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PASHORA SINGH AND ANR.

v.

STATE OF PUNJAB

OCTOBER 9, 1992

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[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

Indian Penal Code, 1860:

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Sections 307, 447, 326, 324, 323 r/w S.34—Accused charged with inflicting injuries on two persons—Convicted on some charges, but given benefit of probation—On appeal High Court sentencing them to 3 years rigorous imprisonment and fine—During pendency of further appeal one accused died—In respect of other accused sentence reduced to rigorous imprisonment for the period already undergone.

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The appellant and his brother were tried for offences under S.307, 447, 326, 324, 323 r/w S.34 IPC for inflicting injuries on two persons. The Trial Court found that charges under Ss.307 and 326 were not established. The Trial Court however found the accused guilty of having committed the other offences charged with. Since the accused were not previous convicts, they were granted the benefit of probation under S.360 Cr.P.C. Against the Trial Court judgment, the State preferred an appeal and the complainant filed a Revision, and the High Court found both the accused guilty of having committed offences under S.307 r/w.S.34 IPC for inflicting injuries on one of the two victims. It also affirmed the conviction of the two accused under Sections 447 and 324 IPC. Taking into consideration the fact that the accused had undergone the agony of trial for more than one year and that the appeal against their acquittal remained pending in the High Court for about 8 years, the High Court sentenced the two accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.3000 each under Ss.307 & 34 IPC. They were also further sentenced to rigorous imprisonment for three months and the second appellant was sentenced to undergo rigorous imprisonment for six months under S.324 IPC.

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Being aggrieved by the judgment of the High Court, the two accused preferred the present appeal by special leave. During the pendency of the appeal, the second appellant died and his appeal abated.

Partly allowing the appeal of the other accused, this Court,

HELD: 1.1. In the facts and circumstances of the case, no offence under Section 307 of the Indian Penal Code is established against the first appellant. According to the statement of one of the injured himself, the first appellant had first given a Gandasa blow on right knee of the other injured person. The second appellant then gave Gandasa blow from the reverse side. The witness further stated that he raised on alarm and tried to intervene, when the second appellant gave two Gandasa blows to him. The first appellant also gave a Gandasa blow on his head. According to him two injuries on his head were inflicted by the second appellant and the third one by the first appellant. It is an admitted case of the prosecution that the accused persons had a grievance against the victim and his uncle for having launched some security proceedings against the accused persons and they had come with an intention of taking revenge.

[928 G-H; 929 A-B]

1.2. Admittedly, the injuries are found to be simple in nature and this clearly goes to establish that the accused persons had no intention of causing death of any of the two persons. In the circumstances, the High Court was not right in holding that the accused had an intention to cause the death of one of the victims or the knowledge of his possible death. Only injury No.1 on the head of one of the victims has been described as dangerous to life and the High Court has itself recorded a finding that the previous litigation between the parties had nothing to do with that victim and it was not established as to which of the two accused had inflicted injury No.1 on his Head. Thus, the first appellant had not committed any offence under Section 307 read with Section 34 of the Indian Penal Code. He can only be found guilty for an offence under Section 326 read with Section 34 of the Indian Penal Code. [929 C-F]

2. The appellant is a cultivator and has already suffered the agony of the case in the Trial Court for more than one year and for more than 10 years in the High Court and this Court. The co-accused, the real brother of the appellant, died on 30.1.1992. The burden of looking after the widow and three minor children of the co-accused has fallen on the shoulders of the appellant apart from the burden of his own wife and three minor children. He has remained in jail for 52 days during the trial and is now continuing in jail after having surrendered on 28.2.1992 during the pendency of the appeal before this Court. Thus, taking in view the entire facts

A and circumstances of the case, justice would be met if the appellant is awarded a sentence of imprisonment of the period already undergone by him for the offence under Sections 326/34 of the Indian Penal Code and a fine of Rs. 3000. [929 G-H; 930 A-B]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 593 of 1992.

From the Judgment and Order dated 9.5.91 of the Punjab and Haryana High Court in Crl. A. No.188-DBA/83.

C Rajinder Sachhar and Sanjay Parikh for the Appellants.

Ms. Amita Gupta and R.S. Suri for the Respondent.

The Judgment of the Court was delivered by

D KASLIWAL, J. Special leave granted.

E Pashora Singh and Lahora Singh, two brothers were tried for offences under Sections 307/447/326/324/323 read with Section 34 of the Indian Penal Code for inflicting injuries on Amar Singh and Pal Singh on 27.8.1981. The Learned Trial Judge held that charges under Sections 307 and 326 were not established. The Trial Judge found both the accused guilty for the offences under Sections 447, 324 and 323 of the Indian Penal Code. As the accused were not previous convicts, they were granted the benefit of probation under Section 360 of the Code of Criminal Procedure.

F The State of Punjab filed an appeal and the Complainant filed a revision in the High Court against the aforesaid order of the Trial Judge. The High Court found both the accused persons guilty for offence under Section 307 read with Section 34 of the Indian Penal Code for injuries inflicted on Pal Singh. The High Court also affirmed the conviction of the accused persons under Sections 447 and 324 of the Indian Penal Code. The High Court took into consideration the fact that the occurrence had taken

G place as back as on 27.8.1981 and the accused had undergone the agony of trial for more than a year before the Trial Court and the appeal against their acquittal remained pending in the High Court for the last eight years, as such sentenced both the accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000 each under Sections 307/34 of the

H Indian Penal Code. The High Court directed that out of the fine, if realised,

Rs.4,000 be paid to Pal Singh injured and Rs.2,000 to Amar Singh injured by way of compensation. Both the accused were further sentenced to undergo rigorous imprisonment for three months under Section 447 and so far as Pashora Singh is concerned, he was also sentenced to undergo rigorous imprisonment for six months under Section 324 of the Indian Penal Code. All the substantive sentences of imprisonment were ordered to run concurrently.

Aggrieved against the judgment of the High Court, this appeal by grant of special leave has been filed by the accused persons. During the pendency of appeal, Lahora Singh died on 30th January, 1992. Thus, the appeal of Lahora Singh Stands dismissed as having abated.

We have heard Mr. Rajinder Sachar, Learned Senior Advocate on behalf of the appellant Pashora Singh and the Learned Counsel of the State of Punjab. We have gone through the judgments of the High Court and the Trial Judge and have perused the record. So far as the incident and the inflicting of injuries by the two accused persons on Amar Singh and Pal Singh has been found established by the Trial Judge and affirmed by the High Court and the same does not call for any interference. The only question which calls for consideration is as to what offence has been committed by Pashora Singh and what sentence has to be awarded to him to meet the ends of justice.

According to the findings recorded by the High Court on the basis of the statement of Pal Singh injured, the accused Lahora Singh gave two Gandasa blows to Pal Singh on his head and Pashora Singh gave another Gandasa blow on his head. PW.1 Dr. Subhash Mittal, Medical Officer, Civil Hospital, Moga recorded the following injuries on Pal Singh:-

"(1) Incised wound 4 1/2" x 1/2" on the left side of scalp "from midline 2 1/2" behind the anterior hair line oblique in direction, underlying bone was cut, through and through. A chip of bone from the cut bone was lying separate which was sent to the Police in a sealed vial. Fresh bleeding was present.

(2) Incised wound 3" x 1/2" x bone deep on the left side of the scalp. 1" from the injury No.1, 2 1/2" above the left pinna 2 1/2" from anterior hair-line. Fresh bleeding was

- A** present oblique in direction.
- (3) Incised wound 1 1/2" x 1/2" on the right side of scalp 2" from midline 1" from anterior hair line. Fresh bleeding was present oblique.
- B** (4) Incised wound 2" x 1/2" on the back and medial aspect of left hand, at the base of left little finger. Advised X-ray. Fresh bleeding was present.
- (5) Incised wound 1/2" x 1/4" on the front on left shoulder. Skin deep."
- C**

The doctor stated that injury No. was declared dangerous to life and injuries Nos. 2, 3, and 5 were simple in nature while injury No.4 was kept under observation. The Trial Judge arrived at the conclusion that the doctor had not stated that injury No.1 on the person of Pal Singh was sufficient to cause death in the ordinary course of nature and had simply deposed that the injury No.1 was dangerous to life and as such no offence is proved to have been committed under Section 307 of the Indian Penal Code by Pashora Singh. The High Court on the other hand took the view that it was established by the prosecution evidence that Pal Singh received three injuries on his head. Underneath one of the injuries on the left scalp, underlying bone was cut through and through. This injury according to the doctor could prove dangerous to his life. The order two head injuries of Pal Singh were also incised wounds. The High Court though observed that it would be difficult to hold as to which of the two accused caused grievous injuries on the head yet both the accused had come together to the spot armed with Gandasas and both the accused had given three repeated blows on the head of Pal Singh and as such they had acted in furtherance of their common intention of causing the death of Pal Singh and as such they were liable for an offence under Section 307 read with Section 34 of the Indian Penal Code.

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G In our view, in the facts and circumstances of the case, no offence under Section 307 of the Indian Penal Code is held established against the appellant Pashora Singh. According to the statement of Pal Singh injured himself, Pashora Singh had first given a Gandasa blow on right knee of Amar Singh. Lahora Singh then gave Gandasa blow on the right hand of Amar Singh from the reverse side. Pal Singh thereafter states that he raised

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an alarm and tried to intervene, when Lahora Singh gave two Gandasa A
 blows to him. Pashora Singh also gave a Gandasa blow on his head.
 According to the above statement of Pal Singh, two injuries on his head
 were inflicted by Lahora Singh and the third one by Pashora Singh. It is
 an admitted case of the prosecution that the accused persons had a
 grievance against Amar Singh and his uncle Malkiat Singh for having B
 launched some security proceedings against the accused persons and they
 had come with an intention of taking revenge from Amar Singh and
 Malkiat Singh. According to the statement of Pal Singh, Pashora Singh
 had given a Gandasa blow on the right knee of Amar Singh and Lahora
 Singh also gave a Gandasa blow on the right hand of Amar Singh from the C
 reverse side. Admittedly, the injuries on Amar Singh are found to be simple
 in nature and this clearly goes to establish that the accused persons had
 no intention of causing death of any person nor any injuries found on Pal
 Singh were stated to be sufficient in the ordinary course of nature to cause
 death. According to Pal Singh, when he raised an alarm and tried to D
 intervene, Lahora Singh inflicted two Gandasa blows and Pashora Singh
 gave third blow on his head and thereafter the accused persons ran away.
 In the circumstances mentioned above, we are clearly of the view that the
 High Court was not right in holding that the accused had an intention to
 cause the death of Pal Singh or the knowledge of possible death of Pal
 Singh. Only injury No.1 on the head of Pal Singh has been described as E
 dangerous to life and the High Court has itself recorded a finding that the
 previous litigation between the parties had nothing to do with Pal Singh
 and it was not established as to which of the two accused had inflicted
 injury No.1 on the head of Pal Singh. Thus, in the above facts it cannot be
 held that Pashora Singh had committed any offence under Section 307 read
 with Section 34 of the Indian Penal Code. The appellant Pashora Singh in
 the facts and circumstances of the case can only be held guilty for an
 offence under Section 326 read with Section 34 of the Indian Penal Code. F

So far as the question of sentence is concerned, the incident had
 taken place as far back as on 27.8.1981. The accused is a cultivator and has
 already suffered the agony of the case of the Trial Court for more than one G
 year and for more than 10 years in the High Court and this Court. The
 co-accused Lahora Singh, the real brother of Pashora Singh has died on
 30.1.1992. It has been submitted that the burden of looking after the widow
 and three minor children of Lahora Singh has fallen on the shoulders of
 Pashora Singh apart from the burden of his own wife and three minor H

- A** children. Pashora Singh has remained in jail for 52 days during the trial and is now continuing in jail after having surrendered on 28.2.1992 during the pendency of the appeal before this Court. Thus, taking in view the entire facts and circumstances of the case, we consider that justice would be met if the accused - appellant - Pashora Singh is awarded a sentence of imprisonment of the period already undergone by him for the offence under Sections 326/34 of the Indian Penal Code.
- B**

- In the result, we allow this appeal in part, set aside the conviction and sentence of the appellant under Sections 307/34 and instead convict him for the offence under Sections 326/34 of the Indian Penal Code and award a sentence of imprisonment for the period already undergone by him and to pay a fine of Rs.3,000. In default of payment of fine to undergo further rigorous imprisonment for six months. Out of the aforesaid fine, if realised, an amount of Rs.2,000 shall be paid to Pal Singh and Rs.1,000 to Amar Singh by way of compensation. The conviction and sentence for other offences as awarded by the High Court is maintained. However, as the other sentences of imprisonment awarded to the accused - appellant have been ordered to run concurrently and such period is already covered in the period of imprisonment already undergone by the appellant, he would be released forthwith.
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G.N.

Appeal partly allowed.