

Darshan Singh and Others

Vs

State of Punjab

Criminal Appeal No. 459 of 1979

(S. R. Pandian, K. N. Singh JJ)

21.09.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. This appeal is directed against the validity of the judgment in Criminal Appeal No. 523 of 1976 of the Punjab and Haryana High Court. The present 6 appellants along with one Mangat Singh took their trial under 4 charges, namely, under Sections 148, 302 read with 149, 323 and 323 read with 149 IPC on the allegations that on June 20, 1974 at about 7.30 p. m. at village Dakoh they all formed themselves into an unlawful assembly and in prosecution of the common object of that assembly caused the death of the deceased Gurdial Singh and also caused injuries to Pritam Singh (PW 7) and Surat Singh. The trial court for the reasons assigned in its judgment convicted these appellants under all those charges and sentenced each of them to undergo one year rigorous imprisonment, imprisonment for life and to pay a fine of Rs. 100 and six months, rigorous imprisonment respectively. However, the trial court acquitted the accused Mangat Singh who, according to the prosecution, attacked Surat Singh, observing : "Be that as it may, neither any lalkara is attributed to Mangat Singh nor any particular overt act has been attributed to him."

2. We heard the learned counsel for both the parties and carefully scrutinised the impugned, copies of the depositions and the other connected records. The gist of the evidence adduced by the prosecution shows that appellants 2 and 3 are the son and grandson of appellant 1, that the appellants 4 to 6 are brothers; that appellants 1 and 3 caught hold of the deceased who was armed with a 12 bore single barrel shot gun; that appellant 6 caught hold of PW 7; that immediately thereafter both appellants 1 and 3 let loose their grip and that all the appellants except appellant 2 attacked the deceased with various kinds of weapons such as gandasi, sua, kirpan and chhavi and caused several injuries to which the victim Gurdial Singh succumbed. Appellant 2 is stated to have given a blow on the right ankle joint of PW 7 with a sua.

3. In our considered opinion, the version of the prosecution that the appellants 1 and 3 caught hold of the deceased when the latter was attacked indiscriminately with lethal weapons is inconceivable and unaccepted. Similarly the cease of the prosecution that the appellants 1 and 3 let loose the grip and then attacked the deceased is not acceptable. Moreover, the evidence of the witnesses that appellant 1 who was then aged about 800 years went in advance and held the deceased is too big a pill to be swallowed. During the course of the arguments, it was faintly represented that appellant 1 is dead but no application or memo with an authenticated proof has been filed to that effect. Be that as it may, the case of the prosecution against appellant 1 is not worthy of acceptance and the evidence also does not inspire confidence. The admitted case of the prosecution is that appellant 2 had not joined with the rest of the appellants in attacking the deceased. Further, there is no

acceptable material to warrant a conclusion that appellant 2 even shared the common object of the rest of the appellants in causing the death of the deceased. As rightly pointed out by the learned counsel for the appellant that appellant 2 is entitled for an acquittal under Section 302 read with Section 149 IPC on the same reason assigned by the trial court with regard to the case of Mangat Singh. We see much force in this submission. When the evidence of PW 7 and other witnesses is tested on the anvil of the objective circumstances, we feel that the conviction of appellant 2 cannot be maintained under Section 323 also.

4. Hence for the reason stated above, we hold that the appellants 1 and 2, namely, Darshan Singh and Karam Singh are entitled to an acquittal and accordingly we set aside the convictions and the sentences recorded by the trial court and as confirmed by the High Court and acquit both of them of all the charges. So far as the appellants 3 and 6 are concerned, we have no hesitation in agreeing with the finding of the courts below that that these appellants made the murderous attack on the deceased and caused his instantaneous death. Since we have now found the appellants 1 and 2 not guilty of any of the charges, we set aside the convictions of the appellants 3 to 6 under Sections 148 and 323 read with 149 of the Indian Penal Code and the sentences imposed therefore and alter the conviction of the appellants 3 to 6 from Section 302 read with Section 149 IPC into one under Section 302 read with Section 344 IPC.

5. Accordingly, the appeal is allowed so far as the appellants 1 and 2 are concerned. Regarding appellants 3 to 6 though we have set aside their conviction and sentences under Sections 148 and 323 read with 149 IPC and the related sentences, we confirm their conviction for the murder charge by modifying the conviction into one under Section 302 read with 34 IPC instead of Section 302 read with 149 IPC and confirm the sentence of imprisonment for life and the fine of Rs. 100.

6. In the result, the appeal is allowed so far as the appellants 1 and 2 are concerned and dismissed in respect of other appellants as indicated above.

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