
(2000) 04 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No's. 329-DB and 455-DB of 1997 (Against order of Nirmal Singh, Sessions Judge, Ferozepur, D/- 22-3-1997.)

Sukha Singh Alias Sukhwinder Singh and others APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 304

Citation : (2000) CriLJ 3133 : (2000) 3 RCR(Criminal) 267

Hon'ble Judges : Mehtab S. Gill, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.L. Sibal, Ms. Reeta Kohki and Kumar Sethi, for the Appellant; Mr. Randhir, DAG and S.C. Chhabra, for complainants, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The four appellants in these two appeals have been held guilty of offences punishable under Sections 302, 326, 324 read with Section 34, I.P.C. Three of them have filed Criminal Appeal No. 329-DB of 1997. Daljit Singh has filed a separate appeal No. 455-DB of 1997. Since both the appeals arise out of one incident and one judgment delivered by the trial Court, these have been heard together and are being disposed of by a common order.

2. The prosecution story has been revealed by Jagwant Singh (P.W. 4). The incident is alleged to have taken place on December 21, 1994 at 4.15 p.m. The injured were carried to the Hospital. The Doctor had sent a message to the Police Station. The statement of Jagwant Singh was recorded by Inspector Jagir Singh (P.W. 8) at 7.45 p.m. On the basis of this statement, FIR Ex. PM/ 2 was recorded at 8 p.m. The special report was delivered to the Judicial Magistrate Ist Class, Ferozepur Cantonment at 10.15 p.m.

3. The victims and the appellants were college students. It is alleged that there was a quarrel between them at about 9.15 in the morning. Thereafter, at about 4.15 p.m. Jagwant Singh along with Jasdip Singh, Shivcharan Singh, Harbant Singh and Harbir Singh was going in a jeep. Two others - Kulwinder Singh and

Harwinder Singh were going in a car. They dropped Harbir Singh at his house. Having dropped him, they were going back towards the bus stop to go to their respective villages. When they reached near the "Dattan Chowk, Ferozepur Cantonment," they found that Sukha Singh and Sukhbirpal Singh armed with "kirches, Major Singh and Daljit Singh armed with "kirpans" were standing. On seeing Jagwant Singh etc., they started "raising "lalkara" and tried to assault." Kulwinder Singh sped away in the car. However, Shivcharan Singh, Jasdip Singh, Harbant Singh and Jagwant Singh got down from the jeep "after stopping it." It is alleged that Sukha Singh gave two blows with his "kirch" to Shivcharan Singh "on his chest." Daljit Singh gave two "kirpan" blows to Shivcharan Singh on "his head and right arm respectively." Shivcharan Singh fell down. While he was lying fallen, Major Singh is alleged to have given two "kirpan" blows "on his right flank and below the right knee respectively." Sukhbirpal Singh had allegedly given a "kirch" blow to him on "the left side of his chest." The complainant party tried to save Shivcharan Singh. Thereupon, Major Singh gave a "kirpan" blow which injured the left hand of Jagwant Singh. Sukhbirpal Singh gave a "kirpan" blow to Jasdip Singh which hit him on the left side of his shoulder. The injured party raised an alarm. The four persons fled away with their respective weapons. Thereafter, Harbant Singh removed Shivcharan Singh and other injured persons to the Hospital. Shivcharan Singh succumbed to his injuries in the Hospital.

4. The prosecution has produced 11 witnesses and certain documents. The medical evidence consists of the testimony of Dr. H. L. Garg, P.W. 1. He had conducted the radiological examination of the injuries suffered by Jagwant Singh (P.W. 4) on December 23, 1994. He had found that a part of the bone of the 5th metacarpal had been separated. Six days later, he had also examined Jasdip Singh (P.W. 5). He had found no bone injury.

5. Dr. Surinder Kinra has appeared as P.W. 2. He had examined Jasdip Singh on 21-12-1994 at 5.50 p.m. in the Hospital and given him treatment. The injury on the left side in the scapular region was declared simple. At 6.15 p.m. he had examined Jagwant Singh and noticed the injuries on his person. He had also sent the message Ex. PE to the police. Thereafter, on arrival of the police, he had declared both Jasdip Singh and Jagwant Singh as fit to make statement. It was then that Inspector Jagir Singh had recorded the statement of Jagwant Singh on the basis of which the First Information Report was recorded.

6. Dr. Faqir Masih (P.W. 3) had conducted the post-mortem examination on Shivcharan Singh on December 22, 1994 at 8.45 p.m. He had found the following seven injuries :-

1. "10 cms. x 0.5 cm. incised wound in left parietal area placed obliquely. 7 cms. above pinna of left ear. Skull bone was exposed, periostem was cut.
2. 2.5 cms. incised stab wound in epigastrium at midline, just below xiphysternum.
3. 2.5 cmz. x 0.25 cm. incised wound in epigastrium just below and 0.75 cm.

towards right side of injury No. 2.

4. 2.5 cms. x 0.25 cm. incised wound placed vertically in left hypochondrium.

5. 5 cms. x 1.25 cm. incised wound in right flank placed horizontally in its upper part.

6. 1.25 cm. x 0.5 cm. incised wound in lower back, vertically placed on right side.

On opening the abdomen it was found that injuries Nos. 2, 3, 4 and 5 entered abdominal cavity. There were 1" deep cuts in front of liver, corresponding to injuries Nos. 2, 3 and 4. Abdominal cavity was full of liquified blood. Injury No. 4 reached up to caeliac vessels injuring them. Apart from these mesentery was injured and there was a large haematoma. Both small and large guts were injured and there was faecal contamination of peritoneal cavity. Injury No. 6 had damaged lower pole of right kidney making it fish mouth like. There was large retroperitoneal haematoma around the right kidney.

7.6 cms. x 5 cms. incised wound in middle of left forearm "U" shaped so that all soft tissues were cut making a flap and exposing the bone on the inner side."

7. In his opinion, death occurred due to extensive injuries to vital (abdominal) organs leading to haemorrhage and shock. All the injuries were ante-mortem in nature and were sufficient to cause death in ordinary course.

8. The ocular version has been given by Jagwant Singh (P.W. 4). He has broadly reiterated the statement made by him before the police on the basis of which the First Information Report was recorded. He was cross-examined at length by different counsel who were appearing for the four appellants. He stated that all the six friends used to travel from their respective villages to Ferozepur for studying at the college. The accused were standing on the left side of the "Dattan" crossing. Shivcharan Singh and Harbant Singh were sitting on the front seat of the jeep which was being driven by the latter. He and Jasdip Singh were sitting on the back seat. The accused had given way to the car and Kulwinder Singh had run away. However, he added that the "jeep was stopped." He further asserted that they had "tried to run away." It was in that process that the "accused caused injuries to Shivcharan Singh." He was confronted with his statement Ex. PM before the police where it was not specifically recorded that when "they tried to run away, the witness and others received the injuries." He further asserted that his clothes were stained with blood. He had not handed over the clothes to the police nor had the police asked for these. They had reached the Hospital at about 5/5.15 p.m. They were immediately examined. He had also reiterated the sequence in which injuries had allegedly been given by different persons to various members of the complainant party. He stated that the owner of the jeep was sitting in the car. On the next day, Harwinder Singh's father had taken away the jeep.

9. Jasdip Singh (P.W. 5) is another witness. Broadly, he has corroborated the prosecution story. P.Ws. 6 and 7 had merely tendered their affidavits. Inspector

Jagir Singh (P.W. 8) is the Investigating Officer. He stated that on December 21, 1994, he had received a message from the Civil Hospital that Shivcharan Singh had died. He had gone to the Hospital. Jagwant Singh and Jasdip Singh - companions of Shivcharan Singh were also injured. They had been admitted in the Hospital. He had submitted an application Ex. PF to the Doctor. Vide endorsement Ex. PF/1, Jasdip Singh was declared fit to make his statement. Similarly, vide endorsement Ex. PG/1 on the application Ex. PG, the doctor had declared Jagwant Singh as fit to make a statement. He had then recorded the statement of Jagwant Singh. He had made an endorsement Ex. PM/1 and sent it to the police station. On the basis thereof, FIR Ex. PM/2 was recorded by Avtar Singh, ASI. He had also prepared the inquest report Ex. PJ. The dead body was identified by Jaswinder Singh and Gurpreet Singh. The accused were not found at their respective places of residence. In cross-examination, he admitted that he had met Harbant Singh in the Hospital. However, he had not tried to find out his whereabouts before preparing the inquest report. He had not even recorded his statement in the Hospital. He denied the suggestion that he had met a Senior Police Officer in the Hospital. He, however, admitted that the investigation was verified by the Assistant Superintendent of Police later on. He admitted that he did not take the blood-stained earth from the place of occurrence. He did not record the statement of any shopkeeper. He asserted that "no shopkeeper was ready to be a witness in this case." He knew that the injured had been removed to the Hospital in a jeep but he did not see it in the hospital nor did he "give any notice to the owner of the jeep produce" it. He admitted having raided the house of Sukhwinder Singh-accused who was residing in the city but not of any other person.

10. The accused were actually arrested by Sub-Inspector Sukhwinder Singh. He appeared as P.W. 10. He stated that Mohinder Singh, an Ex-Sarpanch of Kamruwala had produced before him Sukhbir Singh, Sukha Singh and Daljit Singh on December 24, 1994. They were produced by him before the Court on December 25, 1994. He had obtained their remand. One Gurmail Singh had met him on the way and accompanied them to the police station. In the presence of Gurmail Singh and ASI Chhint Ram, he had interrogated the three persons. They had made disclosure statements regarding the respective weapons which were taken into possession on December 25, 1994. On December 30, 1994, Joginder Singh of village Kamagar had met him at the bus stop. He received secret information that Major Singh was standing at the bus stand of Fazilka. He had gone to the bus stand and arrested Major Singh. In pursuance to a disclosure statement, the "kirpan" was recovered from him.

11. P.W. 9 Sunder Singh had prepared the site plan Ex. PT. Constable Roop Singh (P.W. 11) had tendered an affidavit Ex. PX-2.

12. This is the entire evidence produced by the prosecution.

13. The accused were examined under S. 313, Cri. P.C. They had denied all the allegations. They had also produced Mr. Harpreet Singh Sidhu as D.W. 1.

14. Mr. Hira Lal Sibal, learned counsel for the appellants in both the appeals contended that the prosecution has withheld essential and relevant evidence. The recoveries are doubtful. Thus, the order of conviction as passed by the trial Court cannot be sustained. The counsel further contended that even if the defaults of the prosecution are overlooked, it was a case of a sudden fight which had taken place at the spur of the moment. The appellants are young college students. They were in the age group of 20-23 years. Similar was the position with regard to the complainant party. They had quarrelled at the spur of the moment. Even if it is assumed that the appellants had the knowledge that the injuries inflicted by them could cause death, they had no intention to kill. Consequently, the counsel contended that the case is covered by the provisions of S. 304 and it is not one which may fall within the parameters of S. 302.

15. On the other hand, it was submitted by Mr. Randhir Singh, DAG, Punjab that the entire prosecution story had been promptly revealed by a person who had received injuries. The FIR was recorded soon after the incident. The medical evidence fully corroborates the story as given in the FIR. The two eye-witnesses had received injuries in the incident. Thus, their testimony should be accepted.

16. Mr. SC Chhabra, learned counsel for the complainants had further supported the contentions raised by Mr. Randhir Singh. He also submitted that it was a fit case where not only the conviction should be sustained but the victims should be adequately compensated by payment of substantial amount.

17. On an examination of the evidence, it is clear that the complainant party consisted of seven persons. Two of them viz. Kulwinder Singh and Harwinder Singh were going in the car and the remaining five were in the jeep. It is also the admitted position that out of the five in the jeep, Harbir Singh was dropped at his house. It was after dropping him that the four persons were coming back in the jeep. There is nothing on record to show that the fact that the members of the complainant party had to go to the house of Harbir Singh was known to any one. Still further, learned counsel for the prosecution have not been able to refer to any evidence which may even remotely indicate that any of the appellants was aware of the fact that Jagwant Singh etc. would be going on the road leading to the "Dattan Chowk." In this situation, it can be reasonably inferred that after finishing their college, the seven members of the complainant party were going to their respective places and that they had dropped Harbir Singh at his house. Still further, it would also be reasonable to conclude that it was purely by chance that they had met the appellants near the "Dattan Chowk." Still further, it is the admitted position that there was an attempt to stop the car of Kulwinder Singh. However, he had sped and gone away. So far as the jeep is concerned, Harbant Singh who was at the wheel does not appear to have made any attempt to escape. At least in the First Information Report, there is not even an indication to that effect. It is only at the stage of the recording of the evidence before the Court that Jagwant Singh (P.W. 4) had attempted to assert that they had tried to run away but the jeep was stopped. Irrespective of that, the fact remains that

the complainant and the accused parties had met by chance. They had a quarrel. Three out of the four members of the complainant party had received injuries. In case of Shivcharan Singh, the injuries had unfortunately proved fatal.

18. Mr. Sibal contended that the prosecution has withheld essential evidence. The counsel for the State controverted this.

19. In the present case, we are not satisfied with the manner in which the investigation has been conducted. It is the prosecution's own case that the quarrel had taken place in the morning. The parties were pacified by the Principal. This event was sought to be made the basis and the real motive for the occurrence which had allegedly taken place at 4.15 p.m. Yet, Mr. Anand, the Principal who could have given an impartial and accurate account of the event was not produced. Still further, it is the prosecution's case that four members of the complainant party were travelling in the jeep. The injured were carried to the Hospital in the jeep. The jeep was being driven by Harbant Singh. It was owned by Harwinder Singh. It was taken away by the father of Harwinder Singh on the next morning. Yet, the Investigating Officer did not even examine the jeep. The prosecution did not produce Harbant Singh - the driver and Harwinder Singh - the owner. No attempt was made to even see whether there was any blood in the jeep. In this situation, we cannot compliment Inspector Jagir Singh (P.W. 8) regarding the manner in which he has conducted the investigation. Despite that, we cannot lose sight of the fact that Jagwant Singh and Jasdip Singh who have appeared as witnesses had received injuries in the occurrence. Nothing has been brought on record which may make us suspect their presence.

20. Added to the testimony of these two witnesses is the fact that both the witnesses were admitted to the Hospital in about an hour from the time of occurrence. They were examined by Dr. Surinder Kinra. The police was summoned and the statement of Jagwant Singh Ex. PM was recorded at 7.45 p.m. It, thus, appears that the prosecution story was revealed promptly by a person whose presence at the place of occurrence is proved beyond reasonable doubt.

21. Taking all the factors cumulatively, we find that the appellants had caused injuries in the manner alleged by the prosecution. The appellants who had wielded sharp-edged weapons would have surely known that the injuries could prove fatal. However, it appears that there was a sudden fight and they did not have the intention to kill. The fight had taken place at the spur of the moment.

22. In view of the above, we hold that all the four appellants are guilty of the offence punishable under S. 304, Part I. The order passed by the trial Court is modified to this extent.

23. Coming to the question of sentence, it was submitted by Mr. Sibal that the appellants are young college students. Staying in jail would not only disrupt their studies but affect their future career. They should be given a chance to come out and become useful members of the society. On the other hand, Mr. Chhabra

appearing for the complainants had submitted that adequate compensation should be awarded.

24. We have considered the question of grant of compensation in the State of Punjab v. Santokh Singh 2000 (2) All IJ 62. It was inter alia held as under :-

"The Criminal Justice Delivery System gives justice to the criminal. It gives every reasonable concession to the sinners against God and man. They are "fed and housed." They are given "legal, medical, psychological and psychiatric aid." Even education and vocational training are provided to them. It may be correct for the State to utilise its meagre resources to rehabilitate and even pamper the unrepentant violators of law. However, we cannot ignore the victims. We have to imagine the torture, the trauma that the victims - the children that are abused, the women who are assaulted, the men who have been blinded, the parents whose children have been molested and murdered go through even after they have borne the initial shock of the crime. About two years back, it was reported in the press that two brothers who were sentenced to 10 years in prison on a charge of rape had walked out of the Court, escorted by an unarmed policeman. They had escaped and returned to their victim's house. They had allegedly chopped off her left leg. The victim had fought a two year long legal battle to get the two accused convicted. After her leg was chopped off, she must have wondered "whether it was worth it." Over the centuries, the society has been concerned about the criminals and their rehabilitation. The victims of crime, the "victims of a slanderer's tongue, the victims of an assassin's dagger have been the forgotten children of the Criminal Justice Delivery System.

The State has the responsibility to protect the people and their property. When it fails to perform its duty, the crime occurs. The victim suffers. In spite of the suffering that the victim faces, the Society expects the victims to support the Justice Delivery System. The agony begins when the person goes to lodge the report. It continues till the end of the trial. The victim is made to go through the sole crushing job of repeating the gory details of the crime. He is subjected to the anguishing agony of a ruthless cross-examination. At the end, he has to often bear the ignominy and indignation of being disbelieved in spite of having told the whole truth.

The plight of the victim under our system is pitiable. In the present day world, it is not the criminal but the victim who shirks and dodges the public eye. He is "angry and insecure." Even "vulnerable." He suffers alone "the physical, the psychological and financial hardships" that follow the crime. The "psychological wounds" last longer than the physical injuries. The "post-crime distress" does not end with the conviction of the criminal. Mere punishment to the criminal does not give full justice to the victim. The system must become responsive to the needs of the victim.

Section 357 arms the Court with the power to compensate the victim. It authorises the Court to impose a fine and to direct that the amount shall be

applied "in the payment of compensation for any loss or injury caused by the offence....." The obvious purpose is to compensate the victim. Is it not time that the victim's agony was reduced and the necessity of compelling him to go through the ordeal of a second trial before the Civil Court was obviated ?

In our considered view, S. 357 of the Code of Criminal Procedure clearly permits the Court to direct the payment of a reasonable compensation to the victim. For this purpose, the fine that the Court may impose has to be a realistic sum. It should be adequate. The accused should have the means to pay it. The economic position of the criminal, his family and other relevant factors have to be kept in view. At the same time, the compensation should be calculated to really compensate and not be merely symbolic. It should have a reasonable relationship with the factual position."

25. Keeping the above factors in view, we had questioned Mr. Sibal to ascertain the economic position of the appellants. It is not disputed that their families are well off. They are men of means. They have lands.

26. Shivcharan Singh - the deceased was 20 years of age when he was snatched from his family. Jagwant Singh and Jasdip Singh had also received injuries. After taking into consideration the entire position, we consider it appropriate to award a sentence of seven years each to all the four appellants. In the circumstances of the case, we quantify the amount of compensation at Rs. 4 lacs. An amount of Rs. 1 lac shall be paid as fine by each of the four appellants. Out of the amount of Rs. 4 lacs, Rs. 3 lacs shall be paid to the legal heirs of Shivcharan Singh. Rupees 50,000/- each shall be paid to Jagwant Singh and Jasdip Singh who had suffered injuries. In the event of default of payment of fine, the appellant concerned shall undergo further sentence of rigorous imprisonment for five years.

27. The appeals are partly allowed in the above terms.

28. Appeals partly allowed.