

State of Punjab

Vs

Surjan Singh and Another

Criminal Appeal No. 190 of 1971

(P. K. Goswami, M. H. Beg JJ)

10.11.1975

JUDGMENT

GOSWAMI, J. -

1. In this appeal by special leave at the instance of the State of Punjab the only question that arises for consideration is whether the conviction of the two accused should have been under Section 302/34 I.P.C. instead of Section 326/34 I.P.C.

2. Accused Surjan Singh and Charan Singh are brothers and are living jointly in one house. Labh Singh was the deceased. About eight or nine years before the occurrence there was a criminal case against Labh Singh and two others on account of causing hurt to accused Charan Singh. That case, however, was compromised. Even the deceased's son, Harbhajan Singh (PW 6) stated that there was no dispute between his father and the accused since that compromise.

3. On August 26, 1967, after taking liquor in the house of Piara Singh (PW 6), Labh Singh, Zail Singh (PW 2) and Ujagar Singh (PW 3) were returning home at about 10.00 p.m. Labh Singh was ahead of the other two and when he reached near the house of the accused, Charan Singh armed with a kasaia and Surjan Singh armed with a takwa were standing near their house. A lalkara was raised by Charan Singh that Labh Singh would not be permitted to escape. Thereupon Surjan Singh aimed a takwa blow on the head of Labh Singh who warded it off with his left hand. Charan Singh then struck a blow with his kasaia on Labh Singh's head. Labh Singh fell on the ground. Zail Singh and Ujagar Singh raised an alarm but both the accused lifted Labh Singh and took him inside their house. When they were near the doorway of the house, the accused struck Labh Singh again with their respective weapons. Thereafter Labh Singh was carried further and the door was chained from inside. The above briefly is the prosecution case.

4. The accused were arrested the following evening. Both the trial Court and the High Court accepted the evidence of the eyewitnesses, namely, Zail Singh and Ujagar Singh. While the trial Court convicted the accused under Section 302/34, the High Court altered the conviction to Section 326/34 observing as follows :

On the other hand the totality of the circumstances shows that when Labh Singh intoxicated with liquor came in front of the house of the accused persons he said something objectionable. Charan Singh, who had been admittedly injured by Labh Singh and others in the past, at the spur of the moment formed a common intention with Surjan Singh to cause grievous injury to Labh Singh.

5. The learned Counsel for the State drew our attention to the injuries sustained by the deceased. There are ten injuries of which six are incised and two are lacerated. Besides, there are two abrasions. According to the doctor, injury No. 1 which is an incised wound 6 3/4" x 1" x 1 1/2 on the left face and forehead extending from tip of the nose to hair line on the forehead, cutting the eyebrow in middle, nasal and frontal bone, was sufficient in the ordinary course of nature to cause death and death was due to shock and haemorrhage on account of this wound injuring the brain.

6. Both the accused had injuries on their person. Surjan Singh had two contusions and one abrasion while Charan Singh had three contusions and two abrasions. These injuries were simple and were said to be received about 8 hours prior to their examination on August 27, 1967, at 10.15 p.m. The prosecution wants to explain these injuries through the evidence of Hakam Singh, Sub-Inspector of Police (PW 9) who stated that the accused offered resistance when they were arrested and at that time they received some injuries. The learned defence Counsel, however, draws our attention to a letter from this officer to the Medical Officer (EXT. PY) where the latter was asked to examine the injuries of accused Charan Singh and to report if they were self-inflicted. This according to the defence goes to show that the injuries on the accused could be caused during some scuffle between the deceased and the accused and not at the hands of the police when resisting arrest.

7. Accused Charan Singh stated in examination under Section 342, Criminal Procedure Code, as follows :

I returned from my tube-well at about 10.00 p.m., on the date of occurrence. When I reached near my house I found Labh Singh deceased standing near the heaps of manure, while he was under the influence of liquor. He was armed with a kirpan. I was then having the kasaia Ex. P4 with me. Labh Singh gave a kirpan blow on me which I warded off by raising my kasaia. He also raised a lalkara. I then gave a kasaia blow to Labh Singh as a result of which, he fell down to the ground. I ran to my house. Labh Singh got up and chased me. He came inside my house and aimed a kirpan blow a.m., but I gave him more blows. I then left for my tubewell. My brother Surjan Singh was not with me at the spot.

8. The two eyewitnesses stated about both the accused dragging Labh Singh to their house after Charan Singh had struck the deceased with the kasaia on the head. As against this the accused stated that the deceased chased the accused to their house. It appears that the dead-body was lying inside the courtyard of the accused. According to the prosecution the accused were lying in wait to feed-fat their ancient grudge with the intention of killing Labh Singh. If the intention were to kill Labh Singh, there was no necessary for a two-phased attack, firstly assaulting him in the lane and then to drag him to the house and to give the fatal blows near the doorway of the house. The High Court does not seem to have believed the story of dragging and observed that "Labh Singh ... came in front of the house of the accused persons". The motive of the crime is difficult to believe as it is not supported even by the deceased's son. The High Court considered the entire circumstances of the case and came to the conclusion that it was a case where common intention to cause death was lacking.

9. After hearing the learned Counsel for the State at length we are unable to hold that in view of the entire evidence and circumstances the High Court committed any error of law in the coming to the said conclusion. The appeal, thereafter, fails and is dismissed.

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