

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. Criminal Appeal S-1327-SBA of 2004
Date of Decision : August 29, 2017

State of PunjabAppellant

Versus

Hoshiar Singh and othersRespondents

II. CRR 2365 of 2004

Balbir Singh ...Petitioner

Versus

Hoshiar Singh and othersRespondents

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Sandeep Vermani, Additional Advocate General, Punjab.

Accused Hoshiar Singh and Darshan Kaur already dead.

Mr. Shivam Grower, Advocate
for accused Balwinder Singh and Lakhbir Singh.

T.P.S. MANN, J.

Hoshiar Singh, his wife Darshan Kaur and their sons Balwinder Singh and Lakhbir Singh were tried for committing offences punishable under Sections 324/323/506/34 IPC. Vide judgment and order dated 17.10.2002, learned Judicial Magistrate 1st Class, Khanna convicted Hoshiar Singh and Lakhbir Singh under Section 324 IPC and Darshan Kaur and Balwinder Singh under Sections 324/34 IPC and sentenced them to undergo rigorous imprisonment for four months and

to pay a fine of Rs. 100/- each and in default of payment of fine, to undergo rigorous imprisonment for ten days. All four of them were further convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for two months each. They were also convicted under Section 506 IPC and sentenced to undergo rigorous imprisonment for two months each. All the sentences were ordered to run concurrently.

Aggrieved of their conviction and sentence, all the accused preferred an appeal. Vide judgment dated 18.10.2003, learned Additional Sessions Judge, Ludhiana after holding that the prosecution had failed to prove its case against them beyond reasonable shadow of doubt, acquitted them of the charge against them and set aside their conviction and sentence. Feeling dissatisfied by the acquittal of the accused, the State of Punjab filed CRA-S-1327-SBA of 2004 whereas complainant Balbir Singh filed CRR 2365 of 2004. Both the appeals and the revision stand admitted.

As the appeal and the revision arise out of the same judgment passed by the learned Additional Sessions Judge, Ludhiana, they are being disposed of by a common judgment.

According to the prosecution, on 26.10.2000 medico-legal report regarding injuries of Balbir Singh complainant was received at Police Station Sadar, Khanna. Accordingly, ASI Mohinder Singh went to Civil Hospital, Khanna for recording the statement of injured. The

doctor, however, declared him unfit to make statement. On 27.10.2000, ASI Mohinder Singh, along with other police officials went to the hospital for recording the statement of the injured. The doctor declared him fit to make the statement.

In his statement made to the police, Balbir Singh stated that he had been working with Ajmer Singh as Siri for the last about two years. On 26.10.2000, he was sitting at the dhaba of Ajmer Singh. At about 11.30 a.m., Hoshiar Singh and Lakhbir Singh, armed with iron rod each and Balwinder Singh and Darshan Kaur, armed with stick each came there. Darshan Kaur raised a lalkara that he be not allowed to escape and they would deal with the son of Ajmer Singh on some other occasion. Hoshiar Singh gave iron rod blow on the right side of his head. Balwinder Singh gave blow on his right arm. Darshan Kaur gave a blow on his left leg. Lakhbir Singh also gave an iron blow on the left side of his head. He fell on the ground. All the accused had given blows with their respective weapons. On raising a hue and cry by him, Ajmer Singh and those who were working there came at the spot raising an alarm that he be not attacked. All the accused fled away from the spot while carrying their respective weapons. According to the complainant, the incident was witnessed by the workers of the dhaba and Ajmer Singh. The motive behind the occurrence was a dispute between Ajmer Singh and accused persons regarding some land and the accused had caused injuries to him, being the worker of Ajmer Singh.

After recording the statement of the complainant, ASI

Mohinder Singh forwarded the same to Police Station Sadar, Khanna where on its basis FIR No. 130 dated 27.10.2000 was registered. During the investigation of the case, the statements of the witnesses were recorded and the site plan was prepared. The accused were arrested and, later on, released on bail. On completion of investigation, challan was presented in the Court. The accused were, thereafter, charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as five witnesses.

PW1 Dr. N.P.S. Virk, Medical Officer, Civil Hospital, Khanna deposed that he had medico-legally examined Balbir Singh complainant on 26.10.2000 at about 2.40 p.m. and found the following injuries on his person :-

1. Lacerated wound star shaped 3 cms. x 0.5 cm. on lateral end on right eye-brow. Skin deep, fresh blood present. Advised X-ray.
2. Lacerated wound 3 cms. x 0.5 cm. situated on right side of forehead 6 cms. above injury No.1. Fresh blood present. Advised X-ray.
3. Abrasion 2 cms. x 1 cm. on right cheek.
4. Incised wound 4 cms. x 0.5 cm. on left parietal region. 6 cms. above left ear pinna. Fresh blood present. Advised X-ray. Wound is skin deep.
5. Incised wound 2 cms. x 0.5 cm. skin deep

situated 2 cm. lateral to injury No.4. Advised X-ray.

6. Complaints of pain middle of right forearm. No fresh injury mark seen. Advised X-ray.
7. Abrasion 2 cms. x 1 cm. on middle of shin area of left leg. Advised X-ray.

PW2 Balbir Singh complainant testified that on 26.10.2010 he was present at the dhaba of Ajmer Singh. Accused Hoshiar Singh armed with square shaped iron bar, accused Balwinder Singh armed with soti, accused Darshan Kaur armed with soti and accused Lakhbir Singh armed with square shaped iron bar came to the dhaba of Ajmer Singh at about 11.30 a.m. He further stated that accused Darshan Kaur raised the lalkara. Accused Hoshiar Singh gave a blow from his iron bar on the right side of his head. Accused Balwinder Singh gave a stick blow on his right arm and accused Darshan Kaur gave a stick blow on his left leg and accused Lakhbir Singh gave iron bar blow on the left side of his leg. He further stated to the effect that the accused persons caused injuries to him alongwith their weapons whereafter he fell down. He further stated that the occurrence was witnessed by Raj Kumar, servant and Ajmer Singh, owner of the dhaba. He further stated that the accused persons fled away from the place of occurrence on raising of raula by Ajmer Singh and Raj Kumar. He further stated that the motive behind the occurrence was that the accused were having a land dispute with Ajmer Singh and he is the servant of Ajmer Singh. He has proved his statement Ex.PW2/A made to the police.

PW3 Ajmer Singh, eye-witness of the occurrence also

corroborated the version of Balbir Singh-complainant.

PW4 ASI Mohinder Singh and PW5 SI Banarsi Dass deposed about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C., all the accused denied the incriminating evidence collected by the prosecution. They claimed that they had been falsely implicated in the case. In their defence, they did not examine any witness.

After hearing learned counsel for the parties and on going through the record, learned trial Court convicted and sentenced the accused, as mentioned above. However, in appeal, all the four accused were acquitted of the charges against them.

It may be mentioned here that during the pendency of the appeal, Hoshiar Singh and Darshan Kaur accused died. Report in the shape of affidavit of Shri Raj Kumar Jalhotra, DSP, Khanna was produced in this respect by learned State counsel on 14.12.2015. Along with the report, their death certificates were also attached. In view of the same and it being an appeal/revision against the acquittal of the accused, both of them would abate qua Hoshiar Singh and Darshan Kaur accused. The appeal and revision, accordingly, survive in respect of Balwinder Singh and Lakhbir Singh accused.

Having heard learned counsel for the parties and on going through the impugned judgment passed by learned Additional Sessions Judge, Ludhiana, this Court finds that there was an inordinate delay of

more than thirty hours in recording the statement of complainant Balbir Singh. The occurrence had taken place on 26.12.2000 at 11.30 a.m., whereas the statement of the complainant came to be recorded on 27.10.2000 at 7.00 p.m. The explanation regarding the delayed recording was the opinion Ex. PW/1 of the doctor as per which the complainant was under the effect of sedation. However, it was not on account of unconsciousness or not being in a position to speak. In case the complainant was actually not found fit to make the statement, ASI Mohinder Singh could have recorded the statement of PW Ajmer Singh at whose dhaba the occurrence had taken place and he had seen the occurrence. However, no such steps were taken by ASI Mohinder Singh in this regard.

The medical evidence also did not corroborate the ocular account. Two of the accused were armed with iron rods while the other two with sticks. Out of the seven injuries noticed on the person of the complainant, two were incised in nature. As such these injuries could not be the result of the weapons wielded by the accused. An attempt was made to explain the conflict by way of the testimony of SI Banarsi Dass that the iron rods were not round but square in shape. However, the complainant denied making of any supplementary statement to the effect that the iron rods were square in shape. SI Banarsi Dass could not tell the place where the supplementary statement of the complainant was recorded.

As regards the motive that the accused were having

litigation with Ajmer Singh and out of annoyance they had caused injuries to the complainant who worked with Ajmer Singh. If Ajmer Singh himself was present at the spot when the occurrence had taken place, the accused could have caused injuries to him. The accused, however, chose to cause injuries to the complainant who was merely a servant at the dhaba of Ajmer Singh. In his cross-examination, the complainant testified that there was no altercation at all between him and any of the accused earlier nor he had ever appeared as witness in any case against the accused. PW3 Ajmer Singh testified that he had saved the injured from the accused who, however, did not cause any injury to him. Rather, they proclaimed that if the land was not vacated, they would deal with his son. The conduct of PW2 Balbir Singh and PW3 Ajmer Singh, thus, appears to be unreliable.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by learned lower appellate Court.

Resultantly, Criminal Appeal S-1327-SBA of 2004 and Criminal Revision 2365 of 2004 qua Hoshiar Singh and Darshan Kaur accused are disposed of as having abated whereas qua Balwinder Singh and Lakhbir Singh, they are, hereby, dismissed.

August 29, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO