

SUPREME COURT OF INDIA

State of Punjab

Vs.

Rajinder Singh

CrI.A.Nos.1152-1154 of 2003

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

05.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in these appeals is to the judgment of a Division Bench of the Punjab and Haryana High Court. It has upheld the conviction of the seven accused persons convicted by the Trial Court for offences punishable under Sections 364 and 323 read with Section 149 of the *Indian Penal Code, 1860* (in short 'the IPC'), while acquitting accused Mohan Singh, Rajinder Singh, Kulvinder Singh and Gurcharan Singh of charges relating to Sections 302, 201 read with Section 149 IPC. Originally, there were nine accused persons out of whom two were acquitted by the Trial Court.

2. Criminal Appeal Nos.1152 to 1154 of 2003 have been filed by the State questioning the acquittal while other appeals have been filed by the convicted accused persons.

3. Background facts, as projected by the prosecution are as follows:

“At about 4.00 P.M. on 23.09.1996 Surjit Kaur, (PW-3) the wife of Darshan Singh and the resident of village Dhadrian along with her son Sukhjinder Singh, her father Jangir Singh, her brother Mohinder Singh and cousin Surjit Singh were present in her house whereas her husband Darshan Singh had gone to the fields. In the meanwhile, her father-in-law Mohan Singh armed with a gandasa, Kulwinder Singh and Bhola Singh, son of Hardial Singh, Hardial Singh and Gurnam Singh armed with a dang each, Rajinder Singh armed with an axe and Santa Singh (hereinafter referred to as Lamberdar) empty handed and two unidentified persons all armed with Dangs came in a jeep. Accused Mohan Singh raised a lalkara that the complainant party should be taught a lesson for taking possession of the land and the Dera. The accused persons opened attack on the complainant party causing injuries to Surjit Kaur and Sukhjinder Singh, Jangir Singh, Mohinder Singh, Surjit Singh and Darshan Singh came to the spot and raised an alarm on which the accused persons went towards that side and gave a beating to Jangir Singh (hereinafter referred to as the deceased) and took him

away. Surjit Kaur and other persons injured were thereafter taken to the Primary Health Centre, Longowal. Information was sent to the police station on which investigation was started.”

4. After completion of investigation, charge sheet was filed and the accused were charged for offences punishable under Sections 323, 427, 364, 302, 201, 120-B, 148 and 149 IPC. Since they pleaded innocence, they were put on trial. The Trial Court placed reliance on the evidence of the witnesses and held three of the accused persons to be guilty of offences punishable under Section 302 IPC, whereas accused Gurcharan Singh and Mohinder Singh were convicted under Section 302 read with Section 149 IPC and all the seven accused persons guilty of offences punishable under Section 364 read with Section 149 IPC and Section 148 and 323 IPC.

5. Appeals were preferred by the convicted accused persons. By the impugned judgment, the High Court, while upholding the conviction of the respondents so far as the conviction under Section 364 read with 149 IPC is concerned, directed acquittal of all the three accused persons who were convicted for offences punishable under Section 302 IPC and the two who were convicted for offences punishable under Section 302 IPC read with Section 149 IPC. It is brought to our notice by learned counsel for the appellant-State that accused Mohinder Singh had died during the pendency of the appeal before the High Court and Mohan Singh had died during the pendency of the present Criminal Appeals.

6. According to learned counsel for the appellant-State, the evidence of PW-10, Leela Singh, who was the solitary eye-witness to the occurrence, relating to murder, was cogent and credible and the High Court should not have discarded his evidence. Learned counsel for the respondents on the other hand submitted that the analysis made by the High Court to discard the evidence of PW-10 so far as the charge under Section 302 and/or 302/149 IPC is concerned, cannot be faulted with.

7. The High Court has noted that Leela Singh (PW-10) was allegedly the solitary witness to prove the charge. The High Court noted that he had not offered any basis for his presence in the alleged occurrence. Additionally, he did not disclose about the incident for about 10 days and suddenly according to him, his conscious pricked him and he came forward to speak about the incident to the police. It further appears that the manner of assaults were specifically detailed, is too hard to be believed.

8. The High Court found that his conduct was most unusual. Though, he claimed that he was an independent witness and had no relationship with the deceased or his family members, the witness fairly admitted that he was closely related to the deceased. The High Court, in the aforesaid background analysed his evidence with care and caution. It was noticed that his silence was most unusual because he was closely related to the deceased. Furthermore, the explanation offered that suddenly he became conscious of his constitutional duties to see that guilty persons get punishment, was hardly believable. His evidence about the manner of assault attributed to the various accused persons was too hollow to have any credence. It was quite unnatural that the manner in which the assaults were given could be given with such

precision when accused persons were many as was the number of injuries. That being the position, we do not find any scope for interference in these appeals with the order of acquittal so far as the offence relatable to Section 302 or 302/149 IPC are concerned. The appeal, as noted above, survives only in respect of respondents Rajinder Singh and Kulvinder Singh and Gurcharan Singh. The appeals are dismissed accordingly.

CRIMINAL APPEAL NOS.9-10 OF 2004

9. These two appeals have been filed by accused Gurcharan Singh and Rajinder Singh. After going through the well reasoned judgments of the Trial Court and the High Court and the fact that the appellants have already served out the sentence, as imposed, these appeals have, in any event, become infructuous and are, accordingly dismissed.