

Jagtar Singh and Another

Vs

State of Punjab

Criminal Appeal No. 73 of 1997

(M. K. Mukherjee, A. P. Mishra JJ)

06.11.1998

JUDGMENT

M. K. MUKHERJEE, J. -

1. Jagtar Singh and Harbans Singh, the appellants herein, along with their another brother, Makhan Singh and father, Bhura Singh were tried by an Additional Sessions Judge of Bhatinda for committing murder and other cognate offences in furtherance of their common intention. The trial ended in the conviction of Harbans Singh under Section 302 IPC, Jagtar Singh under Sections 307 and 326 IPC, Makhan Singh under Section 324 IPC and Bhura Singh under Section 323 IPC (two counts). Assailing their convictions, they preferred an appeal before the High Court; and the respondent-State, in its turn, filed an appeal against the acquittal of Bhura Singh, Jagtar Singh and Makhan Singh of the charge of murder. One of the injured, namely, Nidharak Singh also filed a revision petition against the above acquittal. By a common judgment, the High Court disposed of the appeals and the revision petition by upholding the convictions of the appellants as recorded by the trial court, further convicting the appellant, Jagtar Singh under Sections 302/34 IPC and Harbans Singh under Sections 307/34 and 326/34 IPC and acquitting the other two accused persons. Hence this appeal.

2. The prosecution case briefly stated is as follows :

(a) In the morning of 23-9-1991, Naib Singh (the deceased) and his son, Nachhattar Singh (PW 3) had gone to Jaitu Mandi for selling cattle. On that night, at or about 9.00 p.m., Nidharak Singh (PW 2) and his uncle, Ajaib Singh (brother of Naib Singh) went to the house of Naib Singh, to enquire whether they had returned from the Mandi. Reaching there, they found them standing outside their house. A little later, the four accused persons came there armed with deadly weapons and started assaulting them. Jagtar Singh first gave a blow on the head of Nachhattar Singh with a khapra, as a result of which he fell down. Bhura Singh then gave him a kassauli blow and Harbans Singh a gandasa blow on the left side of the head of Naib Singh, who also fell down. When Nidharak Singh and Ajaib Singh tried to separate them, Jagtar Singh gave one khapra blow to Naib Singh near his left ankle and Bhura Singh gave a kassauli blow to Naib Singh on his left thigh. Then, Makhan Singh gave a blow with a sela on his left ankle and another blow on his left thigh. When Ajaib Singh raised alarms, the four accused persons ran away from the spot. The motive ascribed for the assault was a dispute between the parties over a khal (watercourse) for which proceedings under Section 107 CrPC were initiated against both of them.

(b) Ajaib Singh and Gurdev Singh (another brother of Naib Singh) took the three injured to Primary Health Centre, Goniana in a tractor-trolley where Dr. P. C. Singal (PW 7) examined them; and then sent a ruqa to Nahianwala Police Station. On receipt thereof, ASI Tarsem Chand (PW 5) came to the Health Centre and recorded the statement of Nidharak Singh (PW 2). On that statement, a case was registered and investigation taken up. In the meantime, Naib Singh had been forwarded to PGI Hospital at Chandigarh for better treatment where he succumbed to his injuries on 9-10-1991.

(c) On completion of investigation, the police submitted a charge-sheet against the four accused persons and in due course, the case was committed to the Court of Session.

3. The accused persons pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated.
4. In support of their respective cases, the prosecution examined ten witnesses of whom PWs 2 and 3 figured as eyewitnesses, and the defence, two.
5. In the context of the unimpeachable and unimpeached evidence adduced by the doctors to prove that Naib Singh met with a homicidal death and PWs 2 and 3 sustained grievous injuries caused by instruments for cutting, the crucial question that fell for determination before the learned courts below was whether the accused persons were responsible for the above offences. On discussion of the evidence adduced by the parties and relying upon the evidence of the two injured, the trial court held that Harbans Singh alone was responsible for the murder of Naib Singh and the other accused persons did not share the common intention to commit the murder, even though they also participated in the assault upon him. Similar finding was recorded by the trial court in convicting the other three accused persons including the appellant, Jagtar Singh in the manner earlier stated for the assault on Nachhattar Singh and Nidharak Singh. The High Court agreed with the trial court that PWs 2 and 3 were reliable witnesses but, in disagreement with it, held that the two appellants shared a common intention in committing the murder of Naib Singh, attempting to commit the murder of PW 3 and causing grievous hurt to Naib Singh. The High Court, however, acquitted the other two accused persons giving them the benefit of doubt.
6. Having heard the learned counsel for the parties and on going through the record, we do not find any reason to disbelieve the evidence of the two injured eyewitnesses more so when their evidence stands fully corroborated by the medical evidence. Indeed, Mr. Gujral, appearing for the appellants, did not, in his usual fairness, ask us to reappraise their evidence in view of the concurrent findings of the courts below in this regard. He, however, strongly urged that from the evidence on record, a conclusive inference that Naib Singh was murdered could not be drawn for the evidence of the doctor clearly indicated that his death was caused by septicaemia and not by the injuries sustained by him. He next contended that even if it was assumed for argument's sake that Harbans Singh was guilty of the offence of murder, still the appellant, Jagtar Singh could not be convicted with the aid of Section 34 IPC as the evidence of the two eyewitnesses did not firmly establish that he shared a common intention with Harbans Singh to commit the murder.
7. Having given our anxious consideration to the first contention of Mr. Gujral, we do not find any substance in it. It is true that Naib Singh died 16 days after the incident due to septicaemia, but Dr. M. P. Singh (PW 1), who held the post-mortem examination, categorically stated that the

septicaemia was due to the head injury sustained by Naib Singh and that the injury was sufficient in the ordinary course of nature to cause death. From the impugned judgment, we find that the above contention was raised on behalf of the appellants and in rejecting the same, the High Court observed :

"It is well settled that culpable homicide is not murder when the case is brought within the five exceptions to Section 300 Indian Penal Code. But even though none of the said five exceptions is pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses, firstly to fourthly, of Section 300 Indian Penal Code, to sustain the charge of murder. Injury 1 was the fatal injury. When this injury is judged objectively from the nature of it and other evidence including the medical opinion of Dr. M. P. Singh (PW 1), we are of the considered view that the injury was intended to be caused with the intention of causing such a bodily injury by Harbans Singh, the appellant on the person of Naib Singh which was sufficient in the ordinary course of nature to cause death ...."

On a perusal of the evidence of PW 1 in the light of Explanation 2 to Section 299 IPC, we are in complete agreement with the above-quoted observations of the High Court.

8. As regards the other contention of Mr. Gujral, we, however, find much substance. Undoubtedly, the appellants had gone together to the house of the deceased armed with deadly weapons and attacked him, but according to the evidence of the two eyewitnesses, Jagtar Singh assaulted Naib Singh on his left ankle with the weapon he was carrying. From this circumstance and the other attending facts and circumstances appearing on record, it can only be said that Jagtar Singh intended to cause grievous hurt to Naib Singh and not to cause his death. So far as the further convictions recorded against the two appellants by the High Court are concerned, we are of the opinion that the same cannot be sustained as the appeal preferred by the State and the revision petition filed by PW 2 were limited to the acquittal of the three accused persons of the charge under Sections 302/34 IPC only.

9. On the conclusions as above, we uphold the conviction and sentence of the appellant, Harbans Singh under Section 302 IPC and those of appellant, Jagtar Singh under Sections 307 and 326 IPC - and set aside their other convictions. The appeal is, thus, disposed of. Jagtar Singh, who is on bail, will now surrender to his bail bonds to serve out the sentences imposed upon him by the trial court.