

(1992) 09 SC CK 0048

In the Supreme Court Of India

Case No : Criminal Appeals No's. 620-21 with 622 of 1980

Amarjit Singh and others

APPELLANT

Vs

State of Punjab
Balkar Singh and others Vs State of Punjab

RESPONDENT

Date of Decision : 22-09-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 87
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 307

Citation : AIR 1993 SC 229 : AIR 1992 SC 229 : (1992) CriLJ 3858 : (1992) 3 Crimes 549 : (1992) 5 JT 676 : (1992) 2 SCALE 720 : (1993) 2 SCC 254 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;G.N. Ray, J

Bench : Division Bench

Advocate : R.C. Kohli and R.S. Suri, for the Appellant;

Final Decision : Allowed

Judgement

K. Jayachandra Reddy, J.—These three appeals arise out of a common judgment of the Punjab & Haryana High Court and they are being disposed of together here. Original accused Nos. 1, 2, 4, 5, 6, 10 to 14 and 16 are the appellants before us.

2. On 12.9.74 at about 9/10 A.M. a rioting of grave nature took place in Village Bath in Amritsar District, during the course of which four persons were killed and several persons received injuries. In connection with this occurrence 17 accused persons were tried under Sections 148, 302, 307, 324, 325 and 323 read with Section 149 I.P.C. and Section 27 of the Arms Act by the learned Additional Sessions Judge, Amritsar. The learned trial Judge acquitted accused Nos. 3, 7, 8, 9, 15 and 17 and convicted the remaining 11 accused u/s 302 read with Section 149 I.P.C. and sentenced each of them to undergo imprisonment for life. They were also convicted under Sections 148, 307/149, 323/149, 324/149 and 325/149 I.P.C. and sentenced to various terms of imprisonment. Four of them were also convicted u/s 27 of the Arms Act and sentenced to one year's R.I. The

sentences were directed to run concurrently. The convicted accused filed Criminal Appeal Nos. 1608/75, 1645/75 and 52/76 against their respective convictions. The State of Punjab filed Criminal Appeal No.508/76 against acquittal of the six accused. It also filed Criminal Appeal No.322/76 for enhancement of the sentence of imprisonment for life to death against A-1 and others and Criminal Revision No.391/76 was filed by one Madagan Singh, a private party. The High Court confirmed the convictions and sentences imposed on all the 11 convicted accused and their appeals were dismissed. The High Court also dismissed the appeals filed by the State and the criminal revision filed by Madagan Singh. All the 11 convicted accused have preferred these three appeals before us. The prosecution case is as follows:

All the accused persons, the four deceased persons and the material witnesses belong to Village Bath. The house of Gopal Singh, P.W. 13 was situated in Village Bath on the metalled road leading from Taran Taran to Rayya. The mud-house of his nephew Piara Singh, P.W. 24 adjoined his house. About 5 or 6 months prior to the occurrence, Piara Singh, P.W. 24 had gone to Amritsar with his family to earn his livelihood there. At the time of his departure from the village, he entrusted his house to his cousin brother Gian Singh, A-4 who had earlier been residing at Rayya. Some days prior to this occurrence, Piara Singh, P.W. 24 returned from Amritsar alongwith his family and took his house back from Gian Singh, A-4. The latter wanted to retain one room out of the three rooms but Piara Singh, P.W. 24 did not agree. A-4 was employed by A-1 Sarpanch. In the dispute between P.W. 24 and his cousin A-4, A-1 took the side of A-4 to forcibly occupy one room. The mud-wall of the house abutting the road side was dismantled and a door was installed. P.W. 24 took the matter to the brotherhood of Mazhabis namely his caste people. On the fateful day i.e. 12.9.74 at about 9/10 A.M. there was a gathering of his community at the place of occurrence to consider the action of A-1 and A-4 in dismantling the wall and installation of the door. The panchayat of Mazhabis brotherhood decided that the new door opened forcibly by the accused should be closed and some of the prosecution witnesses closed the newly opened door and the door erected by A-4 was dismantled. On seeing the gathering, all the 17 accused persons under the leadership of Amarjit Singh, A-1 came from his house variously armed. Out of them accused Nos. 1, 5, 6 and 13 were armed with guns, A-2 was armed with a rifle and A-4 was armed with a pistol. The others were armed with sharp-edged weapons. Immediately after reaching on the spot, A-1 fired from his gun which hit on the abdomen of Charhta Singh deceased son of Gopal Singh, P.W. 13. Thereafter all the accused who were armed with fire-arms opened fire as a result of which many persons got injuries and fell down. The other accused armed with other weapons came forward and inflicted injuries upon the fallen victims with their respective weapons. Charhta Singh, Chanan Singh and Smt. Jito died on the spot. Several prosecution witnesses and others in all about 15 to 20 persons were seriously injured. P.W. 13 got a lift on the carrier of the bi-cycle of one Karan Singh and proceeded towards Police Station, Taran Taran and gave a report at about 10.30 A.M. SI,

Baldev Singh, P.W. 57 registered the crime, left for the place of occurrence alongwith A.S. I. Narsingh Dass P.W. 56 and a posse of constables and reached the place of occurrence by 12 Noon. By then most of the injured persons either had left the place or had been taken for first aid and medico legal examination. Only Smt. Banti, P.W. 30 and one Bachan Singh out of the injured persons were available. The Investigating Officer prepared the inquest reports on the three dead bodies and they were despatched for post-mortem. He sent P.W. 30 to the Hospital. He recovered five empty cartridges at the scene of occurrence and prepared a memo Ex.P. 11. On the following day, the Investigating Officer arrested some of the accused persons and recovered some weapons. He could not arrest A-1 and proceedings were irritated u/s 87 Cr.P.C. In the meantime A-1 surrendered. The other accused were arrested on various dates. Coming to know that some of the injured persons had been taken to Taran Taran and Amritsar Civil Hospitals, the Investigation Officer proceeded there and came to know that one Ala Singh, who also received injuries at the time of occurrence, died in the course of the investigation. The statements of the other injured witnesses were recorded. After completion of the investigation, the charge-sheet was laid.

3. The prosecution examined 60 witnesses out of which 7 were Doctors and 20 of them were eye-witnesses. All of them except P.W. 13 were injured. The remaining witnesses were of formal character. The accused pleaded not guilty. Accused Nos. 1, 6 and 17 pleaded alibi. A-1 pleaded that on 8.9.74, four days prior to the day of occurrence while riding a motor-cycle he got injured and was hospitalised and on coming to know about the case he surrendered. In support of his plea of alibi he examined D.W. 1, a Doctor and D.W. 3, a PCMS Officer. A-6 examined D.W. 2, a retired Head Constable to prove that on the day of occurrence he was at Ludhiana. A-17 examined D.Ws 6, 7 and 8 Principal and Lecturers of Government College, Taran Taran to prove that A-17 attended the College on the day of occurrence. A-2 and A-4 admitted that they were present at the scene of occurrence but they put forward a different version of the manner of occurrence. A-4 stated that he was in peaceful possession of the portion of the house of Piara Singh, P.W. 24. On the day of occurrence he noted the deceased persons along with others closing the door. He went to the house of A-1 to inform him but he was not available. He only found A-2 present who followed A-4 to the place where the door was being closed. A-2 tried to intervene but he was abused and assaulted and injuries were caused to him with gandasis by the deceased party. A-4 found the life of A-2 in danger. Therefore, he fired 4-5 shots from a DBBL 12 Bore gun resulting in injuries to some of the Mahzabis while others ran away. On herein the noise some other villagers came to the place of occurrence and inflicted injuries on the fleeing Mahazabis. In substance A-4 took upon himself the authorship of causing the death of the deceased persons and the gun-shot injuries to P.Ws in the exercise of right of private defence of his property and the person of A-2. The learned Judge after a detailed analysis of the evidence of the eye-witnesses and the other circumstantial evidence including the medical evidence convicted 11 accused giving the benefit

of doubt to remaining six accused. The learned trial Judge accepted the plea of alibi put forward by A-17 while acquitting him. He also rejected the evidence of the defence witnesses except those examined in support of the plea of alibi of A-17. The High Court once again examined the evidence of the eye-witnesses and agreed with the findings of the trial court.

4. Shri Kohli, learned Counsel for the appellants submitted that the prosecution has failed to explain the injuries on A-2 and the plea of self-defence set up by A-4 ought not to have been brushed aside. His next submission was that all the witnesses are interested and that they have implicated some accused falsely at least A-17. Therefore their evidence cannot be relied upon in respect of others. His further submission was that the case of A-2 stands on the same footing as that of the acquitted A-3 since he did not use his weapon. A-2 has been convicted on the same ground that he was injured. It was also his submission that A-6 who was chargesheeted u/s 302 I.P.C. simpliciter, was acquitted of that charge. Therefore he ought not to have been convicted u/s 302/149 I.P.C. and that the other accused namely A-10, A-11, A-12, A-14 and A-16 who were not armed with fire-arms, could not be held liable under Sections 302/149 I.P.C. inasmuch as they have not attacked any of the deceased persons and therefore they could not have shared the common object with others namely to kill the deceased persons.

5. At the instance of the counsel appearing for both sides we have gone through the evidence of the eye-witnesses. Admittedly four persons died of gun-shot injuries. P.W. 14 had three blunt-weapon injuries out of which injury No.2 was of a grievous nature. P.W. 15 had 8 injuries, P.W. 16 had 7 blunt-weapon injuries, P.W. 17 had 9 injuries, five of which were gun-shot wounds, P.W. 18 had 6 injuries out of which one was a gun-shot wound, P.W. 19 had 9 injuries, P.W. 20 had 7 gun-shot injuries, P.W. 21 had 5 blunt-weapon injuries, P.W. 22 had 8 injuries, P.W. 23 had 11 injuries and P.Ws 24 and 25 had 7 injuries each. All these injured witnesses have fully supported the prosecution case. According to the prosecution, the high-handed dismantling of the wall of P.W. 24 and erecting the door led to the gathering of Mahzabis consisting of deceased persons and injured witnesses. Except that they belong to the same caste, the witnesses are not related to each other. All these details are mentioned in the earliest report which was given within a short time. According to P.W. 11, after the occurrence Hari Singh and Bachhittar Singh, two of the appellants dragged the dead body of Charhta Singh, deceased and the dead body of Chanan Singh was dragged by two of the acquitted accused. The Investigating Officer, P.W. 57 found these two bodies lying in front of the main gate of A-1.

6. Learned Counsel strenuously contended that the prosecution party was the aggressor and the presence of injuries on A-2 would support the plea of self-defence set up by A-4. We see no force in this submission. All the witnesses have unanimously stated that A-4 surrendered the house to P.W. 24, 15 days prior to the occurrence. Learned Counsel relying on some admissions made by P.Ws 15

and 24 sought to contend that the prosecution story regarding A-4 having surrendered the house is not correct. But what we have to note is the fact that the occurrence took place after erection of the door and dismantling of the wall. The fact that four persons were killed and several persons received injuries at the place of occurrence namely near the house of P.W. 24, it amply establishes the fact that the accused in large numbers after forming into an unlawful assembly attacked the deceased persons and the injured witnesses. The Doctor, P.W. I examined A-2 on 12.9.74 and found 5 incised injuries on the head and two contusions. All the injuries were simple. Both the courts below after considering this aspect held that A-2 could not be arrested and he surrendered later and that he never gave any report setting up the plea of self-defence. Both the courts have also held that the grounds on which the plea of self-defence is set up are wholly untenable. The courts below have also observed that some minor discrepancies pointed out in the depositions of the prosecution witnesses are insignificant.

7. Coming to the evidence of the injured witnesses, the learned Counsel commented that the witnesses are all partisans and without sufficient corroboration their evidence can not be accepted. What type of corroboration is necessary in a given case depends upon various factors and circumstances. In the instant case all the eye-witnesses are injured witnesses. It can not be said that every one of them is active partisan in the sense that they would have the tendency of implicating the innocent persons leaving out the real culprits. In any event their evidence has been scanned carefully and has been accepted only in respect of those accused whose presence and participation in the occurrence has been established beyond all reasonable doubts. While scrutinising their evidence, the courts below have applied the relevant test namely whether the names are mentioned in the earliest report and whether there are circumstances to prove their participation etc. The acquittal of some of these accused does not render the evidence of the injured witnesses wholly unacceptable. Learned Counsel made a special plea on behalf of A-1, A-2 and A-6. He submitted that A-1 Amarjit Singh was the Sarpanch and it is very likely that he was implicated falsely and that all able-bodied members of his family have also been implicated. It was also submitted that he could not have participated in the occurrence as he was involved in an accident four days before the occurrence. We see no force in this submission. The background of the occurrence would indicate that A-1 as a leader championed the cause of A-4 Gian Singh and all the injured witnesses who are in large numbers have consistently spoken to about his presence and participation in the occurrence. The theory of accident and his possible inability to participate in the occurrence has not been probablised. So far A-2 Surjit Singh is concerned, it is submitted that his case is identical with that of Banta Singh (A-3) the acquitted accused. According to the learned Counsel, A-3 was acquitted on the ground that there was no corresponding injury to the overt-act attributed to him and the same reasoning applies to the case of A-2 also. No doubt, the trial court has acquitted A-3 on that ground and that is only by way of scrutiny of the

evidence in considering the presence of A-3. But in the case of A-2 all the witnesses have spoken that he was armed with a rifle and his participation by being a member of the unlawful assembly is acceptable because of the overwhelming evidence. Now coming to A-6 Piara Singh, it is submitted that no gun has been recovered from him and therefrom his case also stands on the same footing as that of some of the acquitted accused. But the evidence of the injured witnesses shows that he fired with gun at the deceased Chanan Singh from close quarters. Assuming there is some discrepancy as to the distance from which he fired at the deceased, that by itself is not very material. Both the courts below after scrutiny of the evidence of the injured witnesses have concurrently held that A-6 was also a member of the unlawful assembly.

8. We have also examined the other submissions of the learned Counsel regarding A-2 carefully. All the eye-witnesses have spoken to about his presence at the scene of occurrence being armed with a rifle. Likewise the presence of A-6 armed with a gun is consistently spoken to by all of them. According to these witnesses, A-1, A-5, A-6 and A-13 were armed with guns, A-2 was armed with a rifle and A-4 was armed with a pistol and others were armed with gandasis, dangs and sua etc. A-1 fired his gun hitting deceased Charhta Singh. Then all the other accused having fire-arms in their hands opened fire with their respective weapons. The other accused, who were armed with other weapons, started inflicting blows with their respective weapons and caused injuries to several persons. The Doctors who examined these injured witnesses found several injuries which could have been caused by gandasis or blunt weapons and on the four deceased persons as well as on some of the injured witnesses there were gunshot wounds. Therefore the medical evidence also corroborates the evidence of the eye-witnesses.

9. We do not propose to examine the evidence of the remaining D.Ws which has been rightly rejected by both the courts below. The mere fact that A-17 is acquitted, we cannot, on that ground reject the evidence of the eye-witnesses in respect of the convicted accused. The courts below after a careful analysis of the entire evidence held that all these 11 accused persons were members of the unlawful assembly.

10. We are also not inclined to accept the submission of the learned Counsel that the common object of the other accused who were not armed with fire-arms but armed with other weapons, was not to commit murder. It was, however, submitted by the learned Counsel that it is not uncommon that an unruly crowd on the rampage may contain some miscreants who may go beyond the common object and commit adhoc crimes graver than the objective of the mob and that has happened in this case. We see no force in this submission. In inferring the common object of unlawful assembly, various factors depending upon the facts and circumstances of each case have to be taken into consideration. In the instant case these appellants were found to be armed with fire-arms as well as other deadly weapons. They went in a body and participated in the occurrence.

In such a situation even Section 34 I.P.C. is attracted particularly having regard to the fact that four persons were killed and several others received injuries at the hands of the members of the unlawful assembly. The participation of each of these appellants is established. Therefore all of them shared the common object and Section 149 is squarely attracted. In this context we are also not prepared to accept the submission of the learned Counsel that the case of A-2, A-4 and A-6 stands on a different footing namely that though they were armed with fire-arms it is not established that they used them. The prosecution witnesses have consistently deposed that they were members of the unlawful assembly and we have already held that the common object of the unlawful assembly was to commit the murder. In such a situation these three accused who were members of the unlawful assembly armed with fire-arms cannot get absolved. In the result all the three appeals are dismissed.