Gurcharan Singh

Vs

State of Haryana

Criminal Appeal No. 111 Of 1970

(G. K. Mitter, P. jagmohan Reddy JJ)

25.04.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. Five accused were tried for offences under Sections 148, 302/149, 324/149, 323/149 and 455/149, Indian Penal Code in respect of an attack on one Hari Kishan which resulted in his death. Gurcharn Singh, A-1 and Ram Singh, A-2 are brothers. They are the owners of a rubber factory at Faridabad known as "Sendeep Rubber Factory" while Bhagwani, A-3 and Surinder Kumar, A-4 are the employees in that factory. A-5 Sucha Singh is said to be a friend of A-1 and A-2. About two months prior to the incident, the deceased who is a resident of Jullundur started a similar rubber factory at Faridabad where Chappal straps were being manufactured under the name and style of "Hari Rubber Factory". This factory was started in a portion of the premises belonging to Notan Das, D.W. 5. A similar rubber factory was owned by Kewal Krishan, P.W. 5 and Swarup Singh. Between the factory of Hari Kishan and that of Kewal Krishan, there was a common wall with a window through which one could go from one factory to the other.

2. The case of prosecution is that Hari Kishan started under-selling his goods which caused annoyance to Gurcharn Singh and Ram Singh. On March 22, 1968, at about 10.45 p.m. when Hari Kishan sat down to have his meals, Hari Ram a servant of the factory was with him, while Kewal Krishan was standing near the partition wall of his factory talking to the deceased through the window. At that time the five accused rushed into the factory where the deceased was and attacked him A-1 Gurcharan Singh, A-2 Ram Singh and A-4 Surinder Kumar had knives. Sucha Singh A-5 had a Kassi (Phawda) and Bhagwani, A-3 had hockey stick. A-1 Gurcharan was the first to give a knife blow in the back of Hari Kishan saying that he was going to teach him a lesson for under-selling the rubber goods. After this all appellants attacked the deceased with their respective weapons and continued beating him even after he had fallen on the ground. The brother-in-law of the deceased and Lal Chand, P.W. 7 who were present there tried to intervene but Lal Chand was given knife blows by Ram Singh while Bhagwani gave hockey blows to Kewal Krishan, P.W. 5. Hari Ram also intervened and started shouting when Bhagwani gave Kewal Krishan one or two hockey stick blows. Kewal Krishan began to shout and this attracted Swarup Singh, P.W. 6. Thereafter, the appellants made good their escape along with their weapons. Hari Krishan and Lal Chand both were immediately removed in the car of Harbhajan Singh to B. K. Hospital, Faridabad, where they were admitted at 10.45 p.m. The deceased was removed the next day to Safdarjang Hospital where he died on the 2nd of April, 1968. When the deceased was admitted to the Faridabad Hospital, Gorakh Nath, Assistant Sub-Inspector, Police, P.W. 17 was present there in connection with some other case but being informed by the hospital authorities that deceased and Lal Chand were injured, he wanted to record their statements but the Doctor certified that they were not in a

position to make any statements. The Sub-Inspector, however, recorded the statement of Kewal Krishan, P.W. 5 who had accompanied the injured to the hospital. It may be stated that Hari Ram, the servant of the deceased, was given up by the prosecution and was not examined at the trial because it was alleged that he was won over by the accused.

3. The Sessions Judge after considering the evidence of the prosecution and defence convicted all the five accused who where held to have formed themselves into an unlawful assembly with the common object of only causing grevious injuries to the deceased. In view of this finding, he acquitted all of them under Section 302/149, I.P.C. and convicted them under Sections 148, 326/149, 324/149, 323/149 and 455/149, I.P.C. On these respective counts, he sentenced all of them to rigorous imprisonment to one year, five years and on the remaining three to one year each. The State appealed against the acquittal under Section 302/149. The accused also appealed to the High Court while Smt. Pushpa Ram, the widow of the deceased filed a revision petition for enhancement of the sentence awarded to the accused under Section 326/149, I.P.C. from five years rigorous imprisonment to imprisonment for life. The High Court allowed the State appeal, set aside the acquittal of the appellant under the charge of murder and convicted them under Section 302, read with Section 149, I.P.C. for having committed the murder of Hari Kishan in the prosecution of their common object as members of the unlawful assembly. Each of the accused was sentenced to imprisonment for life under this count and a fine of Rs. 500/-, in default of payment whereof, they were directed to undergo a further rigorous imprisonment for six months. Out of the fine when realised, Rs. 2,000/- was to be paid to the widow of the deceased by way of compensation. The criminal appeals filed by the accused as well as the petition filed by Smt. Pushpa Ram were dismissed. The accused filed Special Leave Petition but this Court granted Leave to Appeal limited only to the question as to whether the High Court was justified in allowing the appeal and converting the appeal under Section 302, read with Section 149.

4. The only question is whether the conviction of the accused under Section 302, read with Section 149 on the finding given by the High Court, was justified. The learned advocate for the accused pointed out that the High Court had held that the injury inflicted by the assailants was with the intention to cause death or at any rate the intention was to cause injury which was sufficient in the ordinary course of nature to cause death. It had also held that it was not known as to who caused the injury individually which was sufficient to prove fatal. In view of these findings, it is submitted that there was no warrant for a conviction under Section 302/149 because if the common object was only to teach the deceased a lesson for under-selling and it could not be ascertained as to which of the accused had caused the fatal injury, none of the accused could be convicted for an offence of murder. We do not think that this submission is warranted. The High Court did not give a finding that the common object of all the accused who had constituted themselves into an unlawful assembly was only to teach a lesson. On the evidence, it came to the conclusion that the accused wanted to get rid of the deceased who had become a rival in the in the trade and was annoying them. This is what the High Court said. "The accused respondents indeed wanted to get rid of the man who had become a rival in trade and giving annoyance to them as they believed that they incurred loss in their business due to under-selling by the deceased or apprehended such loss in their business due to under-selling by the deceased or apprehended such loss if the deceased was allowed to continue in the trade. They thus embarked upon a plan of finishing the deceased who had in their business become a potential danger to them. Killing and not only beating of Hari Kishan was definitely in contemplation of the accused respondents and it was to accomplish this object that they all went armed to the factory of the deceased. There is no manner of doubt that, in the circumstances of the present case, the object of the unlawful assembly was to commit the murder of Hari Kishan and not only to be content with causing grievous injuries to him and that it was in prosecution of

this common object that murder was actually committed." From this finding, no exception could be taken to the conviction of each of the accused of an offence of murder under Section 302/149. The learned advocate was unable to persuade us that this was not so. As the Special Leave is only limited to the legality of the conviction and not in respect of the findings of fact, we could not allow the learned advocate to go into the evidence and urge that the findings of the High Court were not justified. It is evident even on a cursory glance of the medical evidence what the common object of the appellants could have been. Dr. E. Ali, P.W, 4 who examined the deceased on his being admitted in the hospital at Safdarjang shows that there were as many as 18 injuries of which injuries 5 to 8, 11 to 14, 16 to 18 - in all 11 injuries, were incised wounds. The other injuries were caused blunt weapons. Of the incised injuries, X-Ray Report showed that injury No. 14 was a fracture of the parietal bone and was grievous. It is also noteworthy that all the incised injuries, namely, 5 to 8, 11 to 14 were only on the face and head and even injury No. 9 was on the face. It is a contused lacerated wound 2" x 1/2" on the lateral side and about 1" away from injury No. 8. It was on the left side of the forehead just above the left eye-brow vertically situated but directed slightly downward literally. These injuries leave no doubt as to what was the common object of the accused of whom three had knives and other two blunt weapons. That apart, the manner in which the accused came in concert and the merciless beating that they had given the deceased with dangerous weapons which they continued to do so even after he had fallen down, and causing of injuries to his partner who had intervened, demonstrates what their common object was. Even Kewal Krishan who had raised a hue and cry was not spared. On this evidence there could be only one common object, namely, that the accused had attacked the deceased with the object of doing away with him and in this view the judgment of the High Court convicting the accused under Section 302/149 and the sentence awarded is fully justified.

5. The appeal is accordingly dismissed.

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