

Balwant Singh

Vs

State of Haryana

Criminal Appeal No. 82 of 1969

(J. M. Shelat, H. R. Khanna JJ)

07.02.1972

JUDGMENT

KHANNA, J. -

1. Balwant Singh (30), Pehlad Singh (30), Mukhtiar (35), Tej Singh (37), Krishan (30), Shubh Ram (20), Mange Ram (55) and Smt. Chhoti (65), mother of Krishan, were tried in the court of Additional Sessions Judge, Rohtak for offences under Sections 148 and 307 read with Section 149 I.P.C. and were acquitted. On appeal filed by the State, the Punjab and Haryana High Court upheld the acquittal of Chhoti by giving her the benefit of doubt. The appeal against the other seven accused was accepted, their acquittal was set aside and they were convicted under Section 148 and Section 326, read with Section 149, I.P.C. each of those seven accused was sentenced to undergo rigorous imprisonment for a period of 18 months, while for the offence under Section 148, I.P.C., each of them was sentenced to undergo rigorous imprisonment for a period of six months. The sentences were ordered to run concurrently. The seven convicted accused have now come up in appeal to this Court by special leave.

2. The prosecution case is that the accused are collaterals of Hari Singh, husband of Mam Kaur. Hari Singh died issueless about 28 years ago and his land measuring about 200 bighas situated in village Yaqubpur was mutated in the name of his widow Mam Kaur. Mehtab Singh (P.W. 11), Attar Singh (P.W. 12), and Kabul Singh (P.W. 14) are sons of Ude Singh, brother of Mam Kaur. Attar Singh P.W. used to reside with Mam Kaur and cultivate her land. About three years prior to the occurrence, Mam Kaur sold some land and a gher to Mehtab Singh P.W. and his brother Phul Singh for Rs. 12,000. Mange Ram accused brought a suit by pre-emption in respect of the said land and obtained a decree. Possession of that land was thereafter delivered to Mange Ram accused. Mam Kaur thereafter sold 23 kilas of land to Mehtab Singh P.W. and his nephews, but Mange Ram got the possession of that land also after obtaining a decree for possession by pre-emption. On March 20, 1965, Mam Kaur executed a will in respect of her remaining property consisting of land and house in favour of Attar Singh P.W. The will was also got registered by Mam Kaur. The accused resented the efforts of Mam Kaur to transfer her property in favour of her nephews. The relations between the parties consequently became strained.

3. On the morning of June 6, 1965, it is stated, Attar Singh and Mehtab Singh P.Ws. were ploughing Mam Kaur's field known as ' Khatiwala'. Their brother Kabul Singh and cousin Dharam Singh were busy removing weeds from the same field. The eight accused then came there. Balwant Singh was armed with a ballam, while Pehlad Singh, Mukhtiar and Mange Ram were armed with jellis. Tej Singh, Krishan and Shubh Ram had lathis, while Chhoti was empty handed. The seven accused-appellants attacked Mehtab Singh, Kabul Singh and Dharam Singh on the exhortation of Chhoti.

The accused also stated at that time that they would teach a lesson to Mehtab Singh and his brothers for having secured transfer of Mam Kaur's land in their favour. Balwant Singh opened the attack with a ballam blow on the head of Mehtab Singh. A large number of injuries were thereafter inflicted by the accused-appellants on Mehtab Singh, Attar Singh and Kabul Singh. Mehtab Singh and Attar Singh had small dandas in their hands and they wielded those dandas to ward off blow aimed at them. In the process some of the accused got injured. The occurrence was witnessed by A Smt. Mari (P.W. 15), wife of Attar Singh P.W. as well as by one Jage. Dharam Singh, who did not receive any serious injury, ran away from the spot towards the nearby village Kutani, and was chased by Tej Singh, Krishan and Shubh Ram accused. Bhanwar Singh (P.W. 9) and Sri Chand (P.W. 10) who are the Sarpanch and member respectively of the Gram Panchayat of Kutani were asked by Dharam Singh to rescue him. Bhanwar Singh and Sri Chand stopped Tej Singh, Krishan and Shubh Ram accused and took them into custody.

4. The case of the prosecution further is that Sub-Inspector Gurmej Singh (P.W. 17), on hearing about some fight, went to the place of occurrence, and recorded there the statement of Attar Singh at about 2.30 p.m. The place of occurrence is at a distance of about 13 miles from police station Jhajjar. Writing PAH about the apprehension of Tej Singh, Krishan and Shubh Ram accused by Bhanwar Singh and Sri Chand P.Ws. at Kutani was also received by the Sub-Inspector. The Sub-Inspector then prepared the injury statements of the injured persons and sent them for medical examination to the civil, hospital, Jhajjar. Blood-stained earth was taken into possession by the Sub-Inspector from the place of occurrence. Tej Singh, Shubh Ram and Krishan accused were produced before the Sub-Inspector and were put under arrest. The other accused were also thereafter arrested.

5. Dr. B. L. Batra examined Attar Singh, Mehtab Singh and Kabul Singh P.Ws as well as Dharam Singh on June 6, 1965. Attar Singh was found to have 22 injuries, out of which the following two injuries were grievous :

"(1) Incised wound 1"x 1/2" on the right leg 4 1/2" above the right ankle inner malleolus. The tibia bone underneath was fractured.

(2) Lower central incisor right and left are removed from their socket. The right lateral and left lateral were shaky."

The remaining 20 injuries were simple. Two of the injuries of Attar Singh, including the injury on the right ankle inner malleolus had been caused by sharp-edged weapon. One injury had been caused by sharp-pointed weapon and the remaining injuries had been caused by blunt weapon.

6. Mehtab Singh was found to have 23 injuries, out of which one injury, which had resulted in the fracture of the left ulna bone, was grievous, while the remaining injuries were simple. One of the injuries of Mehtab Singh had been caused by sharp-edged weapon, while two of the punctured wounds one on the left elbow and the other on the back of left arm two inches above the elbow, had been caused by sharp-pointed weapon. The remaining injuries had been caused by blunt weapon.

7. Kabul Singh had nine injuries, out of which the following three injuries were grievous :

"(1) Contusion 4" x 1 1/2" over the inner malleolus left ankle. There was lot of swelling around the joint.

(2) Punctured wound over the back of right forearm 4" above the palmer surface of wrist side. The ulna bone underneath was fractured and the wound was about 3/4"

round.

(3) Punctured wound 1/2" circumference on the right forearm on the radial side and two inches from it. The radius bone underneath was fractured. There was a contusion 3" x 1" over this site."

Crack fracture was found in injury No. 1. Two of the injuries, namely, injuries 2 and 3 given above, had been caused by sharp-pointed weapon. Another injury on the person of Kabul Singh had been caused by sharp-edged weapon, while the remaining injuries had been caused by blunt weapons.

8. Dharam Singh had two simple injuries consisting of contusions on his person.

9. Mange Ram and Tej Singh accused were also got examined from Dr. Batra on June 6, 1965. Mange Ram was found to have injury on his gums and a contusion on his right leg. His left lower canine tooth was found to be removed from its socket. Mange Ram also complained of pain in left chest and right forearm. Tej Singh had an abrasion and complained of pain in his right forearm.

10. At the trial Mehtab Singh (P.W. 11), Attar Singh (P.W. 12), Kabul Singh (P.W. 14), and Mari (P.W. 15) gave eye-witness account of the occurrence and supported the prosecution case. Dharam Singh was not examined as he was stated to have joined the army, while Tej Singh was given up by the public prosecutor on the ground of having been won over.

11. The accused, other than Mange Ram and Tej Singh, denied the prosecution allegations. According to them, they were not present at the scene of occurrence. The version of the occurrence on behalf of Mange Ram and Tej Singh was given by Mange Ram in the following words :

"Mam Kaur had sold a gher to Attar Singh etc. We pre-empted that and had taken possession. I had stocked my harvested wheat crop there for thrashing it. Tej Singh and I were working there. Attar Singh, Mehtab Singh, Kabul Singh, Dharam Singh and Ram Singh P.W.s came there. They started giving me abuses and asked us to remove the Bunga of wheat crop. We refused. They started beating us with lathis. We also beat them with out weapons. I had a jelli. Tej Singh had a lathis. We raised hue and cry. Kure, Jai Lal, Shib Narain, Kanshi Ram, Bhartu and Parkash came to our help. They were armed with lathis. The P.W.s did not stop beating us. Our helpers then started beating the P.W.s and thus rescued us. I and Tej Singh then went to the Thana to lodge a report. The Thanedar refused to record our report. He came to the village with us. The Thanedar then arrested all of us in the village."

In defence, one witness Kure was produced in support of the version of Mange Ram.

12. As stated above, the trial court acquitted all the eight accused, while the High Court on appeal convicted the seven accused-appellants.

13. We have heard Mr. Kohli on behalf of the appellants and Mr . Goswami on behalf of the State, and are of the view that there is no merit in the appeal. The prosecution case about the seven accused appellants having assaulted Mehtab Singh, Attar Singh, Kabul Singh and Dharam Singh is supported by the evidence of Mehtab Singh (P.W. 11), Attar Singh (P.W. 12), Kabul Singh (P.W. 14) and Mari (P.W. 15). We agree with the learned judges of High Court that there appears to be no cogent ground to disbelieve the evidence of those witnesses. The mere fact that they are related to each other would not be a sufficient ground for discrediting their testimony. Mehtab Singh, Attar

Singh and Kabul Singh had injuries on their persons and there can be hardly any manner of doubt regarding their presence at the scene at the scene of occurrence. It is also most difficult to believe that the injured witnesses would spare their real assailants and falsely involve innocent persons as those responsible for causing injuries to them. The trial court rejected the evidence of the eye-witnesses on the ground of their being related to each other. This circumstance, as pointed out by the High Court, did not warrant the rejection of their testimony. The trial court also referred to the discrepancy, in the prosecution evidence on the point as to whether there were some persons ploughing nearby field. This discrepancy, as observed by the High Court, was not of a material character and did not militate against the credibility of the prosecution witnesses.

14. The medical evidence shows that as many as 56 injuries were found on the persons of Mehtab Singh, Attar Singh, Kabul Singh and Dharam Singh. Out of them, six injuries were grievous. Four of the injuries had been caused by sharp-edged weapon, and five of them had been caused by sharp-pointed weapon. If the injured prosecution witnesses accompanied by Dharam Singh and Ram Singh had attacked Mange Ram and Tej Singh as stated by Mange Ram, it is difficult to believe that Mange Ram and Tej Singh would escape with only three visible injuries, while as many as 56 injuries would be caused to the complainant party. The version of the occurrence as given by Mange Ram, in our opinion, is not worthy of credence and has been rightly rejected by the High Court. We also find that the injuries on the person of Mange Ram and Tej Singh accused have been fully explained by Mehtab Singh P.W. According to the witness, he and Attar Singh had small dandas in their hands and wielded them to ward off the blows of the accused.

15. There is a discrepancy in the prosecution evidence as to whether Sub-Inspector Gurmej Singh got some intimation about the occurrence when he was on patrol duty or whether he got it at the police station. This circumstance, as held by the High Court, did not justify the throwing out of the entire prosecution case. There is no cogent evidence on the record to show that the intimation received by the Sub-Inspector was precise and not vague before he arrived at the place of occurrence.

16. Mr. Kohli has argued that the five injuries caused by sharp-pointed weapon on the persons of Mehtab Singh, Attar Singh and Kabul Singh P.Ws. could be the result of three blows with jellis. The two injuries caused by sharp-pointed weapon on the person of Mehtab Singh, according to the learned counsel, could have been the result of one blow. Likewise, two of such injuries on the person of Kabul Singh could be caused by a single blow. This contention, even if accepted, in our opinion, would not make much material difference. Three of the accused, according to the prosecution case, were armed with jellis and there is nothing to rule out that each of them gave one blow to the injured witnesses. Assuming that one of the accused with jelli did not cause any injury, that fact would not exculpate him because the conviction of the accused is for the offence under Section 326 read with Section 149, I.P.C. The circumstances of the case indicate that the injuries which were caused to Mehtab Singh, Attar Singh and Kabul Singh were in prosecution of the common object of all the accused-appellants to cause grievous injuries. We, therefore, find no reason to interfere with the appraisal of evidence by the learned judges of the High Court. The appeal consequently fails and is dismissed.

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