

Kartar Singh and Others

Vs

State of Punjab

Dilbagh Singh

Vs

State of Punjab

Criminal Appeals Nos. 67-67-A and 248 of 1983

(M. K. Mukherjee, B.N. Kirpal JJ)

04.01.1996

JUDGMENT

M. K. MUKHERJEE, J. –

1. These two appeals have been heard together as they arise out of a common judgment delivered by the Punjab and Haryana High Court affirming the convictions and sentences recorded against the five appellants under Section 302, 302/149, 324, 324/149 of the Indian Penal Code by the Additional sessions Judge, Amritsar. While one of these appeals (Criminal Appeal No. 248 of 1983) is at the instance of one of the five convicts, the other (Criminal Appeals Nos. 67-67-A of 1983) is by the remaining four. During the pendency of these appeals in this Court one of the appellants, namely, Pargat Singh died and consequently his appeal abates.

2. Having gone through the judgments of the learned courts below we find ourselves in complete agreement with the concurrent findings recorded by them - as they are based on a careful consideration and discussion of the evidence adduced during trial - except that it cannot be said to have been conclusively proved, in view of the evidence of Dr Rajinder Singh (PW 1) who held post-mortem examination upon deceased Mota Sigh, that the appellants shared the common object of causing his murder. Except one incised injury found by him on the skull of the deceased, all other injuries were lacerated injuries on the legs. Those lacerated injuries, according to PW 1, could be caused by firearm, and the incised injury by a sharp-edged weapon. According to the prosecution case as detailed by the eyewitnesses, two of the appellants shot at the deceased with their respective firearms and, therefore, if the common object of the unlawful assembly of which they were members was to kill him, it was expected, in the fitness of things, that they would shoot at the vital parts of his body, more so when the deceased was at close quarters. The evidence of the doctor further discloses that there was no corresponding internal injury of the incised wound which necessarily means that that injury was also not intended to cause the death of the deceased. Such being the state of evidence on record it can only be said that the common object of the unlawful assembly was to cause grievous hurt to the deceased with dangerous weapons.

3. For the foregoing reasons we allow this appeal to the extent that the convictions and sentences of the two appellants (Kartar Singh and Dilbagh Singh) under Section 302 and of the others under

Section 302/149 IPC are set aside; and instead thereof they are convicted under Sections 326 and 326/149 IPC respectively. For the above convictions each of them will suffer a sentence of rigorous imprisonment for seven years. The other convictions and sentences imposed therefor will, however, stand. The substantive sentences will run concurrently. The appellants, who are on bail, will now surrender to their bail bonds to serve out the sentences imposed upon them.