

Charan Singh etc.

Vs

State of Punjab

(G. T. Nanavati, S. P. Kurdukar JJ)

24.10.1997

JUDGMENT

S.P.KURDUKAR, J.

1. Both the appellants in these two criminal appeals were put up for trial before the Sessions Court, Sangrur for an offence punishable under Section 302/34 IPC for committing the murder of Karamjeet Singh. The Session Court on conclusion of the trial by its judgment and order dated May 30, 1986, convicted Lakha Singh (A-1) (appellant in CrI. Appeal No. 62 of 1988) under Section 302 IPC and sentenced him to suffer imprisonment for life, but, however, acquitted Charan Singh (A-2) (appellant in CrI. Appeal No. 61 of 1988). The State of Punjab aggrieved by the order of acquittal of Charan Singh (A-2) filed criminal appeal before the High Court of Punjab & Haryana at Chandigarh. The convicted accused Lakha Singh (A-1) also filed the appeal challenging his order of conviction and sentence before the said High Court. Both the appeals were heard together and the High Court by its judgment and order dated August 24, 1987 allowed the criminal appeal filed by the State and set aside the order of acquittal of Charan Singh (A-2) and convicted him under Section 302/34 IPC and sentenced him to suffer imprisonment for life. The appeal filed by Lakha Singh (A-1) was dismissed. It is against this judgment and order of conviction passed by the High Court, the appellants have filed these two separate criminal appeals to this Court. Criminal Appeal No. 62 of 1988 is by Special Leave whereas Criminal Appeal No. 61 of 1988 is a statutory appeal.

2. Both these appeals arise out of common judgment and, therefore, they are being disposed by this judgment.

3. The prosecution case in nut shell was as under :-

Karamjeet Singh (since deceased) had advanced a loan of Rs. 100/- to Lakha Singh (A-1) but he failed to return the said amount. On 14th August, 1985, Karamjeet Singh demanded the said amount from A-1, but he refused to pay the same and, therefore, Karamjeet Singh gave a slap to him.

4. On 15th August, 1985, Karamjeet Singh along with Balbir Singh, a member of Panchayat and Balbir Singh @ Leela (for clarity referred to as Leela Singh) were going to the field of Leela Singh by the side of drain. When they reached near the sugar cane field of Dial Singh, A-1 and A-2 who were hiding in the sugar cane crop emerged from the said field and they were carrying gandasas with them. A-1 then gave a lalkara saying that they will teach a lesson to Karamjeet Singh for slapping him on the previous day. A-1 and A-2 then advanced towards Karamjeet Singh whereupon A-1 gave a gandasa blow on the head of Karamjeet Singh. A-2 also gave a gandasa blow on the right

shoulder of Karamjeet Singh. After sustaining bleeding injuries, Karamjeet Singh fell down on the ground and thereafter A-1 again gave a gandasa blow near his right ear. Balbir Singh (PW 3) and Leela Singh (PW 4) seeing the ghastly attack on Karamjeet Singh requested the accused not to cause any assault on Karamjeet Singh. They raised an alarm and thereafter A-1 and A-2 fled away. Balbir Singh (PW 3) then went to the village and informed Niranjana Singh (PW 8), a Lumberdar and also to the wife of Karamjeet Singh. Balbir Singh (PW 3) then went to the police station at Dhuri along with Rulda Singh, the brother of Karamjeet Singh and lodged the report (Ex.PF) at about 2.15 p.m. on the same day. The copy of the First Information Report was forwarded and received by Illaqa Magistrate, Dhuri at 2.30 p.m. SI Ajmer Singh (PW 10) proceeded towards the scene of offence. After holding the inquest on the dead body of Karamjeet Singh, it was sent to the Civil Hospital, Dhuri for post mortem examination. Dr. N.C. Garg (PW 1) held the autopsy on the dead body and found three incised ante mortem injuries, Dr. N.C. Garg (PW 1) opined that it was due to the cumulative effective of injury Nos. 1 and 2 leading to the haemorrhage and shock which were sufficient in the ordinary course of nature to cause death. In the meantime, SI Ajmer Singh (PW 10) completed the necessary investigation and filed the charge sheet against A-1 and A-2 for offences punishable under Section 302/34 IPC.

5. The appellants denied the charges levelled against them and pleaded that they have been falsely implicated in the present crime. The prosecution witnesses were telling lies against them being interested in the deceased. They pleaded that they be acquitted.

6. The prosecution examined two eye witnesses, namely, Balbir Singh (PW 3) and Leela Singh (PW 4) who claimed to have seen the entire occurrence. In addition thereto, the prosecution placed reliance upon the evidence of Niranjana Singh (PW 8), a Lumberdar who prepared the complaint and the evidence of Dr. N.C. Garg (PW 1) to prove the cause of death. The prosecution had also relied upon the evidence of panch witnesses relating to the recovery of incriminating articles and the panchnama of the scene of the occurrence. The appellants also examined Nachhatar Singh (DW 1) and Lal Singh (DW 2) to prove the mortgage transaction between Leela Singh (PW 4) and Nachhatar Singh (DW 1). Ajmer Singh (DW 3) was the drafts man who prepared the plan (Ex.DG). Harbhajan Singh (DW 4) was working as SHO at Police Station, Dhuri at the relevant time. He was examined to prove the entries in the register kept in the police station to the bad character of Karamjeet Singh.

7. It is not and cannot be disputed that Karamjeet Singh died a homicidal death. Dr. N.C. Garg (PW 1) who performed the autopsy on the dead body of Karamjeet Singh noted the following three injuries:-

1. Incised wound 18 cm x 2 cm x cutting the underlying bone and brain matter coming out of right temporal region and going 6 cm from outer canthus of right eye and going backwards just above the right pinna.

2. Incised wound 10 cm x 2 cm cutting the underlying bone on the right cheek 7 cm from outer canthus of right eye and cutting the pinna and mastoid bone.

3. Incised wound 3 cm x 1 cm on the back of right shoulder 6 cm from top of back of shoulder cutting the bone. Dr. N.C. Garg (PW 1) testified that all these injuries were ante mortem and injuries nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. Both the courts below accepted the evidence of Dr. N.C. Garg (PW 1) relating to the injuries as well as the cause of death and we see no reason to differ

from the said finding. We, therefore, conclude that Karamjeet Singh died a homicidal death.

8. The trial court accepted the evidence of Balbir Singh (PW 3) and Leela Singh (PW 4) as trustworthy as far as it related to the complicity of A-1. Injury Nos. 1 and 2 were attributed to A-1 and since both these injuries were cumulatively sufficient to cause the death of Karamjeet Singh, the learned trial judge convicted A-1 under Section 302 IPC simpliciter for committing the murder of Karamjeet Singh. The trial court, however, acquitted A-2 and the reasons thereof are found in paragraph 26 which are as under:-

(i) He had no motive to commit the murder of Karamjeet Singh.

(ii) He was not at all in any way aggrieved by the conduct of Karamjeet Singh nor he had any association with A-1 so as to join the latter in commission of the present crime.

(iii) The witnesses failed to disclose how A-1 was connected with A-2 or both of them belonged to one party.

(iv) The evidence of eye witnesses as regards the injury on the shoulder did not find corroboration from the medical evidence. All the three injuries on Karamjeet Singh were possible with one weapon.

(v) The gandasa which was alleged to have been recovered at the instance of A-2 was not proved to be stained with human blood.

(vi) Niranjan Singh (PW 8) did not state in the complaint that A-2 was the other accused along with A-1. Relying upon these circumstances, the trial court gave benefit of doubt and acquitted A-2.

9. The High Court while upsetting the order of acquittal of A-2 had pointed out how none of these grounds was sustainable inasmuch as the presence and participation of A-2 was proved beyond reasonable doubt in the present crime. The evidence of Dr. N. C. Garg (PW 1) corroborated the evidence of these two eye witnesses as regards the third injury though there was some minor error in respect of placement of the same. The evidence of two eye witnesses did not suffer from any infirmity and it proved the complicity of A-2 and the common intention shared by him in the present crime along with A-1. Consistent with these findings, the High Court set aside the order of acquittal and convicted A-2 under Section 302/34 IPC. As regards A-1, the High Court confirmed the order of conviction and sentence passed by the Trial court.

10. It was contended on behalf of the appellants that Leela Singh (PW 4) had mortgaged his land with possession to Nachhatar Singh and if it was so, there was no need either for Leela Singh (PW 4) or others to go to the said land. The claim of the two eye witnesses that they were going together to the mortgaged land was totally unbelievable and if this be so, the presence of Balbir Singh (PW 3) and Leela Singh (PW 4) at the time of occurrence was totally ruled out. We do not see any substance in this contention because both the eye witnesses testified that they were going to the mortgaged land to make a request to Nachhatar Singh to advance some more money. Both the courts below accepted the prosecution story in this behalf. We have gone through the evidence of both these eye witnesses and we do not see any reason to upset the finding recorded by the courts below.

11.It was then urged that both these eye witnesses were chance witnesses and in the absence of any corroboration to their evidence, it would not be safe to accept the said evidence as truthful.This submission again did not impress us.

12.It was then contended on behalf of the appellants that the motive sought to be relied upon by the prosecution did not find corroboration from any other evidence on record and, therefore, there was no reason for the appellants to commit the present crime.We find no substance in this contention because in the complaint lodged on the very same day at 2.15 p.m.did mention the fact that A-1 raised a lalkara saying ".to teach you a lesson for slapping last night." Both the eye witnesses in their substantive evidence in court had testified that Karamjeet Singh had told them that on the previous night, he gave a slap to A-1 as he refused to return Rs.100/- which he had taken on loan.It is true that there is omission which is brought on record in this regard but the very intrinsic evidence in the FIR corroborated the evidence of Balbir Singh (PW 3) who lodge the same.The courts below have accepted the evidence of these two witnesses on the question of motive and we see no reason to differ from the said finding.

13.It was then contended that there was delay in lodging the first information report as the same was lodged after conducting a false story against the appellants.We are not impressed by this submission because the incident in question took place at 12.30 p.m.and the FIR was lodged at 2.15 p.m.after travelling a distance of seven miles.Hence, there was no delay in lodging the First Information Report.

14.After scrutinizing the evidence of these two eye witnesses, we are satisfied that so far as A-1 is concerned, the evidence of the two eye witnesses is unblemish and can safely be accepted as trustworthy.Both the witnesses have categorically stated that A-1 had given two gandasa blows on the vital part of Karamjeet Singh and in the opinion of Dr.N.C.Garg (PW 1) these two injuries were sufficient in the ordinary course of nature to cause the death.In this view of the matter, we are of the considered view that the conviction of A-1 under Section 302 IPC is perfectly legal and needs to be upheld and accordingly we do so.

15.It is not disputed that A-2 was convicted by the High Court with the aid of Section 34 IPC for the substantive offence of murder of Karamjeet Singh.The evidence on record unmistakably proves that A-2 had given a gandasa blow on the back side just below the shoulder of Karamjeet Singh.That injury was not proved to be fatal one.Relying upon these two circumstances, it was urged on behalf of A-2 that he could not be convicted under Section 302/34 IPC.It was further conducted that A-2 had no motive and no reason to cause gandasa blow on Karamjeet Singh.No blood stains were found on the gandasa which was alleged to have been recovered at the instance of A-2.The name of A-2 was also not mentioned in complaint and all that was stated was that A-1 and other person had assaulted Karamjeet Singh.The trial court was right in giving the benefit of doubt to A-2.The High Court, it was contended, was wrong in attributing common intention to A-2 to commit murder of Karamjeet Singh and, therefore, committed a serious error in applying Section 34 IPC and reversing the order of acquittal.The view taken by the trial court was equally probable one and, therefore, the High Court erred in convicting A-2 under Section 302/34 IPC.In support of this submission, Mr.U.R.Lalit, learned counsel drew our attention to the decisions of this Court in Kripal and others Vs.State of Uttar Pradesh AIR 1954 SC 706, Ram Rattan and others Vs.State of Uttar Pradesh AIR 1977 SC 619, Bhaba Nanda Sarma and others Vs.The State of Assam AIR 1977 SC 2252 and Shivalingappa Kallayanappa and others Vs.State of Karnataka AIR 1995 SC 254.He also drew our attention to a decision of the Privy Council in Mehbub Shah Vs.Emperor AIR (32) 1945 PC 118.All these decisions, do not lay down a formula in a straight jacket as regards applicability of Section 34

IPC. The application of Section 34 IPC depends upon the facts and circumstances of each case. The facts and circumstances of the present case which were proved by the prosecution are that both the appellants were hiding in the sugar cane field of Dial Singh and as soon as they saw Karamjeet Singh and others, reached near the said field. The appellants emerged therefrom and came towards Karamjeet Singh with gandasas in their hands. A-1 then gave a lalkara saying they "they will teach a lesson to Karamjeet Singh for slapping him." Immediately thereafter, A-1 gave a gandasa blow from sharp side on the right side of the head of Karamjeet Singh. A-2 then assaulted Karamjeet Singh with his gandasa on the back side near the shoulder of Karamjeet Singh and when he fell down, A-1 gave another gandasa blow near his right ear. These circumstances therefore, in our considered view unmistakably indicated that both the accused had a common intention to teach a lesson to Karamjeet Singh who had slapped A-1 on the previous night. From these proved facts, the only inference that must follow is that A-2 also shared a common intention to teach a lesson to Karamjeet Singh and in pursuance thereof assaulted him with a gandasa. A strong reliance was placed on the fact that no blood stained was found on the gandasa recovered at the instance of A-2 but there is positive evidence on the record that the gandasa was washed before the recovery was effected. If this be so, in our considered view A-2 was rightly convicted under Section 302/34 IPC.

16. For the reasons recorded herein above, we find no substance in these appeals and the same are accordingly dismissed. The appellants who are on bail shall surrender to their bailbonds to serve out the remaining part of their sentences.