

Harjinder Singh

Vs

Karnail Singh

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

06.03.1998

JUDGMENT

NANAVATI J

1. Both these appeals arise out of the judgment of the High Court of Punjab and Haryana in Criminal Appeal No.59 of 1986. The High Court allowed the appeal, set aside the conviction and acquitted the respondents who were tried by the court of Additional Sessions Judge, Barnala, in Sessions Case No.26 of 1984.

2. The three respondents were also tried along with six others in Sessions Case No.15 of 1984 for the same offences but on a complaint filed by the injured victim Harjinder Singh. As the two versions were totally different and the witnesses cited and number of accused were also different, this Court had on an appeal filed by the complainant Harjinder Singh, directed the two cases to be tried separately. In both these cases the accused were tried for committing murders of Major Singh, Jit Singh, Dayal Singh, Nazir Singh and Nachhattar Singh and for causing an injury to Harjinder Singh. In Sessions Case No.26 of 1984, the learned Judge convicted all the three accused (the three respondents in these appeals) under section 302 read with 34 IPC. In Sessions Case No.15 of 1984 he convicted six accused including the three respondents and acquitted the remaining three. The High Court acquitted all the six convicted accused. Aggrieved by their acquittal in the police case, the complainant Harjinder Singh and the State have filed these appeals.

3. On the basis of the same incident, same FIR same investigation and same witnesses as many as 19 persons including complainant Harjinder Singh were tried for the offences punishable under Sections 147, 353, 447 and 307 read with 149 IPC in Sessions Case No.9 of 1984. The learned Additional Sessions Judge convicted 8 accused and acquitted the remaining 11. In appeal (Criminal Appeal No.91-SB of 1986) the High Court confirmed their conviction but reduced their sentence to the period already undergone. In the appeal filed by those accused we have held that neither the FIR was recorded truly nor the investigation was conducted fairly and even at the trial the accused had not received fair treatment at the hands of the prosecution. Taking that view and disbelieving the evidence of three police witnesses (who were examined as eye-witnesses in this case also) and that of the two Investigating Officers we have allowed that appeal today by a separate judgment and set aside the conviction of those convicted accused.

4. The three policemen, namely, Head Constable Chanan Singh, Constable Karnail Singh and Constable Pawan Kumar, who were examined as eye-witnesses, deposed before the Court consistently with the FIR lodged by Head Constable Chanan Singh and further stated that the three respondents had fired at Harjinder Singh and his companions in order to save themselves. The trial

court had rightly held that the said version given by those witnesses was not true and the whole incident had not really happened in the manner stated by them. The trial court relying upon the admission of the respondents that they had fired shots at Harjinder Singh and his companions and the falsity of their defence as indicated by the medical evidence and other circumstances held that the accused had failed to establish that they had caused the deaths of those five persons in exercise of the right of private defence. The trial court, therefore, held them guilty under section 302/34 IPC for causing murder of each of those five deceased. However, no separate punishment was imposed upon them as they were also convicted along with six others in Sessions Case No 15 of 1984 under section 302 read with 34 IPC for the murders of those five deceased persons and were sentenced to suffer imprisonment for life.

5. The High Court allowed the appeal and set aside the conviction of the respondents as it was of the view that in absence of any substantive evidence it was not permissible to convict them under section 302 read with 34 IPC. The High Court held that the trial court by disbelieving the three policemen who were examined as eye-witnesses and also disbelieving the plea of private defence raised by the accused could not have legally convicted the respondents under section 302 read with 34 IPC. There was nothing in the evidence of the eye-witnesses on the basis of which the respondents could have been held guilty for causing the murders of those five persons. On the contrary their evidence supported the defence version. The respondents had merely stated in the statement under section 313 Cr.P.C. that they had fired shots in self-defence without admitting that any of their shots had hit anyone from the opposite party. There was no material before the Court on the basis of which it was possible to say who had caused whose death. There was no material before the Court on the basis of which it could have been said that while firing shots from the guns they were acting in furtherance of their common intention. Thus in absence of any reliable evidence it was not proper to convict the respondents in this case for causing the deaths of those five persons. The High Court was, therefore, right in setting aside their conviction and acquitting them. As the FIR was recorded, investigation was carried out and the trial was conducted in such a way that it was bound to result into an acquittal of respondents, we hold that the acquittal of the respondent in this case shall have no bearing on the conclusion that can be lawfully reached in appeal arising out of the complaint case. As we are of the opinion that the impugned judgment of the High Court is correct, these appeals are dismissed.