

Hardeep Singh and ors. Vs. the State

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Court : Rajasthan

Decided On : May-23-1996

Reported in : 1996CriLJ3091

Judge : V.S. Kokje, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 307; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 154 of 1977

Appellant : Hardeep Singh and ors.

Respondent : The State

Advocate for Def. : S.M. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.

Judgement :
ORDER

V.S. Kokje, J.

1. Six accused persons viz. Hardeep Singh, Sohah Singh, Tarsem Singh, Nirmal Singh, Swaran Singh and Atma Singh were prosecuted in the case from which this appeal No. 154/77 arises. They were convicted and sentenced as under:

NAME	OF	THE	CONVICTION/S	SENTENCE
IMPOSED	ACCUSED	HARDEEPSINGH	326 IPC	2 years RI and a fine of Rs. 500/-
	and in default of	payment of fine to further	suffer 6 months R.I.	325/149 IPC 1 year
	R.I. and a fine of	Rs. 250/- and in default of	payment of fine to suffer	3 months S. I.
	324/149 IPC	9 months R.I.	323/149 IPC	6 months R.I.
	148 IPC	6 months R.I.	ATMA SINGH	326/149 IPC
	1 year R.I. and a fine of	Rs. 500/- in default of	AND	payment of fine to suffer
	6 months S.I.	SOHAN SINGH	325/149 IPC	9 months R.I.
	and a fine of	Rs. 250/- in default to	suffer 3 months R.I.	323/149 IPC
	3 months R.I.	324 IPC	1 year R.I.	148 IPC
	6 months R.I.	NIRMAL SINGH	326/149 IPC	1 year R.I.
	and a fine of	Rs. 500/- in default to	suffer 3 months S.I.	325 IPC
	18 months R.I.	and a fine of	Rs. 300/- in default to	suffer 3 months S.I.
	324/149 IPC	6 months R.I.	323/149 IPC	3 months R.I.
	148 IPC	6 months R.I.	TARSEM SINGH	326/149 IPC
	6 months R.I. and a fine of	Rs. 250/- and in default to	suffer 2 months R.I.	325/149 IPC
	6 months R.I. and a fine of	Rs. 200/- and in default to	suffer 3 months S.I.	324/149 IPC
	3 months R.I.	323 IPC	2 months R.I.	148 IPC
	6 months R.I.	SWARAN SINGH	326/149 IPC	To one months R.I.
	on each count except	325/149 IPC counts Nos. 1 and 2 for	which a fine of	324/149 IPC
	Rs. 100/- on each count has	also been imposed	323/149 IPC and in default of	payment of fine to further
	suffer 1 month S.I.	for each count.		

2. S. B. Criminal Appeal No. 154/77 is the appeal filed by six accused persons challenging their convictions and sentences imposed and S. B. Criminal Appeal No. 446/77 is the appeal filed by the State against acquittal of the accused persons on charge under Section 307 and 307/149 I.P.C. Both these appeals were heard together and are decided by this common judgment.

3. On October 28, 1973, complainant Pyare Singh was working in his field. His share-cropper Tikun Ram as also complainant's nephew Jasveer Singh were also working in the field. Pyare Singh's mother Smt. Chanan Kaur was picking up cotton in the same field. Complainant's brother Harbans Singh was working in another field which was 3 - 4 fields away. At about 4.30 in the evening accused persons Hardeep Singh, Tarsemsingh and Sohan Singh went to the field where Pyare Singh and others were working and abused him alleging that Pyare Singh had beaten their uncle Phuman Singh, the previous night. The complainant told

them that their uncle had come drunk to his house the previous night and received injuries because of a fall from the cot. The complainant challenged these accused persons to bring their uncle before him to ascertain the truth. Thereupon these accused persons went back abusing the complainant and went towards their uncles 'dhani' which was a short distance away. The complainants further contended that 15-20 minutes after the aforesaid incident, the aforesaid three accused persons Hardeep Singh, Tarsem Singh and Sohan Singh came to the spot along with three other accused persons viz. Swaran Singh, Atma Sinigh and Nirmal Singh. This time they were armed. They encircled the complainant and started abusing him. When complainant Pyare Singh stood up and started running, accused Sohan Singh caught hold of him and took him in his arms and other accused persons started beating him. Complainant's mother Smt. Chanan Kaur and nephew Jasveer Singh tried to come to the rescue of Pyare Singh and they were also assaulted by the accused persons. On complainant's Pyare Singh raising an alarm his share cropper Tiku Ram and brother Harbans Singh also reached the spot. Harbans Singh brandished lathi against the accused persons on which they ran away. Pyare Singh, Jasveer Singh and Smt. Chanan Kaur were hospitalised. Pyare Singh's statement was recorded in the hospital and on that basis first information report was registered.

4. The accused persons took a defence that the incident had not taken place as projected by the complainant but in fact at the time of the incident Phuman Singh uncle of Hardeep Singh, and Sohan Singh, Tarsem Singh and Nirmal Singh's father were going by the side of the road, the complainant party stopped them and started beating them. Pyare Singh and Jasveer Singh gave lathi blows and Amrik Singh and Harbans Singh assaulted with a 'barcha' and 'takua'. On hearing the noise, Hardeep Singh, Swaran Singh, Sohan Singh and Atma Singh reached the spot and tried to rescue Phuman. The complainant party also assaulted them and they in their self defence as well as for the defence of the person of the Phuman Singh brandished lathis resulting in injuries to the members of the complainant party. This defence did not find favour with the learned Sessions Judge and he convicted and sentenced the accused persons as aforesaid.

5. The learned counsel for the appellants has laid great stress on the fact that no voluntary explanation from the prosecution has come on record about injuries found on the bodies of the accused persons. According to the learned counsel and inference of exercise of right of private defence has to be drawn in the circumstances of the case from the failure of the prosecution to explain the injuries suffered by the accused persons. Injuries suffered by the accused persons are as follows as per Dr. S. K. Sharma (P.W. 5):

ATMA SINGH:

1. Abrasion 1' x 1/4' on the left side of the back,
2. Abrasion 1/3' x 1/8' on the lateral aspect of the back (left side) lateral to injury No. 1.
3. Abrasion 1' x 1/8' on the lateral aspect of the left forearm in the lower one third.
4. Contusion 1' x 1' on the left parietal region.

All the injuries were simple and were caused by blunt object. The duration was fresh. I prepared the injury report which is Ex. D/8. It is in my handwriting and bears my signature.

SOHAN SINGH:

1. Lacerated wound 1 x 1/4' x bone deep on the left parietal region 4Vi' above the left ear.
2. Abrasion 2'x1/4' with a swelling 3'x3' on the lateral and posterior aspect of the right elbow joint.

Both the injuries were simple in nature, caused by blunt weapon and were fresh in duration. The injury report is Ex. D/9 is written and signed by me and is correct.

SWARN SINGH:

1. Lacerated wound 1/4' x 1/6' oh the right occipital region 1' above the right ear.

2. Abrasion 4' x linear on the right scapula region.

Both the injuries were simple in nature, caused by blunt weapon and were fresh in duration. The injury report Ex. D/10 is written and signed by me and is correct.

HARDEEPSINGH:

1. Abrasions (5 in number) on the front of the middle of right thigh $2\frac{1}{2}' \times \frac{1}{6}'$ to $1' \times \frac{1}{8}'$ within an area of $4' \times 3'$.

2. Incised wound $1\frac{1}{2}' \times \frac{1}{4}' \times \frac{1}{6}'$ on the front of the lower fourth of the right forearm direction from right to left.

Injury No. 1 was caused by blunt weapon while injury No. 2 had been caused by some sharp weapon. Both the injuries were simple in nature and were fresh in duration. The injury report Ex. D/11 is written and signed by me and is correct.

6. It is noteworthy that the prosecution has not led any evidence about these injuries in the examination-in-chief but in cross-examination, after recalling the Doctor, these injuries were proved and injury reports were exhibited at the behest of the defence.

7. It is noteworthy that accused Hardeep Singh had received an incised wound caused by some sharp weapon when according to the complainant party only a lathi was used.

8. Pyare Singh (P.W. 1) deposed in the court and repeated the version given by him earlier. In his examination-in-chief, no explanation as to how the accused persons received injuries was given but only a stray sentence is there that Harbans Singh had a lathi which he had flourished. In cross-examination, he has stated that he had seen Harbans Singh flourishing lathi and hitting Swarn Singh. He also stated that after hitting Swarn Singh, Harbans Singh attacked other accused also but the witness did not know whether any other accused persons were injured or not. He could not offer any explanation as to why in Ex. P/1, his earlier statement on the basis of which first information was lodged, there was no mention of Harbans Singh flourishing lathi and hitting Swarn Singh was there. He

also stated that may be Swarn Singh, Sohan Singh, Hardeep Singh and Atma Singh had received injuries but he did not know how they were received.

9. Chandan Kaur (P.W.2) the mother of Pyare Singh also spoke of Harbans Singh brandishing lathi but she did not say that Harbans Singh hit any one on the accused. On the contrary, she stated that on Harbans Singh's brandishing the lathi, Hardeep Singh hit Pyare Singh by 'kasia' and stated that how they would take him away and then the accused persons ran away. In her cross-examination, she stated that she did not see any injuries being caused to Sohan Singh, Swarn Singh, Hardeep Singh and Atma Singh. She further stated that Harbans Singh is a lame person and therefore carries a lathi for support. She categorically stated that she did not see Harbans Singh's lathi hitting any one of the accused persons. It was pointed out to her that in her statement to Police under Section 161 of the Code of Criminal Procedure, there was no mention of Harbans Singh having a lathi and his having brandished it. The omission as to the presence of Hardeep Singh on the spot, his having hit Pyare Singh as also Nirmal Singh hitting on her legs or Nirmal Singh's and Tarsem Singh's causing injuries to Pyare Singh were also pointed out to her but she could not give any plausible explanation except saying that she had told the Police about it and she did not know why the Police did not record it.

10. Tiku Ram (P.W.3), the share-cropper of Pyare Singh in his examination-in-chief stated that when Harbans Singh with a lathi came to the rescue of Pyare Singh, he brandished the lathi and hit Swarn Singh, when he tried to assault Atma Singh, Atma Singh withdrew and the accused persons ran away. In cross-examination, omissions in the statement of this witness to the Police about Harbans Singh coming with a lathi, brandishing it and hitting Swarn Singh were pointed out to the witness, his explanation was that he had told so to the Police but why they did not record it, he could not say. Several other omissions were pointed to the witness but he had no explanation to offer. He also could not say as to where the lathi of Harbans Singh hit Swarn Singh, He also stated that he did not see any injuries being caused to any of the injured persons except Swarn Singh.

11. Harbans Singh (P.W.4), who is said to be the brother of Pyare Singh and who is stated to have caused injuries to the accused persons by lathis stated in the examination-in-chief that he went to the spot after hearing cries of his mother Chanan Kaur. He claims to have rescued Pyare Singh and others by brandishing the lathi. It was expected of this witness to have stated as to how the accused persons received injuries but in his examination-in-chief nothing has come on the record except the statement on record that he brandished lathi in order to rescue Pyare Singh and others. In his cross-examination this witness admitted that a case was registered against him about the same incident for having caused injuries to Swarn Singh, Atma Singh, Hardeep Singh and Sohan Singh and that case was registered earlier than the report of Pyare Singh. He also admitted that in that case Pyare Singh, Jasveer Singh and Amrik Singh were also the accused persons. Several omissions and contradictions in his statement before the Court and the statement before the Police were pointed out to the witness but he could not give any explanation. He, further stated in the cross-examination that his lathi had hit Swarn Singh on the arm but he could not say why this fact is omitted from the statement to the Police, He also Stated that nobody else had weapon and, therefore, there was no question of any other persons causing injuries to the accused persons.

12. P.W.6 Jasveer Singh son of Harbans Singh stated that his father Harbans Singh came to their rescue and brandished the lathi. He did not say a word in the examination-in-chief about any of the accused persons being hit by lathi flourished by Harbans Singh. In his cross-examination, he stated that Swarn Singh was hit by Harbans Singh's lathi but he did not see any other accused persons receiving injuries. The omission of Harbans Singh's flourishing lathi and hitting Swarn Singh in his Police statement was pointed out to him but he could not offer any explanation about it. Other omission in his statement to the Police were also pointed out to the witness.

13. In the aforesaid state of the evidence, there is no explanation offered by the prosecution for the injuries received by accused Atma Singh, Hardeep Singh and Sohan Singh. The explanation offered for injuries of accused Swarn Singh is also unreliable as it did not find place in the Police statement of the witnesses.

14. In the facts and circumstances of the case, the possibility of the accused persons acting in their self defence cannot be ruled out and appears to be imminently probable. Even otherwise the whole truth does not appear to have been brought forth by the prosecution specially when Harbans Singh (P.W.4), brother of complainant Pyare Singh admitted that the case was registered against them prior to registration of their report in respect of the same incident for causing injuries to Swaran Singh, Atma Singh and Sohan Singh. The Investigating Officer P.W. 7 Krashan Avtar Tyagi also admitted that report No. 69 at 9.00 P. M. on October 28,1973 was recorded at the Police Station by Swarn Singh accused about the same incident. It is not clear as to what happened to that case but if it was a cross case, the trial should have been held along with this case. In any case the whole truth has not come before the Court in the case.

15. In the aforesaid circumstances, I am unable to agree with the trial Court that a conviction could be based on the evidence on record. The appeal of the accused - appellants therefore deserves to be allowed and the State Appeal deserves to be dismissed. The appeal filed by the accused-appellant is therefore allowed and that of the State is dismissed. The appellants are on bail. They need not surrender to their bail bonds. Their bail bonds are discharged.