

SUPREME COURT OF INDIA

Tek Chand

Vs.

State of Haryana

Crl.A.No.70 of 1971

(A. N. Ray and D. G. Palekar, JJ.)

25.11.1971

JUDGEMENT

PALEKAR, J.:-

1. This appeal by special leave is filed by Tek Chand and his son Ramesh Kumar against their conviction and sentence by the High Court of Punjab and Haryana. They have been convicted under Section 302 r/w 34-IPC and sentenced to imprisonment for life on the first count. Tek Chand is also convicted under Section 307-IPC and sentenced to 6 years' rigorous imprisonment. Ramesh Kumar is similarly convicted and sentenced under Section 307 r/w S.34 I.P.C.

2. Fourteen persons were charged before the learned Sessions Judge, Karnal for offences under Section 148, 302, 307, 352, 436 also r/w. Section 149 IPC. They were all convicted under Section 148 and 307 r/w.149-IPC. One of the accused named Antu was convicted under S.302-IPC and sentenced to death. The rest were convicted under Section 302 r/w 149-IPC and sentenced to imprisonment for life. All accused went in appeal to the High Court. The case of Antu was also referred to it for the confirmation of the death sentence. The High Court disbelieved the story of an

unlawful assembly and acquitted all the accused of the offence under Section 148-IPC. The death sentence on Antu was confirmed. The present appellants Tek Chand and Ramesh Kumar were convicted under Section 302 r/w 34-IPC. Tek Chand was further convicted under Sec. 307 and Ramesh Kumar under Section 307 r/w 34-IPC. The remaining 11 accused were acquitted.

3. Antu came to this Court by special leave in Criminal Appeal No. 81 of 1970 and this Court on a consideration of the facts allowed his appeal and acquitted him on 18-12-1970. The present appeal by special leave is by the other two prisoners namely Tek Chand and Ramesh Kumar against their conviction and sentence.

4. The prosecution case was that owing to a dispute about land, some sixteen persons including accused Antu and the two appellants came to the 'dera' of one Labh Singh situated in that land with deadly weapons like guns, barchhas and Farsis, and carried out an assault in which Labh Singh's brother Bakshish Singh died of a gun shot wound fired by Antu from a gun. Another gun was fired by appellant Tek Chand at Labh Singh and Labh Singh was injured in the shoulder by the shot. Appellant Ramesh Kumar, it is alleged, and some others attacked Labh Singh with sticks. That is how the case was put forward before the Sessions Judge and that case was substantially accepted by the Sessions Court.

5. The High Court did not accept the prosecution case. It disbelieved the story that some sixteen persons had come to assault the victims or that there was an unlawful assembly. It, however, accepted the story so far as accused Antu and the present appellants were concerned and that is why they were convicted and sentenced as aforesaid.

6. In Antu's appeal to this Court the whole case on facts was considered and this Court pointed out how the High Court was wrong in concluding that Antu and the present two appellants were the aggressors. The case as found by the High Court amounted to this. After Antu and the present appellants had inflicted the injuries, they went away with some eight others of the sixteen assailants. Thereafter the injured Labh Singh with the help of his two brothers Ajaib Singh and Jagtar Singh wielded their arms with such terrific effect that they injured the remaining five armed assailants inflicting not less than 57 injuries on them. Two of them received severe beating. One actually died a few days later. But the strange thing is that neither Ajaib Singh nor Jagtar Singh received a scratch on their body though they were facing at one time or the other sixteen assailants. It was also not explained why after such a big preparation to assault, the injuries on the side of the complainant's party was restricted to only 7 - one on Bakshish Singh and 6 on Labh Singh, and why most of the assailants, who were on the war path left the place suddenly leaving five of their friends to be attacked by Labh Singh and his two brothers. Moreover, it was impossible to believe that five of the armed assailants received as many as 57 injuries when attacked by only three. Out of these three, Labh Singh had already received a gun shot wound in the shoulder and could have hardly taken part in a retaliatory action. His other two brothers Ajaib Singh and Jagtar Singh would be no match to the other five who were also armed with deadly weapons including a gun. Assuming that these two

brothers were great adepts in the use of weapons it is impossible to believe that they would escape without a scratch. It was, therefore, obvious that the story told for the prosecution was not a true account of what had actually happened. It is true that Antu or Tek Chand or some body of their party had used guns and caused injuries to the deceased Bakshish Singh and complainant Labh Singh with shots fired from their guns. But that does not necessarily mean that they were the injuries received on both sides it would go to show that the complainant's party were the aggressors. The true facts with regard to the injuries received by Bakshish Singh and Labh Singh were not placed before the Court and, therefore, the appellants, like Antu, were entitled to be acquitted.

7. In the result the appeal is allowed. The order of conviction and sentence against the appellants is set aside and they are directed to be released forthwith unless required in connection with some other charge.

Appeal allowed.