

Narinder Singh Vs. Sukhbir Singh and ors.

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Court : Punjab and Haryana

Decided On : Sep-25-1991

Reported in : 1992CriLJ2616

Judge : A.P. Chowdhri and; J.B. Garg, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 320, 324 and 326

Appeal No. : C.A. No. 495-DBA of 1985

Appellant : Narinder Singh

Respondent : Sukhbir Singh and ors.

Advocate for Def. : P.S. Hundal, Adv.

Advocate for Pet/Ap. : J.S. Mann, Adv.

Judgement :

A.P. Chowdhari, J.

1. Sukhbir Singh (18), Ranjit Singh (35), Kabal Singh (70) and Sewa Singh (45) were tried by the Judicial Magistrate, 1st Class, Dasuya, on a complaint filed by Narinder Singh under Sections 326/324/34 of the Penal Code. By judgment and order dated August 27, 1985. Kanal Singh and Sewa Singh were substantively convicted under Section 324 of the Penal Code and the co-accused Sukhbir Singh

and Ranjit Singh were convicted for the said offence with the aid of Section 34 of the Penal Code. Instead of awarding any sentence, the accused were directed to be released on probation for a period of one year on their furnishing bond and surety to the extent of Rs. 2,000/- each. Each of the accused was further directed to pay Rs. 100/- as costs of the proceeding and out of this amount Rs. 200/- were directed to be paid as compensation to the complainant. Aggrieved by the judgment, the complainant Narinder Singh has preferred this appeal for setting aside the acquittal under Section 326 of the Penal Code and for awarding substantive sentence of imprisonment against the accused.

2. According to the prosecution, the parties belong to village Alharpind and are neighbours. On 1-8-1983 it was raining heavily. At about 4 p.m. the rain water entered the house of the complainant which is at a lower level compared to the street on which it abuts. The complainant started draining out the water into the street with the help of a Kassi. The accused Sukhbir Singh and Ranjit Singh were returning from their fields. They took objection to the discharge of the water in the street. They called the co-accused Kabal Singh and his son. Kabal Singh appeared on the scene with a Gandasi and Sewa Singh with a Kirpan. Sukhbir Singh and Ranjit Singh exhorted the co-accused, upon which Sewa Singh gave a Kirpan blow hitting the right thumb of the complainant. Kabal Singh gave a blow with Gandasi which hit the little finger and the ring finger of the right hand of the complainant. Sukhbir Singh and Ranjit Singh belaboured the complainant with fists and slaps. The complainant raised alarm which attracted his mother Smt. Raghbir Kaur (PW-3) and Pargat Singh who had come to house of the complainant. They rescued the complainant from further assault. The injured was taken to Primary Health Centre, Tanda. He was examined. Later on the matter was also reported to the police vide FIR Exhibit PW 4/A dated August 5, 1983, but the police failed to take any action and accordingly a complaint was filed before the Magistrate on August 16, 1983.

3. At the trial, the complainant examined four witnesses. PW-1 is Dr. Dewan Chand who examined the injured at 7.15 p.m. on the day of occurrence. PW-2 is Narinder Singh complainant himself. PW-3 is mother of the injured Smt. Raghir Kaur and PW-4 is Constable Sukhwant Singh who proved first information report

Exhibit PW4/A.

4. The plea of the accused was one of denial. The accused further tried to show that in fact the complainant had a fight with one Amrik Singh son of Sucha Singh of village Johal. In that occurrence Amrik Singh had suffered several injuries. The complainant and said Amrik Singh entered into a compromise and thereafter the complainant had falsely implicated the present accused. The accused examined a number of witnesses in defence.

5. The trial Court repelled the various contentions raised on behalf of the accused. It was, however, held that in the absence of the X-ray which had admittedly not been done, the extent of the cut of the bone could not be determined and the same could not, therefore, be considered to be grievous in nature. In this view of the matter, the trial Court convicted Kabal Singh and Sewa Singh Under Section 324 and the remaining accused with the aid of Section 34 of the Indian Penal Code.

6. The main question which arises for consideration in this appeal is -- whether on the basis of the material on record, injury No. 1 on the person of Narinder Singh can be considered grievous or simple. In order to determine this question, it is necessary to reproduce the injuries found on the person of Narinder Singh as described by Dr. Dewan Chand PW-1 :--

1. Incised wound 1.8 cm x 0.3 cm x bone deep right thumb inside 2.5 cm below root of thumb. On probing, bone in the region was cut and there were crepitations. Wound was filled with fresh blood.

2. Incised wound 1.9 cm x 0.3 cm x skin deep on palmer aspect of right ring finger. The wound was 1 cm below base of finger.

3. Incised wound 2 cm x 0.4 cm x bone deep, palmer side of right little finger with fresh blood. Wound was 0.5 cm below root of finger. Injury kept under observation till X-ray.

7. Mr. J.S. Mann, learned counsel for the complainant, contended that a partial cut of the bone, as distinguished from a cut through and through of the bone, amounts

to a grievous injury. He further submitted that the presence of crepitations which implied the typical sound of a broken bone on the affected part being moved clinched the issue that the doctor found a bone cut. He highlighted the fact that while Dr. Dewan Chand advised X-ray for injury No. 3, he did not advise X-ray for injury No. 1, for the obvious reason that he was satisfied that injury No. 1 was grievous in nature on account of fracture of the bone. Learned counsel also emphasised the fact that as the doctor did not entertain any doubt about the nature of the injury being grievous he had declared injury No. 1 to be grievous in the medico-legal report Exhibit PW1/A. In support of his contention, learned counsel placed reliance on *State of Punjab v. Naib Singh*, ILR (1978) 2 Punj & Har 32 in which *Hori Lal v. State of Uttar Pradesh*, AIR 1970 SC 1969 : 1970 Cri LJ 1665 was followed. He also referred to *Jagir Singh v. State of Punjab*, (1983) 2 Rec. Cri R 1 (Punj & Har).

8. The contention of Mr. P.S. Hundal, learned counsel for the respondents, on the other hand, is that the burden of proving that the bone was cut and further to prove the extent of the cut was on the prosecution. Admittedly, no X-ray was done and the material on record at the most suggested that there was a partial cut of the bone which did not amount to a grievous injury as defined in Section 320 (seventhly) of the Penal Code. He placed his reliance on *Balwant Singh v. State of Punjab*, (1979) 81 Pun LR 37 : 1978 Cri LJ NOC 283, in which a learned single Judge of this Court held that where there was no indication regarding extent of the cut of the bone, the offence would not fall within the mischief of clause (seventhly) of Section 320 of the Indian Penal Code.

9. We have given our thoughtful consideration to the respective submissions of the learned counsel.

10. The point in question does not require any lengthy discussion as it is squarely covered by the law laid down by the Apex Court in *Hori Lal's case*, 1970 Cri LJ 1665 (supra). Therein, it was laid down as under (at p. 1667 of Cri LJ) :--

It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or

splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of Clause 7 of Section 320. What the Court has to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.

11. The law laid down in Hori Lal's case, 1970 Cri LJ 1665 (SC) was followed by a Division Bench of this Court in State of Punjab v. Naib Singh ILR (1978) 2 Punj & Har 32, and a learned single Judge in Jagir Singh v. State of Punjab, (1983) 2 Rec Cri R 1. The decision of Division Bench in Naib Singh's case (supra) was affirmed by the Apex Court in Naib Singh v. The State of Punjab, AIR 1986 SC 2192 : 1986 Cri LJ 2061. The law in Hori Lal's case was reiterated.

12. There can, therefore, be no manner of doubt that the settled law is that in order to constitute fracture of bone within the meaning of Clause (seventhly) of Section 320, it is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. The view to the contrary which was held in Maung Po Yi v. Ma E. Tin, AIR 1937 Rangoon 253 : 1937 (38) Cri LJ 960 and followed in Mutukdhari Singh v. Emperor, AIR 1942 Patna 376 : 1942 (43) Cri LJ 511, does not hold the field. It appears that the fact that the above decisions of Rangoon and Patna High Courts had been expressly overruled in Hori Lal's case, 1970 Cri LJ 1665 by the Supreme Court, was not brought to the notice of the learned single Judge who decided Balwant Singh v. State of Punjab, (1979) 81 Pun LR 37 : 1978 Cri LJ NOC 283. For the foregoing reasons, the statement of law in Balwant Singh v. State of Punjab is not a correct statement as it is based on decisions which had earlier been expressly overruled by the Supreme Court. It follows that Balwant Singh's case which has been relied on by Shri Hundal, can be of no assistance to the accused.

13. This brings us to a consideration of the next important question arising in this appeal. Shri Hundal vehemently contended that the main allegation against Sukhbir Singh and Ranjit Singh, accused was that they exhorted co-accused Kabal Singh and Sewa Singh to assault Narinder Singh, complainant. The evidence of exhortion is, in the very nature of things a weak piece of evidence.

There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect is clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. This is especially so in the facts of this case as the slaps and fist blows alleged to have been given by Sukhbir Singh and Ranjit Singh are not borne out by the medical evidence. We find merit in the contention. Even though Sukhbir Singh and Ranjit Singh have not filed an appeal against their conviction Under Section 324 of the Penal Code, it is open to them to assail their conviction in the appeal filed by the State in so far as their acquittal Under Section 326 read with Section 34 and on the ground of inadequacy of the sentence imposed on them by the trial Court is concerned. In *U.J.S. Chopra v. State of Bombay*, 1955 SCJ 603 : 1955 Cri LJ 1410, the appellant Chopra was convicted by the Trial Magistrate of an offence under the Bombay Prohibition Act. His appeal to the High Court of Bombay was summarily dismissed. Thereafter, the State of Bombay applied to the High Court of Bombay for an order for enhancement of sentence and notice was issued to Chopra to show cause against enhancement of the sentence. Chopra pleaded that he was entitled to show cause against the order of conviction. The Supreme Court held that the summary dismissal of the appeal preferred by Chopra did not preclude him from showing cause against his conviction even though his appeal was summarily dismissed. (See also *Nirbhay Singh v. State of Madhya Pradesh*) (1970) 2 SCJ 1 : 1971 Cri LJ (N) 23.

14. In our view, therefore, it is open to Sh. Hundal to argue against the conviction of Sukhbir Singh and Ranjit Singh even though they have not challenged the order of conviction by filing an appeal.

15. Though we have held that injury No. 1 involved fracture of bone and was, therefore, grievous in nature, it was at the root of thumb while two other injuries attributed to Kabal Singh were on the little finger and ring finger of the complainant. All the three injuries were thus on a non vital part of the body. They were inflicted as far back as August, 1983. In the peculiar facts and circumstances of this case and for the foregoing reasons, we set aside the conviction of Sukhbir Singh and Ranjit Singh and acquit them of the charge. We set aside the acquittal

of Sewa Singh and Kabal Singh Under Section 326 and convict Sewa Singh Under Section 326 of the Indian Penal Code and Kabal Singh Under Section 326 read with Section 34 and Section 324 of the Penal Code. In view of the peculiar facts herein before mentioned, we sentence Sewa Singh and Kabal Singh to imprisonment till rising of Court and fine of Rs. 2500/- and Rs. 1000/- respectively. In default of payment of fine, the defaulting accused shall undergo three months R.I. The accused are allowed one month to pay the fine.

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