

Joginder Singh

Vs

State of Haryana

Criminal Appeal No. 441 of 1980

(S. Mohan, G. N. Ray JJ)

21.02.1992

JUDGMENT

1. On April 24, 1976 at about 10 p.m., Hari Singh, Joginder Singh, Dara Singh and Daljit Singh alias Bir Singh went to the house of the deceased and Indeerjit Singh, P.W. 4. They started making noise, using abusive language. The deceased came out of the house and requested them not to use filthy language against him and P.W. 4. Immediately, thereafter, all these four accused went inside the premises let out to Han Singh and came out fully armed. Han Singh was armed with iron pipe, his son, Joginder, with Lathi while the other two, namely, Dara Singh and Daljit Singh alias Bir Singh were armed with Kirpan and Saria. They pounced on Gurbachan Singh, the deceased. Han Singh gave a blow on his head with iron pipe. On receipt of this blow, Gurbachan fell down on the street. Dara Singh gave a sword blow upon his right arm. Joginder gave a Lathi blow, Daljit gave a blow with iron rod on the left arm of the deceased. Ajit Singh, P.W. 2, son of the deceased went ahead to protect his father. At that time Hari Singh administered a blow on his head. Joginder Singh also gave a Lathi blow on his head Dara Singh gave him two blows With his Kirpan. He also fell down on the street and received further injuries at the hands of these four persons. P.W. 4. daughter of Gurbachan (Sarabjit Kaur), came forward to save her brother Ajit Singh, P.W. 2. She was given a sword blow by Dara Singh. Manjit Singh, Dalip Singh and 'Bansi' Lal, who were living in the neighbourhood, came out their respective houses and witnessed the occurrence. After causing these injuries to the deceased as well as P.Ws. 2 and 3, the four persons, who are accused to 4, went away with their respective weapons.

2. P.W. 1, the Medical Officer, examined Gurbachan Singh at about 11.15 p.m. He found four serious injuries on the person of the deceased. He was of the opinion that the three injuries could have been caused by a blunt weapon excepting the superficial skin deep incised wound on the right hand below wrist joint which could have been caused by a sharp edged weapon.

3. The defence was one of the denial. The learned Sessions Judge of Gurgaon vide judgment dated 23-4-1977 convicted all these accused Han Singh u/S. 302 while Joginder, Dara Singh and Bir Singh u/S. 302 read with 34 and accordingly sentenced them to undergo imprisonment for life. Further they were also charged for offence u/S. 324 read with S. 34 and were sentenced to undergo rigorous imprisonment for 6 months and for offence u/S. 323 read with 34, they were sentenced to undergo R.I. for two months. All these sentences were to run concurrently. Appeals were preferred on behalf of all the accused. The High Court in C. A. No. 708 of 1977 confirmed the conviction and sentence of Han Singh, Joginder Singh, Dara Singh while Daljit Singh (alias Bir Singh) was given the benefit of doubt. Accordingly, the appeal was allowed. A Special Leave Petition was preferred

on behalf of all the three accused, namely, Han Singh, Joginder Singh and Dara Singh. This Court by order dated 6-3-1988 directed issue of notice in the case of Joginder Singh with regard to the nature of offence and sentence. The special leave petition in respect of others was dismissed. Therefore, presently, we are concerned with the case relating to Joginder Singh.

4. The only question that arises for our consideration in order to sustain the sentence imposed on him by the learned Sessions Judge is to analyse the part played by him with regard to the nature of the offence and find out whether he had been sentenced properly.

5. As seen earlier this is a case in which Joginder Singh also stands charged u/S. 34. This is a vital point to be borne in mind because if Sec. 34 were to apply in this case then it does not matter as to what particular part he played. Therefore, our endeavour would be to find out whether there was a common intention.

6. It is one of the settled principles of law that the common intention must be anterior in time to the commission of the crime. It is also equally settled law that the intention of the individual has to be inferred from the overt act or conduct or from other relevant circumstances. Therefore, the totality of the circumstances must be taken into consideration in order to arrive at a conclusion whether the accused had a common intention to commit the offence under which they could be convicted. The pre-arranged plan may develop on the spot. In other words, during the course of commission of the offence, all that is necessary in law is the said plan must proceed to act constituting the offence. In this case, it is clear that there was enmity between Hari Singh and deceased Gurbachan because of the dispute relating to the tenancy. The appellant, Joginder, is none other than the son of Hari Singh. The other two accused Dara Singh and Bir Singh had given evidence for Hari Singh in an ejection case. If Hari Singh was entertaining an idea of getting rid of Gurbachan, certainly he could not have chosen better persons than the three or four accused for carrying out his plan. In the first instance, the accused abused Gurbachan Singh. then went inside the house of Han Singh brought deadly weapon and pounced upon Gurbachan. Thereafter; the injuries were caused with those deadly weapons on the deceased. In the ordinary course of events, the head injury caused by Han Singh with iron pipe was sufficient to bring about his death. Therefore, it is clear that the four accused had the common intention to do away with Gurbachan Singh because only in the event of he being done away with, it would be possible to put further pressure on Han Singh (sic) to vacate the demised portion of the house. From this, the only inference possible is, all these four accused had a common intention to kill Gurbachan. Not only that. Even P.Ws. 2 and 3, the son and daughter of Gurbachan also received injuries which brings us closer to our inference in relation to common intention. If this be the factual position, we do not know how Section 34 will cease to apply. Once this conclusion is arrived at then it matters little as to what part Joginder Singh played. No doubt, he gave only a Lathi blow on the right arm of the deceased. That by itself may not be sufficient to convict him u/S. 302, I.P.C. but when he is charged u/S. 34, the necessary corollary is to convict him also u/S. 302, I.P.C. From this point of view, we find that both with reference to the nature of the offence and the sentence, the Courts below were right. We, therefore, see no case made out for interference. The appeal is dismissed.

7. The bail is cancelled and he shall surrender immediately and serve the sentence. Appeal dismissed.

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