

Shingara Singh

Vs

State of Punjab

Criminal Appeal Nos. 540 of 1981 and 326 of 1983

(Smt. M. S. Fathima Beevi, R. S. Pathak JJ)

30.10.1991

ORDER

1. These appeals are preferred by the appellant, Singhara Singh against the judgments made in Criminal Appeal Nos. 19(DB) of 1980 and 20(DB) of 1980 on the file of the High Court of Punjab and Haryana at Chandigarh. The facts of the case which led to the filing of these two appeals can be summarised as follows :

Before the trial court, this appellant along with 8 others took his trial under seven charges on the allegations that on April 20, 1979 he along with other accused formed an unlawful assembly and in furtherance of the common object of such assembly, he caused the death of the deceased Dharam Singh and also accused caused injuries to several witnesses.

2. According to the prosecution, the deceased Dharam Singh along with PW 14 (Harnam Singh), PW 10, (Anoop Singh) and PW 8 (Sarup Singh) was in possession of four killas of panchayat land which was the scene of occurrence. Accused 9 before the trial court, namely, Gurdit Singh and the rest of the accused, namely, the appellant (A1) and A2 to A8 were in possession of an adjoining four killas of panchayat land and they wanted to take forcible possession of the panchayat lands which was in possession of the deceased Dharam Singh and others. The deceased and others had ploughed their land about 2 or 3 days before the occurrence. In the morning of the fateful day, the appellant and other accused went to the land to re-plough the same land. On receipt of an information, the deceased and other injured prosecution witnesses, namely, PWs 8 to 13 proceeded to the land and on the way PWs 9 and 14 also joined them. They all reached the land by about 9 a.m. Accused 4, 5, 6 and 8 were ploughing the field whilst accused 2, 3 and 7 were standing, each armed with a rifle. The appellant Singhara Singh (A1) was armed with 'barachhi'. Gurdit Singh (A9) was sitting nearby unarmed. On reaching the scene, the deceased asked the accused persons as to why they were ploughing his land and asked him to stop further ploughing. Suddenly, A4, A5, A6 and A8 who were armed with gandasa, dang, barchhi and sua respectively on a lalkara raised by A9 shouting that the deceased part should be taught a lesson started attacking the complainant's party. The appellant herein gave a barchhi blow on the nose of the deceased Dharam Singh. On receipt of the injury, he (the deceased) fell down. Thereupon, accused 8 gave a sua blow on the left side shoulder of the deceased. Again appellant 1 gave another barchhi blow on his right leg while A8 gave another sua blow on his right chest. When PW 13 (Charan Singh) went near the deceased, accused 2 fired a rifle shot hitting him on his right shoulder. He also fell down. Thereupon after attacking PW 9 and other witnesses, they all took to their heels. The deceased Dharam Singh and the injured persons were brought to the house of the deceased. On reaching the house, Dharam Singh expired. Thereafter all the injured persons were taken to the hospital and treated. On the complaint given by PW 8 (Sarup Singh), the case was registered and the investigation proceeded.

3. The appellant took two trials i.e. for the offence of murder and other allied offences along with others and another individually for the offence under Section 25 of the Arms Act. Trial court in S.T. No. 45 of 1979 on the evidence adduced by the prosecution found that the physical possession of the land was with the complainant's party and concluded as follows :

"It is thus established that the accused party was not in possession of the land in dispute and that rather the deceased and his companions were in the possession of that land where the occurrence took place. The accused thus tried to take forcible possession of that land without any right whatsoever to that land. They are certainly liable for causing the murder of the deceased Dharam Singh and the injuries to other injured persons as they were the aggressors."

4. Further, the trial court accepting the evidence of the eyewitnesses particularly the injured witnesses found only the appellant and four other accused guilty and convicted the appellant herein under Section 302 IPC and the rest under Section 302 read with 149 IPC and also under various provisions of the law inclusive of the conviction under Sections 307 and 326, 307 read with 149 IPC and under Section 326 read with Section 149 IPC in addition to the conviction under Section 148 IPC. The appellant in addition was separately tried for the offence under Section 25 of the Arms Act and convicted thereunder and sentenced to one year's rigorous imprisonment.

5. The convicted accused on being aggrieved by the judgment of the trial court, preferred an appeal in Criminal A. No. 19(DB) of 1980 before the High Court. The High Court on appreciation of the evidence, found that the possession of the land was with the accused party and recorded its finding as follows :

"We, therefore, feel reluctant to place reliance on Ex. PKK khasra girdawari; statements of Patwari and the witnesses to accept that the possession of killa number 28/2 was of Dharam Singh or his sons. The natural corollary from this result which follows is that the possession was that of the accused."

6. The High Court examined the legal question as to whether the accused were entitled for acquittal on the ground of right of private defence of person and property, and concluded that the appellant herein, in causing the injury to the deceased which resulted in the death of the deceased, has exceeded the right of defence. However, the High Court found the rest of the four convicted accused not guilty of any offence. The net result was, the appellant alone stood convicted under Section 304 Part I IPC and sentenced to rigorous imprisonment for a period of 10 years. The High Court for the reasons mentioned in Criminal Appeal No. 19(DB) of 1980 confirmed the conviction of the appellant under Section 25 of the Arms Act and the sentence of one year's rigorous imprisonment. Hence these two present appeals.

7. We have heard learned counsel and perused the records very carefully. The finding faith High Court that the possession was with the appellant and the other accused is not seriously challenged before us. Therefore, as rightly pointed out by the High Court, the appellant had a right of defence of his person and property but the question is whether he had exceeded it or not. Appellant 1 is said to have caused injuries to the deceased with a barchhi not only once but also twice. The fourth injury attributed to the appellant is described by the Medical Officer (PW 1) as follows :

"An incised wound 2.5 cm x 1 cm at the root of nose, extending laterally and downward on left side underneath bone cut. After piercing the nasal cavity piercing

the ethmoid bone through and through and then piercing the brain. Free floating blood and clots about 50 cc were present."

8. This injury No. 4, according to the Medical Officer, was sufficient in the ordinary course of nature, to cause death. Therefore, the High Court was right in holding that the offence was one punishable under Section 304 Part I IPC.

9. Now let us come to the quantum of sentence. We feel having regard to the special facts and circumstances of the case, that the ends of justice would be met by reducing the sentence of imprisonment from 10 years to 5 years. Accordingly, while confirming the conviction as recorded by the High Court, we reduce the sentence of imprisonment to 5 years' rigorous imprisonment for the conviction under Section 304 Part IPC.

10. The impugned judgment of the High Court in Criminal Appeal No. 19(DB) of 1980 is confirmed subject to the modification of sentence as indicated above.

11. In the result, Criminal Appeal No. 540 of 1981 is dismissed subject to the above modification of sentence. Consequent upon the dismissal of Cri. A. No. 540 of 1981, Criminal Appeal No. 326 of 1983 is also dismissed. All the substantive sentences of imprisonment are directed to run concurrently.

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