

State of Punjab

Vs

Mann Singh and Another

Criminal Appeal No. 311 of 1976

(A.P. Sen, V.B. Eradi JJ)

04.01.1983

JUDGMENT

A. P. SEN J.-

This appeal by special leave is directed against the judgment passed by Punjab & Haryana High Court dated January 10, 1975 setting aside the judgment and sentences passed by the Sessions Judge. Hoshiarpur dated February, 13, 1974 convicting respondent 1 Mann Singh for having committed an offence punishable under Sections 304 Part II and 323 of the Indian Penal Code, 1860 and sentencing him to undergo rigorous imprisonment for seven years and nine months respectively, and his son Balbir Singh, respondent 2, for an offence under Sections 304 Part II and 323 both read with Section 34 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years and six months respectively. On appeal, the High court has upheld the conviction of respondent 1 Mann Singh but reduced his sentence to the period already undergone i.e. for a period of 20 months and to a fine of Rs. 2000 or in default to suffer further rigorous imprisonment for two years, but acquitted his son Balbir Singh, respondent 2 of both the offences.

2. The prosecution in brief is as follows : on the date of occurrence i.e. on June 22, 1973 early in the morning Mst. Lila Wanti, wife of the accused Mann Singh and one Mst. Rekhi had an altercation leading to exchange of abuses, at which Mst. Lila Wanti snatched away the veil from the head of Mst. Joginder Kaur, PW 9, daughter of the deceased Pala Singh, who tried to intervene. At about 12.30 p.m. the deceased Pala Singh returned from his field and Sewa Singh, PW 4, a neighbour, took him to the house of the accused Mann Singh to protest over the incident and made a demand for return of the veil from the accused Mann Singh at which Mann Singh got infuriated and started abusing the deceased Pala Singh. On seeing him in an agitated mood, both of them returned and the deceased Pala Singh, lay down on a cot under a mulberry tree in front of his house.

3. The prosecution case is that after about an hour, the accused Mann Singh armed with a dang and his son Balbir Singh armed with a gandasi, arrived at the scene of occurrence and hurled abuses at the deceased Pala Singh, who thereupon got up from his cot and asked them to desist from abusing him. Upon this, both the accused made a joint assault on the deceased Pala Singh - Mann Singh dealt a blow with his dang on the head of the deceased Pala Singh, and the accused Balbir Singh gave a gandasi blow on his head as a result of which the deceased fell down unconscious at the spot. On hearing the alarm raised by the deceased Pala Singh, Mst. Joginder Kaur, PW 9 rushed out of the house and laid herself on her father in order to save his life. The deceased Mann Singh gave her a couple of blows with the dang and both the accused then left the place of occurrence. The deceased was taken in an unconscious condition to Civil Hospital, Mukerian where he was examined by Dr. Randhiraj Singh, PW 1 who found the following two external injuries :

1. A verticle lacerated wound 2.3/4" x 1/6" on the left side of the head. It was four inches away form left pinna and three inches above the left eye-brow.
2. A transverse incised wound 1" x 1/8" x 1/8" on the top of the head, three inches form the root of the nose and five inches above the left pinna.

These injuries were bleeding head injuries and the deceased was in a precarious condition. Dr. Randhiraj Singh, PW 1 found that the deceased was in a serious condition and therefore referred him to Canal Hospital, Talwara for treatment, but the deceased died on his way because of the head injuries. In his opinion, Dr. Randhiraj Singh stated that injury 1 was caused by a blunt-edged weapon and injury 2 by a sharp-edged weapon.

4. Dr. Ram Lubhaya, Medical Officer, Canal Hospital, PW 2 performed an autopsy on the dead body of the deceased and found the following two internal injuries :

1. A wound 7 cm long on the left sin of the head, verticle direction, about 10 cm from the left pinna and 7.5 cm above the left eye. The skull bone underneath showed crack fracture at right angle to the injury.
2. A wound 2.5 cm in length on the top of the head, transverse direction, about 7.5 cm from the root of the nose and 12 cm above the left pinna.

According to Dr. Ram Lubhaya, PW 2, injury 1 was sufficient in the ordinary source of nature to cause death.

5. The prosecution based its case on the direct testimony 9 of the three eye-witnesses, viz. Sewa Singh, PW 4, Harbans Singhs, PW 8 and Mst. Joginder Kaur, PW 9, brother and daughter of the deceased. The learned Sessions Judge relied on the testimony of the eye-witnesses and found that both the accused Mann Singh and Balbir Singh came together, armed with a dang and a gandasi and made a joint assault on the deceased leading to a fracture of the skull. He held that although both the accused may not have intended to cause the death of the deceased, both of them acted in furtherance of their common intention. The accused Mann Singh and Balbir Singh came armed with deadly weapons and when they struck the deceased on the head with a dang and a gandasi, they must necessarily be attributed with knowledge that it was likely to cause such bodily injury as was likely to cause death, having regard to the fact that the deceased was an old man of 65 years. The learned Sessions Judge accordingly convicted the accused Mann Singh for having committed culpable homicide not amounting to murder punishable under section 304 Part II and section 323 for having as stated above. He further convicted the accused Balbir Singh for having committed an offence punishable under Sections 304 Part II and 323 read with Section 34, and sentenced him as already stated.

6. On appeal by the respondents against their conviction and sentence, there was no attempts made by them to challenge the conviction of the accused Mann Singh before the High Court and indeed the High Court observes that counsel appearing for the respondents addressed no arguments no merits. The only contention advanced by him was as regard the conviction of the accused Balbir Singh and On the sentence passed on the accused Mann. Singh. It appears that learned counsel for the State did not object to the reduction of the sentence. The High Court set aside the conviction of the accused Balbir Singh observing that "only two injuries were inflicted on the deceased and the same could have been caused by one weapon like dang which were attributable to the accused Mann

Singh." As regards the sentence on the Accused Mann Singh it held that "it would meet the ends of justice if the sentence of imprisonment was reduced to that the already undergone by him," i.e. for a period of 20 months together with a fine of Rs. 2000 or in default to suffer rigorous imprisonment for two years.

7. The order of acquittal of the accused Balbir Singh as recorded by High Court has caused manifest miscarriage of justice. There was no basis for the assumption made by the High Court that both the head injuries caused to the deceased Pala Singh could be inflicted by one weapon like dang and therefore could be attributed to the accused Mann Singh. The conclusion reached by the High Court proceed on mere conjectures and surmises and is wholly unwarranted by the evidence on record. According to the evidence of Dr. Randhiraj Singh PW 1 the deceased Pala Singh had two head injuries. One was a lacerated wound and the other was an incised wound. In his opinion, the lacerated wound was caused by a blunt-edged weapon and the incised wound was caused by a sharp-edged weapon. The unimpeachable testimony of the three eye-witnesses viz. Sewa Singh PW 4 Harbans Singh. PW 8, and Mst. Joginder Kaur, PW 9 clearly shows that both the accused Mann Singh and his son Balbir Singh made joint assault on the deceased Pala Singh by their weapons. In view of this, the learned Sessions Judge was right in convicting the accused Mann Singh for having committed culpable homicide not amounting to murder punishable under Section 304 Part II and 323 and the accused Balbir Singh under Section 304 Part I read with section 34. There can be no doubt whatever that both the accused Mann Singh and Balbir Singh acted with the prior concert when they assaulted the deceased. Accordingly we restore the judgment and sentence passed by the learned sessions, Judge, Hoashiarpur with regard to the accused Balbir Singh.

8. As regards the sentence imposed on the accused Mann Singh the High Court could not have reduced the sentence for an offence of culpable homicide not amounting to murder punishable under Section 304 Part II to the sentence already undergone i.e. for a period of 20 months only with fine of Rs. 2000 merely because counsel for the State did not oppose a reduction in the sentence. It is the duty of the Court in every case to award a proper sentence having regard to the nature of the offence, the manner in which it was committed and to all the attendant circumstances. The test of the eye-witnesses shows that the accused Mann Singh had struck the blow with sufficient force as a result of which the deceased fell down unconscious in a pool of blood. There can be no doubt that the accused Mann Singh bit the deceased Pala Singh with the dang with great force because it resulted in a fracture of the skull, and ultimately caused his death. He must therefore bear the consequences of his act. In all the facts and circumstances of the case, if there is to be reduction of the sentence the proper sentence to award on the accused Mann Singh would be a sentence of rigorous imprisonment for three years. And a fine of Rs. 3000 or in default, to suffer rigorous imprisonment for two years more.

9. The result therefore is that the appeal must succeed and is allowed. The judgment of the High Court dated January 10, 1975 is set aside and instead the judgment and sentence of the learned Sessions Judge dated February 13, 1974 are restored subject to a modification in the sentence. Respondent 1 is convicted for having committed an offence punishable under Sections 304 Part II and 323 and sentenced to undergo rigorous imprisonment for three years, with the a fine of Rs. 3000 or in the default to suffer rigorous imprisonment for two years more. The entire amount of the fine, if realized, be paid over to the heirs of the deceased Respondent 2 Balbir Singh is convicted for having committed an offence punishable under Sections 304 Part II and 323 both read with the section 34 and sentenced to suffer rigorous imprisonment for 18 months.

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