

Naib Singh

Vs

State of Punjab

Criminal Appeal No. 187 of 1978

(B. C. Ray, A.P. Sen JJ)

23.09.1986

JUDGMENT

A.P. SEN, J. -

1. This appeal by special leave directed against a judgment of the Punjab and Haryana High Court dated February 21, 1978 raises a question whether the appellant was guilty of having committed an offence punishable under Section 326 of the Indian Penal Code, 1860 or under Section 324. That would depend on whether cutting of bone without more amounts to fracture within the meaning of clause seventhly of Section 320. On this question, the High Court has differed with the conclusion reached by the Judicial Magistrate, First Class, Muktsar who had convicted the appellant by his judgment and sentence dated April 17, 1974 under Section 324 and released him under Section 4 of the Probation of Offenders Act, 1958.

2. The prosecution case in brief was as follows. On April 22, 1973 at about 10 a.m. in village Motlewala the appellant, who is a teacher in Government School, after an altercation and exchange of abuses struck the complainant Darshan Singh, PW 3 with a gandasa on the middle of his head. Fortunately, Darshan Singh was wearing a turban which cushioned off the force of the blow leaving only a bleeding injury. On the same day at about 2.30 p.m. Darshan Singh was medically examined by Dr S.K. Saluja, Medical Officer, Civil Hospital, Muktsar, PW 1. He found that Darshan Singh had an incised wound 4 cm X 1/2 cm bone deep on the top of the middle of his head. In his opinion, the injury was simple in nature. Darshan Singh remained an indoor patient in Civil Hospital, Muktsar from April 22 to April 29, 1973. Some three weeks after the occurrence i.e. on May 16, 1973 after Darshan Singh was discharged from the hospital, he got himself X-rayed by Dr O.P. Goyal, Radiologist, Civil Hospital, Faridkot, CW 1. In his report, Dr Goyal found that the X-ray plate revealed a partial cut of the skull vault. On the police challan, the learned magistrate framed a charge under Section 324 of the Indian Penal Code but later on the application by the complainant altered the charge to one under Section 326. At the instance of the complainant, the learned magistrate also summoned Dr Goyal, who has performed the radiological examination, as a court witness. The learned magistrate relying upon the testimony of Dr Saluja, PW 1 held that the injury caused by the appellant was a simple injury. That opinion of the doctor was based upon the statement of Modi's Medical Jurisprudence, 1967 edn., p. 242 that cutting of a bone does not necessarily involve a fracture of the bone. The learned magistrate viewed with suspicion the authenticity of the X-ray plate taken by Dr Goyal on May 16, 1973. He observed that a look at the X-ray film would show that there was a white line, a little curved in the lower portion on the skull vault, which was suggestive that a wire was placed on the skull before the film was exposed to X-ray equipment. He found the line to be prominent and observed that it could not be so unless excessive force was used in inflicting the injury. In that event, there would have been extensive

injuries i.e. deep cutting of the bones underneath or multiple fracture of the skull, but there was very little callus formation. The learned magistrate therefore felt that it was not safe to rely on the opinion of Dr Goyal that there was a partial cut of the skull vault or that there was a deep cut involving the whole of the outer table reaching up to the inner table. The learned magistrate accordingly held the decision of this Court in *Hori Lal v. State of U.P.* [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] was not attracted and convicted the appellant of having voluntarily caused a simple injury by a sharp-edged weapon under Section 324.

3. In allowing the appeal against acquittal, the High Court has held that the judgment of the learned magistrate proceeds on mere conjectures and unwarranted inferences. It observes that there was no reason to discard the testimony of Dr O.P. Goyal who found a partial cut of the skull vault merely on the assertion of Dr Saluja that it was a simple injury which opinion was based entirely on the statement of Modi's Medical Jurisprudence. The statement in Modi proceeds on the decision of the Rangoon High Court in *Maung Po Yi v. Ma E Tin* [AIR 1937 Rang 253 : 38 Cri LJ 960] that the cutting of a bone does not necessarily involve a fracture of that bone, which decision was subsequently followed by the Patna High Court in *Mutukdhari Singh v. Emperor* [AIR 1942 Pat 376 : 43 Cri LJ 511]. The High Court pointed out that this Court in *Hori Lal case* [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] had disapproved the view expressed in these decisions and therefore the statement in Modi was no longer good. It further observed that the learned magistrate had adopted the role of a medical expert and made certain observations for which there was no basis whatever. In particular, it referred to the observation made by him that a partial cut of the skull vault is seldom so prominent except when excessive force is used in inflicting the injury and that because the impression of the alleged fracture is white in colour, it supports the defence assertion that a wire must have been placed on the skull before the film was exposed to X-ray equipment. According to the High Court, these were mere surmises and conjectures and the learned magistrate could not have discarded the testimony of Dr O.P. Goyal, CW 1 based on the X-ray report saying that there was a grievous hurt. Accordingly, the High Court reserved the acquittal and convicted the appellant under Section 326 of the Indian Penal Code.

4. It is submitted on behalf of the appellant that the High Court was misled by the decision in *Hori Lal case* [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] which turned on its own facts and it could not be treated as a precedent. The submission in essence is this. The medical evidence is inconclusive to bear out that the head injury suffered by Darshan Singh was grievous hurt within the meaning of clause seventhly of Section 320. We were referred to the testimony of Dr Saluja, PW 1 and Dr Goyal, CW 1 and it was said that there was nothing to show that there was a rupture or fissure in the skull bone. It is said that Dr Saluja who examined Darshan Singh only a few hours after the incident found that the injury was simple in nature, bone deep, caused by some sharp-edged weapon. When questioned by the learned counsel he stated that at the time of probing the depth of the injury, he did not find any partial cut underneath it. On being confronted with the X-ray report of Dr Goyal, he asserted relying on the statement of Modi's Medical Jurisprudence that the cutting of a bone does not necessarily involve a fracture of that bone. The learned counsel was expressly critical of the X-ray report of Dr Goyal and commented on the manner in which it was procured by Darshan Singh some 24 days after the occurrence. At any rate, the submission was that Dr Goyal who testified on his experience for a period of only 11 months when, on his own experience, had no special training or education in radiology, could not be regarded as an expert within the meaning of Section 45 of the Evidence Act, 1872. We are afraid, we cannot accept this line of reasoning.

5. There can be no doubt from the testimony of Dr Goyal, CW 1 based on the X-ray plate that the complainant Darshan Singh suffered a grievous hurt. We share the view of the High Court that the

observation of the learned magistrate of the possibility of some wire having been placed on the skull before the film was exposed to the X-ray equipment, was wholly unwarranted and there is nothing on record to draw any such inference. Dr Goyal after taking the X-ray gave his opinion that X-ray of the skull indicated partial cut of the skull bone. This opinion was forwarded to Dr Saluja who forwarded the X-ray film and the report to the Station House Officer, Police Station, Muktsar with an endorsement that in his opinion the head injury of Darshan Singh was simple in nature. It was somewhat strange that Dr Saluja should still have adhered to that opinion even though the X-ray plate showed that there was a partial cut of the skull vault. When questioned by the learned magistrate as to the basis for the formation of such opinion despite the X-ray report of Dr. Goyal, Dr Saluja relied upon the statement in Modi's Medical Jurisprudence that partial cut of a bone does not necessarily involve a fracture of that bone. There is no basis for that statement since the decisions in Maung Po Yi [AIR 1937 Rang 253 : 38 Cri LJ 960] and Mutukdhari Singh [AIR 1942 Pat 376 : 43 Cri LJ 511] cases have not found favour with this Court in Hori Lal case [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969]. In the case of Maung Po Yi [AIR 1937 Rang 253 : 38 Cri LJ 960] the skin and membranes outside the skull bone were cut through and the knife touched the skull bone cutting the bone underneath. The Rangoon High Court relying on the primary meaning of the word 'fracture' as 'breaking' observed that in the case of a fracture of the skull bone, it is not necessary that it be divided into two separate parts because it may consist merely of a crack; but emphasised that if it is a fracture, it must be a crack which extends from the outer surface of the skull to the inner surface. The Patna High Court in Mutukdhari Singh case [AIR 1942 Pat 376 : 43 Cri LJ 511] disapproved of this view and held that where the evidence is merely that a bone was cut and there is nothing whatever to indicate the extent of the cut, it is impossible to infer from that evidence alone that grievous hurt has been caused within the meaning of the definition in clause seventhly of Section 320. In Hori Lal case [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] the Court held that both these assumptions were misleading and indicated the test to determine whether there was a fracture of a bone in these words : (SCC p. 11, para 7)

It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture of fissure in it, it would amount to a fracture within the meaning of Clause 7 of Section 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.

6. While the learned counsel is right in contending that there is nothing like precedent in criminal cases, but there are certain guiding principles. The court in Hori Lal case [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] observed that it is true that fracture has not been defined in the Indian Penal Code and there were conflicting views. Sometimes it is thought that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that crack must extend from the outer surface of the skull to the inner surface as expressed by the Rangoon High Court in Maung Po Yi case [AIR 1937 Rang 253 : 38 Cri LJ 960]. The court therefore endeavoured to explain and define the meaning of the word 'fracture' in clause seventhly of Section 320. The facts in Hori Lal case [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969] showed that both the accused armed with their kantas gave repeated blows to the victim on different parts of the body resulting in as many as 10 injuries, 7 of which were incised wounds, bone deep, cutting the underlying bones. The nature of injuries considered with the evidence of the doctor undoubtedly established that all the injuries were grievous. As the court indicated in Hori Lal case [(1970) 2 SCR 237 : (1970) 1 SCC 8 : AIR 1970 SC 1969], the question in such cases would be whether the cuts in the bones noticed in the injury report are only superficial or do they effect a

break in them i.e. there is a rupture or fissure in it. There can be no doubt from the X-ray report of Dr Goyal, CW 1 that there was a partial cut of the skull vault. In the report, Dr Goyal did not mention the depth of the cut but stated in the witness box on the basis of his experience that it was a deep cut involving the whole of the outer table reaching up to the inner table. When Darshan Singh was discharged from Civil Hospital, Muktsar on April 29, 1973, the external head injury must have healed. It appears from the evidence of Dr Goyal that there was some callus formation at the seat of the injury. The opinion of Dr Goyal that there was a deep cut involving the whole of the outer table and reaching up to the inner table is borne out by the white line appearing in the X-ray plate. There is no basis for the inference drawn by the learned magistrate that there was the possibility of a mischief being played during the time that elapsed between the discharge of Darshan Singh from Civil Hospital, Muktsar and his X-ray examination by Dr Goyal at Faridkot, and that in all probability some wire had been placed before exposing the film to the X-ray equipment, nor can we subscribe to the view that a partial cut of the skull vault is seldom so prominent except when excessive force is used in inflicting the injury. It appears from the evidence that Darshan Singh was putting on a turban when assaulted with the gandasa. What saved him was the turban and it took away the force of the impact leaving a head injury. In the circumstances, there can be no doubt that there was a fracture within the meaning of clause seventhly of Section 320. The High Court was therefore justified in altering the conviction of the appellant from that under Section 324 of the Indian Penal Code to one under Section 326.

7. Accordingly, the appeal fails and is dismissed. The judgment of the High Court convicting the appellant under Section 326 of the Indian Penal Code is upheld. As to the sentence, we are inclined to take a lenient view. We are informed that the appellant is a teacher in a Government School. The circumstances brought out by the prosecution evidence show that he acted in the heat of the moment. Looking to the fact that the incident occurred on April 22, 1973, some 13 years back, we do not think it desirable to send the appellant back to jail. We accordingly reduce the sentence of rigorous imprisonment for one year awarded by the High Court to imprisonment till the rising of the court and pay a fine of Rs. 5000 or in default, to undergo rigorous imprisonment for a period of six months. The amount of fine shall be deposited in the Court of the Judicial Magistrate, First Class, Muktsar within a period of one month from today. The amount, if recovered, shall be paid to the complainant Darshan Singh by way of compensation.

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