

Gajjan Singh

Vs

State of Punjab

Criminal Appeal No. 249 of 1972

(R.S. Sarkaria, N.L. Untwalia JJ)

03.03.1976

JUDGMENT

UNTWALIA, J. -

1. In the occurrence which took place at about 6.00 a.m. on July 23, 1967 in village Ubboke one Ajit Singh was killed by a rifle shot fired by Birkha Singh - since dead. In the same occurrence was injured by a rifle shot PW 5 Dalvinder Singh. Gajjan Singh the appellant in this appeal by special leave is said to have fired that shot. Birkha Singh was convicted by the trial Judge under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life. The appellant was convicted for the murder of Ajit Singh with the aid of Section 34 of the Penal Code and sentenced to undergo imprisonment. For attempting to murder Dalvinder Singh he was convicted under Section 307 of the Penal Code and sentenced to undergo rigorous imprisonment for 7 years. Birkha Singh died after his conviction and Gajjan Singh's convictions and sentences which were directed to run concurrently by the trial Judge have been maintained by the High Court of Punjab and Haryana.

2. No argument of any substance could be advanced on behalf of the appellant in so far as his conviction under Section 307 of the Penal Code is concerned. On having appreciated the prosecution case and the evidence in support of it, we found no error either of law or of fact in the appellant's conviction under Section 307 of the Penal Code. The imposition of sentence of 7 years rigorous imprisonment is also justified.

3. We, however, do not find it possible on the facts found on the basis of the evidence in the case to sustain the appellant's conviction under Sections 302/34 of the Penal Code for the murder of Ajit Singh. Dalvinder Singh is the son of PW 4 Arur Singh who was the first informant in the case. There were previous murder cases and security proceedings between the family of Arur Singh and that of the appellant. Indisputably there were previous criminal and civil cases and bad blood between the parties. The deceased Ajit Singh was a nephew of Arur Singh in the third degree. It has, however not come in evidence as to whether he had any enmity with the party of the accused or whether he had figured as a helper or witness on the side of Arur Singh or Dalvinder Singh.

4. The prosecution story as told by the eyewitnesses including PWs 4 and 5, in short, is that Arur Singh and his son Dalvinder Singh were present at their haveli where Ajit Singh and PW 7 Pritam Singh also came. They were chatting standing in front of the haveli. At about 6.00 a.m. on the date of the occurrence 8 persons are to said to have come in mob, out of them, according to the prosecution, case, Birkha Singh (since dead) and Gajjan Singh (appellant) were armed with riles. Out of the other 6 accused who have been acquitted by the trial Judge, one is said to have been

armed with a gun and the other 5 with spears. Here we quote the prosecutions case from the evidence of Dalvinder Singh himself. It runs as follows :

They challenged us saying that we will be taught a lesson for the murder of their men and getting their men imprisoned. Ajit Singh looked that side. Birkha Singh fired at me hitting near the shoulder and the bullet passed through the back. I also fell down. Ajit Singh died at the spot. The accused continued firing their weapons and the other raised lalkaras that anybody coming near would not be spared. After some time the accused left the place.

5. More or less to the same effect is the evidence of the other eyewitnesses. The High Court has maintained the appellant's conviction with the aid of Section 34 for causing the death of Ajit Singh by stating in its judgment thus :

According to the prosecution evidence, the appellant and his coaccused, since acquitted and the one who died, had come armed. Birkha Singh fired at Ajit Singh as a result of which he died and Gajjan Singh also fired hitting Dalvinder Singh. After the occurrence they went together carrying their arms. The act of the appellant and Birkha Singh since dead, in coming armed and firing at Ajit Singh and Dalvinder Singh is such, which shows that they had come to commit the murder having their common intention for the same. Thus Section 34, Indian Penal Code, is applicable in this case and Gajjan Singh deceased had the common intention to do the act of causing the death of Ajit Singh and for causing injuries to Dalvinder Singh.

The charge against all the accused was for committing the murder in prosecution of a common object and thus they were all charged with the aid of Section 149 of the Penal Code. If the evidence could justify the conviction of the appellant with the aid of Section 34, there would have been no difficulty in sustaining his conviction. But the mere fact that the members of the mob came together, to be more specific in view of the judgment of the trial Judge, Birkha Singh and Gajjan Singh came together armed with rifles, is not sufficient to indicate that they had come having shared a common intention to commit the murder. Only one shot was fired on the head of Ajit Singh by Birkha Singh. No shot was fired by Gajjan Singh on him. He had no grudge against him. Gajjan Singh did fire a rifle shot on Dalvinder Singh with the intention to kill him but fortunately he escaped death. Admittedly, Ajit Singh was not residing in the haveli wherein the occurrence took place. It was perchance that he happened to be there. It cannot therefore, be said by any stretch of imagination that the appellant and his companion Birkha had any prearranged plan to kill Ajit Singh. On the evidence and the facts found the inference of Gajjan Singh's sharing the common intention with Birkha Singh for the murder of Ajit Singh is not possible to be drawn. It may be that he had such common intention. But it is difficult to fill the gap between "may" and "must" and to say that Gajjan Singh must have shared the common intention for causing the death of Ajit Singh. In our opinion the High Court has committed an error of law in sustaining the conviction of the appellant under Sections 302/34 for the murder of Ajit Singh notwithstanding the missing link in the evidence to supply facts to justify the said conviction.

6. In the result the appeal is allowed in part. Conviction of appellant Gajjan Singh under Sections 302/34 and the sentence of life imprisonment thereunder are set aside. His conviction under Section 307 and the sentence of 7 year's rigorous imprisonment thereunder are maintained.

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