

State of Punjab

Vs

Jagjit Singh and others

Criminal Appeals Nos. 739 with 738 of 1980

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

21.01.1992

### JUDGMENT

1. The State of Punjab feeling aggrieved by the judgment of the High Court of Punjab & Haryana rendered in Crl. A. No. 1354 and Crl. Misc. No. 4738/ 79 has preferred Criminal Appeal No. 739/80 against respondents 1 to 7 who took their trial before the District and Sessions Judge Gurdaspur. Criminal Appeal No. 738/80 is preferred by the convicted accused, respondents Nos. 2 and 5 namely Baldevjsingh and Harbhajan Singh challenging their conviction. We will deal with that appeal separately in the later part of this order.

2. The allegations on the basis of which these seven respondents along with one Raghubir were tried are that on 6th March 1978 about 7.30 a.m. in the area of village Maridke formed themselves into an unlawful assembly and in prosecution of the common object of the said assembly caused the death of Lakhbir Singh and also caused injuries to Charan Singh who is the father of the deceased Lakhbir Singh. It is further stated that in the course of the same transaction, they all committed criminal trespass in the land of Charan Singh. The brief facts of the case as disclosed from the evidence adduced by the prosecution can be summarised as follows: -

Jagjit Singh (R-1) aged about 70 years as on the date of occurrence, is the father of respondents Nos. 2, 3 and 4, namely Baldev Singh aged about 18 years, Sukhdev Singh aged 16 years and Rachhpal Singh aged about 15 years. Harbhajan Singh respondent No. 5 aged about 38 years is the brother of Jagjit Singh. Respondents Nos. 6 and 7 Karam Singh and Dharam Singh aged 20 and 18 years respectively were the servants of the first respondent Jagjit Singh.

There was a banian tree grown on the platform around a well in their common land. It is stated that the fathers of Charan Singh and Jagjit Singh along with one another Sulakhan Singh were co-sharers. It appears that there was a dispute over the enjoyment of the banian tree. A month before the occurrence the respondents wanted to chop some branches of the tree. Charan Singh took objection and made an oral complaint to the Sarpanch of the village who after referring to the revenue records declared that Charan Singh was the owner of the banian tree. On the date of occurrence the acquitted accused Raghubir Singh, Respondents Nos. 6 and 7 each armed with a Takia, Respondent No. 4 armed with a Sua, Respondent No. 3 with a datar, Respondents Nos. 5 and 2 each armed with a kirpan went to the well. Jagjit Singh went up the tree with a saw and started cutting one of the branches of the tree. Charan Singh along with his sons, the deceased Lakhbir Singh and witness Jagjir Singh (PW 3) as well as his wife Bhajan Kaur and daughter Narinder Kaur who were crushing the sugarcane near their tube well which was at a distance of about 11/2 killas from the banian tree came to the scene spot. At the relevant time of the occurrence the deceased was

driving the bullocks, operating the crusher while Charan Singh was transferring the cane juice into the boiler nearby. On seeing the first respondent cutting the tree, they took strong objection. The first respondent declared that he would teach a lesson to Charan Singh for raising objections then and there. So saying, he armed with a knife came down from the tree and went towards the place where the sugarcane was being operated, accompanied by the other respondents and the acquitted accused Raghbir Singh and threw a challenge to Charan Singh. The deceased Lakbbir Sinsh had a small 'parani' in his hand, Charan Singh also took up another 'parani'. All the respondents came near the complaint party and the first respondent made a lalkara and attacked the deceased with a kirpan. The fifth respondent also dealt a kirpan blow on the head of the deceased while the respondent No. 2 gave another kirpan blow on the neck of the deceased. When the deceased raised his left arm the acquitted accused Raghbir Singh gave a toki blow on his left thumb. The third respondent gave a datar blow which chopped off his left forearm. The fourth respondent gave a thrust blow with a sua on the left side of the neck of the deceased. The deceased fell down on the ground. When Charan Singh went forward to save his son, the sixth respondent gave a toki blow with its reverse side on his left arm followed by a similar toki blow on his head by the seventh respondent. It is stated that both the deceased and his father Charan Singh who were each armed with a parani caused simple injuries on the persons of the respondents Nos. 2, 3, 5, 6 and 7. The deceased succumbed to his injuries at the spot.

Thereafter Charan Singh lodged the complaint at the police station at about 9.45 am. under Ex. P-T before the Sub-Inspector of Police who took up the investigation, inspected the spot, held inquest over the dead body and sent the dead body for post-mortem examination. PW 1, the Medical Officer examined Charan Singh and found on his person three contusions. He gave his opinion that the injuries found on the witness were simple in nature. PW 3 another Medical Officer conducted autopsy on the dead body Of the deceased and found as many as five Injuries (incised). The brain matter was lacerated. Added to that there were two other injuries namely a scabbed abrasion on the left side of the chest, and the other injury is described as "whole left hand was cut off from the left arm and thumb of left hand was also cut off from the hand". The Medical Officer also found certain injuries on the respondents.

3. The Trial Court for the reasons assigned in its judgment found all the respondents guilty of the offences punishable under Ss, 148, 302 read with 149, IPC and 323 read with 139, IPC and sentenced each one of them to undergo imprisonment for life, besides awarding various terms of imprisonment for other offences. However, the Trial Court acquitted the accused Raghbir Singh. Being aggrieved by the judgment of the Trial Court all the respondents preferred an appeal before the High Court. The High Court after elaborately discussing the evidence adduced by the prosecution found that the prosecution has not made out a case as against the first respondent Jagjit Singh and the respondents Nos. 6 and 7 namely Karam Singh and Dharam Singh and acquitted these three respondents, but found the respondents Nos. 2, 3, 4 and 5 guilty of the offences punishable under S. 302 read with 34, IPC and convicted them thereunder. As the High Court on an application (Crl. M. No. 4738 / 79) filed by the defence held that the third and fourth respondents namely Sukhdev Singh and Rachhpal Singh were juveniles at the time of the occurrence, the High Court directed these two respondents to be kept in a certified school till each of them attained the age of 18 years, after setting aside the sentence of life imprisonment. The conviction of the respondents Nos. 2 and 5 under Section 302 read with 34, IPC were confirmed but their convictions for other offences were set aside.

4. Admittedly, the respondents 3 and 4 have completed their detention in the certified school. The respondents Nos. 2 and 5 namely Baldev Singh and Harbhajan Singh on being aggrieved by their

conviction have preferred a separate appeal before this Court in Crl. A. No. 738 of 1980. The learned counsel appearing for Baldev Singh states that the second respondent had died in an accident during the pendency of the appeal before this Court but no material is placed before us in support of that statement.

5. We have carefully scanned through the entire evidence available on records. According to the learned counsel appearing for the appellant/ State the High Court has gone wrong in acquitting the respondents Nos. 1, 6 and 7 ignoring the formidable and tenable evidence that are available against these three respondents. In our considered opinion, the High Court has analysed the evidence in the proper perspective and arrived at a correct conclusion that the prosecution has not satisfactorily established the guilt of the respondents 1,6 and 7. On an evaluation of the evidence, we do not find any merit in the submission made by the learned counsel appearing on behalf of the appellant-State. In fact the respondents 2 and 5 have already been convicted under Section 302 read with 34, I.P.C. (sic) have filed a separate appeal challenging their conviction before us. Even in the SLPs the ages of these respondents nos. 3 and 4 are given as 16 and 15 and therefore, the High Court was absolutely correct in sending these two respondents to the certified school. From whichever angle, we look at this case, we feel that the impugned judgment of the High Court with regard to the acquittal of respondents 1, 6 and 7 does not call for any interference. As the respondents 3 and 4 have already completed their detention in the certified school, we do not like to interfere with that order of the High Court also. So far as the case of respondents 2 and 5 is concerned we will deal with them separately in their appeal.

CrI. Appeal No. 738 / 80

6. As we have indicated above, this criminal appeal is filed by Baldev Singh and Harbhajan Singh who stand convicted under S. 302 read with 34, IPC and sentenced to life imprisonment.

7. Admittedly, the deceased and his father Charan Singh each armed with the stick attacked the accused party and caused injuries to the accused persons, namely, Baldev Singh, Sukhdev Singh, Harbhajan Singh, Karam Singh and Dharam Singh. The facts and circumstances of the case indicate that the deceased should have attacked the accused persons either before he was attacked or at least during the course of the actual occurrence. In other words, the deceased and his father had attacked five of the accused persons and caused them injuries. In our considered opinion, the facts and circumstances of the case disclose as rightly pointed out by the learned counsel appearing for the appellants, the appellants have in the exercise of the right of private defence attacked the prosecution party but they in doing so have exceeded their right. Hence the offence these two appellants have committed would be one punishable under Section 304, Part I IPC. On the above finding, we set aside the conviction of these two appellants who are arrayed as respondents 2 and 5 in criminal appeal No. 739/80 and also the sentence of imprisonment for life, instead we convict them under Section 304, Part I, IPC and sentence each of them to undergo rigorous imprisonment for a period of seven years.

8. The bail bonds of these two appellants are cancelled. Criminal Appeal No. 739/80 is dismissed subject to the order made in Criminal Appeal No. 738/80. Criminal Appeal No. 738/80 is partly allowed as indicated above. Appeal partly allowed.

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