

Gurmail Singh and Others

Vs

State of Punjab

Criminal Appeal No. 444 of 1982

(D. A. Desai, Baharul Islam JJ)

30.08.1982

ORDER

1. Special leave granted limited to the question of the nature of offence and sentence in respect of the 1st appellant Gurmail Singh and limited to the question of sentence in respect of remaining three appellants.

2. Appellants four in number are brother and they belong to village Bhawal Bassi. Jagir Kaur, wife of Bogha Singh was on her way to her house from the field where she had gone on November 22, 1980. Accused 4 Sardul Singh is alleged to have cut a joke at her. Jagir Kaur complained about the misbehaviour of accused 4 to her husband Bogha Singh whereupon Bogha Singh and his brother Gura Singh went to the house of accused 4 Sardul Singh to protest his misconduct. This led to an altercation with the accused on one side and Bogha Singh and Gura Singh on the other. On November 23, 1980, between 2 and 2.30 p.m. when Bogha Singh and Gura Singh were sitting in front of their house accused 4 Sardul Singh armed with gandasi, accused 3 Jagseer Singh armed with a gandhali, accused 2 Gulab Singh armed with a kassia and accused 1 Gurmail Singh armed with a spear arrived there. All the four accused raised a lalkara saying that Bogha Singh and Gura Singh should get ready to learn a lesson for abusing one of them on the previous day. Accused 3 Jagseer Singh opened the attack and gave two gandhali blows to Bogha Singh when Bogha Singh raised his arm with a view saving him from the assault and suffered an injury on his right hand. Accused 4 Sardul Singh gave a blow with gandasi to Bogha Singh which caused an injury on the fingers of his left hand. A second blow with gandasi hit Bogha Singh on the left thumb. Accused 3 Jagseer Singh gave two blows with gandhali on the left thigh of Bogha Singh. Accused 4 Sardul Singh gave some more blows from the blunt side of his gandasi on the left and right shoulders of Bogha Singh. At that stage accused 1 Gurmail Singh gave a blow with a spear which landed on the nose of Gura Singh. Accused 1 Gurmail Singh gave another blow with spear on the right hand of Gura Singh. Accused 2 Gulab Singh dealt a kassia blow one each on the right and left hand of Gura Singh. On hearing the commotion one Tej Singh, since deceased, nephew of Bogha Singh and Gura Singh reached the spot. Balbir Kaur, mother of Tej Singh followed him. When Tej Singh tried to intervene to save Gura Singh and Bogha Singh, accused 4 Sardul Singh and accused 2 Gulab Singh gave some blows to Tej Singh. Accused 1 Gurmail Singh then gave a blow with his spear on the chest of Tej Singh whereupon Tej Singh fell down on the ground and Balbir Kaur tried to cover him with a view to saving him from further harm. At that time PW Gura Singh who was then armed with gandhali and Bogha Singh who had a soti, wielded the same in self-defence. Tej Singh was removed to Civil Hospital, Abohar, where in the course of his treatment as an indoor patient he succumbed to his injuries on November 23, 1980. When admitted to hospital, Dr. Dilip Kumar who examined Tej Singh, found one injury on his person being an incised wound of 4 cms. x 2 cms. going down deep up to the chest cavity. The wound was running transversely from upper medical

part of the left areola (sic areola) running medially and slightly downwards. Dr. Dilip Kumar found five injuries on PW Gura Singh of which two were incised wounds, two abrasions and one lacerated wound. Dr. Dilip Kumar also examined PW Bogha Singh and found as many as 11 injuries on his person.

3. After arrest, accused 2 Gulab Singh, accused 3 Jagseer Singh and accused 4 Sardul Singh were found to have suffered injuries and they were sent to Dr. Dilip Kumar for medical examination. Dr. Dilip Kumar found three injuries on the person of accused 2 Gulab Singh, two of them being incised wounds. He found one injury on the person of accused 3 Jagseer Singh and simultaneously he found one injury on the person of accused 4 Sardul Singh.

4. It may be mentioned that PW Bogha Singh had suffered a fracture of the middle phalanx of right index finger consequent upon a blow given by accused 3 Jagseer Singh.

5. The learned Sessions Judge convicted accused 1 Gurmail Singh for an offence under Section 302, IPC and accused 2, 3, and 4 for an offence under Section 302 read with Section 34 of the IPC and sentenced each of them to suffer rigorous imprisonment for life and awarded a sentence of fine also. Further accused 3 Jagseer Singh was convicted for offence under Section 325, IPC and was sentenced to suffer rigorous imprisonment for two and a half year for causing fracture of the middle phalanx of the right index finger of Bogha Singh. Accused 1, 2, and 4 were convicted for an offence under 325, read with Section 34 IPC and each one of them was sentenced to suffer imprisonment for six months. Accused 1 Gurmail Singh was convicted and sentenced to suffer rigorous imprisonment for one year under Section 324, IPC and accused 2, 3, and 4 were convicted under Section 324 read with Section 34, IPC and each of them was sentenced to suffer rigorous imprisonment for three months. Accused 4 was convicted for an offence under Section 324, IPC and sentenced to suffer rigorous imprisonment for one year and accused 1, 2 and 3 were convicted under Section 324 read with Section 34, IPC to undergo rigorous imprisonment for three months each. Accused 2 Gulab Singh was convicted under Section 323, IPC and sentenced to undergo rigorous imprisonment for three months and accused 1, 3 and 4 were convicted under Section 323 read with Section 34, IPC and sentenced to undergo rigorous imprisonment for one month each. Accused 1 Gurmail Singh was also convicted under Section 27 of the Arms Act and sentenced to suffer rigorous imprisonment for six months.

6. All the four appellants preferred Criminal Appeal No. 452-DB of 1981 to the High Court of Punjab & Haryana at Chandigarh. The High Court was of the opinion that the prosecution has failed to prove that accused 1 Gurmail Singh caused death of Tej Singh in furtherance of common intention of all the four accused. The finding of the High Court in this behalf may be extracted :

The learned counsel thereafter only urged that Section 34 of the Indian Penal Code should not have been applied by the trial Court in relation to the murder charge. We agree with him in this respect. The appellant had not at all come for causing the death of Tej Singh. It was only because Tej Singh tried to intervene in the quarrel that Gurmail Singh suddenly gave him a fatal blow with a barchha. There was at all no meeting of minds of all the appellants for the causing of that injury. Furthermore, even the original common intention of causing the death of anybody cannot be inferred from the circumstances of the present case. There was a small annoyance which the appellants had felt on account of the exchange of abuses on the previous evening. The appellants had already exhibited their real intention by the giving of such blows as had been received by Bogha Singh and Gura Singh. We thus acquit Gulab Singh, Jagseer Singh and Sardul Singh in relation to the offence under Section 302/34 of the Indian Penal Code and set aside their sentence in respect of

this offence....

Thus, according to the High Court Gurmail Singh did not cause the single injury which proved fatal to Tej Singh in furtherance of common intention of all the accused. Mr Mulla, learned Advocate for the appellants urged that in the fact found by the High Court neither Para 1 nor Para 3 of Section 300, IPC would be attracted and at best accused Gurmail Singh would be guilty of committing an offence under Section 304 Part II of the Indian Penal Code. We find substance in this contention.

7. The facts found by the High Court are that on an indecent joke being cut by accused 4 with Jagir Kaur, wife of PW Bogha Singh on the day previous to the date of occurrence, PW Bogha Singh and his brother PW Gura Singh both went to the house of the accused to complain against the misbehaviour of accused 4. That is the genesis of the quarrel. Dispute thus was between Bogha Singh and Gura Singh on the one hand and the accused on the other. Deceased Tej Singh was nowhere in the picture. There was no animosity against him. There could not have been even a passing thought of causing any injury to Tej Singh. The High Court found as a fact that Tej Singh appeared on the scene after the accused assaulted Bogha Singh and Gura Singh. In fact, according to the High Court when Tej Singh attempted to intervene to save Bogha Singh and Gura Singh from further harm a blow with a barchha was given by accused 1 Gurmail Singh which landed on Tej Singh. There is nothing to indicate in the evidence that Gurmail Singh ever intended to cause any injury to Tej Singh assuming transmission of malice is inferable. Undoubtedly there could be presumption of transmission of malice but in the facts found could it ever be said that accused 1 Gurmail Singh intended to commit murder of Tej Singh ? The answer obviously being in the negative, Para 1 of Section 300 would not be attracted. But it was said that the case would be covered by Para 3 of Section 300 in that Gurmail Singh intended to cause an injury and the injury intended to be inflicted was proved to be sufficient in the ordinary course of nature to cause death. This argument is often raised for consideration by this Court and more often reliance is placed on *Virsa Singh v. State of Punjab* (1958 SCR 1495 : AIR 1958 SC 465 : 1958 SCJ 772 : 1958 Cri LJ 818.). We would have gone into the question in detail but in *Jagrup Singh v. State of Haryana* ((1981) 3 SCC 616 : 1981 SCC (Cri) 768.), Sen, J. after examining all the previous decisions on the subject, observed that in order to bring the case within Para 3 of Section 300, IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. This view was further affirmed in a decision rendered in *Randhir Singh v. State of Punjab* ((1981) 4 SCC 484 : 1981 SCC (Cri) 856.). We are of the opinion that in the facts found by the High Court it could not be said that accused 1 Gurmail Singh intended to cause that particular bodily injury which in fact was found to have been caused. May be, the injury inflicted may have been found to be sufficient in the ordinary course of nature to cause death. What ought to be found is that the injury found to be present was the injury that was intended to be inflicted. It is difficult to say with confidence in the present case keeping in view the facts found by the High Court that accused 1 Gurmail Singh intended to cause that very injury which was found to be fatal.

8. Now the question then is what is the offence committed by accused 1 Gurmail Singh. He had wielded a weapon like barchha. The injury landed on the chest and penetrated deep into the chest cavity. When accused 1 wielded a weapon like a barchha he must be presumed to know that he was likely to cause an injury which was likely to cause death. Undoubtedly, as it was pointed out by Mr Mulla that accused 1 is a very young man shown to be aged about 19 years in the judgment of the learned Sessions Judge, having regard to all the circumstances and the facts found by the High Court, it may be said that accused 1 is shown to have committed an offence under Section 304 Part II, IPC. In our opinion the sentence of five years' rigorous imprisonment would be adequate

sentence.

9. The only other accused whose case requires to be examined on the question of sentence is accused 3 Jagseer Singh who is convicted for having committed an offence under Section 325, IPC in that he gave a blow on the middle phalanx of right palm of Bogha Singh which resulted in a fracture of the middle phalanx of the right index finger. On this account he is convicted of an offence under Section 325, IPC. It is at this stage that we may point out that in this very occurrence accused 2, 3 and 4 have suffered injuries. Accused 2 had suffered three injuries, two of which were incised wounds and accused 3 and 4 each had suffered one injury. If in this background a blow with the blunt side of gandhali caused fracture of the phalanx, undoubtedly the offence would be under Section 325, IPC but in our opinion a sentence of two and a half years appears to be one which requires reconsideration. In our opinion, having regard to all the circumstances of the case while affirming the conviction of accused 3 Jagseer Singh under Section 325, IPC, his substantive should be reduced to rigorous imprisonment for six months. We do not think any other modification in the sentence awarded to any other accused in respect of other offences for which they were convicted and sentenced is called for.

10. Accordingly, this appeal is partly allowed. Conviction of accused 1 Gurmail Singh for having committed an offence under Section 302, IPC and sentence of rigorous imprisonment for life and a fine of Rs 3000 in default to suffer rigorous imprisonment for one and a half years, is set aside but he is convicted for an offence under Section 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and a fine of Rs 500, in default to suffer rigorous imprisonment for six months.

11. Appeal of accused 3 Jagseer Singh is partly allowed in that while affirming his conviction for an offence under Section 325, IPC, the sentence awarded to him of two and a half years' rigorous imprisonment is modified and is reduced to rigorous imprisonment for six months.

12. Except for the above modifications, the conviction and sentence awarded to each appellant for other offences by the High Court is reaffirmed and the appeal to that extent is dismissed.

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