

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1226-SB of 2003

Date of Decision: 18.3.2015

Balwinder Singh and Others

... Appellants(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

Present: Mr. Dinesh Trehan, Advocate
for the appellant(s).

Mr. Jasanpreet Singh, Assistant Advocate
General, Punjab for the respondent.

Mr. Dhirender Chopra, Advocate
for the complainant.

Darshan Singh, J.

1. The present appeal has been preferred by the appellants against the judgment of conviction dated 3.6.2003, vide which they were held guilty and convicted for the offences punishable under Sections 324 and 324 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and the order of sentence of even date vide which appellant Gian Singh was released on probation of good conduct, whereas appellants Balwinder Singh and Sarup Singh were sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹ 500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each for the offence punishable under Section 324 IPC. They were also awarded similar sentence for the offence punishable under Section 324

read with Section 34 IPC. Both the sentences were ordered to run concurrently.

2. The present case was set up as a cross-case to the main case titled as “State v. Karnail Singh and Others” under Section 307 IPC, FIR No. 24 dated 19.3.1997, Police Station Sultanpur Lodhi, District Kapurthala.

3. As per the prosecution allegations, the present appellants along with their co-accused Teja Singh, Krishna and Surjit Singh (since acquitted) formed an unlawful assembly while armed with deadly weapons. Appellant Gian Singh gave a kirpan blow on the left side of forehead of complainant-Karnail Singh. He also gave a kick blow to the complainant while he was lying on the ground. Appellant Sarup Singh gave a gandasi blow to the complainant which hit on the right side of his forehead and appellant Balwinder Singh gave a stick blow which hit on the left kneecap of the complainant. The occurrence was witnessed by Didar Singh, Charan Singh and Satnam Singh. The motive for the occurrence was the land dispute between appellant Gian Singh and PW.3 Mohan Singh about the partition of the shamlat land. On completion of the formalities of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) was submitted in the Court. The case was committed to the Court of Sessions for trial by the learned Judicial Magistrate, Sultanpur Lodhi, apparently may be due to the reason that it was the cross-case of the case titled as “State v. Karnail Singh and Others” under Section 307 IPC.

4. The appellants and their co-accused were charge sheeted for the offences punishable under Sections 148, 324 and 323 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as seven witnesses.

6. When examined under Section 313 Cr.P.C, the appellants pleaded that infact the complainant party had caused injuries to Balwinder Singh on his head and other parts of his body and a false case has bee registered against them as a counter-blast.

7. In the defence evidence, the accused examined Dr.Baljit Singh who had medicolegally examined appellant Balwinder Singh. Thereafter, the defence evidence was closed.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held the appellants guilty and convicted them for the offences punishable under Sections 324 and 324 read with Section 34 IPC. They were sentenced as mentioned in the earlier part of the judgment. Their co-accused, namely Teja Singh, Krishna and Surjit Singh were acquitted by the learned trial Court.

9. Aggrieved against the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mr. Dinesh Trehan, learned counsel for the appellants, Mr. Jasanpreet Singh, learned Assistant Advocate General, Punjab for the State of Punjab, Mr. Dhirender Chopra, learned counsel for the complainant and have meticulously examined the record.

11. It is pertinent to mention at the very outset that appellant Gian Singh has died during the pendency of the appeal. The death report of appellant Gian Singh has been filed by the learned State counsel by way of affidavit of Davinder Singh, Deputy Superintendent of Police, Sub Division, Sultanpur Lodhi, District Kapurthala, which is accompanied with the death certificate of the said appellant. The same are taken on record. The death certificate of appellant Gian Singh shows that he died on 9.12.2012. So, the appeal qua appellant Gian Singh stands abated.

12. Now we are only concerned with appellants Balwinder Singh and Sarup Singh.

13. Learned counsel for the appellants pleaded that the parties have already compromised the matter. He does not challenge their conviction. He only wants to pursue the present appeal on the quantum of sentence. He contended that the appellants are residents of the same village. No dispute has taken place between the parties after this occurrence. The appellants are also not the previous convicts. The parties have also compromised and are now living peacefully. The occurrence had taken place on 17.3.1997 i.e. 18 years back. So, they deserve the benefit of probation.

14. Mr. Dhirender Chopra, learned counsel for the complainant has also corroborated the plea of learned counsel for the appellants that the parties have compromised. He further stated that the complainant and the injured will have no objection if the appellants are given the benefit of probation.

15. Per contra, Mr. Jasanpreet Singh, learned Assistant Advocate

General, Punjab contended that the appellants have caused serious injuries to Karnail Singh. So, the sentence awarded to them by the learned trial Court is just and appropriate.

16. I have duly considered the aforesaid contentions.

17. Learned counsel for the appellants has not challenged the conviction of the appellants. Moreover, the finding of the learned trial Court with respect to the conviction of the appellants is well founded. The prosecution has examined complainant Karnail Singh as PW.3, Mohan Singh, injured witness as PW.1, Satnam Singh, the witness of the occurrence as PW.2 and Charan Singh, another eye witness as PW.5. They have consistently deposed that appellants-Balwinder Singh and Sarup Singh had caused injuries to complainant Karnail Singh with their respective weapons. This ocular evidence is also supported by the medical evidence. So, there is no legal infirmity in the conviction of the appellants as recorded by the learned trial Court.

18. However, I find substance in the contentions raised by learned counsel for the appellants on the quantum of sentence. There is no dispute that the appellants are the first offenders. The record of the case does not show their any previous conviction. It is also not disputed that both the appellants are residents of the same village. Learned counsel for the appellants as well as complainant have stated in one voice that after this occurrence, no further dispute of this nature has taken place between the parties and they have also stated that now the parties have compromised and are living peacefully in the village. The occurrence had taken place on 17.3.1997. A period of 18 years has passed. To

award the substantive sentence to the appellant will amount to open the old wounds. Learned counsel for the complainant has also not objected to the grant of benefit of probation to the appellants. Thus, keeping in view the facts & circumstances of the case, nature of the offences and antecedents of the appellants, it is a fit case where the benefit of probation can be granted to the appellants.

19. Thus, keeping in view my aforesaid discussion, the appeal of appellants Balwinder Singh and Sarup Singh qua their conviction is hereby dismissed and their conviction is upheld. However, the order on the quantum of sentence is hereby modified. Instead of awarding the substantive sentence, they are ordered to be released on probation on their furnishing the probation bonds in the sum of ₹ 50,000/- with one surety each in the like amount to the satisfaction of the trial Court operative for a period of two years. During this period, they will maintain peace and be of good behaviour and will come to receive the sentence as and when called upon to do so. The probation bonds be furnished before the learned trial court within one month from today.

(Darshan Singh)
Judge

March 18, 2015

“DK”