SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Harpal Singh Vs. State

Harpal Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/1136756

Court : Delhi

Decided On : Apr-03-2014

Judge : V. K. Jain

Appellant : Harpal Singh

Respondent : State

Advocate for Pet/Ap. : Mr. Hans Raj Singh, Ms. Ritu Gauba

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

03. 04.2014 CRL. A. 752/2010 RAJBIR SINGH ..... Appellant Through: Mr. Hans Raj Singh, Adv. versus STATE ..... Respondent Through: + Ms. Ritu Gauba, APP. CRL.A. 753/2010 HARPAL SINGH ..... Appellant Through: Mr. Hans Raj Singh, Adv. versus STATE ..... Respondent Through: + Ms. Ritu Gauba, APP. CRL.A. 754/2010 NARENDER SINGH Through: ..... Appellant Mr. Hans Raj Singh, Adv. versus STATE ..... Respondent Through: Ms. Ritu Gauba, APP. CRL. A. 429/2014 JAIPAL SINGH ..... Appellant Through: Mr. Hans Raj Singh, Adv. versus STATE ..... Respondent Through: Ms. Ritu Gauba, APP. CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) On 28.8.2005, on receipt of copy of DD No.45B, Head Constable Shailender Singh of Police Station Saraswati Vihar reached G-Block, Bihari Chowk, Shakurpur, where he came to know that the injured persons had been taken to

BJRM Hospital by PCR van. When the aforesaid Head Constable reached the hospital, Devender, Manish and Prem Singh were found admitted there in injured condition. He recorded the statement of the complainant Prem Singh who inter alia told him that he was residing in Shakpurpur along with his uncle Devender and his cousin Manish and all of them were working in Chaudhary Fashion at E-16/224, Tank Road, Bapa Nagar, Karol Bagh. He further stated that earlier all of them were working with H.S. Garments owned by Shri Harpal Singh and about 5-6 months ago they had left the employment of Mr. Harpal Singh and taken up the employment with Laxman Chaudhary who also was earlier working with Harpal Singh and had started his own factory after resigning from there. He alleged that since the time they left the service of Harpal Singh, he had become inimical to them and had been threatening them. He further alleged that at about 11:00 p.m. on 28.8.2005, when they were coming to G- Block, Shakurpur and reached Bihar Chowk, Harpal Singh, his brother Narender, his uncle Jaipal and Rajbir, all of whom were armed with iron saria (rod) stopped them on the way and attacked them with saria saying simultaneously that they would tell them how to work with Laxman. He also alleged that Harpal Singh gave saria blow to him. Rajbir Singh gave saria blow to his cousin Manish and Jaipal and Narender gave saria blow to his uncle Devender. Somehow saving their lives they ran towards police station. On the aforesaid complaint an FIR under Sections 308/34 of IPC was registered.

2. All the four (4) persons named above were chargesheeted. On 3.9.2007, the appellants were charged under Sections 308/34 of IPC to which they pleaded not guilty. The prosecution thereupon examined ten (10) witnesses in support of its case whereas three (3) witnesses, DW1 to DW3, including the appellant Harpal Singh were examined in defence.

3. The complainant Prem Singh came in the witness box as PW6 and inter alia stated that the accused Harpal was annoyed with them on account of their having shifted to the factory of Laxman Chaudhary and had been threatening with dire consequences in case they did not join his factory. He further alleged that on 28.8.2005 at about 11:00 p.m., he along with his uncle Devender and cousin Manish was returning from the factory of Laxman Chaudhary and when they reached Bihari Crossing in the area of Shakurpur all the four (4) accused were

found present on the side of the road with iron rods. They said that they would teach them as to how they were working at the factory of Laxman Chaudhary and then started beating them. Harpal inflicted iron rod blow on his head as a result of which he became unconscious. Rajbir inflicted iron rod blows on Manish whereas Jaipal and Narender caused injuries to Devender.

4. PW7 Manish is the cousin brother of the complainant. He corroborated the deposition of the complainant as regards the appellant Harpal threatening them for their having joined Laxman Chaudhary and the appellants causing injuries to them with sarias in the night of 28.8.2005. PW5 Devender is the uncle of the complainant. He also corroborated the deposition of the complainant as regards appellant Harpal Singh being annoyed with them as also with respect to their having been injured with sarias in the night of 28.8.2005.

5. PW1 Dr. Neeraj Chaudhary proved the MLCs of Manish, Prem Singh and Devender. PW3 Dr. Shipra Rampal proved the X-Ray PW3/A in respect of Manish who had no bone injury. She also proved X-Ray in respect of Devender and found it to be a doubtful case of fracture. PW9 S.I. Ram Saran inter alia stated that the accused Narender Singh voluntary got recovered a saria from the corner of the room on the first floor of House No.E-57, JJ Colony, Shakurpur. Similarly Jaipal Singh also got recovered a saria from a room on the first floor of the aforesaid house. In their respective statements under Section 313 of Cr.P.C., the appellants denied the allegations against them and claimed to be innocent.

6. DW1 Dr. G.N. Sukhwani stated that he had examined the injured Jaipal Singh, Rajbir, Khazan Singh, Harpal Singh and Narender Singh in his clinic on 29.8.2005 and noticed that Jaipal Singh had injury on his wrist whereas the other persons had head injuries. According to him the certificates Ex.DW1/A to DW1/D were issued by him in this regard. DW2 Khazan Singh stated that the injured persons had taken Rs.20,000/each as advance from Shri Harpal Singh and on 28.8.2005, he had gone to the factory of Chaudhary Fasions with Harpal Singh so that Harpal Singh could seek return of the advance which he had paid to them. A quarrel ensued there but the matter was pacified by the proprietor of Chaudhary Fashions and they agreed to repay the entire advance amount by evening. He further stated

that at about 11:00 p.m. Devender, Prem Singh, Amrish and Manish called them from their house. As soon as Narender and Rajbir came out from the room Devender and Manish gave saria blow on the head of Narender and Jaipal. Manish and Prem also hit danda on the hand of Jaipal whereas Amrish and Prem Singh hit Harpal Singh on his head using a saria for the purpose. He further stated that neighbours thereupon gathered at the spot, snatched dandas and sarias from the above-referred persons and gave beatings to them as a result of which Manish, Amrish, Prem and Devender received injuries. The police was informed by someone and Manish, Amrish, Prem and Devender were taken to a Government Hospital whereafter they went to Dr. Sukhwanis clinic where they were medically examined.

7. The appellant Harpal Singh came in the witness box as DW3 and stated that he had given advance of Rs.20,000/- each to Manish, Prem Singh, Devender and Amrish. He further stated that on 28.8.2005, he along with Khazan Singh went to Chaudhary Fashions where the above-referred persons started quarrelling with them but they were pacified by the proprietor of Chaudhary Fashions and they agreed to repay the advance amount by evening. He claimed that at about 11:00 p.m. on that day, he along with Jaipal Singh, Narender, Rajbir and Khazan Singh was present in his house when Devender, Prem Singh, Amrish and Manish came there and called them outside. As soon as they reached verandah Devender and Manish hit them with sarias. On hearing their shouts he, Jaipal Singh and Khazan Singh also went out in the verandah. Prem Singh and Manish attacked them with danda and lathi and all of them except Jaipal sustained injuries whereas Jaipal sustained wrist injuries due to beatings given by the aforesaid persons. He claimed that on alarm being raised by them, people of the locality gathered there and snatched the danda and lathis from the hands of the aforesaid persons and gave beatings to them. He claimed that since Khazan Singh and Rajbir were badly hurt he took them to Dr. Sukhwanis clinic where they were medically examined and were advised X-rays at Shakti Super Siagnostic Centre, Shakti Nagar. He also alleged that when the case was registered against them he made complaints Ex.DW3/A to the ACP and the DCP whereas one copy of the complaint dated 21.9.2005 was given in the office of the SHO, Police Station Saraswati Vihar.

8. Vide impunged judgement dated 1.6.2010, all the appellants were convicted under Sections 308/34 of IPC and vide impugned Order on Sentence dated 4.6.2010, they were sentenced to undergo RI for three (3) years each and to pay fine of Rs.2,000/- each or to undergo SI for six (6) months each in default. Being aggrieved from their conviction and sentence awarded to them, the appellants are before this Court by way of these appeals.

9. The main question which comes up for consideration is as whether charge under Section 308 of IPC is made out in the facts of the case. It was held by the Honble Supreme Court in Ved Kumari and another v. State and another [96(2002) DLT820 that in order to constitute offence under section 308 IPC it must be proved (i) that the accused committed an act; (ii) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (iii) that the offence was committed under such circumstances if the accused by that act had caused death he could have been guilty of culpable homicide. It was further ruled that intention is a question of fact which is gathered from the acts committed by the accused and knowledge means awareness of the consequences of the act. In Velu lia Javelu v. State [2004 Crl.LJ3783, when the prosecution witnesses were unloading the iron rods after parking their lorry in front of the factory, the accused came there in a van, questioned PW2 for parking his lorry in such a way which was preventing his vehicle from coming snide the factory, and that resulted in an altercation between them. Within a few minutes the accused armed with an iron pipe hit on the back side scalp of PW2. It was held that since the appellant caused the blow in a spur of moment and there was no proper planning or pre-meditation, the offences punishable under Section 308 of IPC was not made out and the appellant was guilty only of offence punishable under Section 324 thereof In Bishan Singh and another v The State [(2007) 13 SCC65 the injured suffered as many as seven injuries including three lacerated wound out of which two were on the scalp and one was on the right forehead. He also had a fracture with dislocation of wrist joint. The Apex Court, however, felt that the accused could not be convicted under Section 308 of IPC and the case would fall under Section 323 and 325 thereof.

10. There is no witness of seizure of iron sarias from the appellants Narender Singh and Jaipal. Even the Investigating Officer, in his examination in chief, did not refer to the recovery of any saria at their instance and it was only during the cross examination that on suggestion of learned Additional Public Prosecutor that he admitted that accused Narender Singh got recovered sarias from his house E57, JJ Colony, Shakarpur from a corner of a room on the first floor, Jaipal also got recovered saria from the same house, from the corner of a room, on the first floor. Thus, the alleged recovery of sarias, according to this witness, took place only on 22.09.2005. There is no other witness of the alleged recovery of sarias. Even the police official did not witness the said recovery. Admittedly, the name of Jaipal and Narender Singh were disclosed by the complainant in the FIR itself, which was lodged on 29.08.2005. It is not as if the address of the aforesaid persons was not known to the Investigating Officer. In fact, all the appellants are residents of the same house, as can be seen from their addresses given in the charge-sheet. Admittedly, the other two accused were arrested on 16.09.2005 from the house E57, JJ Colony, Shakarpur, which is the same house from which the sarias are stated to have been recovered on 22.09.2005. In his cross examination, the Investigating Officer admitted that efforts were made by him on 16.09.2005 also to search the sarias, but the same could not be found. I fail to appreciate how the Investigating Officer was unable to recover the sarias form the same house on 16.09.2005, but was able to find them on 22.09.2005. In these circumstances, the recovery of sarias from the house E-57, JJ Colony, Shakarpur on 29.09.2005 becomes highly suspicious. Moreover, the appellants - Narender Singh and Jaipal were not likely to retain the sarias in their hosue till 22.09.2005 when their co-accused residing in the same house had been arrested on 16.09.2005. Even if the rooms from where the sarias are alleged to have been recovered were not searched on 16.4.2005, once their co-accused were arrested, Narender and Jaipal would certainly have thrown away the sarias instead of keeping them in their rooms. In fact, the person using a weapon is most unlikely to keep the weapon of offence in his own house particularly when he knows that the victim of the crime being known to him was bound to name him before the police and in that event his house would be the first place to be searched for recovery of the weapon of offence.

11. The sarias alleged to have been recovered from the appellants - Narender Singh and Jaipal were not shown to any of the eye witness during their deposition in the court. The sarias were not sent to the doctor to obtain an opinion as to whether the injuries to the victims could have been caused using those sarias or not. In these circumstances, the court cannot be sure as to whether the appellants had used the sarias or some other weapon for causing injuries to the injured persons. In any case, the court does not know what was the shape and size of the sarias alleged to have been used for causing injuries to the complainant and his companions.

12. A perusal of the medical record of the appellants would show that they were treated in Dr. Sukhwani Clinic on 29.08.2005 itself, though the injuries sustained by them were superficial. However, no attempt has been made by the prosecution to explain the injuries sustained by the appellants. The deposition of the injured persons also does not explain how the said injuries came to be sustained by the appellants. The logical inference in such circumstances would be that a quarrel had ensued between the appellants on the one hand and PW6 - Prem Singh, PW7 - Manish and PW5 - Devender on the other hand in which both the parties sustained injuries though the injuries sustained by the appellants were minimal.

13. A perusal of the MLC of Manish would show that he had three clean lacerated wounds - one measuring 4 cmx05 cm, the second wound measuring 2 cm x0.5 cm and the last wound measuring 2cm x 2.5 cm. The injured Prem Singh had two clean lacerated wounds both measuring 2 cm x 5 cm x. .5 cm. Devender also had two clean lacerated wounds - one of 8.1 x.5 cm and the other measuring 6 cm x .5 cm. In none of the MLCs, the depth of any wound has been given. None of the doctors who examined the injured persons has been produced by the prosecution and the MLC were exhibited in the deposition of another doctor who was deputed by the Medical Suptd. to deposit in their place. Since no depth of the wound has been given in the MLCs, the inference is that the wounds were superficial and not deep, which in turn, indicates that the blows to the injured persons were not given with much force. Had the blows to the injured persons been given with substantial force, the wounds would not have been superficial.

14. In these circumstances, when the injuries have been caused in the course of a quarrel, both the parties have sustained injuries, the weapon of offence has not been produced, the court does not know what precisely was the weapon used and what was its shape and size, it would be difficult to say that the appellants caused the injuries to the prosecution witnesses with such intention or knowledge and under such circumstances that if they by that act had caused death they would be guilty of culpable homicide not amounting to murder. Consequently, the conviction of the appellants under Section 308 of IPC would not be justified. In the facts and circumstances of the case, the appellants are likely to be convicted are likely to be convicted under Section 323/34 of IPC for causing hurt to the prosecution witnesses.

15. For the reasons stated hereinabove while acquitting the appellants of the charge under Section 308 of IPC read with section 34 thereof, they are convicted under Section 323 of IPC read with Section 34 thereof. The learned counsel for the appellants, other than appellant - Jaipal, states on instructions from the aforesaid appellant that they shall pay, jointly, an amount of Rs.50,000/- each to all the three injured persons namely Devender, Manish and Prem Singh. In view of the aforesaid undertaking, the appellants are granted benefit of probation, subject to all the three injured being paid compensation in terms of the statement made by the learned counsel. The appellants are, therefore, released on furnishing bonds of peace and good conduct in the sum of Rs.10,000/- each with one surety each in the like amount during the period of one year. During the period of bond, they shall maintain peace and good conduct and refrain from committing any crime. They shall also appear, as and when directed, to receive the sentence imposed on them. The pay orders in the names of the injured persons shall be submitted by them along with the bonds of peace and good conduct within two weeks from today. In the event of failure to pay the compensation and/or furnish bonds of peace and good conduct, they shall undergo RI for one year each. The appeal stands disposed of accordingly. One copy of this order be sent to the concerned Jail Suptd for information and necessary action. Trial court record be sent back along with a copy of this order. APRIL03 2014 bnesh /rd V.K. JAIN, J.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com