

Balkar Singh and others

Vs

State of Punjab

Criminal Appeal No. 416 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

30.01.1992

JUDGMENT

1. The four appellants before us were tried along with others for an offence punishable under Sections 307 read with 34, 326 read with 34, 324 read with 3 IPC. The trial court convicted the four appellants. Their appeal was dismissed by the High Court. So far as appellant Harpal Singh 1 concerned, his case was tried differently because he was a child and he was dealt with under the East Punjab Children Act. Therefore, it may be necessary to deal with his case separately. Then there remains the case of Rain Singh. Balkar Singh and Jagir Singh. All the three were convicted under Section 307 read with 34, 326 read with 34, 324 read with 34 and were sentenced to imprisonment for 2 years, 2 years and 2 years and 1/2 year respectively. The High Court relied upon the evidence of injured witness - Principal witness being Bachan Singh who was examined as PW-1. Some injuries were found on the appellants also. Then the question is whether the prosecution has properly explained the injuries on the accused. The High Court referred to the evidence of Bachan Singh as well as the other witnesses and gave a finding that the prosecution in a way has explained the injuries. The learned counsel for the appellant, however, submits before us that there is no proper explanation and therefore the necessary inference is that the prosecution has not come forward with the true version and on that ground the convictions and sentences should be set aside. We see no force in his submission. Two courts below have considered this aspect and held that the prosecution has explained the inference.

2. The next question is whether all the three appellants namely Balkar Singh, Jagir Singh and Ram Singh have participated in the crime. So far as Balkar Singh and Jagir Singh are concerned the evidence is clear. PW-1 has deposed that the appellant Balkar Singh caused injury on the left hand of Satnam Singh who was one of the witnesses. Likewise Jagir Singh also caused injury to Darshan Singh and so far as appellant Ram Singh is concerned, PW-1 Bachan Singh, principal witness, stated in his deposition that Ram Singh and Avtar Singh, the acquitted accused, have caused injuries to Darshan Singh. No other particulars are mentioned. Even the weapon in Ram Singh's hand is not mentioned. What kind of injuries and on what part of the body, nothing is mentioned. Therefore it is an omnibus allegation. Free fight appears to have taken place during which some of the PWs and some of the appellants received injuries. That being so, it is necessary to examine the overt acts, if any, attributed so that the participation can be inferred. If we apply this type of test, it is difficult to hold that Ram Singh also caused any injury. Some persons in quite good numbers gathered at the place and the said occurrence took place and under the circumstances mentioned above, it is presumed that Ram Singh was also present there. Therefore, the case of Ram Singh can be distinguished. His mere presence cannot constructively make him liable and both the Courts below have simply applied Section 34 without taking into consideration whether any specific overt act is proved against the appellant Ram Singh. Therefore this is ground on which the case of appellant

Ram Singh can be distinguished.

3. In the result the convictions and sentences awarded against Balkar Singh and Jagir Singh are confirmed. Appellant Ram Singh is given the benefit of doubt and he is acquitted of all the charges and the convictions and sentences awarded against him are set aside. The appeal is dismissed as against Balkar Singh and Jagir Singh and allowed in respect of Ram Singh.

4. So far as Harpal Singh is concerned the High Court has found that he inflicted a fatal injury with a lethal weapon like a burchhi. Regarding the sentence, the High Court reported his case to the State Government for proper orders as provided under Section 34 of the Children Act in view of the fact that Harpal Singh was a child. We see no ground to interfere in his appeal. His appeal is also dismissed.

Order accordingly.

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