

Jagpal Singh and Others

Vs

State of Punjab

Criminal Appeal No. 666 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

06.12.1990

JUDGMENT

1. This criminal Appeal is preferred by the three appellants challenging the correctness and validity, of the judgment, rendered by the High-Court of Punjab and Haryana in Criminal Appeal No. 108/76 on its file convicting the three appellants u/S. 302 read with Ss. 149, 307 read with Ss. 149 and 148 of the I.P.C. and sentencing each of the appellants to undergo life imprisonment, three years' rigorous imprisonment and two years rigorous imprisonments respectively. According to the prosecution, these three appellants along with two others on 263-1971 at village Govindpura at about 7 or 8 p.m. formed themselves into an unlawful assembly with a common object of causing the death of one Kapur Singh, committed rioting, attempted to cause the death of Kapur Singh and caused the death of Mrs. Surjit Kaur. The Trial Court on the evaluation of the evidence found these three appellants (who were tried separately since they had been absconding for a long time) guilty under all the charges and convicted and sentenced them. The High Court confirmed the judgment of the Trial Court. It is brought to our notice during the hearing of the appeal that the two other accused were separately tried and convicted and sentenced. It is not known as to whether those two appellants have preferred any appeal before this Court or not.

2. To substantiate the charges levelled again-Appellants, two eye witnesses were examined, namely, Kapur Singh (P.W. 2) and Dalip Singh (P.W. 3). The evidence discloses that these appellants and the other two came to the house of Kapur Singh (P.W. 2) to attack him and fired shots. But Kapur Singh to save his life went into the house of Udham Singh, husband of the deceased Surjit Kaur. The appellants along with the two other accused went in front of the house of the deceased and fired shots from their weapons. At that time, Surjit Kaur was standing by the side of a door of a room. It is said that one of the shots fired by the first appellant, Jagpal Singh, hit at the deceased who succumbed to the injuries, sustained by her. Though Kapur Singh (P.W.2) has admitted that he could not state as to who shot at the deceased, P. W. 3, Dalip Singh, has deposed that it was the first appellant, Jagpal appellant, Jagpal Singh. The defence has examined the husband of the deceased as DW 1. The husband of the deceased (DW 1) has categorically stated that the deceased was not shot by any one of the appellants and that both the eye witnesses were not in his house at the time of occurrence. But both the Courts below have not placed any reliance on the evidence of Udham Singh.

3. On going through the entire evidence and other connected records placed before us, we are fortified in holding that the first appellant, Jagpal Singh shot at Surjit Kaur even though he aimed at only Kapur Singh. Therefore, under the doctrine of transfer of malice as contemplated u/ S. 301 of

the IPC, Jagpal Singh has made himself punishable u/S. 302 IPC (simpliciter). So far as the rest of the appellants are concerned, the allegations are omnibus. On a careful analysis of the entire evidence particularly of Udham Singh, we are of the opinion that it is not safe to convict the other two appellants, namely, Baldev Singh and Gurmel Singh s/ o Chanan Singh.

4. In the result, we convict Jagpal Singh alone u /Ss. 302 (simpliciter) and 307 (simpliciter) instead of 302 read with Ss. 149 and 307 read with 149 IPC and retain the sentence of imprisonment for life and the sentence of three years rigorous imprisonment. The conviction u/ S. 148 IPC as against this appellant, Jagpal Singh, is set aside. As we have now come to the conclusion that it is not safe to convict the other appellants, we set aside the conviction recorded against these two appellants u/ Ss. 302 read 149, 307 read with 149 and 148 IPC as well the sentences Imposed of them therefor. Accordingly, the appeal of Jagpal Singh is dismissed subject to the above modification and the appeal so far as the other two appellants are concerned is allowed.

5. Counsel for the appellant sis no table to say as to whether those two appellants have preferred any appeal before this Court or not. Therefore, we extend the benefit of acquittal to Bhupinder Singh and Gurmel Singh s/o Kehar Singh provided they have not preferred any appeal before this Court with regard to this case. In case any appeal is preferred by them challenging their convictions concerning this case is pending or dismissed then the benefit of acquittal extended by us to them cannot be enured. ,

6. In the result, the appeal of Jagpal Singh is dismissed as indicated above and the appeal in respect of the other two appellants is allowed. As we have now extended the benefit of acquittal to the other two accused, namely, Bhupinder Singh and Gurmel Singh s/o Kehar Singh and their convictions and sentences recorded as against them are also set aside and they are directed to be set at liberty forthwith provided their convictions are not confirmed by the dismissal of SLP if any preferred by them, or in an appeal or if any appeal is pending before this Court.

7. The bail bonds are discharged.

Order accordingly.

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