Sarwan Singh and Others

Vs

State of Punjab

Criminal Appeal Nos. 59 and 60 of 1972

(Jaswant Singh, P. S. Kailasam JJ)

30.08.1978

JUDGMENT

KAILASAM, J. -

1. The two criminal appeals 59 and 60 of 1972 are by special leave. Criminal appeal 59 of 1972 is preferred by Sarwan Singh, Karnail Singh, Zora Singh and Malkiat Singh, while criminal appeal 60 of 1972 is by Bachan Singh against their conviction and sentence imposed on them by the trial Court and confirmed by the Punjab and Haryana High Court in Criminal Appeal 512 of 1970. This Court granted special leave in both cases limited to the question as to whether the offence committed by the appellants was one under Section 302, I.P.C. or under any part of Section 304, I.P.C.

2. The facts necessary for determining what offence the accused were guilty of may be stated. Sant Singh is the father of Sarwan Singh, Bachan Singh and Mewa Singh. Sarwan Singh is the first appellant in Criminal Appeal 59 of 1972 and Bachan Singh is the sole appellant in Criminal Appeal 60 of 1972. The deceased Mewa Singh is their brother. Sarwan Singh had two sons, Zora Singh and Karnail Singh who are appellants 3 and 2 in Criminal Appeal 59 of 1972. Sarwan Singh's daughter was married to Malkiat Singh who is the fourth appellant in Criminal Appeal 59 of 1972. Pending appeal, Sarwan Singh and Bachan Singh have died and their appeals have abated. We are therefore concerned only with Karnail Singh, Zora Singh and Malkiat Singh who are appellants 2, 3 and 4 in Criminal Appeal 59 of 1972.

3. The deceased is the brother of the two accused and paternal uncle of the two other accused. The dispute was over a common Khal of the land and a pahi. The deceased Mewa Singh put an application before the Revenue authority against the accused and the matter was pending when the occurrence took place.

4. On the date of occurrence, dated September 8, 1969, at about 3 p.m., PW 3, Mohinder Singh, went to Amar Singh, PW 5, who is Lambarder of his village in connection with the mutation of his land. Amar Singh was grazing his cattle near the minor canal just opposite to the well of the accused and the deceased Mewa Singh. When PW 3 was 20 Kadams away from the place where Amar Singh was grazing his cattle, he heard a Raula coming from the side of tube-well of Mewa Singh. Hearing the noise, PW 3 ran towards the place of the occurrence. He also saw PW 5, Amar Singh and Mohinder Singh, son of Thakar Singh. PW 4 running towards the place of occurrence. The three witnesses and Ujagar Singh, PW 9 who are eye-witnesses spoke to the actual incident as follows :

When they reached near the place of occurrence they heard Zora Singh shouting to

Mewa Singh. Zora Singh was armed with a Gandasi, Karnail Singh was holding a Takwa, Malkiat Singh was armed with a Gandasi and Sarwan Singh and Bachan Singh were having a lathi each. Zora Singh gave a Gandasi blow to Mewa Singh who raised his hands to ward off the blow and sustained injury. Karnail Singh then gave a Takwa blow to Mewa Singh which he warded off by raising his hands and got an injury on his hand. Zora Singh and Karnail Singh gave more injuries with their respective weapons. Thereafter, all the accused started causing injuries to Mewa Singh with their respective weapons while he was lying on the ground.

5. On the evening at about 8.30 p.m., PW 14 saw Mewa Singh and enquired from the doctor whether he was in a fit condition to make a statement. The doctor gave his opinion that Mewa Singh was not fit to make a statement. Mewa Singh's condition was found to be not satisfactory and therefore he was moved to Civil Hospital, Ludhiana. He dies at 5.40 p.m. on September 9, 1969. The doctor noted 27 injuries on the person of Mewa Singh. According to the doctor, the cause of death was shock and haemorrhage and the injuries were ante-mortem and sufficient in the ordinary course of nature to cause death. Dr. Jagjit Singh, PW 5, examined Mewa Singh on admission to the hospital at 6.45 p.m. on September 8, 1969 and found 27 injuries on Mewa Singh, of which injuries 2 and 3 were grievous. Injuries at 3, 5 to 9, 11 to 17 were caused by sharp-edged weapons. All the injuries, except 2 and 3 were simple in nature.

6. The trial court was of the view that the question for consideration was whether the accused intended to inflict the injuries in question and if once the existence of injuries is proved, the intention to cause death will be presumed unless the evidence or the circumstances warrant an opposite conclusion. In this view, the trial court found all the accused guilty under Section 302, read with Section 149 of the Indian Penal Code. The High Court found that the common object was clearly to kill the deceased and the offence fell under Section 300, Thirdly, read with Section 34, Indian Penal Code.

7. The facts of the case disclose that five accused armed with various weapons caused the injuries to the deceased which resulted in his death. If a person causes an injury with the intention of causing bodily injury to any person and when the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the offence would fall under clause 3rdly of Section 300 and would be an offence under Section 302 of the Indian Penal Code. The five accused were convicted by the trial court for an offence under Section 302 read with Section 149, I.P.C. In order to find the person guilty of offence under Section 302 read with Section 149, the prosecution must establish that the offence was committed by any member of an unlawful assembly in prosecution of the common object of the assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object. It is, therefore necessary for the prosecution to establish that the common object of the unlawful assembly was to commit an offence under Section 302 or that the members of the assembly knew it to be likely that an offence under Section 302 would be committed in prosecution of the common object. The cumulative effect of injuries was no doubt found to have been sufficient in the ordinary course of nature to cause death. If the injuries that are sufficient in the ordinary course of nature to cause death are traced to particular accused, he will be guilty of an offence under Section 302 without the aid of Section 149. When the injuries caused are cumulatively sufficient to cause death, it is necessary before holding each of the accused guilty under Section 302 read with Section 149 to find that the common object of the unlawful assembly was to cause death or that the members of the unlawful assembly knew it to be likely that an offence under Section 302, I.P.C. would be committed in prosecution of the common object. In order to determine this question, it is necessary to refer to the injuries caused in some detail.

8. Two grievous injuries are injuries 2 and 3 described in Ex. PD. Injury 3 is incised wound 3/4 inch x 1/4 inch bone deep on the right little finger at its middle and injury 3 is incised wound 1/3 inch distal to injury 2 at the right little finger cutting the bone underneath. The grievous injury is the fracture and cutting of the right little finger caused by a sharp-edged weapon. All the other injuries are simple in nature. The injuries 1 to 3, 5 to 9, 11 to 17 were caused by sharp-edged weapon. Injury 1 is incised wound 1-1/2 inch x 1/6 inch muscle deep on the left palm in between the left thumb and index finger. Injury 2 is incised wound 3/4 inch x 1/4 inch bone deep on the right little finger at its middle. Injury 3 is incised wound 1/3 inch distal to Injury 2 at the right little finger cutting the bone underneath. Injury 5 is incised wound 2 inch x 1/4 inch muscle deep on the left shin at its middle area. Injury 6 is incised wound 1/2 inch x 1/4 inch on the left shin. Injury 7 is incised wound 1/3 inch x 1/4 inch muscle deep on the left shin. Injury 8 is incised wound 1/3 inch x 1/4 inch muscle deep on the left shin. Injury 9 is incised wound 3/4 inch x 1/3 inch muscle deep on the left shin. While Injury 1 is on the left palm in between the left thumb and index finger, injuries 2 and 3 are on the right little finger at its middle, injuries 5 to 9 are in the area of the left shin. Most of the injuries are only 1/4 inch deep while injury 9 is 1/3 inch deep, and injury 1 is 1/6 inch in depth. The other injuries 11 to 17 are on the right shin and are incised wounds, most of which are of the size of 1/2 inch x 1/4 inch. The other injuries are contusions in the chest area on the right and the left side, the width not exceeding 3/4 of an inch. Injury 26 is on the head of the dimension of 1-3/4 inch x 1/4 inch muscle deep on the left side of the head 3 inches above the left ear. All the injuries are described by the doctor as simple. The depth of the incised injuries is not more than 1/4 of an inch and the width of the contusions is not more than 3/4 inch. The area of the injury cannot be said to be a vital part of the body. The injury on the head is only 1/4 inch in depth and has not caused any damage. On an analysis of the injuries it cannot be said that any of the persons that inflicted injuries intended to cause death or such injury as is sufficient in the ordinary course of nature to cause death. If the common object of the unlawful assembly was to commit murder and in prosecution of the common object of the unlawful assembly any member caused an injury which is sufficient in the ordinary course of nature to cause death, the members of the assembly would be liable for an offence under Section 302, I.P.C. read with Section 149, I.P.C. but on a consideration of the injuries we are not satisfied that the common object of the unlawful assembly was to cause death. Taking the circumstances that the unexpected quarrel was between the members of the same family over a dispute as to water rights, we are unable to hold that offence under Section 302 read with Section 149 is made out. On a consideration of the circumstances and the nature of the injuries it is not possible to hold that the common object of the assembly was to cause bodily injury which is sufficient in the ordinary course of nature to cause death. It can be said that the common object of the assembly was to cause bodily injury as is likely to cause death. Though the doctor has stated that the injuries were sufficient in the ordinary course of nature to cause death, we find it difficult to hold that the injuries, cumulatively, were sufficient in the ordinary course of nature to cause death. The common object of the assembly in the circumstances can only be said to cause injuries which are likely to cause death which will be an offence under Section 304(1) of the Indian Penal Code. In the circumstances we set aside the conviction under Section 302 read with Section 149, I.P.C. but find the appellants guilty of an offence under Section 304(1) read with Section 149, I.P.C. and sentence them to five years' rigorous imprisonment and a fine of Rs. 3500 each.

9. In this case, the death was caused by the brothers in a quarrel regarding water rights. From the records we are satisfied that the accused are possessed with sufficient funds to compensate, at least to some extent, the loss that has been suffered by the dependents of the deceased.

10. The law which enables the Court to direct compensation to be paid to the dependents is found in Section 357 of the Code of Criminal Procedure, 1973 (Act 2 of 1974). The corresponding provision

in the 1898 Code was Section 545. Section 545 of Code of Criminal Procedure, 1898 (Act 5 of 1898) was amended by Act 18 of 1923 and by Act 26 of 1955. The amendment which is relevant for the purpose of our discussion is 545(1)(bb) which, for the first time inserted by Act 26 of 1955. By this amendment the court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the persons sentenced, for the loss resulting to them from such death. In introducing the amendment, the Joint Select Committee stated "when death has been caused to a person, it is but proper that his heirs and dependents should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was responsible for it. The Committee proceeded to state that though Section 545 of the Code as amended in 1923 was intended to cover such cases, the intention was not however very clearly brought out and therefore in order to focus the attention of the courts on this aspect of the question, the Committee have amended Section 545 and it has been made clear that a fine may form a part of any sentence including a sentence of death and it has also been provided that the persons who are entitled under the Fatal Accidents Act, 1855, to recover damages from the person sentenced may be compensated out of the fine imposed. It also expressed its full agreement with the suggestion that at the time of awarding judgment in a case where death has resulted from homicide, the court should award compensation to the heirs of the deceased. The Committee felt that this will result in settling the claim once for all by doing away with the need for a further claim in a civil Court, and avoid needless worry and expense to both sides. The Committee further agreed that in cases where the death is the result of negligence of the offender, appropriate compensation should be awarded to the heirs. By the introduction of clause (bb) to Section 545(1), the intention of the legislature was made clear that, in suitable cases, the heirs and dependents should be compensated for the loss that resulted to them from the death, from a person who was responsible for it. The view was also expressed that the court should award compensation to the heir of the deceased so that their claims would be settled finally. This object is sought to be given effect to by Section 357 of the new Code (Act 2 of 1974). Section 357(3) provides that when a court imposes a sentence, of which find does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount, as may be specified in the order, to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damage from the person sentenced even though fine does not form part of the sentence. Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a Court imposes a sentence, of which find does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury.

11. In awarding compensation as cautioned by this Court in Palianappa Gounder v. State of T. N. ((1977) 3 SCR 132 : (1977) 2 SCC 634 : 1977 SCC (Cri) 397), the Court should not first consider

what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation. It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all the facts of the case, we feel that in addition to the sentence of 5 years' rigorous imprisonment, a fine of Rs. 3500 on each of the accused under Section 304(1), I.P.C. should be imposed. The fine will be paid as compensation to the widow of the deceased, Mewa Singh. In default of payment of fine, the accused will undergo further simple imprisonment for 6 months.

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