

Naln Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-15-1998

Reported in : 1999CriLJ376

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 323, 324 and 326

Appeal No. : Criminal Appeal No. 624 of 1981

Appellant : Naln Singh

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : D.K. Purohit, Adv.

Judgement :

G.L. Gupta, J.

1. Through this appeal, Nain Singh has called in question the judgment dated 31 - 10-81 passed by the learned Sessions Judge, Balotra, whereby he was convicted under Section 326, IPC and sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs. 500, in default two months' S. I.

2. The case relates to an occurrence which took place on 13-1-81. In his statement recorded by the police on 13-1-81 at 6. p.m., Bhanwar Singh, injured, stated that at about 4.30 p.m. as he went out of his house, Nain Singh having sword in his hand and Hari Singh having 'Bevla' attacked him and an injury was caused by sword on his head. On this report, a case under Sections 324 and 323/34, IPC was registered. After the completion of the investigation, the police submitted a challan under Sections 307, 326, 324 and 323/34, IPC.

3. Charges under Sections 307, 326, 324 and 323/34, IPC were read over to Nain Singh. Hari Singh was charged with the offences under Sections 307/34, 326/34, 324/34 and 323, IPC. They pleaded not guilty. The prosecution examined PW 1 Bhanwar Singh, PW 2 Shaitan Singh, PW 3 Babulal, PW 4 Sawa, PW 5 Mangilal, PW 6 Bhanwara, PW 7 Hari Singh, PW 8 Dr. S. M. Mehta, PW 9 Bhom Singh, PW 10 Prem Singh, PW 11 Dr. Gopi Krishan Vyas, PW 12 Kehra Ram and PW 13 Kishna Rain. Accused in their statements denied accusation. They examined DW 1 Balwanl Singh, DW 2 Padam Singh and DW 3 Narayan Singh. After hearing counsel for the parties, the learned Sessions Judge has held that it was not established that the two accused had committed offence in furtherance of their common intention. He further held that only charge under Section 323, IPC was proved against Hari Singh. He, convicted him under Section 323, IPC but instead of sentencing him, ordered him release on probation. The learned Sessions Judge held that charge under Section 326, IPC was proved against accused Nain Singh. He, therefore, convicted and sentenced him as stated above.

4. Mr. Purohit contended that the trial Court has erred in convicting the appellant on the basis of the evidence produced in the case. He pointed out that the eye witnesses named in the FIR have not supported the prosecution story. Pointing out that the technician, who had conducted the x-ray examination, has not been examined by the prosecution, he argued that it was not proved that the injury suffered by Bhanwar Singh was of grievous nature. His further contention was that the witnesses have suppressed the genesis of the occurrence, and therefore, the accused is entitled to acquittal.

5. On the other hand, learned Public Prosecutor tried to support the judgment of the trial Court.
6. I have carefully considered the above arguments. Bhanwar Singh (PW 1) deposes that as he went out of his house, the two accused Nain Singh and Hari Singh attacked him. He says that accused Nain Singh had inflicted a sword blow on his head and he suffered injuries on his hands when he tried to catch the sword. He proves the first information report Ex. P/1. The statement of Bhanwar Singh is corroborated by the testimony of Dr. S.M. Mehta(PW 8) who had examined his injuries at 6.15 p.m. on the same day. Dr. Mehta states that there were incised wounds on both the hands as also on the head and face of the injured. There is nothing in the cross-examination of Dr. Mehta to disbelieve him. By his testimony, it is fully established that Bhanwar Singh had suffered five incised wounds on 13-1-81.
7. Dr. Gopi Krishan Vyas, P.W. 11 was the Medical Jurist, Banner, at the relevant time. He deposes that he had x-rayed the injury of the skull of Bhanwar Singh and had found that there was fracture of the outer table of parietal bone. Dr. Vyas states that he himself had X-rayed the injury in the private clinic as the X-ray machine of the hospital was out of order. Since Dr. Vyas himself had conducted the X-ray examination, the prosecution was not required to examine the technician of M/s Usha Clinic. Dr. Vyas had no cause to depose falsely in favour of the prosecution. By his testimony it is fully established that Bhanwar Singh's head injury was of grievous nature.
8. The two eye-witnesses named in the FIR are Sawa (PW 4) and Mangilal (PW 5). Sawa, though has gone hostile, deposes in clear terms that accused Nain Singh had caused injury by a sword to Bhanwar Singh. On the ground that the two eye witnesses have turned hostile, the testimony of Bhanwar Singh cannot be disbelieved.
9. Mr. Purohit argued that according to Bhanwar Singh, he had lodged the report at the Police Station whereas the FIR produced in the case indicates that it was written at the hospital. This, according to him, goes to show that the initial version of the occurrence, has been suppressed by the prosecution. There is no

substance in this contention. Though Bhanwar Singh deposes that he had lodged the report at the Police Station but at the same time he says in clear terms that the report Ex. P/1 is the report which he had lodged. Bhanwar Singh explains further that he had not put his thumb mark at the Police Station. It seems that while going to the hospital Bhanwar Singh was taken at the Police Station but as his condition was serious, he was immediately directed to be taken to the hospital where the police officer recorded his statement which was treated as FIR. It is in these circumstances that Bhanwar Singh deposes to have lodged FIR at the Police Station. It is significant to point out that F.I.R. Ex. P-1 was lodged immediately after the occurrence which ensures the correctness of the prosecution version.

10. Bhanwar Singh deposes that on the day of occurrence he had hosted lunch for the Excise Officials and thereafter the Excise Officials had raided the shop of the accused and therefore, he was given beatings. The learned Sessions Judge has observed that it was the instant motive for the accused to commit the crime. There is no reason to take a view different than the one taken by the trial Court. The relations of the parties were already not cordial for the last about three years because of dispute of the land. The facts reveal that the Excise Officials were entertained by Bhanwar Singh and they immediately after that raided the shop of the accused. The accused therefore, thought that it was done at the instance of Bhanwar Singh and that was the instant cause of occurrence. Thus the motive for the crime is proved on record.

11. Mr. Purohit's contention was that the I. O. did not send the sword to the FSL and this creates doubt in the prosecution case. It was, of course, a mistake on the part of the Investigating Officer not to send the recovered sword and the clothes of the injured to the Forensic Science Laboratory for chemical examination but on that ground, the prosecution story cannot be held to be doubtful. The charge is amply proved by the statement of the injured and the medical evidence. Even the hostile witness supports the prosecution version. The F.I.R. was also prompt.

12. The defence case, that Bhanwar Singh had sustained injuries as his brother had made an attempt to cause injury to the Excise Officials, can hardly be believed. Shaitan Singh (PW 2), brother of the injured, emphatically denies the

suggestion. Bhanwar Singh also denies to have sustained the injury in the manner suggested by the accused. Had there been such an incident, the Excise people would not have omitted to report against the complainant party. The very fact that the Excise people did not report about attack on them goes to show that the defence version is not correct. The trial Court has rightly not placed reliance on the defence evidence.

13. As a result of the foregoing discussion there is no escape from the conclusion that the learned Sessions Judge has not committed any error in convicting the appellant under Section 326, IPC.

14. Coming to the sentence, it is noticed that the occurrence had taken place in 1981. More than 17 years have elapsed. It is also noticed that the accused has remained in custody for about one and a half months. Taking all the facts and circumstances into consideration, I think the ends of justice would be met if the appellant is sentenced to the period of imprisonment already undergone by him and the sentence of fine imposed by the trial Court and compensation is awarded to the injured..

15. Consequently, this appeal is partly allowed. While maintaining the conviction of the appellant under Section 326, IPC, his sentence of imprisonment is reduced to the period already undergone by him. The sentence of fine shall stand. It is directed that the appellant shall pay Rs. 10,000/- as compensation to injured Bhanwar Singh. The appellant is given four weeks to deposit the amount of compensation in the trial Court. If the appellant fails to deposit the amount, the judgment of the trial Court will revive and he will suffer imprisonment as directed by the trial Court. In that event the trial Court shall take steps of the arrest of the appellant.