

Hardev Singh and Another

Vs

The State of Punjab

Criminal Appeals Nos. 71 and 77 of 1971

(P. N. Bhagwati, N. L. Untwalia JJ)

04.12.1974

JUDGMENT

UNTWALIA, J. -

1. Criminal Appeal No. 71 of 1971 has been filed by the two appellants on grant of special leave by this Court. Criminal Appeal No. 77 of 1971 is an additional appeal by one of the appellants under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. Both the appellants are brothers and residents of village Shankar in the district of Jullundur. Piara Singh the third accused was their friend. He has not come up in appeal to this Court. It is not known why? The prosecution case may be stated in a narrow compass. The occurrence in question took place at about 7.00 p.m. on February 21, 1976. The motive of the occurrence is said to be connected with an incident that occurred about two years before it. Some poppy-heads were recovered from the possession of appellant Hardev Singh. He was convicted on his confessional statement and fined Rs. 50. On February 20, 1968 at about 6.00 p.m. PW 7 Kewal Singh with his brother was returning from his well. He was going to his house. When he reached near the haveli of appellant Hardev Singh the latter started abusing him saying that Kewal Singh had been instrumental for his prosecution in the case of poppy-heads. Appellants Hardev Singh threatened to kill PW Kewal Singh. The parties were separated by one Gurdas. The prosecution case further was that the following day, i.e. on February 21, 1968 at about 7.00 p.m. Kewal Singh was sitting at the shop of PW 8 Hussan Lal. Appellant Hardev Singh passed that way. After about 15 minutes Hardev Singh returned along with appellant Harjinder Singh and Piara Singh. Hardev Singh was armed with a Kirpan. Harjinder Singh had a takwa while Piara Singh carried a sota. All of them shouted a lalkara on hearing which Kewal Singh rushed towards his house which was close-by. The three accused followed him and overtook him at a distance of 10 or 12 Karams. Harjinder Singh gave a takwa blow on the head of Kewal Singh. The latter fell down. In the meantime mother of Kewal Singh Smt. Tej Kaur reached there from her house which was close-by. She lay herself on Kewal Singh in order to save him. Appellant Hardev Singh inflicted a Kirpan blow on the head of Tej Kaur who fell down and became unconscious. Piara Singh gave two or three sota blows to Kewal Singh. The prosecution case was supported as eyewitnesses by PW 7 Kewal Singh and PW 8 Hussan Lal who had also witnessed the occurrence. Tej Kaur died on February 24, as a result of the head injury received by her with the kirpan of appellant Hardev Singh. The injury in the opinion of the doctor was sufficient in the ordinary course of a nature to cause her death. Kewal Singh was also examined by a doctor who found and incised wound over the left parietal bone, a swelling, a contusion and a scratch on the different parts of the body of Kewal Singh. All his injuries were simple in nature.

3. Appellant Hardev Singh was charged under Section 302 of the Penal Code for having committed the murder of Tej Kaur. Appellant Harjinder Singh was charged under Section 324 for causing simple injuries by a sharp cutting weapon of Kewal Singh. Accused Piara Singh had been charged of having caused simple injury with a blunt weapon on the person of Kewal Singh. The peculiar feature of this case is that all the three accused were also charged with the aid of Section 34 for all the substantive offences under Sections 302, 324 and 323 of the Penal Code.

4. The learned Sessions Judge of Jullundur, who tried the three accused, convicted appellant Hardev Singh under Section 304 - Part I of the Penal Code and sentenced him to undergo rigorous imprisonments for five years. Appellant Harjinder Singh was awarded one year's rigorous imprisonment for his conviction under Section 324. Accused Piara Singh was convicted under Section 323 with a sentence of six months rigorous imprisonment. Hardev Singh and Piara Singh were convicted under Section 324/34 with one year's rigorous imprisonment to each and appellants Hardev Singh and Harjinder Singh were also convicted under Sections 323 read with Section 34 with a sentence of six months rigorous imprisonment each. Sentences were directed to run concurrently.

5. All the three convicted persons filed an appeal in the High Court of Punjab and Haryana. The State also filed an appeal, against the acquittal of appellant Hardev Singh under Section 302 and those of the other two accused under Sections 302, read with Section 34 of the Act. The High Court dismissed the appeal of the convicts and allowed the State appeal in part. Appellant Hardev Singh was convicted by the High Court under Section 302 and sentenced to undergo life imprisonment. The other two namely, appellant Harjinder Singh and Piara Singh, were convicted by the High Court under Section 326 read with Section 34 of the Penal Code each with sentence of four years rigorous imprisonment. The directions, that the sentences were to run concurrently, were maintained. As already stated only have filed appeals in this Court.

6. Mr. R. L. Kohli, learned Counsel for the appellants found it difficult to advance any argument of substance to persuade us to knock down altogether the conviction of the appellants. He faintly endeavoured to show by taking us through the evidence of PW 7 and PW 8 that the occurrence could not have taken place as alleged by the prosecution and the incident which happened two years prior to the date of occurrence could not justifiably be held to be the motive for the commission of the offence. On perusal of the evidence of the eye-witnesses and on appreciation of the submissions made by the Counsel we were convinced that there was no scope of interfering with the concurrent findings of the two courts below that an occurrence, as alleged by the prosecution, did take place on February 21, 1986 at about 7.00 p.m. It is difficult to read the mind of the accused as to why appellant Hardev Singh took into his head to commit an assault of Kewal Singh after a lapse of about two years after his conviction in the poppy-heads case. But there is no doubt in our mind that the accused did commit an assault at the time and place as alleged by the prosecution.

7. Mr. Kohli, however, strenuously urged that conviction of appellant Hardev Singh under Section 302 of the Penal Code was not sustainable. The view taken by the Sessions Judge that he could be held guilty under Section 304 - Part I was the only legal, reasonable and possible view to be taken. Similarly, conviction of appellant Harjinder Singh under Section 326 read with Section 34 was also bad. We think the argument for the appellant in this regard is well-founded and must be accepted as correct.

8. The prosecution version of the occurrence as told by the two eye witnesses PWs 7 and 8 is like this. After overtaking Kewal Singh, appellant Harjinder Singh first gave a takwa blow on his head.

He fell down. Then his mother Tej Kaur who was an old lady of about 55 years reached the spot. She lay herself on Kewal Singh in order to save him. Appellant Hardev Singh inflicted a kirpan blow on her head. She fell down and became unconscious. Thereafter accused Piara Singh gave two three sota blows to Kewal Singh. The tests laid down by this Court in the case of Virsa Singh v. State of Punjab ((1958) SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) have often been adopted as the guideline to find out whether an author of an injury which on objective test has been found to be sufficient in the ordinary course of nature to cause the death of the victim had intended to cause that particular injury which caused the death. The question in such a case which falls for determination is whether the causing of the fatal injury was accidental or unintentional or whether some other kind of injury was intended to be inflicted by the assailant. Ordinarily and generally once the existence of the injury is proved, the intention to cause it will be presumed unless the evidence of the circumstances warrant an opposite conclusion. On facts similar to the present ones it was held in the case of Harjinder Singh v. Delhi Administration (AIR 1968 SC 867 : 1968 Cri LJ 1023) by this Court that it could not be said with any definiteness that appellant Harjinder Singh of that case had aimed the blow at the particular part of the body of the victim knowing that it would cut the artery. In the circumstances of that case it was held that it was not proved that it was the intention of the appellant to inflict the particular injury on the particular place. The facts of the instant case are on such a border line that relying upon the decision of this Court in AIR 1968 SC 867 the trial Court convicted appellant Hardev Singh under Section 304 Part-I while distinguishing the same decision the High Court changed his conviction to one under Section 302. In our opinion the tilting balance of the facts and circumstances of this case is such that it is not safe to maintain the conviction of appellant Hardev Singh under Section 302 of the Penal Code. The common intention of the accused party was to assault Kewal Singh. Only simple injuries were caused to him by appellant Harjinder Singh and accused Piara Singh. It indicates that the accused party had not intended either to kill Kewal Singh or to cause any grievous hurt to him. It does not appear from the prosecution evidence that Kewal Singh escaped getting severe injuries due to anything intervening accidentally between the assailants and the victim. Tej Kaur came suddenly when Kewal Singh was being assaulted. She lay herself on her son. Darkness must have fallen, though it may not be pitch dark at about 7.00 p.m. in the month of February. It is not clear from the evidence of the prosecution that appellant Hardev Singh aimed his kirpan blow at the head of Tej Kaur. It may well be that Hardev Singh wanted to give a kirpan blow to Tej Kaur as she lay herself upon Kewal Singh but not necessarily on her head. Falling not the kirpan accidentally on the head of Tej Kaur cannot be ruled out. In our opinion, therefore, on the facts and in the circumstances of this case also as in the case of Harjinder Singh (supra) it should be held that the appellant Hardev Singh did not intend to cause the fatal injury to Tej Kaur but when he struck her with a kirpan he must have known that the deceased then being in bent position the blow could land on any vital part of her body and that it was likely to result in her death.

9. The view of the High Court that even the person not committing the particular crime could not be held guilty of that crime with the aid of Section 34 of the Penal Code if the commission of the act was such as could be shown to be in furtherance of the common intention not necessarily intended by every one of the particulars, is not correct. The common intention must be to commit the particular crime, although the actual crime may be committed by any one sharing the common intention. Then only others can be held to be guilty. In this case assault on Tej Kaur by appellant Hardev Singh was his individual Act. There was no common intention to commit the murder or cause grievous hurt to anybody. Circumstances are completely lacking to lead us to any such inference.

10. For the reasons stated above, we allow the appeals in part, set aside the conviction and sentence

of appellant Hardev Singh under Section 302 of the Penal Code, convict him under Section 304-Part-I and sentence him to undergo rigorous imprisonment for seven years. As recently held ((Boucher Pierre Andre v. Supdt., Central Jail, ((1975) 1 SCC 192 : 1975 SCC (Cri) 70) by a Bench of this Court to which one of us (Bhagwati, J.) was a party, the appellant Hardev Singh would be entitled to get a set-off or adjustment under Section 428 of the Criminal Procedure Code, 1973, of the period if any, during which he remained in jail as an undertrial prisoner. His conviction recorded under Sections 324 and 323 read with Section 34 is maintained; the direction that the sentences under these counts shall run concurrently, is also maintained. The conviction and sentence of appellant Harjinder Singh Section 326 read with Section 34 of Code are set aside. His conviction as recorded by the trial Court are maintained. But taking into consideration all the facts and circumstances of the case we reduce his sentence to the period already undergone either on conviction or as an undertrial prisoner.

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