

Amar Singh and Others

Vs

State of Punjab

Criminal Appeal No. 161 of 1978

(M. M. Dutt, G. L. Oza JJ)

17.02.1987

JUDGMENT

DUTT, J. -

1. This appeal is directed against the judgment of the Punjab and Haryana High Court whereby the High Court affirmed the order of the learned Additional Sessions Judge, Gurdaspur, convicting the appellants under Sections 148, 302/149 IPC and sentencing each of them to undergo a rigorous imprisonment for one year under Section 148 IPC and life imprisonment under Sections 302/149 IPC and to pay a fine of Rs. 1000 each.
2. Initially there were seven accused including the appellants. The learned Additional Sessions Judge, however, acquitted two of them, namely, Amar Singh and Rattan Singh, both sons of Isher Das, by giving them the benefit of doubt, of the remaining five accused, the High Court acquitted Bachan Singh and, as stated already, upheld the convictions and sentences of the appellants.
3. The prosecution case is that on July 18, 1972, Murta Singh and his brother Piara Singh deceased were working in their field. In the evening their mother, Smt. Veero (PW 5), had brought tea for them. At about 6.00 p.m., PW 4 Murta Singh, Piara Singh deceased and their mother, Smt. Veero (PW 5), left the fields for their house. They were going towards their village on canal minor bundh when, all of a sudden, appellant 2 Lakha Singh and appellant 1 Amar Singh, both sons of Bachan Singh and armed with a barchi (a dagger) and a sum (a piercing weapon) respectively, appellant 3 Harbhajan Singh armed with a Kulhari (axe), appellant 4 Amrik Singh armed with a dang (a cudgel) and Amar Singh and Rattan Singh, the acquitted accused, both sons of Isher Das, Armed with a Kirpan and a suo respectively, emerged out of the bushes growing by the side of the canal minor and raised a lalkara that they be caught hold of and not allowed to escape alive. Thereupon, the appellants, other than Bachan Singh, ran towards them to attack them. PW 4 Murta Singh and Piara Singh deceased tried to run away in different directions to save themselves. The latter ran towards his village and Murta Singh ran towards village Denriwal. Smt. Veero (PW 5), their mother, was raising raula. Amar Singh and Rattan Singh, the two acquitted accused, ran after PW 4 Murta Singh for a few paces and then stopped for a while, hid himself in the bushes and saw the accused person, other than Bachan Singh running after Piara Singh deceased. After a while he went to his house where his mother met him weeping. She told him that the accused persons, other than Bachan Singh, and Amar Singh and Rattan Singh, the two acquitted accused, had taken Piara Singh deceased after inflicting injuries on him towards the house of Bachan Singh where he had been killed. She also told him that Bachan Singh, who was present in his house, was raising Lalkara that Piara Singh be killed. At that time, he was armed with a dang. Pw 6 Anokh Singh also witnessed this part of the occurrence Smt. Veero (PW 5) asked Murta Singh to run away towards the fields to

save his life. Thereupon, Murta Singh again went away to the fields. His brother, Surta Singh, came there. He narrated the whole occurrence to the latter and both of them went to the Police Station Kalanaur, to lodge the first information report.

4. After recording the first information report PW 10 Jagir Singh, the Sub-Inspector of Police, proceeded to the place of occurrence for conducting an investigation into the matter. On reaching there at 3.00 a.m. he immediately rushed to the house of Bachan Singh and recovered the dead body of Piara Singh deceased.

5. The post-mortem examination on the dead body of Piara Singh deceased was conducted by Dr. D. K. Verma (PW 2) on July 19, 1972. He found the following injuries on the body of the deceased :

(1) Contusions 4 in number each 1" x 1" in dimension on the face, right side of forehead and neck. Colour reddish blue and fracture of the underlying part. Face was blood-stained.

(2) Contusion 6" x 6" on the outer side of left forearm. Colour brownish. There was fracture of both ulna and radius.

(3) Abrasion 1" x 1/2" on the outer side of right elbow joint.

(4) Contusion 3" x 2" on the front of left knee joint. There was also a lacerated wound 1" x 1/2" on the front of left knee joint in center of contusion. There was fracture of left Patella. Area was bloodstained.

(5) Contusion 3" x 4" on the right leg below right knee. There was fracture of right tibia into many parts. There was lacerated wound 1" x 1 1/2 in the center of contusion. Bone was protruding out.

(6) Three abrasions each 2" x 1 1/2" running longitudinally on the back. Colour brownish.

6. In the opinion of Dr. Verma (PW 2), the death of Piara Singh was due to shock and hemorrhage resulting from all the injuries which were antemortem and sufficient to cause death. After investigation, the appellants and the three other accused persons (since acquitted) were prosecuted and were committed to the Court of Sessions to stand their trial. At the trial the prosecution examined PW 4 Murta Singh, PW 5 Smt. Veero and PW 6 Anokh Singh as eyewitnesses.

7. The learned Additional Sessions Judge accepted the evidence of these eyewitnesses as, in his opinion, their evidence was corroborated by the medical evidence as well as by the fact that the dead body was recovered from the house of Bachan Singh. He, however, acquitted Amar Singh and Rattan Singh, both sons of Isher Das, for, in his view, their participation in the commission of the offence was doubtful. The appellants and Bachan Singh were all convicted and sentence by him as mentioned above. On appeal, the High Court as stated already, affirmed the convictions and sentences of the appellants, but acquitted Bachan Singh. No appeal has, however, been preferred by the State against the acquittal of Bachan Singh.

8. In assailing the judgment of the High Court, the first point that has been urged by Mr. Frank Anthony, learned counsel appearing on behalf of appellants 1 and 2, is that the conviction of the

appellants under Sections 148 and 149 IPC is bad inasmuch as of the seven accused, the trial court had acquitted two of them, namely, Amar Singh and Rattan Singh, both sons of Isher Das, and the High Court acquitted the accused Bachan Singh. It is submitted that after the acquittal of the three accused person out of seven, the appellants who are the remaining four, cannot be held to have formed an unlawful assembly within the meaning of Section 141 IPC and, accordingly, the charges under Sections 148 and 149 IPC were not at all maintainable.

9. In our opinion, there is much force in the contention. As the appellants were only four in number, there was no question of their forming an unlawful assembly within the meaning of Section 141 IPC. It is not the prosecution case that apart from the said seven accused persons, there were other persons who were involved in the crime. Therefore, on the acquittal of three accused persons, the remaining four accused, that is, the appellants, cannot be convicted under Section 148 or Section 149 IPC for any offence for, the first condition to be fulfilled in designating an assembly an "unlawful assembly" is that such assembly must be of five or more persons, as required under Section 141 IPC. In our opinion, the convictions of the appellants under Sections 148 and 149 IPC cannot be sustained.

10. It is next contended on behalf of the appellants that the learned Additional Sessions Judge and the High Court were not justified in placing any reliance upon the evidence of PW 5 Smt. Veero, which is totally inconsistent with the medical evidence. It has been already noticed that all the accused persons were armed with sharp weapons. It is evidence of PW 5 that Amar Singh, son of Bachan Singh, and Rattan Singh were each armed with a suo, Lakha Singh was armed with a barchi, Harbhajan Singh was armed with a Kulhari and Amar Singh, son of Isher Das, was armed with a Kirpan. She said : "Then all the accused except Bachan Singh accused surrounded my son Piara Singh (deceased). Then Lakha Singh accused gave a barchi blow on the left knee of my son. Then Piara Singh (deceased) fell down and all the accused then gave injuries to him with their respective weapons." In her cross-examination she said that the accused persons gave quite a number of blows with their respective weapons after they had overpowered him, and that many of the blows fell on the ribs and abdomen of deacease Piara Singh. But, not a single incised wound was found on the body of the deceased by Pw 2 Dr Verma. Moreover, the medical report shows that there was no injury on the ribs and adubomen of the deceased. We are unable to accept the evidence of PW 5 that although a number of blows were given by the accused with their weapons on the ribs and abdomen of deceased, yet such blows did not produce any mark of injury. The medical report submitted by PW shows that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by PW 5. If her evidence that all the accused inflicted injuries on the deceased with their respective weapons has to be accepted, then there would be incised wounds all over the body of the deceased, but the medical report shows that not a single incised wound was found on the body of the deceased. Thus the evidence of PW is totally inconsistent with the medical evidence. This Court in *Ram Narain Singh v. State of Punjab* (AIR 1975 SC 1727 : (1975) 4 SCC 497 : 1975 SCC (Cri) 571), has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonable explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of PW and the medical evidence.

11. In this connection, we may refer to the evidence of the second eyewitness PW Anokh Singh. In his examination-in-chief this witness sought to support the prosecution case, but in cross examination he stated in clear and unequivocal terms that he did not see Piara Singh deceased receiving any injury at the hands of the Accused. No reliance, therefore, can be placed on the

evidence of PW 6. So far as PW 4 Murta Singh is concerned, he is not a witness of the actual incident, as he had started running towards village Dhariwal on being chased by Amar Singh and Rattan Singh, sons of Isher Das, and hid himself in the bushes. He then waited for a short while in the bushes out of fear and then went to his house. His mother PW 5 told him that his brother Piara Singh had been murdered in the house of Bachan Singh, and that he should run away from home. Thus, out of the three witnesses, the only witness who gave evidence about the beating of Piara Singh deceased by the appellants and the other accused is PW 5 Smt. Veero. Her evidence, as already noticed, is contrary to the medical evidence.

12. We may further examine the evidence of PW 5 as to the place where Piara Singh was alleged to have been killed. In her examination-in-chief she stated that all the accused took Piara Singh deceased to the courtyard of the house of Bachan Singh where he was beaten by Amar Singh, appellant 1, with thappi. Thereafter Piara Singh was dragged inside the room of the house of Bachan Singh by the accused persons. In her cross-examination she said that after killing Piara Singh on the spot, the accused took him inside the room of the house. The evidence, however, is that blood was recovered from the room and no blood was found on the courtyard. Her evidence is, therefore, inconsistent as to the place where Piara Singh was killed by the accused. In this connection, it may be pointed out that although according to the evidence of PW 4 Murta Singh, that when he came home he found his mother weeping and she told him that the accused had killed Piara Singh, in the first information report lodged by PW 4, there is no mention of the statement of his mother that Piara Singh was killed by the accused.

13. Upon an analysis of the evidence of PW 5, it appears that here evidence is not only not corroborated by the evidence of any witness, but is contrary to the medical evidences to the injuries that were found on the body of the deceased. Apart from the fact that the appellants cannot be convicted under Sections 148 and 149 IPC, it is difficult to convict them on any charge on the basis of the evidence of PW 5. The learned Additional Sessions Judge was not right in holding that the guilt of the appellants had been proved by the prosecution beyond all reasonable doubt. In our opinion, the evidence of PW 5 who turns out to be the only eyewitness in the case casts a great doubt as to the commission of any offence by the appellants and, consequently, the benefit of that doubt must go to the appellants.

14. For the reasons aforesaid, the convictions and sentences of the appellants under Sections 148 and 302/148 IPC are set aside and the appellants are acquitted. The bail bonds, if any, are discharged.

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