

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1034-DB of 2014
Date of Decision: 10.02.2015

Swaran Singh

..... Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM

:-

Present: Mr. Sajjan Singh Malik, Advocate for the appellant.

S.S. SARON, J.

The appellant Swaran Singh who is the injured in the case has filed this appeal against the judgment and order dated 18.02.2014 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib whereby his father Anoop Singh (respondent No.2) and his step sister Sukhbir Kaur alias Sukhi (respondent No.3) have been acquitted.

Two medical reports of Swaran Singh (appellant) and of Jaswinder Singh, who is the brother-in-law i.e. wife's brother of the appellant, were received at the Police Station Lambi on 09.05.2009. Three injuries i.e. injury No.1 with a sharp edged weapon and injuries No.2 and 3 were mentioned in the MLR of Swaran Singh (appellant). Injury No.2 was subject to CT scan. The other two injuries were subject to x-ray examination. In the MLR of Jaswinder Singh i.e. wife's brother of the appellant, seven injuries with blunt weapon were mentioned. Injury No.2 was

subject to x-ray examination. ASI Duli Chand along with Head Constable Balkaran Singh on receipt of MLRs went to Civil Hospital, Lambi. There they came to know that Swaran Singh (appellant) being in serious condition was referred to Military Hospital, Bathinda. Jaswinder Singh was declared fit to make a statement. Jaswinder Singh, however, informed the police that he would make his statement after Swaran Singh (appellant) gained consciousness. Later, Swaran Singh (appellant) was referred to Command Hospital, Panchkula from Military Hospital, Bathinda.

ASI Duli Chand reached Command Hospital, Panchkula on 11.05.2009 for recording the statement of Swaran Singh. The doctor, however, declared him unfit to make a statement and he also informed the police that Swaran Singh (injured) would be able to speak after some days. Later Jaswinder Singh (injured) along with Harbhajan Singh met ASI Duli Chand at the Bus Stand of village Lalbai and his statement was recorded .

According to Jaswinder Singh, his elder sister Lovepreet Kaur was married to Swaran Singh (appellant) for the last nine years. There was a land dispute between the appellant and his father Anoop Singh (respondent No.2). Swaran Singh (appellant) had got the land demarcated from the Halqa Patwari and Kanungo some time ago. However, Anoop Singh (respondent No.2) had demolished the marks of demarcation. Jaswinder Singh (complainant) along with his brother-in-law Swaran Singh were irrigating their land with canal water on 08.05.2009 at about 10.30 pm. It was a moonlit night and in the meantime Anoop Singh (respondent No.2) armed with a 'kappa', Gurjiwan Singh

(juvenile) armed with a handle of hand pump, Semi (juvenile) armed with a 'gandasi' and Sukhbir Kaur alias Sukhi (respondent No.3) armed with a 'sotta', Swaran (juvenile) and Vicky (juvenile) armed with a 'dang' each along with three unidentified persons came on motorcycles and scooters. Sukhbir Kaur alias Sukhi (respondent No.3) raised a 'lalkara' to teach them a lesson for irrigating their fields. On this, Anoop Singh (respondent No.2) inflicted a 'kappa' blow from its sharp side on the person of Swaran Singh (appellant), which hit him on his forehead. Gurjiwan Singh (juvenile) inflicted two consecutive blows with the handle of hand pump, which hit on the left jaw and left temple of Swaran Singh. The complainant raised an alarm of 'maarta-maarta' and in the meantime, Semi (juvenile) inflicted a 'gandasa' blow from its sharp side on the person of Swaran Singh, which hit on his head. On account of the injuries that were inflicted, Swaran Singh fell down. Then Swarana (Swaran Singh son of Sukhdev Singh) (juvenile), Vicky (juvenile) and two other unidentified persons gave 'dang' blows on the back of Swaran Singh (appellant) while he lay on the ground. One injury was caused near his left eye. When the complainant Jaswinder Singh came forward to save Swaran Singh (appellant), Gurjiwan Singh (juvenile) inflicted a blow with the handle of hand pump, which hit on his head. Swarna (Swaran Singh son of Sukhdev Singh) (juvenile) inflicted two 'dang' blows, which hit Jaswinder Singh (complainant) on his left arm and Vicky (juvenile) inflicted two 'dang' blows, which hit on his right shoulder and right biceps. Two unidentified persons inflicted 'dang' blows, which hit on his left

arm and left biceps. They raised an alarm of 'maarta-maarta', which attracted Gurmeet Singh, who came at the spot and witnessed the occurrence. The accused then ran away from the spot with their respective weapons. While leaving, they damaged their motorcycles make Hero Honda Splendor. Gurmeet Singh after arranging a conveyance, took the injured to Civil Hospital, Lambi. Swaran Singh (appellant) being a military personnel was referred to Military Hospital, Bathinda where he was admitted. Later, he was referred to Command Hospital, Chandi Mandir.

The motive behind the incident was that there was a land dispute pending between Swaran Singh (appellant) and his father Anoop Singh (respondent No.2). On account of the said grudge, injuries had been caused to the complainant side. ASI Duli Chand made his endorsement on the statement of Jaswinder Singh (complainant). FIR was registered in the case and investigations were conducted. Swaran Singh son of Sukhdev Singh (juvenile), Anoop Singh (respondent No.2) and Gurjiwan Singh (juvenile) were arrested on 17.05.2009 and the weapons that were used in committing the crime were got recovered from them. The motorcycle with registration No.PB60A - 3284 along with with registration certificate was taken in possession in pursuance of recovery memo. Semi and Vicky (juveniles) were arrested on 19.05.2009. The weapons of offence were got recovered from them.

After investigation was completed, police report ('challan') was filed in the Court of the learned Ilqa Magistrate against Anoop Singh and Sukhbir Kaur (respondents No.2 and 3).

The police report ('challan') against Gurjiwan Singh, Semi, Swaran Singh son of Sukhdev Singh and Vicky was filed before the Juvenile Justice Board, Sri Muktsar Sahib as they were juveniles in conflict with law.

Anoop Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3) were charge sheeted for the offences punishable under Sections 148, 307, 325, 323 and 427 read with Section 149 Indian Penal Code ('IPC' - for short). The learned Additional Sessions Judge, Sri Muktsar Sahib to whom the case was assigned considered the case as to whether Anoop Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3) along with Swaran Singh, Vicky, Gurjiwan Singh and Semi (juveniles in conflict with law) formed an unlawful assembly and were armed with deadly weapons and thereby committed the offence of rioting. Besides, whether they caused injuries to Swaran Singh (appellant) with a 'kappa' from its sharp side on his head with an intention to kill him. It was also considered whether they voluntarily caused grievous injury and simple injury to Swaran Singh with the handle of a hand pump. Further whether they voluntarily caused simple injury to Swaran Singh with 'gandasa' and 'dangs', and whether they committed mischief by causing damage to the motorcycle make Hero Splendor belonging to Swaran Singh (appellant).

The prosecution examined Jaswinder Singh, complainant (PW-1), Swaran Singh (appellant) (PW-2), Harnek Singh, Patwari (PW-3), Gurjant Singh, Kanungo (PW-4), Dr. Bikramdeep Singh, M.O. (PW-5), SI Banta Singh (PW-6), Darbara Singh, Retd. Irrigation Patwari (PW-7), Pawan Kumar, Manager

(PW-8), Lt. Col. Shikha Garg (PW-8/A), ASI Duli Chand, Investigating Officer (PW-9) and HAV S.S. Yadav, Command Hospital, Western Command, Chandimandir, Panchkula (PW-10). Besides, documents were tendered in evidence and the evidence of the prosecution was closed. The statements of Amrik Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3) were recorded in terms of Section 313 of the Code of Criminal Procedure ('CrPC' - for short). The substance of evidence appearing against them was put to them. They denied the incriminating circumstances put to them and pleaded that they were innocent.

Anoop Singh (respondent No.2) took the defence that he, Gurjiwan Singh, Swaran Singh and Semi were not armed with any weapons and they did not cause any injuries to Jaswinder Singh and Swaran Singh. In fact on 08.05.2009 Jaswinder Singh (complainant) and his brother-in-law (appellant) had demolished the 'khal' (water course) through which he used to irrigate his land. On the same day at about 8.00 p.m. when he (Anoop Singh) along with Gurjiwan Singh, Semi and Swaran Singh had gone to repair the 'khal' (water course) then Jaswinder Singh armed with a 'dang' and his brother-in-law Swaran Singh (appellant) armed with a 'kulhari' were present in the fields. When they started to restore the 'khal' (water course), Jaswinder Singh and his brother-in-law Swaran Singh abused them. They asked them not to do so then Swaran Singh (appellant) inflicted two-three 'gandasi' blows to him (Anoop Singh) which hit him on his forehead, left eye and middle of the eyes and nose. Jawinder Singh gave two 'dang'

blows on his person which hit on his left elbow. After causing injuries to him (Anoop Singh); Jaswinder Singh and Swaran Singh fled away from the spot on a motorcycle. While they were leaving the spot, they fell down from the motorcycle and received injuries due to a heavy fall. Later on the false case was registered against him (Anoop Singh) in connivance with the doctor and the police. They had not damaged the motorcycle of Swaran Singh. Sukhbir Kaur @ Sukhi took the defence that she did not participate in the commission of the alleged offences. She had been falsely implicated in the case being the daughter of Anoop Singh from his second wife. Anoop Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3) did not examine any witness in their defence.

The learned Additional Sessions Judge, Sri Muktsar Sahib after considering the evidence and material on record has acquitted Anoop Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3). Aggrieved against the same, Swaran Singh son of Anoop Singh (appellant) has filed the present appeal.

Learned counsel appearing for the appellant has contended that the police has not conducted fair investigation in the case. It is submitted that all the prosecution witnesses have supported the prosecution case, besides, Anoop Singh and Sukhbir Kaur @ Sukhi (respondents No.2 and 3) had a motive to attack the appellant. It is submitted that Swaran Singh (appellant) suffered a head injury for which CT scan was advised, besides, he suffered an injury on his left thigh for which x-ray was advised. Swaran Singh (appellant) was discharged after twenty

four days of treatment. It is submitted that Anoop Singh (respondent No.2) is attributed the role of inflicting a 'kappa' blow on the head of Swaran Singh. The 'kappa' was recovered from Anoop Singh (respondent No.2) on the basis of his disclosure statement. It is submitted that the learned trial Court has erred in reaching the conclusion that the injuries might have been caused to the appellant as a result of a fall from the motorcycle. It is submitted that the incident had occurred on a 'kachaa Paahi' (un-metalled road); therefore, it is not possible for anybody to get serious injuries by falling from the motorcycle on an un-metalled road. In fact, Anoop Singh (respondent No.2) admits his presence at the place of occurrence. The case has been spoiled by unfair investigation.

We have given our thoughtful consideration to the contentions of the learned counsel for the appellant, however, find no merit in the same.

Dr. Bikramdeep Singh, Medical Officer, CHC Lambi (PW-5) medico-legally examined Swaran Singh (appellant). He observed that the injured Swaran Singh (appellant) received injuries in an assault as disclosed by Gurmeet Singh who brought the injured to the hospital. The injured was semi-conscious, irritable and was not oriented to time, place and person. He was smelling of alcohol. Three injuries were found on his person. X-ray of skull and C.T. Scan of head was advised in respect of injury No.1. X-ray of left thigh was advised for injury No.3. All the three injuries were kept under observation subject to x-ray and C.T. scan report. Swaran Singh after being given primary treatment

on 08.05.2009 was referred to Civil Hospital, Bathinda for further management. Dr. Bikramdeep Singh (PW-5) also deposed regarding the medico-legal examination of Jaswinder Singh who was brought during the intervening night of 08.05.2009 and 09.05.2009 at about 11.50 p.m. Jaswinder Singh, it is stated, was co-operative and well-oriented to time, place and person. Seven injuries were found on his person. Injury No.2 was kept under observation subject to x-ray report and injuries No.1 and 3 to 7 were declared simple in nature. All the injuries were with blunt weapons. On the basis of x-ray report, injury No.2 on the person of Jaswinder Singh was declared simple in nature. He (Jaswinder Singh) was discharged from the hospital on 12.05.2009. In cross-examination Dr. Bikramdeep Singh stated that he found five abrasions on the person of Anoop Singh (respondent No.2). Injuries No.1 to 4 and 5 were caused with blunt weapons and were declared simple. Injury No.3 was kept under observation which was declared simple in nature after x-ray examination.

According to the case of the prosecution, Swaran Singh (appellant) suffered a skull injury for which x-ray was advised, a head injury for which CT scan was advised and an injury on his thigh for which x-ray was advised. The learned trial Court has observed that no evidence had come on record to prove that the injuries on the person of Swaran Singh (appellant) were dangerous to life except a mere mention in the endorsement (Ex.PW-9/C) made by the Investigating Officer. No x-ray report or CT Scan report of Swaran Singh (appellant) had been brought on record to prove the seriousness or the gravity of the injuries that

are said to have been caused. Even in the MLR (Ex.PW-5/F) prepared by Dr. Bikramdeep Singh (PW-5) there is no mention of any kind of weapon that can be said to have been used for inflicting the injuries on the person of Swaran Singh. Only an x-ray report of Jaswinder Singh (complainant) is on record. All the injuries on the person of Jaswinder Singh were declared simple in nature by Dr. Bikramdeep Singh (PW-5). It has not come in his statement that the injuries on the persons of injured Swaran Singh and Jaswinder Singh were dangerous to life, besides, there is no mention about the nature of injuries in the statement of MS 14313 K Lt. Col. Shikha Garg, Medical Officer (PW-8) and HAV S.S. Yadav, Command Hospital, Western Command, Chandi Mandir (PW-10). Therefore, on mere mention of an endorsement (PW-9/C) of the Investigating Officer would indeed not be sufficient to hold that the prosecution case has been established.

As regards motive, it may be noticed that it is a double edged weapon, which may be used for causing injuries to the complainant side and also for falsely implicating the accused. The fact that a 'kappa' had been recovered from Anoop Singh (respondent No.2) is quite inconsequential as it is not shown that the recovered 'kappa' was blood stained or sent to FSL for its examination.

The learned trial Court noticed major contradictions in the depositions of the material witnesses about their presence at the spot at the time of alleged occurrence. Jaswinder Singh (PW-1) stated that he and his brother-in-law Swaran Singh were present at the spot since morning on the date of the occurrence

whereas according to injured eye-witness Swaran Singh (PW-2) they had gone to the fields at 9.30 p.m. They irrigated their fields for about half an hour and then the incident had occurred. Their testimonies did not inspire confidence in the mind of the learned trial Court.

Gurmeet Singh, an independent witness who had taken the injured to the hospital, was available and yet was not examined for which an adverse inference was drawn by the learned trial Court and rightly so. Besides, there has been an unexplained delay of seven days in lodging the FIR. Though prompt lodging of an FIR is not an unmistakable guarantee of its truthfulness, however, delay in lodging the FIR creates a doubt at times of a coloured or false version being included so as to make a false case against others especially where litigation is pending between the parties. The incident had occurred on 08.05.2009 at 10.30 p.m., however, the FIR was lodged on 15.05.2009 at 12.15 p.m. for which there is no sufficient explanation. The prosecution also failed to prove the genesis of the occurrence as according to the complainant Jaswinder Singh, he and his brother in law Swaran Singh were irrigating their land with canal water when at about 10.30 p.m. the accused came there duly armed with weapons. According to the 'varabandi' (Ex.PW7/A) there was no turn for irrigating the land in favour of Swaran Singh at the time when the incident had occurred. The said fact is accepted by ASI Duli Chand. According to Darbara Singh (Retd.) Irrigation Patwari (PW-7) it was the turn of one Channan Singh son of Thakur Singh from 10.05 p.m. to 11.32 p.m.

Said Channan Singh is the father of Anoop Singh (respondent No.2).

Dr. Bikramdeep Singh (PW-5) stated that he also medico-legally examined Anoop Singh (respondent No.2) on 08.05.2009 at 11.10 p.m. with alleged history of assault. He found him to be conscious, cooperative and well-oriented to time, place and person. He found five abrasions on his person and injuries No.1, 2, 4 and 5 were caused with blunt weapon and were declared simple in nature. Injury No.3 was kept under observation which was declared simple in nature after x-ray examination. The carbon copy of MLR (Ex.D1) and pictorial diagram showing the seats of injuries (Ex.D1/A) of Anoop Singh were tendered in evidence. Admittedly the injuries on the person of the accused have not been explained. The non-explanation of injuries sustained by an accused at about the time of occurrence or in the course of altercation has been held to be a very important circumstance from which the Court can draw several inferences like that the prosecution had suppressed the genesis and the origin of the occurrence and not presented the true version. The witnesses who denied the presence of injuries on the person of the accused were lying on a most material point which rendered their evidence unreliable. In case there was a defence version which explains the injuries on the person of the accused it is rendered probable and casts a doubt on the prosecution case. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes even greater importance when the evidence consists of interested witnesses or inimical

witnesses or where defence gives a version which competes in probability with that of the prosecution case. There have indeed been no explanation of the injuries suffered by Anoop Singh (respondent No.2) which casts serious doubt on the prosecution case.

The defence taken by Anoop Singh (respondent No.2) before the learned trial Court was that Jaswinder Singh and Swaran Singh (appellant) had demolished the 'khal' (water course) on 08.05.2009 and when he (Anoop Singh - respondent No.2) along with Gurjiwan Singh, Semi and Swaran had gone to repair the 'khal', then Jaswinder Singh armed with a 'dang' and his brother-in-law Swaran Singh armed with a 'kandhali' were present in the fields. When the accused started to restore the 'khal', Jaswinder Singh and his brother-in-law Swaran Singh caused injuries to Anoop Singh (respondent No.2) with their respective weapons and after causing injuries, they tried to flee away from the spot on the motorcycle and they fell from the motorcycle and suffered injuries due to heavy fall. Dr. Bikramdeep Singh, Medical Officer (PW-5) in his medico legal report (PW-5/A) of Swaran Singh (appellant) mentions that the patient was smelling of alcohol. Therefore, the possibility of Swaran Singh (appellant) receiving injuries otherwise than by way of an assault cannot be ruled out. The learned trial Court held that the prosecution had not been able to prove its case beyond shadow of reasonable doubt and the accused were entitled to benefit of doubt.

The learned trial Court held that the statements of Jaswinder Singh (PW-1) and Swaran Singh (appellant) (PW-2) did

not inspire confidence. Anoop Singh (appellant) is mentioned as 70 years old, although, in the array of parties, he is mentioned as 75 years of age and Sukhbir Kaur alias Sukhi (respondent No.3) to whom 'lalkara' is attributed is 25 years old. It was held that it did not seem probable that Swaran Singh and Jaswinder Singh suffered injuries at the hands of an old person or juveniles, who alleged to have accompanied the accused. It was held that the prosecution case was that the accused had damaged the motorcycle of Swaran Singh while leaving the spot, however, no photographs of the damaged motorcycle and its test reports have been brought on record to show the damage of motorcycle of Swaran Singh. The learned trial Court in the circumstances has recorded cogent and convincing reasons for acquitting the respondents No.2 and 3, which warrant no interference by this Court. The findings and conclusions reached at by the learned trial Court are just and proper and warrant no inference by this Court.

Consequently, the appeal is dismissed. However, nothing stated hereinabove shall be construed as an expression of opinion as against the case against the juvenile and the learned trial Court dealing with the case of the juvenile shall determine the matter on the basis of evidence and material as adduced before it.

(S. S. Saron)
Judge

(Gurmit Ram)
Judge

10.02.2015

G. Bhardwaj/amit