
(1996) 02 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No's. 152 of 1992 and 460 of 1993

Zora Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 323, 324, 326

Citation : (1996) CriLJ 2915

Hon'ble Judges : V.K. Bali, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : K.S. Ahluwalia, for the Appellant; Mehtab Singh, Dy. A.G., for the Respondent

Judgement

V.K. Bali, J.—By this order we propose to dispose of two Criminal Appeals bearing No. 460-DBA of 1993 titled Man Singh v. Ajaib Singh as also 152-DB of 1992 titled Zora Singh v. State of Punjab as both these appeals arise from the same occurrence even though there are two separate judgments recorded in each case. Vide judgment dated 27th of February, 1992. the Additional Sessions Judge. Patiala convicted appellants Zora Singh and Man Singh in Criminal Appeal No. 152-DB of 1992 u/s 302 read with Section 34 of the Indian Penal Code and sentenced them for life and to pay a fine of Rs. 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each. They have also been convicted and sentenced u/s 326 I.P.C. read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for two years and fine of Rs. 1,000/-each and in default of payment of fine to further undergo rigorous imprisonment for 3 months each. They have also been convicted and sentenced u/s 323 IPC. Read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for three months each. However, all the sentences have been ordered to run concurrently}. Man Singh has filed Criminal Appeal No. 460-DBA of 1993 against acquittal of Ajaib Singh and Jarnail Singh of the charges framed against them under Sections 307/ 326/324 read with Section 34 of the Indian Penal Code.

2. The common case between the parties is that the occurrence in question took place on 29th of April, 1988 at 10.00 A.M. The manner in which, however, the occurrence took place has been given differently by the two sides. It is, however, proved that whereas Sarup Singh died in this occurrence and Ajaib Singh who is PW-9 from his side sustained four injuries, from the side of the appellants i.e. Zora Singh and Man Singh, Malkiat Kaur daughter of Man Singh had suffered three injuries whereas Zora Singh had suffered 8 injuries on his person. Raminder Kaur daughter of Man Singh had also suffered one injury on her head whereas Man Singh himself had suffered nine injuries on his person.

3. The matter was reported by Man Singh who lodged the F.I.R. on 29th of April 1988 at 4.05 PM. (Ex. PS) which was recorded by ASI Gurbhajan Singh PW-11 at Civil Hospital, Samana. Man Singh stated in his aforesaid statement that he was resident of village Gajipur and was engaged in cultivation. They were four brothers. Sarup Singh was the eldest, Wasakha Singh was younger to him whereas he was younger to him and Zora Singh was the youngest. They owned four killas of land. He and Sarup Singh were married, whereas Wasakha Singh and Zora Singh were unmarried. He had taken the land of Wasakha Singh on lease, whereas Sarup Singh had taken the land of the share of Zora Singh on lease since long. Wasakha Singh and Zora Singh were residing with him and were also taking their meals with him. Zora Singh had resided at Hazur Sahil for about six years. Sarup Singh had not paid the lease money for the aforesaid period. Zora Singh came back prior to sowing of Hari crop and he demanded the lease money from Sarup Singh for the aforesaid period. Sarup Singh had paid some money to Zora Singh. Zora Singh filed a suit in order to redeem his land from Sarup Singh. It was decided in his favour. He had sown wheat crop in the aforesaid land and the entries regarding Girdawari of this land were in the name of Sarup Singh. On account of this, he obtained stay from the Court. He also harvested the wheat crop. He took the grains after thrashing the wheat crop.; On the eventful day, he (first informant) and his brother Zora Singh were collecting grains from the thrashing floor near the tubewell in their field situated across the Choi and Sarup Singh along with his sons was also collecting grains from the thrashing floor in their fields. They opened the Naka of water and started irrigating the field of Zora Singh. Zora Singh, Nihang armed with barchha went near Sarup Singh in order to prevent him from irrigating his field. A dispute took place between them. He also rushed there. Sarup Singh armed with Barchha, Ajaib Singh armed with Gandasi and Jarnail Singh also armed with Gandasi were beating Zora Singh. Immediately all the aforesaid persons opened attack at him. Ajaib Singh gave a Gandasi blow from its right side on his head. He raised his right arm in order to ward off the blow. Jarnail Singh gave a Gandasi blow from its wrong side on his right biceps. Sarup Singh gave 2-3 Barchha blows from its right side on his right biceps. He fell down. Jarnail Singh gave a Gandasi blow from its right side on his left leg below the knee. Ajaib Singh gave Gandasi blows from its right side on his right leg above the ankle and in front of left leg. Sarup Singh gave a Barchha blow on the right side of his abdomen and he also received

injury on his left wrist. Sarup Singh and Ajaib Singh also sustained injuries in self defence. During the fight Sarup Singh had also caused injuries to his daughters Malkiat Kaur and Raminder Kaur who had come with their meals while they were trying to separate them. The cause of grudge was that his elder brother Sarup Singh had taken one Killa of land from Zora Singh on lease. Zora Singh wanted to redeem that land because the Court had vacated the stay in favour of Zora Singh which was earlier granted in favour of Sarup Singh. On the eventful day at 9-30/10.00 A. M. Sarup Singh had diverted the flow of water to the land. His brother Zora Singh went there in order to prevent them from irrigating the field and the dispute took place. Sarup Singh and others having connived with one another had caused injuries to them. They had also received injuries at their hands in their self defence. His daughter Sukhwinder Kaur who came there later on brought him to the village in a Rehri. They reached the hospital from there. Karnail Singh son of Jit Singh resident of Gajipur came with them from the village and got them admitted. The doctor had conducted their medical examination after dressing their wounds.

4. The aforesaid statement, as mentioned above, was recorded by Gurbhajan Singh A.S.I, at Civil Hospital, Samana. In fact he had earlier received a telephonic message on 29th April, 1988 that four men and two women had reached the hospital in an injured condition. On the basis of the statement referred to above, a case under Sections 323/324/ 326 read with Section 34 of the Indian Penal Code was registered. A.S.I. Gurbhajan Singh also recorded the statement of Ajaib Singh son of Sarup Singh which is Ex.PL. The version of Ajaib Singh with regard to the same incident was that his father had three brothers, eldest being his father, next being Basakha Singh and then Man Singh and youngest being Zora Singh. The four brothers owned one acre of land each. Basakha Singh and Zora Singh took their food from the house of Man Singh and the land owned by Zora Singh who was Nihang was with them on lease for the last many years and Khasra Girdwaries were also in their names. He further stated that Zora Singh after having come back from Hazur Sahib wanted to take the land from him but they had sown the wheat crop and had also harvested the wheat crop and that on the day of occurrence, he alongwith his father Sarup Singh was collecting wheat and at some distance Man Singh and Zora Singh were also collecting their wheat. Zora Singh and Man Singh started irrigating one acre of land in their possession from the water of the motor of Man Singh and when they asked Zora Singh as to why he was doing so, they stated that they were doing so with a view to take the possession. Zora Singh was having a spear and Man Singh was having a Gandasi and with a view to kill him they reached there. In the meantime, his brother Zora Singh also came there. Man Singh gave gandasi blow on the right side of head and when he raised his left arm for saving himself, Man Singh gave a Gandasi blow which fell on his elbow and he gave a reverse blow on his left leg and Zora Singh gave a direct spear blow in the abdomen of his father and then Man Singh gave a gandasi blow on the left leg of his father and gave one more Gandasi blow from its reverse side on the left arm

of his father. Jarnail Singh his brother raised . a noise for saving them and the daughters of Man Singh, namely, Malkiat Kaur and Rajinder Kaur reached there. They were also given injuries in the saving process. He and his father had also caused some injuries to the other side during saving efforts. The grudge for occurrence was the same as was stated by Man Singh while making his statement. On 30th of April, 1988, Sarup Singh died in Rajindera Hospital, Patiala.

5. From the facts as have been mentioned above, it is, thus, clear that there are two versions with regard to the same occurrence. After investigation, the appellants were challaned under Sections 302/ 326/324/323 of the Indian Penal Code for committing the murder of Sarup Singh and also for causing injuries to Ajaib Singh, whereas these very accused instituted a complaint, wherein as mentioned above the version is that the PWs of murder case had caused injuries to four persons which were multiple and grievous injuries. The complaint was instituted by the appellants and as both the cases had their origin in the occurrence dated 29th of April, 1988, the learned Sessions Judge, Patiala sought a reference on 7th of February, 1991 to dispose of both the cases one by one and the same Court after the completion of evidence in the complaint case. However, this reference was declined by this Court and it is for this reason that both the cases have been decided separately.

6. With a view to bring home the offence against the appellants herein the prosecution examined as many as 12 witnesses. Dr. Krishan Vij conducted the post-mortem on the dead body of Saup Singh on 1 st May, 1988 and found the following injuries on his person :-

1. On removing dressing from the middle of left leg, two stitched wounds 3 cms x 2 cms lying obliquely and parallel to each other were present on the posterior lateral aspect of middle of left leg involving sub-cutaneous tissue and muscle.
2. Horizontally placed stitched wound 2 cm long on the front of the middle of right arm involving subcutaneous tissue and hand mussels.
3. Stitched wound 20 cm long place just to the right side of umbilicus. On dissection stitched abdominal wall was present. Stitched anterior wall of stomach (1/2") was present. Abdominal cavity contained blood.
4. Abrasion 2.5 cms x 1 cm over the lateral aspect of middle of left fore-arm. "The doctor was of the opinion that death in this case was due to shock and haemorrhage due to injuries and the injuries were ante-mortem and were sufficient to cause death in the ordinary course of nature. Dr. P.K. Singla PW-2 examined Ajaib Singh son of Sarup Singh and found that the shaft of ulna of Ajaib Singh was fractured causing dislocation of head of radius. Dr. Satish Arora PW-3 had also medically examined Ajaib Singh on 29th of April, 1988 and had found three incised wounds and one abrasion on his person.

7. Ajaib Singh appeared as PW-9 and fully supported the prosecution version.

There is no need to mention at all the other evidence led by prosecution in the case for the sole reason that even though at the stage of trial both parties were trying to plead and prove that their opponents were aggressors and they had caused injuries or death in right of their self defence of person and property but now before us the sole contention raised by the learned Counsel for the appellants Zora Singh and Man Singh is that even if the version of the other side which has been supported by the investigating agency is accepted, the case would not fall u/s 302 and at the most the appellants can be held guilty of an offence u/s 304 Part I or II as also it is Zora Singh alone who would be guilty of committing an offence u/s 304 Part I or II whereas Man Singh can at the most be held guilty u/s 386 of the Indian Penal Code.

8. We have heard the learned Counsel for the Parties and have gone through the records with their assistance. It is an unfortunate case in which Sarup Singh has lost his life at the hands of none other but his own brothers Zora Singh and Man Singh appellants herein over a trivial dispute involving only one acre of land. Both the parties have inflicted injuries on each other. It may be mentioned here that Malkiat Kaur daughter of Man Singh received three injuries in this incident out of which one is grievous. Zora Singh appellant received 8 injuries out of which two are grievous whereas Raminder Kaur has got one injury on her head even though simple in nature. Man Singh appellant received 9 injuries out of which injuries 2, 4 and 6 were declared grievous. Injuries No. 3, 7 and 9 were stab injuries. If the matter is looked into in the context of the background of the parties being closely related to each other and fighting over a trifle dispute and causing injuries to each other, it would straightway appear that the appellants could not have an intention to cause death. They had not planned the attack on Sarup Singh their own real brother and the matter flared up on account of sudden quarrel when perhaps attempt was made by both the sides to establish their possession over one acre of disputed land. Before the parties resorted causing injuries to each other, there were certainly some words exchanged between them which became an immediate cause of inflicting injuries to each other. The case, in our view, is thus squarely covered under Exception 4 to Section 300 of the Indian Penal Code. There was no pre-meditation and it was a sudden flight in the heat of passion on a sudden quarrel that Sarup Singh sustained injuries on his person resulting into his death. The appellants had not taken undue advantage or acted in a cruel or unusual manner. Sarup Singh had received three injuries and It is injury No. 3 attributed to Zora Singh which proved fatal. It requires to be mentioned here that as per Explanation attached to Exception 4 to Section 300 it is immaterial in such cases as to which party offered the provocation or committed the first assault.

9. In view of the discussion made above, the appeal is partly allowed. Conviction and sentence recorded against Zora Singh u/s 302 read with Section 34 is converted into one u/s 304 Part I of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for seven years. Conviction and sentence recorded against Man Singh appellant u/s 302 read with Section 34 IPC is

converted u/s 326 of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo rigorous imprisonment for one month. The sentence awarded to the appellants Man Singh and Zora Singh under Sections 323 and 323/34 Indian Penal Code is reduced to two months rigorous imprisonment. All the substantive sentences shall run concurrently.

10. Criminal Appeal No. 460-DBA of 1993 which has been filed by Man Singh against the order of Additional Sessions Judge, Patiala, acquitting Ajaib Singh and Jarnail Singh for the charges framed against them under Sections 307/326/324 read with Section 34 of the Indian Penal Code has no merit and is accordingly dismissed. .

11. For the reasons to be recorded later on, this appeal is partly allowed. Conviction and sentence recorded against Zora Singh u/s 302 read with Section 34 is converted into one u/s 304 Part 1 of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for seven years. Conviction and sentence recorded against Man Singh appellant u/s 302 is converted under Sections 326 and 323 of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 500/- in default of payment of fine to further undergo rigorous imprisonment for one month.

12. Criminal Appeal No. 460-DBA of 1993 is dismissed.