SUPREME COURT OF INDIA

Tarsem Singh

Vs.

State of Punjab

Crl.A.No.820-22 of 1996

(N. Santosh Hegde and Doraiswamy Raju JJ.)

29.01.2002

JUDGMENT

Santosh Hegde, J.

1. The appellant and 12 others were chargesheeted before the learned Sessions Judge, Barnala, for various offences; principal offence amongst them being one punishable under Section 302 IPC for having caused the death of Hari Singh and Bharpur Singh in an incident which took place on 4.6.1987 at about 10 a.m. It is the prosecution case that in regard to certain disputes the appellants' group and complainant PW-4, Nazar Singh's group had in regard to the right to bid for certain Shamlat land which was being auctioned on the relevant date, the appellant and other accused persons assaulted the group of the complainant, caused injuries to various persons, consequent to which the abovesaid two persons died due to the injuries suffered in the said attack. The learned Sessions Judge as per his judgment dated 22.12.1988 convicted 9 of those persons for offences punishable under Section 304, Part II, IPC, and sentenced them to undergo RI for a period of 8 years and to pay a fine of Rs.1,000/- each. Being aggrieved by the said judgment, the appellants preferred criminal appeals before the High Court of Punjab & Haryana at Chandigarh, and the High Court as per its judgment dated 2.11.1995 upheld the conviction of the appellants imposed on them under Section 304, Part II, IPC but on taking into consideration various extenuating factors, reduced the said sentence from 8 years to 5 years' RI, maintaining the fine imposed by the Sessions Court. The other sentences imposed on the appellants under other minor charges were maintained and were made to run concurrently. It is against this judgment of the High Court that the appellants, 8 in numbers, are before us.

2. Having perceived the difficulty in arguing for a clear acquittal, Mr. Mahabir Singh, learned counsel appearing for the appellants, in our view rightly, confined the two-fold arguments to the nature of the offence and the quantum of sentence only.

3. He contended that the courts below erred in coming to the conclusion that the offence in question was one falling under Section 304, Part II, IPC, while if at all a conviction is to be based, according to him, it could be only under Section 325 IPC. Based on the material

available on record, he pointed out that though the appellants had carried sharp-edged and blunt weapons which could cause serious injuries, a perusal of the injuries caused on the deceased would show that they were not used for the purpose of causing such injuries which in their knowledge would cause death.

4. In support of this contention, the learned counsel drew our attention to the injuries found on the deceased and argued that these injuries were small in nature and were not deep enough so as to cause a knowledgeable death. He further contended that even, according to the prosecution the appellants are supposed to have carried weapons like spears, daggers, gandasas, gupti etc. and if, as a matter of fact, the appellants were to cause injuries which in their knowledge would cause death then the injuries on the deceased would have been more severe injuries. He also contended that since the attack in question was spontaneous, without there being any personal or individual enmity with the deceased persons, the injuries at the most could be attributable to offences punishable under Section 325 IPC.

5. We have carefully examined the evidence adduced by the prosecution and also the arguments addressed on behalf of the parties. The learned Sessions Judge who considered the evidence on record, in our opinion, rightly came to the conclusion that the offence in question could not be one that could be brought under Section 302 read with Section 149 IPC, but the one which would fall under Section 304, Part II, IPC. He found that at least one of the injuries caused on the deceased was severe enough to cause death in the ordinary course of nature. Based on the evidence of the doctor, he held that an incised wound of 3 x x inches on the right side of the scalp just above the left ear which caused the fracture of left parietal and left temporal bone extending to the frontal and occipital region could never be treated as an injury contemplated under Section 325 IPC, but should be held to be one that would cause death which knowledge the appellant must have had. It is on an analysis of this evidence of the doctor pertaining to the injuries suffered by the two deceased persons, namely, Hari Singh and Bharpur Singh, the learned Sessions Judge came to the conclusion that these accused who have been found guilty of having caused those injuries could only be convicted for an offence punishable under Section 304, Part II, IPC. The High Court on re-appreciation of this evidence, has agreed with the learned Sessions Judge, and we do not find any infirmity in the findings recorded by the trial court as well as the High Court. In our opinion, it would be stretching the defence case far beyond the limits if we were to conclude that the injuries caused on the two deceased persons which were attributed to the appellants, could be anything other than the one falling under Section 304, Part II, IPC. In the said view of the matter, we are not inclined to interfere with the findings recorded by the two courts below.

6. It was next contended by Mr. Mahabir Singh, learned counsel, that the appellants are all aged persons and the incident in question took place as far back as on 4.6.1987 and they having served some part of the sentence, are entitled to a more humane consideration, hence, the sentence of 5 years awarded by the High Court should be reduced. We notice that under the Code, the maximum sentence awardable for an offence under Section 304, Part II, IPC is imprisonment for 10 years. Inspite of the same, the learned Sessions Judge considered the material on record and came to the conclusion that a sentence of 8 years with a fine of

Rs.1,000/- each would serve the ends of justice in the facts and circumstances of the case. Even this sentence was reduced by the High Court on taking a more humane approach and reduced that sentence to a period of 5 years. We are convinced that the sentence now awarded by the High Court is reasonable, even taking into consideration the respective ages of the appellants as also the long period that has rolled by since the committing of the offence in question. We do not think it appropriate to further reduce the period of sentence, keeping in view the gravity of the offence committed.

7. In the said view of the matter, the appeals fail and the same are hereby dismissed. If the appellants are on bail the bailbonds are cancelled, and they are required to serve out the remainder period of their sentence.