

Gurbachan Singh

Vs

State of Haryana

Criminal Appeal No. 139 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

11.12.1973

JUDGMENT

BEG, J. -

1. Gurbachan Singh, appellant, his brother Kundan Singh, his nephew Pala Singh, and one Jagga Singh, said to be a co-sharer in cultivation with Kundan Singh, were tried by the Sessions' Judge of Hissar on charges framed under Sections 302/34 and 323/44, Indian Penal Code. It was alleged that they had, in furtherance of a common intention, attacked Karnail Singh on September 17, 1966 and Nishan Singh and Balkar Singh. Karnail Singh had died of his injuries on September 18, 1966. He had sustained a stab wound 2 1/2 cm X 1 1/1 cm in the front of his chest on the left side, 5 cm below the left nipple which pierced his abdominal peritoneum. The learned Sessions' Judge had acquitted Kundan Singh and Pala Singh but convicted Gurbachan Singh alone under Section 302, Indian Penal code, and sentenced him to life imprisonment. Gurbachan Singh had appealed against his conviction to the High Court but had failed. The state had appealed against the acquittal of Kundan Singh, Pala Singh, and Jagga Singh who were convicted by the High Court under Section 323/34, I.P.C., and sentenced to two months rigorous imprisonment each. We are not concerned here with the cases of Kundan Singh, Pala Singh, and Jagga Singh who have not appealed, but only with Gurbachan Singh's appeal by special leave.

2. It was alleged that, sometime before the occurrence, Kundan Singh and Jagga Singh had, under the effect of liquor, abused Karnail Singh deceased who lived quite close to the house of Gurbachan Singh. It is alleged that just before the occurrence under consideration, Kundan Singh and Jagga Singh, accompanied by Pala Singh, had come in front of Karnail Singh's house and hurled challenges and abuses at Karnail Singh who came out and asked them to desist from abuse and to leave the place. Jagga Singh then abused Karnail Singh who responded with an abuse. Thereupon, Kundan Singh and Pala Singh caught hold of Karnail Singh and threw and held him down on the ground. In the meantime, Nishan Singh P.W. 1, and Balkar Singh, P.W. 3, the sons of Karnail Singh, armed with lathis, came out and started attacking Kundan Singh. The prosecution witnesses Gurdip Singh and Mota Singh also reached the spot. Jagga Singh inflicted some injuries on Balkar Singh. Karnail Singh, an old man was trying to get up when Gurbachan Singh, appellant, suddenly appeared with a Barchha. Kundan Singh gave a "lalkara" and Gurbachan Singh thrust his Barchha into the chest of Karnail Singh. These were the facts found by the High Court as well as the Sessions' Court. We find no reason whatsoever to disagree with their assessment of evidence.

3. The only question which arose, on the facts set out above, was whether Gurbachan Singh could possibly have a right of private defence. Apart from the fact that he neither took up either a plea of private defence or of a mistake of fact or of accident, we are in agreement with the High Court that

no right of private defence can exist against an unarmed and unoffending individual who was trying to get up. Even if Karnail Singh had managed to get up and was standing at the time when the fatal injury was inflicted upon him, there is no suggestion, even in the course of cross-examination of witnesses, to indicate that he lifted his little finger against Gurbachan Singh. In the circumstances, Gurbachan Singh had no justification whatsoever for thrusting his spear into Kernail Singh's chest. It was apparent that the act was deliberate, but, on considering all the facts of the case, the lesser sentence of life imprisonment was awarded. We uphold the conviction and sentence passed on Gurbachan Singh and dismiss his appeal.

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