

Balbir Singh and ors. Vs. the State

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Court : Delhi

Decided On : Jul-23-1984

Reported in : 1984(2)Crimes343; 26(1984)DLT239

Judge : D.R. Khama, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 325

Appeal No. : Criminal Appeal No. 242 of 1982

Appellant : Balbir Singh and ors.

Respondent : The State

Advocate for Pet/Ap. : R.K. Madan and; D.R. Sethi, Advs

Judgement :

D.R. Khanna, J.

(1) Balbir Singh, Surender Pal Singh and Amrik Singh have moved this appeal against their conviction by Shri T.S. Oberoi, Additional Sessions Judge under Section 325/34 Indian Penal Code . Balbir Singh was sentenced to imprisonment till rising of the court and a fine of Rs. 1000.00 . He was further required to execute a personal bond under section 106 Cr. P.C. in the amount of Rs. 3000.00 along with one surety for keeping peace for a period of one year. The other two appellants being below the ages 21 years, were allowed the benefit of Probation of

Offenders Act, and required to furnish bond for Rs. 3,000.00 each with one surety in the like amount to keep good behavior and safe conduct for one year.

(2) Briefly stated the prosecution case was that Amrik Singh complainant and his nephew Surender Pal Singh were standing at the 1.P. College bus stand on 28-4-1981 at 8.30 P.M. having parked their taxis of which they were drivers at a nearby taxi stand. They were then proceeding to their homes. The three accused then came in a taxi and stopped on the wrong side of the road near the place where they were standing. Surender Pal Singh was carrying a naked sword, while Amrik Singh had a lathi and Balbir Singh one iron rod. They shouted at Amrik Singh and his nephew that they would not allow them to go alive and would teach them a lesson for extracting money without any rhyme or reason. Surender Pal Singh then gave a sword blow which Amrik Singh warded off and bore the same on his right hand resulting in injury to one of the fingers. The other accused then attempted to use rod and lathi, but did not actually hit Amrik Singh. Surinder Pal was, of course, assaulted. Both of them then ran from there and were followed by the three accused in a taxi in which they had come. At some distance Balbir Singh accused who was driving the taxi, hit Amrik Singh complainant on his leg, resulting in injuries to him including fractures on the leg and one finger. The accused then fled away. Mahima Singh, brother of Amrik Singh Public Witness ., and Charan Singh, his cousin had also happened to be present and witnessed the occurrence. One Avtar Singh who was son of the brother-in-law of Mahima Singh, then took Amrik Singh Public Witness . first to the police station Civil Lines, and were directed from there to go to the hospital. At Hindu Rao hospital, Amrik Singh Public Witness . was admitted and he had then stated to the doctor that he received injuries in a roadside accident. In the meanwhile the police reached there and recorded his statement. A case under Section 307/34 Indian Penal Code . was then registered. Balbir Singh was arrested on the same night while the other two accused taken into custody subsequently.

(3) Amrik Singh injured was discharged from the hospital on 2-5-1981. The injuries which were found on his person, were abrasions or lacerated wounds. The weapon of offence was opined to be blunt. His X-ray examinations revealed fractures at the leg and one finger, and, therefore, the nature of injuries was

described as grievous. The defense version has been that the complainant party had been monopolizing the use of the I.P. taxi stand, and would extract money from the accused persons for using that stand for the taxis. Thus the accused persons resented and as such the complainant side threatened them that they would teach them a lesson.

(4) So far as the assault on Surinder Pal Singh, no charge was framed, and the trial court has also not convicted any of the accused on the account. In fact, this assault remains unsubstantiated,

(5) The learned trial court has taken note that the incident involved two stages. One was the assault at the bus stand with sword by Surender Pal Singh. That sword was not taken into possession, and the nature of injuries also shows that no sharp edged weapon was used. According to Charan Singh (P.W. 8) the blows with sword were given with full force, and they hit the injured directly. If that was so, some incised injury would have resulted. The medical evidence thus entirely negatives this part of the incident. There is no Explanationn why the sword was not taken into possession if it had been used. Moreover, Amrik Singh injured has although stated that the other two accused used rod and lathi, admitted that they did not hit him. This part of the assault, thereforee, cannot be held to have been brought home to the accused.

(6) The next stage of the incident was when the three accused followed Amrik Singh injured in a taxi driven by Balbir Singh when he had fled towards Shankaracharya Marg to escape from their assault. The taxi then hit him, causing the said injuries. Here the assault can be said to be by Balbir Singh only who was driving the taxi, and not by any other accused. It is not shown that they were, in any manner, shouting or inciting Balbir Singh to knock down Amrik Singh. I, thereforee, acquit both Surender Pal Singh and Amrik Singh accused.

(7) Adverting to the conviction of Balbir Singh under Section 325 Indian Penal Code ., it must be said that the court has to be considerably cautious as the complainant party has attempted to aggravate the nature of crime and come out with a story of assault by sword, lathi and iron rod which has been rejected. However, the caution in such circumstances should not call for rejection of the

other case which is otherwise proved on record. Shifting of the evidence and ascertainment of correct facts is part of the judicial function. The learned trial court has accepted this part of the incident, and after giving my due consideration to all the circumstances, I am unable to interfere in the assessment thereof. Four witnesses have testified to Balbir Singh chasing Amrik Singh in his taxi and then knocking him down. The injuries resulted in fractures. These witnesses are, of course, relations, but I am unable to discredit their evidence on the defense version that merely because there were some rivalries with regard to use of particular taxi stand by different taxi owners, this case has been falsely instituted. Amrik Singh had suffered fracture injuries, and would not have invited them just to harm the accused. To this extent, therefore, I accept the prosecution version.

(8) As regards Avtar Singh who had taken the injured to the hospital in his taxi, it has been pointed out by the appellants' counsel Mr. Madan that he was found at the spot also by the Investigating Officer. However, Avtar Singh has stated that after leaving Amrik Singh injured in the hospital he had come back to the spot. There was, therefore, no material discrepancy in this regard.

(9) The result, therefore, is that Surender Pal Singh and Amrik Singh are acquitted and their appeal allowed. Balbir Singh's conviction under Section 325 Indian Penal Code . is maintained. The sentence awarded has been nominal, and I am not inclined to interfere in the same. His appeal is rejected.