

Bahadur Singh and another

Vs

State of Punjab

Criminal Appeal No. 212 of 1985

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

19.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J .:-

1. This appeal is filed against the judgment of the learned Judge, Special Court, Ferozepur. There are two appellants A-1 and A-5 and both of them are convicted under Section 302 I.P.C. and sentenced to imprisonment for life. They along with five others (Accused Nos. 2, 3, 4, 6 and 7) were tried for offence punishable under Section 302 read with Section 34, I.P.C. but the trial Court acquitted accused Nos. 3, 4, 6 and 7. A2 was, however, convicted under Section 324, I.P.C. and sentenced to I- 1/ 2 months R.I. and is not before us.

2. The prosecution case is that one Dhan Kaur daughter of Bishan Kaur appointed Jit Singh (A- 1) one of the appellants before us, as her attorney to conduct the litigation. The deceased in this case is Pritam Singh who was appointed as attorney by the opposite side namely Sukhdev Singh. The dispute was regarding tenancy. The suit was filed by the accused along with others against the said Sukhdev Singh and the matter stood fixed for arguments on 6-4-84. On that day all the seven accused who were parties to the litigation were present in the court. P.W. 3 left the deceased outside the court-room to attend to the call of the case. The deceased along with P.Ws. 4 and 5 left for taking tea. Then there was a lalkara that the deceased should not be left scot-free. P.Ws. 3, 4 and 5 saw all the accused coming in a group. A-1 Jit Singh and A-5 Bahadur Singh were armed with gandasas and the others were armed with takwas. A-1 gave a gandasa blow on the head of the deceased and A-5 gave a gandasa blow on the right jaw of the deceased. The other accused also inflicted injuries. Sita Singh, A-2 inflicted injuries to the P.Ws. Thereafter the accused ran away. A constable reached the place of occurrence and he remanded the dead-body. P.W. 3 went to the Police Station and gave an F.I.R. A case was registered under Sections 148 and 302/149, I.P.C. A.S.I. went to the spot, held the inquest and sent the dead body for post-mortem. P.W. I the Doctor, who conducted the post-mortem, noticed incised wound on the occipital region and the brain matter was lacerated and another incised wound on the right lower jaw and the big vessels, the nerve, muscles deep were found cut. The other three injuries were only abrasions and a lacerated wound. The accused were arrested. Jit Singh, A-I and Bahadur Singh, A-5 were also examined for their injuries and there was a lacerated wound on the scalp on Jit Singh, A-1. On Bahadur Singh, A-5 there were five lacerated injuries, one of them was on the back. They were all simple injuries. After completion of the investigation, the charge-sheet was laid. The accused pleaded that they were attacked by the deceased party at the place of occurrence and in exercise of right of self-defence A- I and A-5 inflicted injuries on the deceased. Learned Judge of the Special Court did not accept the plea of self-

defence and convicted the two appellants on the ground that they inflicted the fatal blows on the deceased. From the above narration it can be seen that question which arises for consideration is whether the accused had the right of self-defence. The trial Court pointed out that the plea of right of self-defence was put forward only during the trial and not during the investigation. We do not think this is a right approach. It has been held in a number of cases that the accused can even rely on the circumstances and admissions made by the witnesses in support of his plea without even setting up a specific plea.

3. From the medical evidence we find that the accused had suffered some serious injuries. As already mentioned on Jit Singh A-1, there was a lacerated wound and a swelling and on another accused Surjit Singh there was an abrasion and a lacerated wound. On Bahadur Singh, A-5 there were, lacerated wounds. The prosecution tried to explain away these injuries by saying that the members of the deceased party hurled brick-bats against the accused party when they dealt gandasas blows on the deceased.

4. Having regard to the nature of injuries on the accused particularly Jit Singh and Bahadur Singh (the appellants) it is clear that they must have received injuries at the hands of the deceased and his followers who were in the court premises. The accused have taken a specific plea in the trial Court that the deceased and other P.Ws. dealt blows with dang (lathi). A-I and A-5 inflicted two injuries on the deceased. No doubt the right of self-defence cannot be weighed in golden scales. But the accused by using gandasas and inflicting such serious injuries have exceeded the same. Having gone through the medical evidence as well as the specific plea of the accused, a reasonable doubt arises regarding their right of self-defence and therefore they are to be given the benefit of right of self-defence but in our view, they have exceeded the same. The injuries on the deceased were very serious and the accused have used heavy cutting weapons like gandasas. Therefore they have clearly exceeded the right of self-defence. Therefore Exception 11 to Section 300 is attracted and the offence committed by them would be one punishable under Section 304, Part 1, I.P.C. Accordingly, we set aside the conviction of the appellants under Section 302, I.P.C. and the sentence of imprisonment for life. Instead we convict them under Section 304, Part 1, I.P.C. and sentence each of them to suffer seven years' R.I. The appeal is partly allowed. Appeal partly allowed.

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