

Gurdeep Singh

Vs

Jaswant Singh and Others

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Vs

State of Punjab

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Vs

Joga Singh and Another

Criminal Appeal Nos. 353

(Kuldip Singh, R. C.Pathak, R.M. Sahai JJ)

04.03.1992

JUDGMENT

R.M. SAHAI, J. –

1. These four appeals are directed against the judgment and order passed by Punjab and Haryana High Court. Appeal No. 351 was filed by Jaswant Singh, Joga Singh and Bhinder Singh who were tried and convicted under Section 302 for murder of one Kesar Singh. The Sessions Judge convicted Jaswant Singh under Section 302 IPC and sentenced him to undergo life imprisonment and imposed fine of Rs 2,000. Joga Singh and Bhinder Singh were convicted under Section 302/34 IPC and were sentenced to undergo life imprisonment and fine of Rs 1000 each. Bhinder Singh was further sentenced to six months rigorous imprisonment and fine of Rs 200. Jaswant Singh and Joga Singh were convicted under Section 324/34 also and were sentenced to undergo imprisonment for three months and fine of Rs 100 each. Joga Singh was convicted under Section 27 of Arms Act and sentenced to undergo rigorous imprisonment for three months. All the sentences were to run concurrently. Against their conviction and sentence the appellants filed appeal in the High Court which was allowed in part. The conviction and sentence of Jaswant Singh under Section 302 IPC was maintained. But the conviction of Joga Singh and Bhinder Singh under Section 302 read with Section 34 IPC was set aside. They were convicted under Section 326/34 but keeping their age in view they were sentenced to undergo rigorous imprisonment for three years only. Their conviction and sentence under Section 324 and 324/34 were maintained. All the sentences were directed to run concurrently. Aggrieved by the order of the High Court the appellants approached this Court. The Criminal Appeal No. 353 of 1981 has been filed by complainant Gurdeep Singh against allowing of appeal of Joga Singh and Bhinder Singh. Appeal Nos. 354 and 355 were filed by State of Punjab against the accused. All the appeals are being disposed by this order.

2. Fields of Kesar Singh, deceased and Jaswant Singh, appellant, were adjacent to each other. In between the two fields there was a passage. Kesar Singh trespassed over two karams against which Jaswant Singh filed an application before the Revenue Authorities which was allowed and Kesar Singh was directed to remove the encroachment. He, however, did not remove the encroachment. On October 22, 1978 at about 4.00 p.m. the appellants armed with weapons went on a tractor and after ploughing the field of Jaswant Singh had started ploughing on the portion which was said to have been encroached upon by Kesar Singh. This resulted in protest by Kesar Singh and attack by appellant in which Kesar Singh died. Both the High Court and the Sessions Judge after considering the evidence on record particularly of PW 3, PW 4 and PW 5 and examining the different versions one given by the prosecution claiming that the appellant were aggressors and the other by the appellant that they had caused injuries in exercise of their right of self defence found it as a fact that even though Kesar Singh had encroached upon the common path and the Revenue Authorities had directed him to remove the encroachment yet it were the appellants who were the aggressor and had caused injuries to Kesar Singh without any provocation or justification. The injuries of the appellant were explained to have been caused by Gurdeep Singh while saving his father Kesar Singh from the attack of the appellant. The High Court, however, found that there was no previous enmity and the appellants went on the spot not with any intention to kill Kesar Singh but to chastise him.

3. We have heard learned counsel for parties at length and have been taken through the findings and relevant evidence. We agree with learned counsel for appellant that on the findings recorded by the High Court and in peculiar facts and circumstances of this case accused No. 1, i.e., Jaswant Singh having had no intention to cause death of Kesar Singh he could be attributed only with the knowledge that the injury caused by him was likely to cause death. Therefore, on the ratio laid down by this Court in *Tholan v. State of T.N.* [(1984) 2 SCC 133 : 1984 SCC (Cri) 164 : AIR 1984 SC 759] it appears appropriate to convict him under Section 304 Part II.

4. As regards other two accused despite strenuous arguments by the learned counsel for the State of Punjab and the complainant we do not find any good reason to interfere with the finding of the High Court that these appellants did not share the common intention of Appellant 1. They had no doubt come armed with weapons but none of them caused any injury on any vital part of the deceased. The finding of the High Court that the common intention of the appellant was to chastise Kesar Singh and not to kill him, appears to be well founded.

5. In the result, this appeal succeeds and is allowed in part. The conviction of Appellant 1 is altered from Section 302 IPC to 304 Part II IPC. The incident is of 1978. The appellant is on bail for nearly last 10 years. In these circumstances, his sentence is reduced to the period already undergone. He is on bail. His bail bonds are discharged.

6. The appeal of other appellants is dismissed.

7. The Appeal Nos. 353, 354 and 355 are also dismissed.

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