

Bachan Singh and others

Vs

State of Punjab

Criminal Appeal No. 216 of 1991

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

27.03.1992

### JUDGMENT

1. The three appellants, namely, Bachan Singh, Makhan Singh and Pal Singh who were arrayed as accused Nos. 1, 6 and 4 respectively before the trial Court have preferred this criminal appeal challenging the correctness of the judgment dated 30-11-79 made in Cr. A. No. 1291 of 1978 by the High Court of Punjab and Haryana.

2. Before the trial Court, these three appellants along with four others took their trial on the allegations that on 21-2-78 at about 9.00 p.m. they all formed themselves into an unlawful assembly and that in pursuance of the common object of that assembly they caused the death of the deceased Narayan Singh. The trial Court for the reasons assigned in its judgment found these three appellants and Sulakhan Singh (A5) guilty of the offence of murder and convicted and sentenced them, in that the first appellant Bachan Singh and Sulakhan Singh have been convicted under Section 302, IPC (simpliciter) and sentenced to undergo imprisonment for life in addition to pay a fine of Rs. 1,000/- each and in default to undergo RI for one year. In addition, all the appellants and Sulakhan Singh were convicted under Section 324 read with Section 34 and sentenced to one year RI with a direction that the substantive sentences should run concurrently.

3. The brief facts of the prosecution case are as follows:

The occurrence in the present case took place on 21-2-78 at about 9.00 p.m. in the area of village Mirgindpura. Sometimes before this occurrence, Puran Singh PW 5 son of the deceased Narayan Singh came running saying that Sulakhan Singh had called him by bad names. When PW 5 came close to his house he also hurled bad names on Sulakhan Singh. Within five or 10 minutes thereafter, Bachan Singh (A1), Sulakhan Singh and Makhan Singh (A6) with barchhas marked as Exs. P5, P6 and P4 respectively and Pala Singh, (A4) armed with barchhas appeared in front of the house of the deceased and they all called the deceased and his son by bad names. On hearing them PW 2 and the deceased came out of their house and told them that they have not done anything for being insulted in that manner. At this point of time, Makhan Singh raised a lalkara and instigated the accused persons not to allow anyone to escape alive. On the instigation of Makhan Singh, Bachan Singh gave a spear blow to the deceased on the left side of his chest which injury had proved fatal. The acquitted accused Sulakhan Singh gave a barchha blow hitting on the right flank of the deceased. The appellant Makhan Singh gave a barchha blow on his right leg. When PWs 2 and 3 intervened to rescue the deceased, accused Surain Singh (since acquitted) gave a spear blow to PW 3 on his left buttock. The third appellant Pala

Singh gave a barchha blow to PW 3 on the index finger of his left hand. Thereafter, the acquitted accused Dara Singh gave a barchha blow to PW 2 on his left shoulder. PW 3 the daughter-in-law of the deceased raised an alarm. It is stated that the acquitted accused Bachan Singh gave a barchha blow on her right leg. The injured Narayan Singh fell down on the ground and died on the spot within a few minutes. After causing injuries to the deceased and witnesses, the accused persons took to their heels. PW 2 lodged the first information report at Bhikiwind Police Station at 6.30 a.m. on 22-2-78. On the basis of the report given by PW 2, a case was registered and the investigation proceeded with.

4. PW 1, the Medical Officer who conducted the autopsy on the dead body of the deceased found two stab wounds, one on the left side of the chest and another on the right side of the abdomen. Besides there were a contusion and abrasion. According to Medical Officer, the death was due to injury No. 1, namely, stab wound on the left side of the chest.

5. The prosecution examined PWs 2 to 5 as eye-witnesses to the occurrence. According to the accused that all the three appellants herein were injured by the prosecution party in that the deceased armed with a dang, PW 2 with a spear and PW 3 with a dang attacked them while they were coming from the house of Dilip Singh and it was only during the course of the occurrence that the acquitted accused Puran Singh brandished his gandasa.

6. The fact that the accused parties also sustained injuries cannot be disputed. In fact, the first appellant Bachan Singh had sustained a stab wound on the dorsal side of the right shoulder. The appellant, Makhan Singh had received injuries on his mouth as a result of that two teeth were uprooted and that A4 sustained a lacerated wound on the right parietal. A survey of the evidence leaves an impression that there was a free fight between these two groups, namely, the prosecution party and the accused party, in which both the parties sustained injuries. It is the settled law that in a free fight each accused will be liable for the individual act attributed to the particular accused. According to the evidence, the third appellant Pal Singh had not caused any injury to the deceased but he has caused a simple injury on the index finger of PW 3. As we have already pointed out Sulakhan Singh who was convicted by the trial Court under Section 302 (simpliciter) has been acquitted by the High Court. The appellant Makhan Singh has caused a simple injury on the leg.

7. Mr. Kohkli, the learned senior counsel appearing on behalf of the appellants strenuously contended that all the appellants are entitled for a complete acquittal on the plea of the right of private defence of persons. After analysing and evaluating the evidence let in by the prosecution, we are of the opinion that the appellants Nos. 2 and 3 would be entitled for an acquittal. Hence accepting the submission made by the learned counsel, we hold that the second and third appellants cannot be saddled with the criminality of murder with the aid of Section 34 and consequently both these appellants 2 and 3 are entitled for an acquittal. Coming to the case of the first appellant, Bachan Singh who is said to have given the blow on the left side of the chest which according to the Medical Officer PW I was fatal. It is also seen from the evidence of the medical officer that the injury given on the shoulder, attributed to Sulakhan Singh was also fatal but Sulakhan Singh had been acquitted by the High Court. The State has not preferred any appeal as against the acquittal of Sulakhan Singh.

8. It is shown that Bachan Singh had sustained a stab wound on the right shoulder. The prosecution has not given any explanation, much less convincing explanation as to by whom and under what circumstances that stab wound on the right side shoulder of the first appellant Bachan Singh was

caused.

9. Under these circumstances, we hold that though Bachan Singh has caused the injury in the right of private defence, he has exceeded the right of private defence and, therefore, he is liable to be punished under Section 304, Part I IPC. In the result, we set aside the conviction of the second and the third appellants under Section 302 read with S. 34, IPC and the sentence of imprisonment and the fine imposed therefor. The conviction of the first appellant Bachan Singh under Section 302 (simpliciter) and the sentence of imprisonment for life as well as the fine of Rs. 2,000/- are set aside, instead he is convicted under Section 304, Part 1, IPC and sentenced to undergo RI for a period of seven years. The conviction of the appellants under Section 324 read with 34 and the sentence of RI for one year are set aside.

10. The appeal is partly allowed and partly dismissed as indicated above. Appeal partly allowed.

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