/s 304(1) of the I.P.C. was wholly inadequate. This argument has been supported by Mr. Baidev Singh, the learned senior counsel appearing for the complainant in Crl. Revision No. 680 of 1992.

8. As against this, Mr. T.P.S. Mann, the learned counsel appearing for Hardeep accused in Crl. Appeal No. 277-SB of 1992 has urged that Maha Singh accused had absolutely no motive to make an attack on Rajinder Singh as he had not been involved in the quarrel on the day of Holi. He has urged that as only one injury had been caused to the deceased, the conviction of Hardeep accused u/s 304(1) of the I.P.C. called for no interference.

9. We have heard the learned counsel at length and have gone through the record with their help. We are of the opinion that no interference is called for with respect to the acquittal of Maha Singh; Admittedly, he had not been involved in the quarrel that had ensued between Hardeep accused and Rajinder Singh deceased on the day of Holi. Moreover, the only part attributed to him is that he had held Rajinder Singh in his grip which facilitated Hardeep to cause an injury to him. In an appeal against acquittal, interference would be called for only if the judgment impugned was perverse and not based on the evidence. We are of the opinion that as far as the acquittal of Maha Singh is concerned, these two broad principles are not present.

10. We are, however, of the opinion that acquittal of Hardeep accused for an offence punishable u/s 302 of the I.P.C. is wholly uncalled for as the injuries caused by him on the persons of Rajinder Singh had been administered with an intention of causing bodily injury which would in all probability cause his death.

We reproduce here the injuries found on the dead body.

1. An incised wound 4.9 cms x 1.8 cm over front of left side of chest. Its medial end was 6.1 cm from midsternal line and the lateral end was 7.2 cms inferomedial to left nipple. It was present in the 5th inter costal space with its lateral end being superior. It was spindil shaped. On deeper dissect ion the inter coastal muscles in the medial part of 5th intercostal space were sharply incised and 6th coastal cartilage was sharply divided parallel to the line of wound, 2.8 cms proximal (medial) to 6th costocondral junction. The tract was running obliquely medially and posteriorly. The pericardium was having a tear in its anterior part. Pericardial cavity was full of blood. Thene, the tract was extending to anterior wall of left ventricle of heart. There was a through and through sharp cut in the left ventricle of heart in its anterior wall. It was 3.2 cms long and 0.3 cm broad, obliquely placed. Al! the chambers of heart were empty.

2. An incised wound 1.2 cm 1 .4 cm muscle deep over front of left forearm, 9.6 cms above left elbow joint.

11. The doctor opined that injury No. t was sufficient to cause death in ordinary course of nature within 5 or 10 minutes. This is precisely what did happen. We also find that the injury inflicted was with very great force and had cut through and penetrated right up to the left ventricle of the heart. It is in this situation that in Mahesh Balmiki @ Manna Vs. State of Madhya Pradesh, the Hon"ble Supreme Court field that in tlie case of only one injury the offence would not always be mitigated as it was the nature of the injury and the manner of its infliction that was equally germane to the issue. We now examine the matter in this light. We find that the attack made on Ra-jinder Singh was premeditated as Hardeep had administered a warning to Rajinder Sirigh on the day of Holi that he would teach him a lesson for asking him to repay the money. That incident had taken place 4 or 5 days earlier to the present one. It is, there-fore, obvious that Hardeep had chosen to attack Raj inder Singh pursuant to a positive decision to settle scores. We are, therefore, of the opinion that the acquittal of Hardeep accused for an offence punishable u/s 302 of the I.P.C. was totally unjustified on the given facts. We, therefore, while dismissing Crl. Appeal No. 463-D8A of 1992 with respect to Maha Singh accused, allow the aforesaid appeal qua Hardeep accused and convert his conviction to one punishable u/s 302-of the I.P.C. We also sentence him to undergo imprisonment for life and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo R.I. for two months. Crl. Revision No. 680 of 1992 is also disposed of in the aforesaid manner.

12. Crl. Appeal No. 277-SB of 1992 filed by Hardeep accused is also dismissed.

13. Appeals dismissed.