

Nand Singh Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Nov-15-2006

Reported in : 2007CriLJ716

Judge : T.P.S. Mann, J.

Appellant : Nand Singh

Respondent : State of Punjab

Judgement :

T.P.S. Mann, J.

1. The appellant was convicted by Additional Sessions Judge, Faridkot on 7-5-1990 under Section 307, IPC and sentenced to undergo RI for six years and to pay a fine of Rs. 5,000/-. In default of payment of fine, he was sentenced to undergo further RI for two months.

2. The FIR was registered on 20-9-1987 at 3.20 a.m. in Police Station, Baghapurana on the basis of a statement made by Manjit Singh injured, recorded by ASI Gurmit Singh at 3.15 a.m. on 20-9-1987 in Civil Hospital, Baghapurana. Said Manjit Singh stated therein that he was working as an employee at the liquor vend of Surinder Kumar situated in village Nathu Wala, where the appellant also worked as an employee. Relations between Manjit Singh and the appellant became strained as there used to remain a dispute regarding the cash at the liquor

vend. On 19-9-1987, both the complainant and the accused took liquor. At about 11.30 p.m., accused proclaimed that he would finish the outstanding dispute for all times to come. He took up a dagger lying at the liquor shop and gave blows with the same in the abdomen and chest of Manjit Singh. The latter tried to ward off the injuries with his hands and as a result of which some injuries were received by him on his hands as well. An alarm was raised by the injured which attracted Zaila Singh Chowkidar. At this the accused ran away from the spot while carrying the dagger with him. The occurrence was claimed to have been witnessed by Balbir Singh and Zaila Singh. An effort was made to apprehend the accused but he managed to escape. The injured was thereafter removed to the hospital, where he was medically examined. Ruqa was thereafter sent to the Police Station by the doctor. On receipt of the same, ASI Gurmit Singh went to the hospital and recorded the statement of Manjit Singh.

3. After the registration of the FIR, the investigation of the case was taken up by ASI Gurmit Singh himself, who went to the place of occurrence and prepared rough site plan. Blood-stained earth was picked up from the place of occurrence. The accused was arrested.

4. After the completion of the investigation, challan was presented by the police. The case was thereafter committed to the Court of Session, where charge under Section 307, IPC was framed against the appellant on 4-1-1989. The accused pleaded not guilty to the charge and claimed trial.

5. In support of his case, the prosecution examined PW 1 Dr. Tejinder Kumar, PW 2 Manjit Singh, PW 3 Zaila Singh (Jaila Singh), PW 4 Balbir Singh, PW 5 Gurbachan Singh, Draftsman, PW 6 ASI Gurmit Singh and PW 7 Dr. Mon Abraham. Out of them, Manjit Singh PW 2 deposed about the ocular account whereas Zaila Singh PW 3 and Balbir Singh PW 4, who were claimed by the prosecution to be the eyewitnesses of the occurrence, did not support the prosecution case and were declared hostile. The investigation part of the case was proved by ASI Gurmit Singh PW 6, whereas Dr. Mon Abraham PW 7 stated about conducting medico legal examination on the person of Manjit Singh injured on 20-9-1987. As per his testimony 17 injuries were found. Out of them, injury Nos. 4, 6

and 11 to 17 were declared dangerous to life.

6. The prosecution gave up Satwant Singh, Jaspal Singh and Surinder Kumar as having been won over by the accused whereas SI Joginder Singh was given up as unnecessary. Affidavits of MHC Jagbir Singh and C. Amarjit Singh were tendered in evidence and so also reports Ex. PL of Chemical Examiner and Ex. PM of Serologist. Thereafter, the evidence of the prosecution was closed.

7. In his statement under Section 313, Cr.P.C., the accused pleaded innocence and stated that he had falsely implicated in the case because of his having some altercation regarding the job at the liquor vend.

8. In defence, the accused examined Gurmit Singh as DW1, who stated that the accused though employed at the liquor shop in village Nathu Wala, yet he used to return to the house of his relatives in village Wadaghar.

9. Learned Counsel for the appellant has submitted that the ocular account has come in the statement of Manjit Singh PW 2 only whereas the two other witnesses, namely, Zaila Singh PW 3 and Balbir Singh PW 4 did not support the case of the prosecution. Thus, there was no independent corroboration to the testimony of Manjit Singh and conviction of the appellant could not be sustained on his sole testimony.

10. Learned Counsel for the State has pointed out that the presence of Manjit Singh at the spot could not be disbelieved as he had received 17 injuries. Mere fact that the other two persons did not support the case of the prosecution was no ground to set aside the conviction and sentence of the appellant.

11. In a case where injuries are inflicted, the crucial testimony is of the injured. He had borne the impact of the assault. Unless there is any plausible explanation of his deposing falsely, his testimony could not be brushed aside on the ground that he was the lone person to depose about the occurrence and others, who were claimed by the prosecution to have witness the occurrence, did not support the prosecution version and was declared hostile.

12. There was no undue delay in lodging of the FIR. The occurrence in question had taken place on 19-9-1987 at 11.30 p.m. The injured was thereafter removed to Civil Hospital, Baghapurana where he was first medico-legally examined and the Doctor thereafter sent a ruqa to the Police Station. On receiving the said ruqa, ASI Gurmit Singh reached Civil Hospital, Baghapurana and sought an opinion from the Doctor about the fitness of Manjit Singh to make a statement. The Doctor made an endorsement Ex. PB/1 on 20-9-1987 at 2.45 a.m. that the injured was fit to make a statement. Accordingly, statement of Manjit Singh was recorded, which was completed at 3.15 a.m. and the formal FIR was thereafter registered at 3.25 a.m. on the same day.

13. Learned Counsel for the appellant has submitted that accepting the case of the prosecution as such, no offence under Section 307, IPC was made out. Though injured Manjit Singh was shown to have received 17 injuries but none of the injuries, especially Nos. 4, 6 and 11 to 17, were declared to be sufficient to cause of death in the ordinary course of nature, although Dr. Mon Abraham PW 7 stated that the aforementioned nine injuries were dangerous to life. At the most it could be a case of causing of grievous hurt as the aforementioned nine injuries could be described to be the one endangering the life of the victim.

14. Learned Counsel for the State has submitted that the intention of the accused to commit the murder of Manjit Singh was clear when he caused as many as 17 Injuries on his person and out of them, nine were declared to be dangerous to life.

15. To bring an offence under Section 307, IPC, the prosecution is required to prove that the accused had an Intention to commit murder of injured. This intention could be gathered either from the act of the accused or from the impact of the injuries. Nowhere in the statement made by Manjit Singh before ASI Gurmit Singh, it was alleged that the appellant had caused injuries to Manjit Singh with an intention to kill him. Though Dr. Mon Abraham PW 7 deposed that injuries Nos. 4, 6 and 11 to 17 were dangerous to life but he did not describe any of those 9 injuries to be sufficient to cause death in the ordinary course of nature. Thus, the necessary ingredients required for bringing the offence under Section 307, IPC, were lacking in the present case. However, injuries Nos. 4, 6 and 11 to 17 were

such which endangered the life of the victim. All of them were caused with sharpened pointed weapon i.e. dagger. This would bring the offence to one under Section 326, IPC. Accordingly, conviction of the appellant under Section 307, IPC deserves to be set aside and instead he ought to be convicted under Section 326, IPC.

16. Coming to the question of sentence, it may be noted that the occurrence in question had taken place on 19-9-1987. At that time the appellant was about 27 years of age. He remained in custody for five months and six days as under-trial. Upon his conviction and sentence, he was taken into custody and remained in jail thereafter for one month and six days as a convict, when he was released on bail. The present appeal was filed by the appellant through his counsel, but the said counsel did not put in appearance when the appeal was posted for final hearing on 11-5-2005. Accordingly, this Court cancelled the bail of the appellant. Orders were passed for securing his presence through warrants of arrest. When warrants of arrest could not be executed, a direction was issued to Chief Judicial Magistrate, Faridkot to trace out the bail bonds furnished by the appellant so that notice may be issued to the surety for enforcing the presence of the appellant. Ultimately, on 10-7-2006, the surety produced the appellant before Chief Judicial Magistrate, Faridkot and he was taken into custody and ever since then he is in jail. He has thus, undergone another period of four months and five days as of today behind the bars. Adding the said period to the period already spent by the appellant, first as an under-trial and thereafter as a convict up to 13-6-1990, It is clear that the appellant has served a period of more than 10 months in the Jail.

17. Keeping in view the aforementioned circumstances, it would be appropriate if the appellant is sentenced under Section 326, IPC to the imprisonment already undergone by him.

18. Accordingly, the appeal is partly accepted by acquitting the appellant under Section 307, IPC. Instead he is convicted under Section 326, IPC and sentenced to the period already undergone by him. A fine of Rs. 5,000/- imposed upon the appellant under Section 307, IPC is converted to the one to be paid by him under Section 326, IPC. In default of payment of fine, the appellant shall undergo RI for

two months.

19. Appeal is disposed of in terms of the above.

20. Before parting with the judgment the Court places on record its appreciation for Mr. S.S. Dahiya, Advocate, who appeared as Amicus Curiae for the appellant.

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