

Sukhdev Singh

Vs

State of Punjab

Criminal Appeal No.43 of 1981

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

14.11.1991

JUDGMENT

1. The appellant Sukhdev Singh has directed this criminal appeal canvassing the correctness and legality of the judgment made in Criminal Appeal No. 578 of 1979 on the file of the High Court of Punjab and Haryana confirming the judgment of the trial Court, convicting him under S.302, I.P.C. and sentencing him to undergo imprisonment for life therefore.
2. This appellant along with three others took their trial on the allegation that on 13-9-78 at about 5.00 p.m. in the revenue village Shahpur Kalan, in furtherance of common intention murdered Sant Singh alias Lilloo, the deceased herein. On the said allegation, the appellant was charged for an offence under S.302 whilst the rest of the three accused were charged under S.302 read with S.34, I.P.C.
3. According to the prosecution, this appellant and the other three accused who are since acquitted and who are not before us emerged from sugarcane field. The appellant had a gandasa (chopper), the accused Atma Singh had a Takua (distaff) and the remaining two accused had ghops. A lalkara (challenge) was exhorted by the appellant stating that the deceased should be taught a lesson since he had given some information to the police in connection with the distillation of illicit liquor. The acquitted accused Atma Singh shouted that the deceased should not be allowed to go alive. On the lalkara of the appellant and at the instigation of accused Atma Singh, the accused Nikka Singh gave two blows with a ghop on different parts of the body of the deceased. Following that the acquitted accused Lakhbir Singh gave two more blows with the similar weapon whilst the acquitted accused Atma Singh gave a blow with a Takua on the right leg. On receipt of these injuries, the injured Sant Singh fell down on the ground. It is stated that it is only thereupon the present appellant is said to have dealt a blow with the gandasa near the right ear. The accused Lakhbir Singh not being satisfied with the blows that he had already dealt with gave one more blow with a ghop on the right arm of the deceased. The injured was removed to Primary Health Centre, Longowal and he died at 7.40 p.m.
4. The prosecution has examined a number of witnesses of whom PWs 2, 3 and 4 are eye-witnesses to the occurrence. The trial Court for the reasons assigned in its judgment convicted the present appellant under S.302 and Lakhbir Singh for an offence under S.302 read with S.34, I.P.C. and sentenced each of them to life imprisonment. On an appeal the High Court acquitted Lakhbir Singh but retained the conviction of the appellant alone.
5. Mr. R. K. Talwar, learned counsel appearing for the appellant strenuously contended that the evidence of PWs 2, 3 and 4 could not be accepted and acted upon as none of them had informed any

of the persons whom they met as to what they had witnessed and that the non-production of the material articles is fatal to the prosecution. We see absolutely no force in this argument. Indeed, we are in full agreement with the conclusion arrived at by the High Court rejecting similar contentions which were advanced before it. On a careful perusal of the judgment and the evidence on record, we feel convinced that Sukhdev Singh took part in perpetrating the attack on the deceased, resulting in the death of the deceased.

6. The next question that arises for our consideration is what is the nature of the offence that the appellant had committed. It is not the case of the prosecution that the appellant attacked the deceased along with other acquitted accused while he was standing. The appellant had given one blow after the deceased fell down. That blow according to the prosecution was sufficient to cause death in the ordinary course of nature. Even though we have accepted the testimony of PWs 2, 3 and 4 as to the participation of the appellant in the crime, we are unable to accept their evidence giving specific overt act to each of the accused, because according to the prosecution the victim was surrounded by all the four accused and each one armed with weapons and attacked him simultaneously. Therefore, it is difficult to fix this fatal injury to the appellant accepting the evidence of the witnesses whose evidence on that aspect has to be considered with a pinch of salt. Under these circumstances, we are constrained to hold that the appellant caused the injury with the knowledge that he was likely by such act to cause death and he is liable to be convicted under S. 304, Part II, I.P.C.

7. In the result, we set aside the conviction under S.302 and the sentence of imprisonment for life instead convict him under S.304, Part II, I.P.C.

8. Having regard to the special facts and circumstances of the case, we feel that the ends of justice would be met by imposing a sentence of five years. Accordingly, we sentence him to undergo five years rigorous imprisonment. The appeal is dismissed subject to the modification of the conviction and sentence as indicated above. Order accordingly.

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